PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760

WILLKIE FARR & GALLAGHER LLP
Mark T. Stancil (admitted *pro hac vice*)
Joshua S. Levy (admitted *pro hac vice*)
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000
mstancil@willkie.com
jlevy@willkie.com

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

Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST'S WITNESS AND EXHIBIT LIST WITH RESPECT TO HEARING TO BE HELD ON MAY 11, 2026

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The service address for the Reorganized Debtor is 6333 Mockingbird Ln., Ste 147 #5045, Dallas, Texas 75214.

Highland Capital Management, L.P., the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the Highland Claimant Trust (together, "Highland"), by and through its undersigned counsel, submits the following witness and exhibit list with respect to the *Motion for Relief from Order and Motion to Vacate* [Docket No. 4513] ("Motion for Relief") filed by The Dugaboy Investment Trust ("Dugaboy") which the Court has set for hearing on May 11, 2026 at 9:00 a.m. (Central Time) (the "Hearing") at the George Mahon Federal Building, 1205 Texas Avenue, Room 314, Lubbock, Texas 79401.

A. Witnesses:

1. James Dondero;
2. James P. Seery, Jr.;
3. Nancy Dondero, as Trustee to The Dugaboy Investment Trust;
4. Mark Patrick;
5. Any witness identified by or called by any other party; and
6. Any witness necessary for rebuttal.

B. Exhibits:

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
A.	**Patrick Authority**			
1.	Trust Agreement of Hunter Mountain dated December 17, 2015 [HCMLPHMIT00004103-HCMLPHMIT00004114]	70		

[2] Highland's Witness and Exhibit List for the June 25, 2025 hearing (the "9019 Hearing") on the *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4216] can be found at Docket No. 4255 and as further amended at Docket Nos. 4277 and 4280. Exhibit reference is to the exhibit list (and copies of the exhibits themselves) found at Docket No. 4255 unless otherwise noted.

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
2.	HMIT Appointment of Successor Administrator dated 8/12/2022 [HCMLPHMIT00003872]	75		
3.	Amended and Restated Limited Liability Company Agreement of Beacon Mountain LLC dated September 24, 2015 [HCMLPHMIT00004115-HCMLPHMIT00004123]	94		
4.	Second Amended and Restated Limited Liability Company Agreement of Beacon Mountain LLC dated February 12, 2025	95		
5.	Membership Interest Purchase Agreement, dated February 12, 2025, between Rand PE Fund I, L.P. and CLO Holdco, LLC			
6.	Membership Interest Purchase Agreement Rand Advisors dated August 1, 2022 [HCMLPHMIT00004202-HCMLPHMIT00004215]	86		
7.	Limited Liability Company Agreement of Atlas IDF GP, LLC dated October 29, 2015 [HCMLPHMIT00003511-HCMLPHMIT00003517]	73		
8.	Amended and Restated Company Agreement of Atlas IDF GP, LLC dated August 8, 2022 [HCMLPHMIT00004127-HCMLPHMIT00004151]	83		
9.	Member and Manager Consent of Atlas IDF GP, LLC dated October 13, 2022 [HCMLPHMIT00004124-HCMLPHMIT00004126]	82		
10.	Limited Liability Company Agreement of Rand PE Fund Management, LLC dated October 29, 2015 [HCMLPHMIT00003873-HCMLPHMIT00003879]	76		
11.	Amended and Restated Company Agreement of Rand PE Fund Management, LLC dated August 1, 2022 [HCMLPHMIT00004177-HCMLPHMIT00004201]	85		
12.	Member and Manager Consent of Rand PE Fund Management, LLC dated October 13, 2022 [HCMLPHMIT00004219-HCMLPHMIT00004221]	88		
13.	Limited Liability Company Agreement of Rand Advisors, LLC dated August 28, 2013 [HCMLPHMIT00003880-HCMLPHMIT00003886]	77		

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
14.	Amended and Restated Company Agreement of Rand Advisors, LLC dated August 1, 2022 [HCMLPHMIT00004152-HCMLPHMIT00004176]	84		
15.	Member and Manager Consent of Rand Advisors, LLC dated October 13, 2022 [HCMLPHMIT00004216-HCMLPHMIT00004218]	87		
16.	3/17/2025 Rand Advisors Form ADV [HCMLPHMIT00003465-HCMLPHMIT00003493]	89		
17.	Agreement of Limited Partnership of Rand PE Fund I, L.P. dated October 29, 2015 [HCMLPHMIT00003887-HCMLPHMIT00003893]	78		
18.	Rand PE Fund I, LP Offering Series 1 Limited Partnership Interests dated November 30, 2015 [HCMLPHMIT00004024-HCMLPHMIT00004095]	81		
19.	Rand PE Fund I, L.P. SEC Form D dated February 24, 2025 [HCMLPHMIT00004096-HCMLPHMIT00004100]	93		
20.	Amended and Restated Limited Partnership Agreement of Atlas IDF, LP dated November 30, 2015 [HCMLPHMIT00003894-HCMLPHMIT00003928]	79		
21.	Atlas IDF, LP Offering of Series 1 Limited Partnership Interests dated November 30, 2015 [HCMLPHMIT00003929-HCMLPHMIT00004023]	80		
22.	Atlas IDF LP SEC Form D dated February 24, 2025 [HCMLPHMIT00003518-HCMLPHMIT00003522]	92		
23.	Atlas IDF, LP Subscription 12/21/2015 (signature pages only)	90		
24.	Atlas IDF, LP Subscription 12/23/2015 (signature page only)	91		
25.	Crown Global Rand Participation Agreement (Executed)	102		
26.	Crown Global DVA Policy 30218 (signed)	98		

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
27.	Crown Global DVA Termsheet 30218	99		
28.	Crown Global DVA Policy 30219 (signed)	100		
29.	Crown Global DVA Termsheet 30219	101		
30.	Bylaws of The Okada Family Foundation, Inc. (final version)	96		
31.	Bylaws of Empower Dallas Foundation, Inc.	97		
32.	S&G HMIT Opinion Rep Letter dated January 29, 2016	103		
33.	S&G HMIT Opinion dated January 29, 2016	104		
34.	HOLDCO Responses and Disclosures Related to the Court's Order Requiring Disclosures [Docket No. 2547] HCMLPHMIT00003523-HCMLPHMIT00003828]	74		
35.	Show Cause Hearing Transcript June 8, 2021 [HCMLPHMIT00002716-HCMLPHMIT00003013]	71		
36.	HMIT Hearing Transcript June 8, 2023 [HCMLPHMIT00003014-HCMLPHMIT00003402]	72		
B.	**Validation of Patrick's Authority**			
37.	*Remittance Agreement* between the NexPoint Small Bay and Charitable DAF and Liberty CLO Holdco, Ltd. (as those terms are defined), dated January 10, 2025 [Docket No. 4536-E]	22		
38.	Intercreditor and Participation Agreement with HCLOM dated January 10, 2025 [HCMLPHMIT00003868-HCMLPHMIT00003871]	13		

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
39.	*Stipulation Withdrawing Objection of the Dallas Foundation and Crown Global Life Insurance, Ltd. to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement With the HMIT Entities and Authorizing Actions Consistent Therewith* dated June 27, 2025 [Docket No. 4291]			
40.	The Rule 11 Agreement filed in the TX Business Court on July 13, 2025 [Docket No. 4356-F]			
41.	*Consent Order in In re Charitable DAF Holdco, Ltd*., entered by the Grand Court of the Cayman Islands Financial Services Division on July 31, 2025 [Docket No. 4556-20]			
42.	*Order* in *The Highland Dallas Foundation, Inc., et al. v. Patrick, et al*., No. 25-BC01B-0027, filed in the Texas Business Court, 1st Division on September 18, 2025 [Docket No. 4534-16]			
43.	An amendment to a loan agreement executed by, among others, certain Dondero-controlled entities and CLO Holdco, Ltd., dated September 30, 2025 [Docket No. 4536-G]			
44.	*Stipulation [Proposed] Order of Dismissal With Prejudice* between Liberty CLO HoldCo, Ltd. and Dugaboy and others aligned with or controlled by Dondero, dated December 3, 2025 [Docket No. 4536-H]			
45.	*Agreed Final Judgment* between Atlas IDF, LP (an HMIT affiliate) and certain Dondero-controlled entities, dated December 8, 2025 [Docket No. 4536-I]			
C.	**Dugaboy's Knowledge of the Principal Allegations Against Patrick**			
46.	Excerpts of Returns of Organizations Exempt from Income Tax filed on IRS Form 990, dated 2024, for the Highland Dallas Foundation Inc., the Highland Kansas City Foundation Inc., and the Highland Santa Barbara Foundation Inc. [Docket No. 4556-21]			
47.	The *Winding Up Petition in In re Charitable DAF Holdco, Ltd*., filed in the Grand Court of the Cayman Islands Financial Services Division on April 16, 2025 [Docket No. 4534-6]			

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
48.	The *Affidavit of James David Dondero*, notarized on April 9, 2025 and filed in support of the *Winding Up Petition in In re Charitable DAF Holdco, Ltd*., filed in the Grand Court of the Cayman Islands Financial Services Division on April 16, 2025 [Docket No. 4534-7]	119		
49.	*Petition for Court Supervision of a Voluntary Liquidation in In re Charitable DAF Holdco, Ltd*., filed in the Grand Court of the Cayman Islands Financial Services Division on May 2, 2025 [Docket No. 4534-13]			
50.	*Order Granting Petition for Court Supervision of a Voluntary Liquidation in In re Charitable DAF Holdco, Ltd*., entered in the Grand Court of the Cayman Islands Financial Services Division on May 6, 2025 [Docket No. 4534-14]			
51.	The *Affidavit of Mark Eric Patrick*, notarized on June 4, 2025, in *In re Charitable DAF Holdco, Ltd*. and filed in the Grand Court of the Cayman Islands Financial Services Division on June 4, 2025 [Docket No. 4534-10]			
52.	*Objection of The Dallas Foundation and Crown Global Life Insurance, Ltd to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4231], filed in the United States Bankruptcy Court for the Northern District of Texas on June 9, 2025 [Docket No. 4534-18]			
53.	*Dugaboy Investment Trust's Discovery Related to Rule 9019 Motion* in the above-captioned bankruptcy case, dated June 10, 2025 [Docket No. 4534-19]			
54.	*Highland Capital Management, L.P., the Highland Claimant Trust, and the Highland Litigation Sub-Trust's Responses and Objections to Dugaboy's Discovery Related to Rule 9019* Motion, dated June 13, 2025 [Docket No. 4534-12]			
55.	Deposition transcript of Shawn Raver dated June 20, 2025			

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
56.	Deposition transcript of Julie Diaz dated June 22, 2025	124 (at Dkt. 4277)		
57.	Deposition transcript of Torrey Littleton dated June 22, 2025	125 (at Dkt. 4277)		
58.	Deposition Transcript of Mark Patrick dated June 23, 2025			
59.	The transcript of the June 25, 2025 hearing in the United States Bankruptcy Court for the Northern District of Texas on the *Motion for an Order Further Extending Duration of Trusts* [Docket No. 4213] and *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith [Docket No. 4216]* [Docket No. 4534-11]			
60.	Highland Rule 9019 Presentation dated June 25, 2025 [Docket No. 4536-L]	L (at Dkt. 4536)[3]		
61.	*Declaration of James David Dondero* filed in the Texas Business Court, Dallas, Texas and dated July 1, 2025 [Case No. 19-34054, [Docket No. 4521-H-6]			
62.	*Plaintiffs' Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Request for Appointment of Receiver in The Highland Dallas Foundation, Inc., et al. v. Patrick, et al*., No. 25-BC01B-0027, filed in the Texas Business Court, 1st Division on July 1, 2025 [Docket No. 4534-15]			
63.	*JOL Writ of Summons and Statement of Claim*, filed in the Cayman Proceeding on July 15, 2025 [Docket No. 4536-B]			
64.	*The Dugaboy Investment Trust's Motion to Stay 9019 Order* [Docket No. 4326] and accompanying exhibits, filed in the United States Bankruptcy Court for the Northern District of Texas on July 17, 2025 [Docket No. 4326]			

[3] This demonstrative was used at the 9019 Hearing on June 25, 2025 and admitted into evidence at the request of Mr. Lang, Dugaboy's attorney. *See* June 25, 2025 transcript (Exhibit 62) at 171:15-25.

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
65.	*Memorandum Opinion and Order Regarding Stay Requests [Addressing DE ##4326 & 4308]* (Denying Stay) dated July 21, 2025 [Docket No. 4333]			
66.	Charitable DAF Holdco, Ltd. Guidance Notes for Members of the Liquidation Committee (not dated) [Docket No. 4534-9]			
67.	CWR Form No. 15, Liquidator's Certificate (Composition of Liquidation Committee) (O. 9, r. 1) in the Grand Court of the Cayman Islands Financial Services Division, dated July 21, 2025 [Docket No. 4534-17]			
68.	*Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representatives, and (III) Related Relief Under Chapter 15 of the Bankruptcy Court, filed in the United States District Court for the District of* Delaware, dated July 21, 2025 [Docket No. 4536-J]			
69.	*Declaration of Margot MacInnis*, sworn to on July 21, 2025, and filed in the United States Bankruptcy Court for the District of Delaware in connection with the Ch. 15 Recognition Petition [Docket 4521-6 (Exhibit G)]			
70.	*Third Affidavit of Margot MacInnis* filed in Grand Court of the Cayman Islands November 2025 (Under Seal)			
D.	**The Cayman Court Rejects the Dondero Foundation's Fraud Claims**			
71.	Letter from Maples and Calder (Cayman) LLP to Karen Hoskins, Personal Assistant to the Hon. Justice Raj Parker of the Grand Court of the Cayman Islands Financial Services Division, dated February 3, 2026 [Docket No. 4556-22]			
72.	*Judgment in In re Charitable DAF Holdco, Ltd.*, filed in the Grand Court of the Cayman Islands Financial Services Division on February 10, 2026 [Docket No. 4534-4]			
E.	**Other**			
73.	Settlement Agreement and General Release dated May 19, 2025 [Docket No. 4217-7]	1		

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
74.	*Notice of Appeal of Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith* dated July 15, 2025 [Docket No. 4311]			
75.	Dugaboy's Index (compiled from all documents Dugaboy filed at Docket Nos. 4513 and 4521), a document prepared by professionals employed by my firm at my direction dated April 3, 2026 [Docket No. 4536-A]			
76.	Executed Withdrawal Letters – Dolomiti and Hakusan dated February 6, 2025			
77.	Deposition Transcript of James Dondero dated May 8, 2026			
78.	*Highland Capital Management, L.P.'s Requests for the Production of Documents Directed to the Dugaboy Investment Trust* dated February 2026 [Dkt 4551-8]			
79.	Membership Interest Purchase Agreement, dated August 1, 2022 by and among John Honis, as seller, DAF Holdings Corp., as buyer, and CLO Holdco, Ltd., as guarantor			
80.	Amended and Restated Limited Partnership Agreement of Rand PE Fund, dated as of November 30, 2015			
81.	Investment Management Agreement, dated as of November 30, 2015, by and among Rand Advisors and Atlas IDF			
82.	Investment Management Agreement, dated as of November 30, 2015, by and among Rand Advisors and Rand PE Fund			
83.	Assignment and Assumption of Membership Interest Agreement, dated March 24, 2021, between Grant J. Scott and Mark E. Patrick			
84.	Amended and Restated Limited Liability Company Agreement of DAF GP, dated as of January 1, 2012			
85.	Second Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated March 11, 2024			

Number	Exhibit	HCMLP Prior W&E Ref.[2]	Offered	Admitted
86.	Contribution and Assignment Agreement, dated April 27, 2023, by and among DAF Fund, CLO Holdco, Ltd, Liberty CLO Holdco, Ltd., and DAF Holdings Corp.			
87.	Highland Demonstrative Exhibit: Highland's Slide Deck for Hearing on Motion for Relief from Order and Motion to Vacate			
88.	Any document entered or filed in Highland Capital Management, L.P.'s chapter 11 Bankruptcy Case or any associated contested matter or adversary proceeding, including any exhibits thereto			
89.	All exhibits necessary for impeachment and/or rebuttal purposes			
90.	All exhibits identified by or offered by any other party at the Hearing			

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Dated: May 8, 2026

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jkroop@pszjlaw.com

WILLKIE FARR & GALLAGHER LLP

Mark T. Stancil (admitted *pro hac vice*)
Joshua S. Levy (admitted *pro hac vice*)
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000
mstancil@willkie.com
jlevy@willkie.com

-and-

HAYWARD PLLC

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

Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

EXHIBIT 1

TRUST AGREEMENT

This Trust Agreement is dated as of December 17, 2015 (this "Trust Agreement"), between Beacon Mountain, LLC, a Delaware limited liability company, as sponsor (in such capacity, the "Sponsor"), John Honis as administrator (in such capacity, the "Administrator"), and Wilmington Trust, National Association, a national banking association, as Delaware trustee (the Delaware Trustee").

1. Definitions. Certain capitalized terms used in this Trust Agreement shall have the respective meaning assigned to them in this Section 1. All references herein to "the Agreement" or "this Agreement" are to this Trust Agreement as it may be amended and supplemented from time to time, and all references herein to Articles, Sections and subsections are to Articles, Sections and subsections of this Trust Agreement unless otherwise specified.

"Account" means the trust account or other account established by the Administrator in the name of the Trust for the benefit of the Sponsor at any financial institution selected from time to time by the Administrator in his sole and absolute discretion.

"Delaware Act" means the Delaware Statutory Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 et seq.

"Honis Cause" means conduct by Honis, in any capacity, amounting to (i) Honis's conviction or plea of nolo contendere for any criminal offense; (ii) dishonesty, fraud, willful misconduct, unlawful discrimination, bad faith or theft on the part of Honis that is injurious to any of the Applicable Entities; (iii) Honis's using for his own benefit any confidential or proprietary information of any of the Applicable Entities, or willfully or negligently divulging any such information to third parties without the prior written consent of the Partnership, in each case, other than as provided herein; (iv) a breach or violation of the terms of this Agreement or other agreement to which Honis or any of his Affiliates and any of the Applicable Entities are party in any manner that adversely affects any of the Applicable Entities; or (v) a breach of fiduciary duties. Any determination of whether conduct constitutes Honis Cause pursuant to this Agreement shall be made in the reasonable discretion of the Partnership, shall be made in good faith and shall be binding upon all parties affected thereby.

"Honis Trigger Event" means, with respect to Honis or any of his Affiliates, (i) the Bankruptcy of Honis; (ii) the death of Honis; (iii) the Disability of Honis; (iv) any conduct by Honis amounting to Honis Cause; (v) the termination of Honis's employment with, or the failure of Honis to be actively engaged in the management of, Rand Advisors; (vi) a change in the ownership of Rand Advisors, such that Honis fails to retain, directly or indirectly, majority voting control of Rand Advisors; (vii) a sale of all or substantially all of the assets of Rand Advisors; or (viii) the termination of this Agreement pursuant to Section 16. Honis agrees to give the Partnership ten (10) days' written notice of his Bankruptcy. "Limited Partnership" means Highland Capital Management, L.P., a Delaware limited partnership.

"Limited Partnership Agreement" means the Agreement of Limited Partnership of Highland Capital Management, L.P., as amended from time to time.

"Limited Partner Interests" means limited partner interests in the Limited Partnership.

"Person" means any individual or any corporation, association, partnership, limited liability company, joint venture, business trust, trust, organization, governmental entity or other entity of any kind.

"Trust" means the Delaware statutory trust established and governed by this Trust Agreement.

"Trust Property" means all Limited Partnership Interests and all amounts in the Account, unless and until any of such Limited Partnership Interests are disposed of in accordance with this Trust Agreement.

2. Scope. This Trust Agreement governs the Trust and the disposition of all Trust Property, including amounts in the Account or otherwise held by the Trust now existing or hereafter arising. Each of the Sponsor, the Administrator and the Delaware Trustee hereby acknowledges that the Trust Property shall be held in trust for Beacon Mountain LLC under Delaware law solely for the use and purposes set forth herein.

3. Name; Certificate of Trust. The Trust shall be known as "HUNTER MOUNTAIN INVESTMENT TRUST", in which name the Administrator may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued on behalf of the Trust, to the extent herein provided. The Delaware Trustee is authorized and directed to file a Certificate of Trust of the Trust with the Office of the Secretary of State of the State of Delaware in accordance with the applicable provisions of the Delaware Act. It is the intention of the parties hereto that the Trust created hereby constitute a statutory trust under the Delaware Act and that this Trust Agreement constitute the governing instrument of the Trust.

4. Account Establishment. The Administrator shall establish and control the Account. The Account shall include Trust Property and may include other assets in the sole discretion of the Administrator.

5. Beneficial Owner; Liability of Beneficial Owner. The beneficial owner of the trust shall be Beacon Mountain LLC. Beacon Mountain LLC, as beneficial owner of the Trust, shall be entitled to the same limitation of liability extended to stockholders of private corporations for profit organized under the General Corporation Laws of the State of Delaware.

6. Title to Trust Property. Legal title to all Trust Property, including the Account, shall be vested at all times in the Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Trust Property or the Account, to be vested in a trustee or trustees, in which case title shall may be vested in a trustee, a co-trustee and/or a separate trustee, as the case may be, as selected by the Administrator. Title to Trust Property shall not be vested in the name of the Delaware Trustee without the Delaware Trustee's prior written consent.

7. Purpose and Powers of the Trust; Administrator's Powers. The Trust shall have the power and authority (i) to accept funds and other assets, (ii) to contribute or otherwise transfer funds and other assets to the Account, (iii) to acquire Limited Partnership Interests from (a) the limited partners of the Limited Partnership and (b) the Limited Partnership, in each case, with funds in the Account or other sources of funds, including through the incurrence of debt, and to hold such Limited Partnership Interests in the Account or otherwise and (iv) to dispose of or otherwise allocate such Limited Partnership Interests pursuant to and accordance with the terms and conditions of the Limited Partnership Agreement. The Administrator shall pursuant to Section 3806(b)(7) of the Delaware Act have the power and authority, and shall be duly authorized, from time to time, in his sole discretion to manage the business and affairs of the Trust, and to take the actions described in (i) through (iv) on behalf of the Trust. The Administrator shall have all additional powers and authority necessary or desirable, in the sole discretion of the Sponsor, for prompt and effective administration of the Trust created hereunder, unless the particular power or authority is specifically denied by this Trust Agreement. The Administrator shall also have the power to settle, compromise, submit to arbitration, or submit to any court having jurisdiction in the matter any matters in dispute.

8. Fiduciary Duties of Administrator. (a) The Administrator is authorized to acquire and retain the Limited Partnership Interests in accordance with the terms of this Trust Agreement without regard to any law limiting the nature of investments of fiduciaries.

(b) The Administrator agrees to perform his duties under this Trust Agreement in good faith and in the best interests of the Trust, but only upon the express terms of this Trust Agreement. To the fullest extent permitted by law, the Administrator shall have all implied duties (including fiduciary duties) or liabilities existing at law or in equity with respect to the Trust. For the avoidance of doubt, to the fullest extent permitted by law, no Person other than the Administrator (including any such Person that may control or be under common control with the Administrator) shall have any duties (including fiduciary duties) or liabilities at law or in equity to the Trust, any beneficial owner or any other Person.

(c) To the extent that, at law or in equity, the Administrator has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Person, the Administrator shall not be liable to the Trust or to any other Person for his good faith reliance on the provisions of this Trust Agreement.

(d) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between the Administrator or any of its affiliates, on the one hand, and the Trust or the beneficial owner, on the other hand; or

(ii) whenever this Trust Agreement or any other agreement contemplated herein or therein provides that the Administrator shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or the beneficial owner,

the Administrator shall resolve such conflict of interest, take such action or provide such terms, considering in each case solely the interests of the Trust and the beneficial owner.

(e) Notwithstanding any other provision of this Trust Agreement or otherwise applicable law, whenever in this Trust Agreement the Administrator is permitted or required to make a decision:

(i) in his "discretion" or under a grant of similar authority, the Administrator shall be entitled to consider such interests and factors as it desires, including its own interest, and, to the fullest extent permitted by applicable law, shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in his "good faith" or under another express standard, the Administrator shall act under such express standard and shall not be subject to any other or different standard. The term "good faith" as used in this Trust Agreement shall mean subjective good faith as such term is understood and interpreted under Delaware law.

(f) The Administrator and any of his affiliates may engage in or possess an interest in other profit-seeking or business ventures of any nature or description, independently or with others, whether or not such ventures are competitive with the Trust and the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to the Administrator. The Administrator insofar as he acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Trust shall not have any duty to communicate or offer such opportunity to the Trust, and the Administrator shall not be liable to the Trust or to the beneficial owners for breach of any fiduciary or other duty by reason of the fact that the Administrator pursues or acquires for, or directs such opportunity to another Person or does not communicate such opportunity or information to the Trust. Neither the Trust nor any beneficial owner shall have any rights or obligations by virtue of this Trust Agreement or the trust relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the activities of the Trust, shall not be deemed wrongful or improper. The Administrator may engage or be interested in any financial or other transaction with the Trust or any affiliate of the Trust, or may act as depositary for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Trust or its affiliates.

9. Recordkeeping and Accounting. The Administrator shall maintain appropriate records in which he shall record the Trust Property and the acquisition and disposition of Limited Partnership Interests.

10. Tax Treatment. The Sponsor and the Administrator acknowledge and agree that for United States Federal Income Tax purposes (i) the Trust shall be disregarded as an entity for federal income tax purposes. The Administrator shall comply with the information reporting requirements applicable to the Trust under the Internal Revenue Code and prepare and furnish to Beacon Mountain LLC any appropriate Internal Revenue Service forms required to be provided to Beacon Mountain LLC as beneficial owner of the Trust.

11. No Other Interests

(a) The Sponsor acknowledges that it has no rights or claims to specific Trust Property, including funds in the Account, and otherwise has no interest in the Trust Property or the Account other than a beneficial interest in the Trust Property and the Account.

(b) The Administrator acknowledges that he has no right, title, or interest in the Trust, the Trust Property, or the Account in his personal capacity and has no beneficial interest in the Trust.

12. Compensation; Administrator Liability. The Administrator shall not receive any compensation for his role as Administrator. Nothing herein shall be construed to limit the Administrator's ability to receive compensation pursuant to other agreements for services he may provide other than his role as Administrator. The Administrator shall be indemnified, defended and held harmless by the Trust for any liability incurred by him while acting hereunder, and shall not be liable to the Trust or the Sponsor, except for a breach of his fiduciary duties hereunder, his own bad faith, willful misconduct or gross negligence in the performance of his express duties under this Trust Agreement.

13. Amendment. The Administrator, solely with the consent of the beneficial owner, shall have the right at any time or times to amend or supplement the provisions of this Trust Agreement, in each case by a writing or writings signed by the Administrator; provided that no such amendment shall be permitted if it would subject any amount held hereunder to any right, charge, security interest, lien or claim by, of or for the benefit of any creditor or creditors of the Sponsor or its subsidiaries and affiliates in its corporate or personal capacity. If any such amendment or supplement affects the rights, immunities or obligations of the Delaware Trustee, the Administrator shall be required to obtain the prior written consent of the Delaware Trustee.

14. Duration. The Trust shall be perpetual unless otherwise dissolved and terminated pursuant to paragraph 15 below.

15. Termination. The Administrator shall have the power solely upon the prior written consent of the beneficial owner to dissolve the Trust and to distribute all Trust Property held in the Account to, or for the benefit of, such persons (including the Sponsor) as the Administrator shall determine in his sole discretion and after satisfying the claims and obligations of the Trust in accordance with the Delaware Act. Following any such dissolution, the Administrator shall proceed to wind up the affairs of the Trust in an orderly manner and within a reasonable period of time considering relevant circumstances and shall have the powers necessary to wind up the Trust's affairs, including but not limited to the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, exchange or otherwise dispose of all or any part of the remaining property of the Trust to one or more Persons at public or private sale (for consideration which may consist in whole or part of cash, securities or other property of any kind), discharge or pay its liabilities, defend or prosecute suits or administrative proceedings and do all other acts appropriate to the winding up and liquidation of the property and affairs of the Trust. After paying or making reasonable provision for the payment of all claims and obligations of the Trust as required by the Delaware Act, and upon receipt of such releases, indemnities or like documentation as the Administrator may reasonably deem necessary

for the protection of the Administrator, the Administrator shall distribute the remaining property of the Trust as contemplated by this Trust Agreement. Upon the completion of winding up, the Trust shall terminate and the Administrator shall provide written notice directing the Delaware Trustee to file an appropriate form of Certificate of Cancellation to be filed in the Office of the Secretary of State of the State of Delaware by the Delaware Trustee.

16. Removal of Administrator. Upon any Honis Trigger Event, the Administrator shall immediately be removed without any action by the Delaware Trustee or any other party.

17. Successor Administrator. The Administrator may resign as Administrator hereunder, without leave of court, at any time, and, in such event, the Adminstrator shall appoint a successor Administrator unless, prior to the effective date of his resignation, the Administrator dissolves the Trust in accordance with paragraph 15 above. Any appointment of a successor Administrator shall be in writing signed by the appointing Administrator, or by a duly authorized officer or officers of the appointing Administrator, if an entity. Whenever this Trust Agreement refers to the Administrator, such reference shall include any successor Administrator appointed under this paragraph. All powers hereby granted to the Administrator shall be exercisable by any successor Administrator, and each successor Administrator shall be deemed to have assumed the duties hereby undertaken by the Administrator.

Upon the termination of the Administrator in accordance with paragraph 16 above, Beacon Mountain, LLC shall appoint a successor Administrator within a reasonable period of time.

The Administrator shall not be required to furnish any bond or surety. No one dealing with the Administrator need inquire concerning the validity of anything the Administrator purports to do or see to the application of any money paid upon the Administrator's order.

18. Delaware Trustee.

(a) For purposes of satisfying Sections 3807 of the Delaware Act, during the existence of the Trust, there shall at all times be a "Delaware Trustee" hereunder who shall, in the case of a natural person, be a person who is a resident of the State of Delaware, or, in all other cases, is a trustee with its principal place of business in the State of Delaware. The Delaware Trustee shall not have any duties (including fiduciary duties) or liabilities except to the extent and for the limited purposes described in this paragraph. Accordingly, no reference in this Trust Agreement to the "Administrator" shall include, or be deemed to refer to, the Delaware Trustee. The sole power and duty of the Delaware Trustee shall be to accept service of process in accordance with Section 3804 of the Delaware Act and to execute and deliver for filing all documents required to be filed with the State of Delaware as required by the Delaware Act.

(b) The Sponsor and the Administrator hereby appoint Wilmington Trust, National Association as the initial Delaware Trustee. The initial Delaware Trustee and any successor Delaware Trustee may resign and may be removed by the Sponsor then serving for any reason, with or without cause. If the Delaware Trustee resigns or is removed, or if there is no Delaware Trustee serving at any time for any other reason, the Administrator shall appoint a successor Delaware Trustee who qualifies under the terms of this paragraph 18. Upon each

appointment of a successor Delaware Trustee, the Administrator shall cause an amendment to the Certificate of Trust of the Trust that reflects such change to be filed with the Secretary of State of the State of Delaware in accordance with the Delaware Act.

(c) By its execution hereof, the Delaware Trustee accepts its appointment hereunder. Except as otherwise expressly required by clause (a) above, the Delaware Trustee shall not have any duty or liability with respect to the administration of the Trust, the investment of the Trust Property or the payment of any distributions of income or principal to the beneficial owners.

(d) The Delaware Trustee shall not be liable for the acts or omissions of the Administrator, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of or performing the duties and obligations of the Administrator, the Sponsor or the Trust under this Trust Agreement or any other document. The Delaware Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith or gross negligence in the performance of its express duties under this Trust Agreement. In particular, but not by way of limitation:

(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes gross negligence on its part;

(ii) no provision of this Trust Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder, if the Delaware Trustee shall have reasonable grounds for believing that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iii) under no circumstances shall the Delaware Trustee be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Trust;

(iv) the Delaware Trustee shall not be personally responsible for or in respect of the validity or sufficiency of this Trust Agreement or for the due execution hereof by the Sponsor or the Administrator;

(v) the Delaware Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof rely on a certificate, signed by the Administrator, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Trust hereunder, the Delaware Trustee (a) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and the Delaware Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Delaware Trustee in good faith and with due care and (b) may consult with counsel, accountants and other skilled persons to be selected by it in good faith and with due care and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons; and

(vii) except as expressly provided in this Section, in accepting and performing the Trust hereby created the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all Persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Trust Agreement or the Trust Agreement shall look only to the Trust's property for payment or satisfaction thereof.

(e) The Delaware Trustee (or any successor Delaware Trustee) shall be entitled to receive compensation from the Sponsor or from the Trust for its services in accordance with such fee agreements and schedules as shall have been separately agreed to from time to time by the Delaware Trustee and the Sponsor. The Delaware Trustee may consult with counsel (who may be counsel for the Sponsor or for the Delaware Trustee). The reasonable legal fees incurred in connection with such consultation shall be reimbursed to the Delaware Trustee pursuant to this Section, provided that no such fees shall be payable to the extent that they are incurred as a result of the Delaware Trustee's gross negligence, bad faith or willful misconduct.

(f) The Delaware Trustee shall serve for the duration of the Trust and until the earlier of (i) the effective date of the Delaware Trustee's resignation, or (ii) the effective date of the removal of the Delaware Trustee. The Delaware Trustee may resign at any time by giving thirty (30) days written notice to the Administrator; provided, however, said resignation shall not be effective until such time as a successor Delaware Trustee has accepted such appointment. The Delaware Trustee may be removed at any time by the Administrator by providing thirty (30) days written notice to the Delaware Trustee; provided, however, such removal shall not be effective until such time as a successor Delaware Trustee has accepted such appointment. Upon the resignation or removal of the Delaware Trustee, the Administrator shall appoint a successor Delaware Trustee. If no successor Delaware Trustee shall have been appointed and shall have accepted such appointment within forty five (45) days after the giving of such notice of resignation or removal, the Delaware Trustee may, at the expense of the Sponsor, petition any court of competent jurisdiction for the appointment of a successor Delaware Trustee. Any successor Delaware Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section, shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Delaware Trustee.

(g) The Delaware Trustee or any officer, affiliate, director, employee, or agent of the Delaware Trustee (each an "Indemnified Person") shall be entitled to indemnification from the Sponsor, to the fullest extent permitted by law, from and against any and all losses, claims, actions, suits, taxes, damages, reasonable expenses, and liabilities (including liabilities under state or federal securities laws) of any kind and nature whatsoever (collectively, "Expenses"), to

the extent that such Expenses arise out of or are imposed upon or asserted against such Indemnified Persons with respect to the creation, operation or termination of the Trust, the execution, delivery or performance of this Trust Agreement or the transactions contemplated hereby; provided, however, that the Sponsor shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person. The obligations of the Sponsor to indemnify the Indemnified Persons as provided herein shall survive the termination of this Trust Agreement and the resignation or removal of the Delaware Trustee.

(h) The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder.

19. Waiver of Jury Trial. THE PARTIES HERETO HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION RELATING TO ANY CLAIM ARISING HEREUNDER OR RELATED HERETO.

20. Governing Law. The validity and construction of this Trust Agreement and all amendments hereto shall be governed by the laws of the State of Delaware, and the rights of all parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof; provided, however, that the parties hereto intend that the provisions hereof shall control over any contrary or limiting statutory or common law of the State of Delaware (other than the Delaware Act) and that, to the maximum extent permitted by applicable law, there shall not be applicable to the Trust, the Sponsor, or the Delaware Trustee any provision of the laws (statutory or common) of the State of Delaware (other than the Delaware Act) pertaining to trusts which relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, (g) the existence of rights or interests (beneficial or otherwise) in trust assets, (h) the ability of beneficial owners or other persons to terminate or dissolve a trust, or (i) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees or beneficial owners that are inconsistent with the limitations on liability or authorities and powers of the Sponsor or the Delaware Trustee set forth or referenced in this Trust Agreement. Sections 3540, 3542 and 3561 of Title 12 of the Delaware Code shall not apply to the Trust.

21. Exclusive Jurisdiction. Each of the parties hereto, to the fullest extent permitted by law, (i) irrevocably agrees that any claims, suits, actions or proceedings arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce (A) the provisions of this Agreement or (B) the duties, obligations or liabilities of the Sponsor, the Administrator and the Delaware Trustee, or (C) the rights or powers of, or

restrictions on, the Trust, Sponsor, the Delaware Trustee or the Administrator, or (D) any provision of the Delaware Act, or (E) any other instrument, document, agreement or certificate contemplated by any provision of the Delaware Act relating to the Trust (regardless of whether such claims, suits, actions or proceedings (x) sound in contract, tort, fraud or otherwise, (y) are based on common law, statutory, equitable, legal or other grounds, or (z) are derivative or direct claims)), shall be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, any other court in the State of Delaware with subject matter jurisdiction, (ii) irrevocably submits to the exclusive jurisdiction of such courts in connection with any such claim, suit, action or proceeding, (iii) irrevocably agrees not to, and waives any right to, assert in any such claim, suit, action or proceeding that (A) it is not personally subject to the jurisdiction of such courts or any other court to which proceedings in such courts may be appealed, (B) such claim, suit, action or proceeding is brought in an inconvenient forum, or (C) the venue of such claim, suit, action or proceeding is improper, (iv) expressly waives any requirement for the posting of a bond by a party bringing such claim, suit, action or proceeding, and (v) consents to process being served in any such claim, suit, action or proceeding by mailing, certified mail, return receipt requested, a copy thereof to such party at the address set forth in the books and records of the Trust, and agrees that such service shall constitute good and sufficient service of process and notice thereof; provided, nothing in clause (v) hereof shall affect or limit any right to serve process in any other manner permitted by law.

22. Application to Successors. This Trust Agreement shall extend to and be binding upon the successors, executors, administrators and assigns of each of the Sponsor, the Delaware Trustee and the Administrator.

23. Transfer of Beneficial Ownership. Beacon Mountain LLC shall be the sole beneficial owner of the Trust to the extent provided herein and the interests of Beacon Mountain LLC hereunder shall not be represented by a certificate. To the fullest extent permitted by law, the beneficial interest of Beacon Mountain LLC in the Trust may not be offered, sold, transferred, pledged, hypothecated or otherwise disposed of.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

BEACON MOUNTAIN, LLC, as Sponsor

By: _____
Name: John Honis
Title: President

JOHN HONIS, as Administrator

_____
1-11-16

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Delaware Trustee

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

BEACON MOUNTAIN, LLC, as Sponsor

By:_____
Name: John Honis
Title: President

JOHN HONIS, as Administrator

_____

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Delaware Trustee

By:_____
Name: Jennifer A. Luce
Title: Vice President

EXHIBIT 2

HUNTER MOUNTAIN INVESTMENT TRUST

APPOINTMENT OF SUCCESSOR ADMINISTRATOR

August 12, 2022

Reference is made to that certain Trust Agreement of Hunter Mountain Investment Trust dated December 17, 2015 (the "Trust Agreement"). Capitalized terms not otherwise defined shall have the meaning given them in the Trust Agreement. Pursuant to section 16 of the Trust Agreement, upon the occurrence of a Honis Trigger Event, the current Administrator is immediately removed. Pursuant to that certain Membership Interest Purchase Agreement dated August 1, 2022 ("MIPA"), by and among John Honis (as "Seller"), Rand Advisors Holding Corp., a Delaware corporation (as "Buyer"), and CLO Holdco, Ltd., a Cayman limited company (as "Guarantor"), the Buyer acquired all the membership interests in, and therefore voting control of, Rand Advisors, LLC ("Rand"). A Honis Trigger Event under the Trust Agreement includes a change in ownership of Rand, such that John Honis fails to retain majority voting control.

Pursuant to section 17 of the Trust Agreement, upon the occurrence of a Honis Trigger Event and the immediate removal of John Honis as Administrator, Beacon Mountain, LLC ("Beacon") shall appoint a successor Administrator. Accordingly, Beacon hereby appoints Mark E. Patrick as Administrator of Hunter Mountain Investment Trust, effective as of the date first written above.

BEACON MOUNTAIN, LLC, a Delaware limited liability company
By: Rand PE Fund I, L.P., its sole member
By: Rand PE Fund Management, LLC, its general partner
By: Rand Advisors Holding Corp., its sole member



By:_____
Name: Mark Patrick
Title: President

EXHIBIT 3

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
BEACON MOUNTAIN LLC

This Amended and Restated Limited Liability Company Agreement (this "Agreement"), dated as of the 24th day of September, 2015, has been entered into by Rand PE Fund I, L.P. – Series 1 (the "Member"). The Member's LLC Interest (as hereinafter defined) is as set forth on Schedule A hereto.

WHEREAS, the initial Limited Liability Company Agreement, also dated as of the 24th day of September, 2015 ("Initial Agreement"), contained a scrivener's error with respect to the name of the single member of the Company (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Initial Agreement is hereby amended and restated in its entirety to read as follows:

1. Name, Business, Address and Registered Agent.

(a) The Member hereby acknowledges that a limited liability company under the name of "Beacon Mountain LLC" (the "Company") was formed under the Delaware Limited Liability Company Act (the "Act") for the purpose of engaging in any business of any kind necessary to, in connection with, related to or incidental to such purposes as the Member shall from time to time deem desirable.

(b) The principal office of the Company shall be at such place as the Member may from time to time designate.

(c) The initial registered office of the Company for purposes of the Act shall be at 1675 South State Street, Suite B, in the City of Dover, County of Kent, Delaware 19901. The initial registered agent of the Company for purposes of the Act shall be Capitol Services, Inc., whose business office is identical to the Company's registered office.

2. Member. The sole responsibility for managing the business and affairs of the Company, except as otherwise provided herein or in the Act, shall be vested in the Member. Except as expressly provided herein, voting power shall be vested solely in the Member, and all matters requiring a vote pursuant to this Agreement or the Act shall be determined by the vote of the Member and the Member may act by written consent.

3. Officers.

(a) Election of Officers; Term. Officers, including assistant and subordinate officers, may from time to time be appointed by the Member. All officers shall hold office until their successors are appointed by the Member. Any two or more offices may be combined in the same person as the Member may determine. No officer may act in more than one capacity where the action of two or more officers is required.

(b) Removal of Officers; Vacancies. Any officer of the Company may be removed summarily with or without cause, at any time, by the Member. Vacancies may be filled by the Member.

(c) Duties. The officers of the Company shall have only such powers and duties as are from time to time conferred by the Member in writing or as are set forth in writing and executed by either of the President or the Secretary. The Member shall determine the compensation of all officers of the Company.

4. Term. The term of the Company shall be perpetual, except that the Company shall be dissolved upon the first to occur of any of the following events:

(a) The election of the Member to dissolve and terminate the Company;

(b) At any time there are no remaining members, except as may be avoided pursuant to §18-801(a)(4) of the Act;

(c) The entry of a decree of judicial dissolution under §18-802 of the Act; or

(d) Automatic cancellation of the Company's certificate of formation pursuant to §18-1108 of the Act.

5. Capital. The Member may contribute such capital, in cash or other property, as it so chooses in its sole discretion. No capital contributions shall be required unless the Member consents thereto in writing, in its sole and absolute discretion.

6. Bank Accounts. The President and the Secretary and any other officer, including any assistant or subordinate officer, as may be authorized to do so in writing by either of the President or the Secretary, are authorized to open commercial banking accounts for and in the name of the Company throughout the United States, at any time and from time to time, and to deposit to the credit of the Company in such banking accounts any monies, checks, drafts, orders or other commercial paper payable to the Company, and from time to time to withdraw all or any part of the funds on deposit in the name of the Company by check drawn in the name of the Company and signed by such officer.

7. Voting of Shares. Unless otherwise provided by written resolution of the Member, either of the President or the Secretary may from time to time appoint an attorney or attorneys or agent or agents of the Company, in the name and on behalf of the Company, to cast the vote which the Company may be entitled to cast as a stockholder or otherwise in any corporation, partnership, limited liability company, joint venture or any other entity, any of whose securities may be held by the Company, at meetings of the holders of the shares or other securities of such entity or to consent in writing to any action by any such entity. Such officer shall instruct the person or persons so appointed as to the manner of casting such votes or giving such consent and may execute or cause to be executed on behalf of the Company such written proxies, consents, waivers or other instruments as may be necessary or proper in the premises. In lieu of such appointment, either of the President or the Secretary may himself attend any meetings of the holders of the shares or other securities of any such entity and there vote or

exercise any or all power of the Company as the holder of such shares or other securities of such entity or consent in writing to any action by any such entity.

8. Distributions. Any cash or other property of the Company not required for the operation of the Company shall be distributable to the Member at such times and in such amounts as determined by the Member.

9. Certificates; "Opt-In" to Article 8; Transferability of Interests.

(a) The Company may issue one or more certificates evidencing the limited liability company interests in the Company ("LLC Interest") in the form attached hereto as Exhibit A. Certificates shall be executed on behalf of the Company by one of its executive officers. The Member hereby agrees that the LLC Interest held by such Member shall be treated as a "security" for purposes of and shall be governed by Article 8 of the Delaware Uniform Commercial Code--Investment Securities, as amended from time to time.

(b) The Member may transfer, sell, assign, mortgage, grant a lien on, give or otherwise dispose of, whether voluntarily or by operation of law, at judicial sale or otherwise, all or any part of its LLC Interest in the Company; provided, however, that there shall not at any time be more than one member until this Agreement is amended to provide generally (in addition to Section 12 hereof) for having more than one member. If, in connection with any such transfer, less than 100% of the LLC Interest of the transferor member is transferred, then this Agreement shall be amended to include appropriate provisions, including those relating to partnership accounting and tax issues, necessary to address the fact that the Company has more than one member.

10. Liquidation. Any net proceeds from the sale, exchange or other disposition (including a disposition pursuant to foreclosure or deed in lieu of foreclosure) of the assets of the Company following the dissolution of the Company shall be distributed to the Member.

11. Other Activities. The Member may engage in or possess any interest in another venture or business of any nature or description, independently or with others.

12. Tax Classification. The Member intends that the Company be disregarded for U.S. federal income tax purposes as long as there is only one member, and that if there is ever more than one member or more than one owner of the Company as determined for U.S. federal income tax purposes, that the Company be classified as a partnership for U.S. federal income tax purposes and this Agreement shall be interpreted accordingly.

13. Limited Liability. The Member shall not have any personal obligation for any debts, obligations or liabilities of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member, except as provided under the Act.

14. Exculpation; Indemnification.

(a) Except as otherwise provided by any written employment, consulting or similar agreement, if applicable, or unless otherwise expressly required by law, no officer or member of the Company (including any former executive officer or member) (each such person

referred to herein as a "Covered Person") shall have any liability to the Company or to any member for any loss suffered by the Company or any member which arises out of any act or omission or alleged act or omission of the Covered Person in the Covered Person's capacity as a Covered Person to the extent the Covered Person acted in good faith and to the extent such course of conduct did not constitute willful misconduct or gross negligence of the Covered Person. Each Covered Person shall be indemnified by the Company against any losses, judgments, liabilities, claims, damages, costs, expenses (including reasonable legal fees and other expenses actually incurred in investigating or defending against any such losses, judgments, liabilities or claims and expenses actually incurred enforcing this Agreement) and amounts paid in settlement of any claim (approved in advance and in good faith by the Member) sustained by any of them by reason of any act or omission or alleged act or omission in connection with the activities of the Company (including any subsidiaries thereof) unless there is a final judicial determination by a court of competent jurisdiction to which all rights of appeal have been exhausted or expired that the same were the result of bad faith, willful misconduct or gross negligence of the Covered Person. The Covered Person may rely in good faith upon the advice of legal counsel.

(b) To the extent available on commercially reasonable terms, the Company may purchase, at the Company's expense, insurance (including without limitation, liability insurance policies and errors and omissions policies) to cover any liabilities covered by this Section 14 in such amount and with such deductibles as the Company may determine; provided, however, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person. Any such insurance may extend beyond the termination of the Company for a commercially reasonable period. The Company shall be subrogated to the Covered Person's rights under such indemnification or insurance. If any Covered Person recovers any amounts in respect of any such liabilities from insurance coverage or any third party source, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to it by the Company in respect of such liabilities. The Company shall not incur the cost of that portion of any insurance, other than public liability insurance, which insures any party against any liability the indemnification of which is herein prohibited.

(c) The Company may, as determined in good faith by the Member, pay the legal fees and other expenses reasonably incurred by any Covered Person hereunder in connection with any proceeding in advance of the final disposition of such proceeding, so long as the Company receives a written undertaking, in form and content approved by the Company's counsel, by such Covered Person to repay the full amount advanced if there is a final judicial determination by a court of competent jurisdiction, as to which all rights of appeal have been exhausted or expired, that such Covered Person did not satisfy the standards which entitle it to indemnification pursuant to the terms of this Section 14.

(d) The right of indemnification hereby provided shall not be exclusive of, and shall not affect, any other rights to which any Covered Person may be entitled. Nothing contained in this Section 14 shall limit any lawful rights to indemnification existing independently of this Section 14.

(e) The indemnification rights provided by this Section 14 shall not be construed to increase the liability of the Member.

(f) The indemnification rights provided by this Section 14 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

(g) The provisions of this Section 14 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 14 and regardless of any subsequent amendment to this Agreement; provided, however, that no such amendment shall reduce or restrict the extent to which the indemnification provisions of this Section 14 apply to actions taken or omissions made or alleged actions taken or omissions made prior to the date of such amendment.

(h) If deemed appropriate or necessary by the Member, the Company may establish reserves, escrow accounts or similar accounts to fund its obligations under this Section 14.

(i) The provisions of this Section 14 shall survive the termination or dissolution of the Company.

15. No Third Party Beneficiary. No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of the Member to make capital contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the Member, the Covered Persons (to the extent granted herein) and the Company and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned member has executed this Amended and Restated Limited Liability Company Agreement as of the date first set forth above.

RAND PE FUND I, L.P. – Series 1

By: RAND PE FUND MANAGEMENT, LLC
Its: General Partner

By: _____
Its: MANAGING MEMBER

SCHEDULE A

MEMBER

Member	LLC Interest
Rand PE Fund I, L.P. – Series 1	100%

EXHIBIT A

CERTIFICATE NO. __

CERTIFICATE OF LLC INTEREST

of

BEACON MOUNTAIN LLC

A Delaware Limited Liability Company

This Certificate of LLC Interest (this "Certificate") is issued and shall be held subject to the provisions of the Certificate of Formation of Beacon Mountain, LLC, a limited liability company organized under the laws of the State of Delaware (the "Company"), filed on September ___, 2015 with the Secretary of State of the State of Delaware, and the Limited Liability Company Agreement of the Company, dated as of September ___, 2015, as each may be amended from time to time.

This Certificate of LLC Interest certifies that _____, a Member of the Company, is the registered holder of ___% of the "LLC Interest" (as such term is defined in the above-referenced Limited Liability Company Agreement) of the Company, which LLC Interest shall be transferable only on the books of the Company by the holder hereof in person or by a duly authorized attorney upon surrender of this Certificate with a proper endorsement.

SEE RESTRICTIONS ON REVERSE SIDE.

IN WITNESS WHEREOF, the Company has caused this Certificate to be signed by its duly authorized officer as of the ____ day of _____, 2___.

BEACON MOUNTAIN LLC

By:_____
Name: _____
Title: _____

[REVERSE SIDE OF CERTIFICATE]

BEACON MOUNTAIN LLC

For value received, the undersigned hereby sells, assigns, and transfers to _____ and its successors and assigns, ___% of the LLC Interest of Beacon Mountain LLC standing in the name of _____, on the books of said limited liability company represented by certificate No. ____ and does hereby irrevocably constitute and appoint _____, and its successors and assigns, attorney to transfer said interests on the books of the limited liability company with full power of substitution.

Dated: _____

_____

By: _____
Name: _____
Title: _____

THE LLC INTEREST REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES ACT OR OTHER SIMILAR STATUTE IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. WITHOUT SUCH REGISTRATION, THE SALE, PLEDGE OR OTHER TRANSFER OF THIS LLC INTEREST IS RESTRICTED, EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED FOR THE TRANSFER, OR SUCH OTHER EVIDENCE SATISFACTORY TO THE COMPANY THAT THE TRANSFER IS NOT IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAW. THE SALE, PLEDGE OR OTHER TRANSFER OF THIS LLC INTEREST IS ALSO SUBJECT TO THE RESTRICTIONS SET FORTH IN THE LIMITED LIABILITY COMPANY AGREEMENT OF THE COMPANY, WHICH MAY BE AMENDED FROM TIME TO TIME.

EXHIBIT 4

SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
BEACON MOUNTAIN LLC

This Amended and Restated Limited Liability Company Agreement (this "Agreement"), dated as of the 12th day of February, 2025 (the "Effective Date"), has been entered into by CLO Holdco, LLC (the "Member"). The Member's LLC Interest (as hereinafter defined) is as set forth on Schedule A hereto.

WHEREAS, the initial Limited Liability Company Agreement (the "Initial Agreement") and the Amended and Restated Limited Liability Company Agreement (the "A&R Agreement"), were each dated as of the 24th day of September, 2015; and

WHEREAS, the Member acquired all the membership interests in the Company from Rand PE Fund I, L.P., as of the Effective Date, and desires to amend and restate the A&R Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the A&R Agreement is hereby amended and restated in its entirety to read as follows:

1. Name, Business, Address and Registered Agent.

(a) The Member hereby acknowledges that a limited liability company under the name of "Beacon Mountain LLC" (the "Company") was formed under the Delaware Limited Liability Company Act (the "Act") for the purpose of engaging in any business of any kind necessary to, in connection with, related to or incidental to such purposes as the Member shall from time to time deem desirable.

(b) The principal office of the Company shall be at such place as the Member may from time to time designate.

(c) The initial registered office of the Company for purposes of the Act shall be at 1675 South State Street, Suite B, in the City of Dover, County of Kent, Delaware 19901. The initial registered agent of the Company for purposes of the Act shall be Capitol Services, Inc., whose business office is identical to the Company's registered office.

2. Member. The sole responsibility for managing the business and affairs of the Company, except as otherwise provided herein or in the Act, shall be vested in the Member. Except as expressly provided herein, voting power shall be vested solely in the Member, and all matters requiring a vote pursuant to this Agreement or the Act shall be determined by the vote of the Member and the Member may act by written consent.

3. Officers.

(a) Election of Officers; Term. Officers, including assistant and subordinate officers, may from time to time be appointed by the Member. All officers shall hold office until their successors are appointed by the Member. Any two or more offices may be combined in the same person as the Member may determine. No officer may act in more than one capacity where the action of two or more officers is required.

(b) Removal of Officers; Vacancies. Any officer of the Company may be removed summarily with or without cause, at any time, by the Member. Vacancies may be filled by the Member.

(c) Duties. The officers of the Company shall have only such powers and duties as are from time to time conferred by the Member in writing or as are set forth in writing and executed by either of the President or the Secretary. The Member shall determine the compensation of all officers of the Company.

4. Term. The term of the Company shall be perpetual, except that the Company shall be dissolved upon the first to occur of any of the following events:

(a) The election of the Member to dissolve and terminate the Company;

(b) At any time there are no remaining members, except as may be avoided pursuant to §18-801(a)(4) of the Act;

(c) The entry of a decree of judicial dissolution under §18-802 of the Act; or

(d) Automatic cancellation of the Company's certificate of formation pursuant to §18-1108 of the Act.

5. Capital. The Member may contribute such capital, in cash or other property, as it so chooses in its sole discretion. No capital contributions shall be required unless the Member consents thereto in writing, in its sole and absolute discretion.

6. Bank Accounts. The President and the Secretary and any other officer, including any assistant or subordinate officer, as may be authorized to do so in writing by either of the President or the Secretary, are authorized to open commercial banking accounts for and in the name of the Company throughout the United States, at any time and from time to time, and to deposit to the credit of the Company in such banking accounts any monies, checks, drafts, orders or other commercial paper payable to the Company, and from time to time to withdraw all or any part of the funds on deposit in the name of the Company by check drawn in the name of the Company and signed by such officer.

7. Voting of Shares. Unless otherwise provided by written resolution of the Member, either of the President or the Secretary may from time to time appoint an attorney or attorneys or agent or agents of the Company, in the name and on behalf of the Company, to cast the vote which the Company may be entitled to cast as a stockholder or otherwise in any corporation, partnership,

limited liability company, joint venture or any other entity, any of whose securities may be held by the Company, at meetings of the holders of the shares or other securities of such entity or to consent in writing to any action by any such entity. Such officer shall instruct the person or persons so appointed as to the manner of casting such votes or giving such consent and may execute or cause to be executed on behalf of the Company such written proxies, consents, waivers or other instruments as may be necessary or proper in the premises. In lieu of such appointment, either of the President or the Secretary may himself attend any meetings of the holders of the shares or other securities of any such entity and there vote or exercise any or all power of the Company as the holder of such shares or other securities of such entity or consent in writing to any action by any such entity.

8. Distributions. Any cash or other property of the Company not required for the operation of the Company shall be distributable to the Member at such times and in such amounts as determined by the Member.

9. Certificates; "Opt-In" to Article 8; Transferability of Interests.

(a) The Company may issue one or more certificates evidencing the limited liability company interests in the Company ("LLC Interest") in the form attached hereto as Exhibit A. Certificates shall be executed on behalf of the Company by one of its executive officers. The Member hereby agrees that the LLC Interest held by such Member shall be treated as a "security" for purposes of and shall be governed by Article 8 of the Delaware Uniform Commercial Code--Investment Securities, as amended from time to time.

(b) The Member may transfer, sell, assign, mortgage, grant a lien on, give or otherwise dispose of, whether voluntarily or by operation of law, at judicial sale or otherwise, all or any part of its LLC Interest in the Company; provided, however, that there shall not at any time be more than one member until this Agreement is amended to provide generally (in addition to Section 12 hereof) for having more than one member. If, in connection with any such transfer, less than 100% of the LLC Interest of the transferor member is transferred, then this Agreement shall be amended to include appropriate provisions, including those relating to partnership accounting and tax issues, necessary to address the fact that the Company has more than one member.

10. Liquidation. Any net proceeds from the sale, exchange or other disposition (including a disposition pursuant to foreclosure or deed in lieu of foreclosure) of the assets of the Company following the dissolution of the Company shall be distributed to the Member.

11. Other Activities. The Member may engage in or possess any interest in another venture or business of any nature or description, independently or with others.

12. Tax Classification. The Member intends that the Company be disregarded for U.S. federal income tax purposes as long as there is only one member, and that if there is ever more than one member or more than one owner of the Company as determined for U.S. federal income tax purposes, that the Company be classified as a partnership for U.S. federal income tax purposes and this Agreement shall be interpreted accordingly.

13. Limited Liability. The Member shall not have any personal obligation for any debts, obligations or liabilities of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member, except as provided under the Act.

14. Exculpation; Indemnification.

(a) Except as otherwise provided by any written employment, consulting or similar agreement, if applicable, or unless otherwise expressly required by law, no officer or member of the Company (including any former executive officer or member) (each such person referred to herein as a "Covered Person") shall have any liability to the Company or to any member for any loss suffered by the Company or any member which arises out of any act or omission or alleged act or omission of the Covered Person in the Covered Person's capacity as a Covered Person to the extent the Covered Person acted in good faith and to the extent such course of conduct did not constitute willful misconduct or gross negligence of the Covered Person. Each Covered Person shall be indemnified by the Company against any losses, judgments, liabilities, claims, damages, costs, expenses (including reasonable legal fees and other expenses actually incurred in investigating or defending against any such losses, judgments, liabilities or claims and expenses actually incurred enforcing this Agreement) and amounts paid in settlement of any claim (approved in advance and in good faith by the Member) sustained by any of them by reason of any act or omission or alleged act or omission in connection with the activities of the Company (including any subsidiaries thereof) unless there is a final judicial determination by a court of competent jurisdiction to which all rights of appeal have been exhausted or expired that the same were the result of bad faith, willful misconduct or gross negligence of the Covered Person. The Covered Person may rely in good faith upon the advice of legal counsel.

(b) To the extent available on commercially reasonable terms, the Company may purchase, at the Company's expense, insurance (including without limitation, liability insurance policies and errors and omissions policies) to cover any liabilities covered by this Section 14 in such amount and with such deductibles as the Company may determine; provided, however, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person. Any such insurance may extend beyond the termination of the Company for a commercially reasonable period. The Company shall be subrogated to the Covered Person's rights under such indemnification or insurance. If any Covered Person recovers any amounts in respect of any such liabilities from insurance coverage or any third party source, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to it by the Company in respect of such liabilities. The Company shall not incur the cost of that portion of any insurance, other than public liability insurance, which insures any party against any liability the indemnification of which is herein prohibited.

(c) The Company may, as determined in good faith by the Member, pay the legal fees and other expenses reasonably incurred by any Covered Person hereunder in connection with any proceeding in advance of the final disposition of such proceeding, so long as the Company receives a written undertaking, in form and content approved by the Company's counsel, by such Covered Person to repay the full amount advanced if there is a final judicial determination by a court of competent jurisdiction, as to which all rights of appeal have been exhausted or expired,

that such Covered Person did not satisfy the standards which entitle it to indemnification pursuant to the terms of this Section 14.

(d) The right of indemnification hereby provided shall not be exclusive of, and shall not affect, any other rights to which any Covered Person may be entitled. Nothing contained in this Section 14 shall limit any lawful rights to indemnification existing independently of this Section 14.

(e) The indemnification rights provided by this Section 14 shall not be construed to increase the liability of the Member.

(f) The indemnification rights provided by this Section 14 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

(g) The provisions of this Section 14 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 14 and regardless of any subsequent amendment to this Agreement; provided, however, that no such amendment shall reduce or restrict the extent to which the indemnification provisions of this Section 14 apply to actions taken or omissions made or alleged actions taken or omissions made prior to the date of such amendment.

(h) If deemed appropriate or necessary by the Member, the Company may establish reserves, escrow accounts or similar accounts to fund its obligations under this Section 14.

(i) The provisions of this Section 14 shall survive the termination or dissolution of the Company.

15. No Third Party Beneficiary. No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of the Member to make capital contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the Member, the Covered Persons (to the extent granted herein) and the Company and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned member has executed this Second Amended and Restated Limited Liability Company Agreement as of the date first set forth above.

CLO HOLDCO, LLC, a Delaware limited liability company



By:_____
Mark Patrick
Manager

SCHEDULE A

MEMBER

Member	**LLC Interest**
CLO Holdco, LLC	100%

EXHIBIT A

CERTIFICATE NO. __

CERTIFICATE OF LLC INTEREST

of

BEACON MOUNTAIN LLC

A Delaware Limited Liability Company

This Certificate of LLC Interest (this "Certificate") is issued and shall be held subject to the provisions of the Certificate of Formation of Beacon Mountain, LLC, a limited liability company organized under the laws of the State of Delaware (the "Company"), filed on September ___, 2015 with the Secretary of State of the State of Delaware, and the Limited Liability Company Agreement of the Company, dated as of September ___, 2015, as each may be amended from time to time.

This Certificate of LLC Interest certifies that _____, a Member of the Company, is the registered holder of ___% of the "LLC Interest" (as such term is defined in the above-referenced Limited Liability Company Agreement) of the Company, which LLC Interest shall be transferable only on the books of the Company by the holder hereof in person or by a duly authorized attorney upon surrender of this Certificate with a proper endorsement.

SEE RESTRICTIONS ON REVERSE SIDE.

IN WITNESS WHEREOF, the Company has caused this Certificate to be signed by its duly authorized officer as of the ____ day of _____, 2___.

BEACON MOUNTAIN LLC

By: _____
Name: _____
Title: _____

[REVERSE SIDE OF CERTIFICATE]

BEACON MOUNTAIN LLC

For value received, the undersigned hereby sells, assigns, and transfers to _____ and its successors and assigns, ___% of the LLC Interest of Beacon Mountain LLC standing in the name of _____, on the books of said limited liability company represented by certificate No. ____ and does hereby irrevocably constitute and appoint _____, and its successors and assigns, attorney to transfer said interests on the books of the limited liability company with full power of substitution.

Dated: _____

_____

By: _____
Name: _____
Title: _____

THE LLC INTEREST REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES ACT OR OTHER SIMILAR STATUTE IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. WITHOUT SUCH REGISTRATION, THE SALE, PLEDGE OR OTHER TRANSFER OF THIS LLC INTEREST IS RESTRICTED, EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED FOR THE TRANSFER, OR SUCH OTHER EVIDENCE SATISFACTORY TO THE COMPANY THAT THE TRANSFER IS NOT IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAW. THE SALE, PLEDGE OR OTHER TRANSFER OF THIS LLC INTEREST IS ALSO SUBJECT TO THE RESTRICTIONS SET FORTH IN THE LIMITED LIABILITY COMPANY AGREEMENT OF THE COMPANY, WHICH MAY BE AMENDED FROM TIME TO TIME.

EXHIBIT 5

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This Membership Interest Purchase Agreement (this "**Agreement**"), dated as of February 12, 2025, is entered into between RAND PE FUND I, L.P., a Delaware limited partnership ("**Seller**") and CLO HOLDCO, LLC, a Delaware limited liability company ("**Buyer**").

RECITALS

(A) WHEREAS, Seller owns all of the issued and outstanding membership interests (the "**Membership Interests**"), of BEACON MOUNTAIN, LLC, a Delaware limited liability company (the "**Company**"); and

(B) WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Membership Interests, subject to the terms and conditions set forth herein.

(C) NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
PURCHASE AND SALE

Section 1.01 Purchase and Sale. Subject to the terms and conditions set forth herein, at the Closing (as defined herein), Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title, and interest in and to the Membership Interests, free and clear of any mortgage, pledge, lien, charge, security interest, claim, or other encumbrance ("**Encumbrance**"), for the consideration specified in Section 1.02.

Section 1.02 Purchase Price. The aggregate purchase price for the Membership Interests shall be $1,000,000.00 (the "**Purchase Price**"). The Buyer shall pay the Purchase Price to Seller at the Closing (as defined herein) in cash, by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth on Schedule 1.02 hereto.

Section 1.03 Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place simultaneously with the execution of this Agreement on the date of this Agreement (the "**Closing Date**") remotely by exchange of documents and signatures (or their electronic counterparts). The consummation of the transactions contemplated by this Agreement shall be deemed to occur at noon on the Closing Date.

Section 1.04 Transfer Taxes. Buyer shall pay, and shall reimburse Seller for, any sales, use or transfer taxes, documentary charges, recording fees or similar taxes, charges, fees, or expenses, if any, that become due and payable as a result of the transactions contemplated by this Agreement.

Section 1.05 Withholding Taxes. Buyer shall be entitled to deduct and withhold from amounts otherwise payable pursuant to this Agreement such amounts as are required to be deducted and withheld under applicable law. Buyer shall provide Seller with written notice of its

intent to withhold prior to the Closing with a written explanation substantiating the requirement to deduct or withhold, and the parties shall use commercially reasonable efforts to cooperate to mitigate or eliminate any such withholding to the maximum extent permitted by law. dTo the extent that amounts are so withheld and paid over to the appropriate tax authority by the Buyer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the person in respect of which such deduction and withholding was made.

Section 1.06 Allocation of Company Income and Loss. Buyer and Seller shall request that the Company allocate all items of Company income, gain, loss, deduction, or credit attributable to the Membership Interests for the taxable year of the Closing based on a closing of the Company's books as of the Closing Date.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this ARTICLE II are true and correct as of the date hereof. For purposes of this Article II, "Seller's knowledge," "knowledge of Seller," and any similar phrases shall mean the actual knowledge of those persons listed on Schedule 2 of the Schedules.

Section 2.01 Organization and Authority of Seller; Enforceability. Seller is a limited partnership duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller has full limited partnership power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Seller of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite limited partnership action on the part of Seller. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Seller, and (assuming due authorization, execution, and delivery by Buyer) this Agreement and the documents to be delivered hereunder constitute legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

Section 2.02 No Conflicts; Consents. The execution, delivery, and performance by Seller of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the certificate of limited partnership, limited partnership agreement, or other organizational documents of Seller; (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule, or regulation applicable to Seller, except where the violation or conflict would not, individually or in the aggregate, have a material adverse effect on Seller's ability to consummate the transactions contemplated hereby on a timely basis; (c) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which Seller is a party, except where the conflict, violation, default, termination, cancellation, modification, or acceleration would not, individually or in the aggregate, have a

material adverse effect on Seller's ability to consummate the transactions contemplated hereby on a timely basis; (d) result in any violation, conflict with or constitute a default under the Company's organizational documents (the "**Beacon Organizational Documents**"); or (e) result in the creation or imposition of any Encumbrance on the Membership Interests. No consent, approval, waiver, or authorization is required to be obtained by Seller from any person or entity (including any governmental authority) in connection with the execution, delivery, and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby, except such consents, approvals, waivers, or authorizations which would not, in the aggregate, have a material adverse effect on the Seller's ability to consummate the transactions contemplated hereby on a timely basis.

Section 2.03 Legal Proceedings. There is no claim, action, suit, proceeding or governmental investigation ("**Action**") of any nature pending or, to Seller's knowledge, threatened against or by Seller (a) relating to or affecting the Membership Interests; or (b) that challenges or seeks to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement, except any Actions that would not, individually or in the aggregate, have a material adverse effect on Seller's ability to consummate the transactions contemplated hereby on a timely basis. To Seller's knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 2.04 Financial Statements. True, correct, and complete copies of any financial statements requested by the Buyer (collectively, the "**Financial Statements**") have been provided to Buyer. To Seller's Knowledge, the Financial Statements, if any, are true, correct, and complete.

Section 2.05 Ownership of Membership Interests.

(a) Seller is the sole legal, beneficial, record, and equitable owner of the Membership Interests, free and clear of all Encumbrances whatsoever.

(b) To Seller's Knowledge, the Membership Interests were issued in compliance with applicable laws. To Seller's Knowledge, the Membership Interests were not issued in violation of the organizational documents of the Company or any other agreement, arrangement, or commitment to which Seller or the Company is a party and are not subject to or in violation of any preemptive or similar rights of any Person.

(c) Other than the organizational documents of the Company, there are no voting trusts, proxies, or other agreements or understandings in effect with respect to the voting or transfer of any of the Membership Interests.

Section 2.06 Beacon Organizational Documents. The Seller has provided Buyer a true, correct, and complete copy (including all amendments and modifications) of the Beacon Organizational Documents, which agreement is in full force and effect and is the only agreement in effect with respect to the matters described therein.

Section 2.07 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

Section 2.08 Non-Foreign Status. Seller is not a foreign person as defined in Treasury Regulations Section 1.1446(f)-1(b)(4) or Section 1.1445-2.

Section 2.09 No Other Representations or Warranties. Except for the representations and warranties contained in this ARTICLE II, neither Seller nor any partner, director, officer, employee, or agent of Seller has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this ARTICLE III are true and correct as of the date hereof. For purposes of this ARTICLE III, "Buyer's knowledge," "knowledge of Buyer" and any similar phrases shall mean the actual knowledge of those persons listed on Schedule 3 hereto.

Section 3.01 Organization and Authority of Buyer; Enforceability. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Buyer has full limited liability company power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite limited liability company action on the part of Buyer. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Buyer, and (assuming due authorization, execution, and delivery by Seller) this Agreement and the documents to be delivered hereunder constitute legal, valid, and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

Section 3.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the certificate of formation, LLC agreement or other organizational documents of Buyer; or (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule, or regulation applicable to Buyer, except where the violation or conflict would not, individually or in the aggregate, have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby on a timely basis. No consent, approval, waiver, or authorization is required to be obtained by Buyer from any person or entity (including any governmental authority) in connection with the execution, delivery, and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby, except such consents, approvals, waivers, or authorizations which would not, in the aggregate, have a material adverse effect on the Buyer's ability to consummate the transactions contemplated hereby on a timely basis.

Section 3.03 Investment Purpose. Buyer is acquiring the Membership Interests solely for its own account for investment purposes and not with a view to, or for offer or sale in

connection with, any distribution thereof. Buyer acknowledges that the Membership Interests are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Membership Interests may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

Section 3.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

Section 3.05 Legal Proceedings. There is no Action pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenges or seeks to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement, except any Actions that would not, individually or in the aggregate, have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby on a timely basis. To Buyer's knowledge, no event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 3.06 Buyer's Assumption of Risk and Liabilities. Buyer acknowledges and agrees that it is purchasing the Membership Interests in the Company on an "as-is, where-is" basis, with all faults and conditions, whether known or unknown. Buyer further acknowledges that it has conducted its own due diligence and waives any claim against Seller for any matters arising out of or related to the Company's operations, liabilities, or legal compliance, whether arising before or after the Closing Date. Buyer assumes all risks and liabilities associated with the ownership of the Membership Interests, including but not limited to any regulatory, tax, financial, or legal claims or disputes that may arise in the future whether at law or in equity. In the event that any claim, lawsuit, or governmental investigation or action is initiated against Seller related to the Company or the transactions contemplated herein, Buyer shall, at its own cost and expense, take all commercially reasonable actions to resolve such claims and shall be solely responsible for any associated costs, judgments, settlements, or penalties. Seller shall have no obligation to participate in such proceedings and shall be released from any liability related thereto.

ARTICLE IV
CLOSING DELIVERIES

Section 4.01 Seller's Deliveries. At the Closing, Seller shall deliver to Buyer the following:

(a) an assignment of the Membership Interests to Buyer in substantially the form attached hereto as Exhibit A (the "**Assignment**"), executed by Seller.

(b) A certificate of the Secretary or Assistant Secretary (or equivalent officer) of Seller certifying as to (i) the resolutions of the board of directors (or equivalent managing body) of Seller, duly adopted and in effect, which authorize the execution, delivery, and performance of this Agreement and the transactions contemplated hereby, and (ii) the names and signatures of the officers of Seller authorized to sign this Agreement and the documents to be delivered hereunder.

Section 4.02 Buyer's Deliveries. At the Closing, Buyer shall deliver the following to Seller:

(a) The Purchase Price.

(b) The Assignment, executed by Buyer.

(c) A certificate of the Secretary or Assistant Secretary (or equivalent officer) of Buyer certifying as to (i) the resolutions of the board of directors (or equivalent managing body) of Buyer, duly adopted and in effect, which authorize the execution, delivery, and performance of this Agreement and the transactions contemplated hereby, and (ii) the names and signatures of the officers of Buyer authorized to sign this Agreement and the documents to be delivered hereunder.

ARTICLE V
NO INDEMNIFICATION

Section 5.01 No Indemnification. The parties acknowledge and agree that there shall be no indemnification obligation on behalf of either party in connection with this Agreement, the representations, warranties, and covenants contained herein, or any of the instruments or documents delivered in connection with this Agreement.

Section 5.02 Exclusive Remedies. The parties acknowledge and agree that following the closing, the provisions of this ARTICLE V shall be their exclusive remedy for any and all claims relating to the subject matter of this Agreement or any of the other documents to be delivered hereunder, except for claims arising from intentional fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement.

ARTICLE VI
MISCELLANEOUS

Section 6.01 Expenses. Except as otherwise provided in Section 1.04, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 6.02 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

Section 6.03 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient

or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 6.03):

If to Seller:	Rand PE Fund Management, LLC 6716 Glenhurst Drive Dallas, TX 75254 E-mail: MPatrick@randadvisors.com Attention: Mark Patrick
If to Buyer:	CLO HoldCo, LLC 6716 Glenhurst Drive Dallas, TX 75254 E-mail: mpatrick@dafholdco.com Attention: Mark Patrick

Section 6.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 6.05 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify the Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 6.06 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in documents to be delivered hereunder, the Exhibits and Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control.

Section 6.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 6.08 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 6.09 Amendment and Modification. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

Section 6.10 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 6.11 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

Section 6.12 Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the city of Dallas and county of Dallas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

Section 6.13 Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 6.14 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. Each party hereto (i) agrees that it shall not oppose the granting of such specific performance or relief and (ii) hereby irrevocably waives any requirements for the security or posting of any bond in connection with such relief.

Section 6.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

RAND PE FUND I, L.P.,
a Delaware limited partnership

By: Rand PE Fund Management, LLC
Its: General Partner

By _____
Name: Mark Patrick
Title: Authorized Signatory

CLO HOLDCO, LLC,
a Delaware limited liability company

By _____
Name: Mark Patrick
Title: Director of the Manager, CDH GP, Ltd.

Schedule 1.02

[Included]

Schedule 2

1. Mark Patrick
2. Shawn Raver

Schedule 3

1. Mark Patrick
2. Shawn Raver

Exhibit A

Assignment of Membership Interests

[See attached]

Assignment of Membership Interest

This Assignment of Membership Interest (this "**Assignment**") is entered into as of February 12, 2025, by and between RAND PE FUND I, L.P., a Delaware limited partnership ("**Assignor**"), and CLO HOLDCO, LLC, a Delaware limited liability company ("**Assignee**").

RECITALS

WHEREAS, Assignor owns, beneficially and of record, 100% of the issued and outstanding membership interests (including all voting, consent, and economic rights associated with such membership interests, the "**Membership Interests**") of BEACON MOUNTAIN, LLC, a Delaware limited liability company (the "**Company**");

WHEREAS, Assignor and Assignee have entered into that certain Membership Interest Purchase Agreement, dated February 12, 2025 (the "**Purchase Agreement**"), pursuant to which, among other things, Assignor has agreed to sell, assign, and transfer all of its right, title, and interest in and to, and Assignee has agreed to accept, the Membership Interests; and

WHEREAS, in order to effect the sale, transfer, and assignment of the Membership Interests to Assignee, Assignor and Assignee are executing and delivering this Assignment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby sells, assigns, and transfers to Assignee, and Assignee hereby accepts, all of Assignor's right, title, and interest in and to the Membership Interests.

2. Terms of the Purchase Agreement. This Assignment is made in accordance with, and is subject to, the terms and conditions of the Purchase Agreement. Nothing in this Assignment, express or implied, is intended to or shall be construed to modify, expand, or limit any of the terms of the Purchase Agreement. Assignor and Assignee acknowledge and agree that no representations and warranties are made in this Assignment. The representations, warranties, covenants, and agreements contained in the Purchase Agreement shall not be superseded by this Assignment but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

3. Definitions. All capitalized terms used in this Assignment but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.

4. Further Assurances. Each of Assignee and Assignor shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances, and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Assignment.

5. Successors and Assigns. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Amendment and Modifications. This Assignment may not be amended or modified in any manner other than by a written agreement signed by the party to be charged.

7. Governing Law. This Assignment shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

8. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Assignment delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignee and Assignor have executed this Assignment as of the date set out above.

RAND PE FUND I, L.P.,
a Delaware limited partnership

By: Rand PE Fund Management, LLC
Its: General Partner

By: _____
Name: Mark Patrick
Title: Authorized Signatory

CLO HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: Mark Patrick
Title: Director of the Manager, CDH GP, Ltd.

EXHIBIT 6

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This Membership Interest Purchase Agreement (this "**Agreement**"), dated as August 1, 2022, is entered into by and among JOHN HONIS ("**Seller**"), RAND ADVISORS HOLDING CORP., a Delaware corporation ("**Buyer**"), and CLO HOLDCO, LTD. a Cayman limited company (the "**Guarantor**").

RECITALS

WHEREAS, Seller owns one hundred (100%) percent of the issued and outstanding membership interests, (the "**Interests**") of each of Atlas IDF GP, LLC, a Delaware limited liability company ("**Atlas GP**"), Rand PE Fund Management, LLC, a Delaware limited liability company ("**Rand GP**") and Rand Advisors, LLC, a Delaware limited liability company ("**Advisor**", and together with Atlas GP and Rand GP, each a "**Company**" and collectively, the "**Companies**");

WHEREAS, the Companies collectively manage certain private investment funds, including two (2) insurance-dedicated funds ("**IDFs**") and one (1) one private equity fund that one of the IDFs invests in (collectively, the "**Client Funds**");

WHEREAS, in addition to the foregoing with respect to the Client Funds, Advisor acts as the investment sub-advisor to Rand Advisors Series I Insurance Fund of SALI Multi-Series Fund, L.P., a Delaware series limited partnership (such, product, the "**SALI Fund**");

WHEREAS, Rand GP as the general partner of Rand PE Fund I, LP, ("**Rand LP**") manages: a) Rand LP; b) Rand LP's wholly owned subsidiary Beacon Mountain, LLC ("**Beacon**"); and c) Beacon's sponsorship and administration of the Hunter Mountain Investment Trust ("**HMIT**", and together with Rand LP and Beacon, the "**Managed Companies**"); and

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Interests, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
PURCHASE AND SALE

Section 1.01 Purchase and Sale. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Interests, free and clear of any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance. In connection with such sale of the Interests, Seller acknowledges that he retains no rights to any commissions or other compensation or consideration from (a) any Company, (b) any of the Client Funds, (c) the SALI Fund, (d) any of the Managed Funds, and/or (e) any person or entity affiliated with any of the foregoing, that has not been paid as of the Closing.

Section 1.02 Purchase Price. The purchase price payable by Buyer for the Interests shall be equal to One Million One Hundred Twenty Thousand ($1,120,000.00) Dollars (the "**Purchase Price**"). The Purchase Price shall be due and payable in sixteen (16) equal quarterly installments of Seventy Thousand ($70,000.00) Dollars (each, an "**Installment Payment**") with the first Installment Payment payable on the Closing Date and subsequent Installment Payments made quarterly thereafter on March 31, June 30, September 30 and December 31 of each calendar year until the Purchase Price has been paid in full; *provided, however*, that if any Installment Payment is due and owing on a day that is not a Business Bay, such Installment Payment shall be paid on the next Business Day. For purposes of this Agreement, the term "Business Day" means any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in New York, New York. Each Installment Payment shall be paid to Seller pursuant to the wiring instructions provided in writing at least two (2) days prior to Closing; *provided* that Seller may provide alternative wiring instructions in writing at least two (2) days prior to any Installment Payment.

ARTICLE II
CLOSING

Section 2.01 Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place electronically as of the Effective Date, with the parties executing and exchanging all material closing documents by counterpart, as applicable, on the date that all deliverables pursuant to Sections 2.02 and 2.03 have been delivered, or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "**Closing Date**".

Section 2.02 Seller Closing Deliverables. At the Closing, Seller shall deliver to Buyer the following:

(a) The resignation letter, resigning in all capacities from each of the Companies.

(b) The independent contractor agreement, by and between Seller and Buyer, dated as of the date hereof (the "**Independent Contractor Agreement**"), countersigned by Seller.

(c) The books and records of the Companies.

Section 2.03 Buyer's Deliveries. At the Closing, Buyer shall deliver the following to Seller:

(a) The Purchase Price.

(b) The Independent Contractor Agreement, countersigned by Buyer.

(c) Evidence of compliance with Section 5.01(b).

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this ARTICLE III are true and correct as of the date hereof.

Section 3.01 Organization and Authority of Seller. Seller is a natural person and resident of the State of New York. Seller has all necessary authority to enter into this Agreement, to carry out his obligations hereunder and to consummate the transactions contemplated hereby. This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.02 Organization, Authority, Qualification and Ownership of the Companies. Each Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it is currently conducted. Each Company is duly licensed or qualified to do business and is in good standing in each jurisdiction where the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a material adverse effect. Seller is the sole owner and member of each Company.

Section 3.03 Employment Matters. Seller is the only employee of each of the Companies.

Section 3.04 Title to Interests. Seller has exclusive and valid title to all of the Interests, with the absolute right to sell, assign and transfer the same to Buyer free and clear of all liens, pledges, security interests and encumbrances. Seller has not assigned, transferred or sold any rights, options or other benefits associated with the Interests. Further, Seller represents and warrants that the assets of the Companies are free and clear of any and all liens, pledges, security interests and other encumbrances.

Section 3.05 No Restrictions Against Sale. Seller has full right, power and authority to sell the Interests to Buyer as provided in this Agreement without obtaining the consent or approval of any creditor, third party or governmental body.

Section 3.06 Intentionally Blank

Section 3.07 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE III, none of Seller, the Companies or any other person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller or any Company, including any representation or warranty as to the accuracy or completeness of any information regarding the Companies furnished or made available to Buyer as to the future revenue, profitability or success of each Company, or any representation or warranty arising from statute or otherwise in law.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all necessary corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder, and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with any provision of the certificate of incorporation or by-laws of Buyer; (b) violate or conflict with any provision of any law or governmental order applicable to Buyer; (c) require the consent, notice or other action by any person under, violate or conflict with, or result in the acceleration of any agreement to which Buyer is a party; or (d) require any consent, permit, governmental order, filing or notice from, with or to any governmental authority; except, in the cases of clauses (b) and (c), where the violation, conflict, acceleration or failure to obtain consent or give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and, in the case of clause (d), where such consent, permit, governmental order, filing or notice which, in the aggregate, would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

Section 4.03 Legal Proceedings. There are no actions pending or, to Buyer's knowledge, threatened against or by Buyer or any of its affiliates that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 4.04 Buyer Acknowledgement of SALI Agreement and CG Agreement. Buyer acknowledges the obligations of (i) the Advisor pursuant to the Subadvisor Agreement dated September 25, 2013 between the Advisor and SALI Fund Management, LLC (the **"SALI Agreement"**) and (ii) Atlas IDF, LP and the Advisor pursuant to the Participation Agreement dated as of November 30, 2015 among Crown Global Life Insurance Ltd., Atlas IDF, LP and the Advisor (the **"CG Agreement"**). The purchase and sale of the Interests pursuant to this Agreement will not cause a violation of either Exhibit C to the SALI Agreement or Schedule D to the CG Agreement (**"Schedule D"**).

Section 4.05 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of Seller, the Companies, the Managed Companies, the Client Funds and the SALI Fund, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Seller, the Companies, the Managed Companies, the Client Funds and the SALI Fund for such purpose. Buyer represents and warrants that it is aware that the Companies are involved in multiple litigations, the ultimate liability under such litigations may not be quantified and accepts any risk related thereto. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in ARTICLE III of this Agreement; and (b) none of Seller, any Company or any other person has made any representation or warranty as to Seller, any Company, any Managed Company, any Client Funds, the SALI Fund or this Agreement, except as expressly set forth in ARTICLE III of this Agreement.

ARTICLE V
COVENANTS

Section 5.01 Director, Manager and Officer Indemnification Liability.

(a) Buyer agrees that all rights to indemnification, advancement of expenses and exculpation by each Company now existing in favor of each person who is now, or has been at any time prior to the date hereof, an officer, manager, member or director of such Company, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date hereof, shall survive the Closing Date and shall *continue in full force and effect in accordance with their respective terms.*

(b) Each Company shall, and Buyer shall cause each Company to (i) maintain in effect for a period of six (6) years after the Closing Date the current policies of Investment Adviser and Fund Professional and Directors and Officers Liability Insurance (or similar policy) maintained by each Company immediately prior to the Closing Date (provided that each Company may substitute policies, of at least the same coverage and amounts and containing terms and conditions that are not less advantageous to the directors, members, managers and officers of such Company when compared to the insurance maintained by such Company as of the date hereof), or (ii) obtain as of the Closing Date "tail" insurance policies with a claims period of six (6) years from the

Closing Date with at least the same coverage and amounts, and containing terms and conditions that are not less advantageous to the mangers and officers of such Company, in each case with respect to claims arising out of or relating to events which occurred on or prior to the Closing Date (including in connection with the transactions contemplated by this Agreement). The parties acknowledge and agree that the coverages required by this Section 5.01(b) shall not be required to cover the Excluded Claims referenced in Section 5.04 hereinafter.

(c) The obligations of Buyer and each Company under this Section 5.01 shall not be terminated or modified in such a manner as to adversely affect Seller.

(d) In the event that Buyer, any Company or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then, and in either such case, proper provision shall be made so that the successors and assigns of Buyer or such Company, as the case may be, shall assume all of the obligations set forth in this Section 5.01.

Section 5.02 Further Assurances. Following the Closing:

(a) each of the parties hereto shall, and shall cause their respective affiliates to, execute and deliver such additional documents and instruments and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

(b) The parties agree that certain matters in which any of the Affected Parties will be involved may necessitate Seller's cooperation in the future. Accordingly, for any reason, to the extent requested by any of the Affected Parties or their representatives and/or agents, Seller shall reasonably cooperate with the Affected Parties in connection with any matters in which any of the Affected Parties asserts that Seller's assistance is necessary, including, but not limited to, the Kirschner Litigation, the HCMLP Bankruptcy, and any other disputes; provided that, any of the Affected Parties shall make reasonable efforts to minimize disruption of Seller's other activities. The respective Affected Parties shall reimburse Seller for reasonable expenses incurred in connection with such reasonable cooperation and, to the extent that Seller is required to spend substantial time on such matters, the respective Affected Parties shall compensate Seller at an hourly rate of $350.00 per hour. Such reasonable cooperation shall include, but is not limited to, providing interviews, truthful testimony, documents, assistance, information, and executing and returning documents related to any litigation or disputes in which any of the Affected Parties is involved, including, but not limited to, the Kirschner Litigation and/or the HCMLP Bankruptcy and any disputes related thereto. "Affected Parties" shall collectively mean Buyer, Companies, Client Funds, SALI Fund and Managed Companies.

(c) Additionally, Seller agrees that he will not voluntarily provide reasonable assistance to or cooperate with any party that has any adverse interests to any of the Affected Parties without prior written consent from the respective Affected Parties, and Seller will notify the Affected Parties if any third-party seeks such reasonable assistance or cooperation from Seller. Any failure to comply with this clause by Seller shall constitute a material breach of this Agreement. Seller shall not, except as required by law, disclose to any third party this Agreement, its terms and particularly this cooperation clause. If, at any time, Seller is ordered or subpoenaed by any court, regulator, agency, or legislative body to disclose, or is served with a subpoena or discovery request seeking or requiring disclosure of, this Agreement or any of its terms, Seller shall so notify the Affected Parties at least two (2) business days in advance of the time for compliance with the order, subpoena or discovery request.

Section 5.03 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and Seller shall cooperate with respect thereto as necessary).

Section 5.04 Release. Effective as of the Closing, (i) Buyer shall, (ii) Buyer shall cause the Companies, (iii) Buyer shall cause the Companies to cause the Client Funds, and (iv) Buyer shall cause the Companies to cause the Managed Companies (together, the "**Buyer Releasors**") generally, irrevocably, unconditionally and completely to release and forever discharge Seller and his partners, affiliates, employees, consultants, counsel and agents, and the counsel, consultants and agents of the Companies, the Managed Companies, and the Client Funds (each, a "**Seller Releasee**" and collectively, the "**Seller Releasees**") from, and irrevocably, unconditionally and completely to waive and relinquish each and all past, present and future disputes, claims, controversies, demands, rights, obligations, liabilities, actions and causes of action of every kind and nature, including any unknown, unsuspected or undisclosed claim (collectively "**Claims**"), that the Buyer Releasors may have had in the past, may now have or may have in the future against any of the Seller Releasees and has arisen or arises directly or indirectly out of, or relates directly or indirectly to, this Agreement and the transactions contemplated hereby, or the operation of the Companies, the Managed Companies, the SALI Fund or the Client Funds, other than any claim that Buyer may have against any of the Seller Releasees that arises under this Agreement. Buyer Releasors, acknowledges that the laws of many states provide substantially the following: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." The Buyer Releasors acknowledge that such provisions are designed to protect a party from waiving claims which it does not know exist or may exist. Nonetheless, the Buyer Releasors, agree that, effective as of the Closing, the Companies, the Client Funds and the Managed Companies shall be deemed to waive any such provision. Buyer shall not permit any Company, Client Fund or Managed Company to institute, solicit or encourage, or participate, assist or cooperate in, any legal proceeding based upon, arising out of, or relating to any of the disputes, claims, controversies, demands, rights,

obligations, liabilities, actions and causes of action waived under this Section 5.04. Notwithstanding the foregoing, the parties acknowledge and agrees that the Claims released by this Section 5.04 shall not include any and all Claims that are found by a court of competent jurisdiction to be a result of a Seller Releasees fraud, gross negligence or willful misconduct (each an "**Excluded Claim**" and/or collectively, the "**Excluded Claims**").

Section 5.05 Guaranty.

(a) The Guarantor hereby irrevocably and unconditionally guarantees to Seller full and punctual performance of and compliance with all of Buyer's obligations pursuant to this Agreement. The guaranty set forth in this Section 5.05(a) is an absolute, present, primary and continuing guaranty of performance, payment and compliance. The Guarantor acknowledges and agrees that upon any default by Buyer, Seller shall not be obligated to first attempt enforcement against Buyer. The Guarantor hereby waives any and all defenses to enforcement of the guaranty set forth in this Section 5.05(a), now existing or hereafter arising, which may be available to guarantors, sureties and other secondary parties at law or in equity. The Guarantor further agrees to pay all reasonable costs and expenses, including reasonable attorney fees and related costs, incurred by any Seller Releasee in enforcing the guaranty set forth in this Section 5.05(a).

(b) The Guarantor represents and warrants to Seller that (i) the execution and delivery of this Agreement, and the Guarantor's performance under this Agreement, including the Guarantor's performance under this Section 5.05, does not violate any law, decree or contractual restriction binding on the Guarantor, (ii) this Agreement has been duly executed and delivered by the Guarantor and constitutes the valid and legally binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and general principles of equity and (iii) the Guarantor has the financial capacity necessary to perform its obligations under the guaranty set forth in Section 5.05(a).

Section 5.06 Ownership of Work Product of the Companies. Seller hereby agrees that all work product, designs, graphics, processes, trade secrets, proprietary information and confidential investor information of the Companies, that is not (i) generally available to the public other than by virtue of a disclosure by Seller after the Closing Date and in violation of this Agreement or (ii) independently developed by Seller from sources not known by Seller to be bound by an obligation of confidentiality to the Companies (collectively, "**Confidential Information**") and shall remain the property of the applicable Company without any further act on Seller's or any Company's part, and that Seller shall not have any past, current or future copyright, trademark right, intellectual property right, property interest and/or any other right, title or interest in such Confidential Information. Seller acknowledges and agrees that all right, title and interest in such Confidential Information, including, without limitation, all conceivable intellectual property rights, including, without limitation, all copyrights, trademarks, service marks, patents, and discoveries shall remain the property of the applicable Company on and after the Closing Date. Notwithstanding anything in this Section 5.06 or otherwise in this Agreement

to the contrary, Seller may retain the phone that he used in the management and ownership of the Companies as his own personal property, and all "personal" information/data on such phone shall not constitute Confidential Information.

Section 5.07 Client Information. Seller hereby covenants and agrees at all times following the execution hereof to hold in strictest confidence, and not to use (for himself or for any other person), or to disclose to any person, firm or entity, any such Confidential Information. The provisions of this Section 5.07 shall survive the execution hereof.

Section 5.08 Buyer Obligations Pursuant to CG Agreement. Buyer covenants and agrees to ensure that after the Closing, either (x) Buyer and each person that would be an "Adviser Party" within the meaning of Schedule D immediately after the Closing is not affiliated with any "Policy Party" within the meaning of Schedule D or (y) each such person that would be such an Adviser Party immediately after the closing and that is affiliated with any such Policy Party has established or will establish procedures pursuant to a legally binding written agreement to prevent any communication prohibited by Schedule D.

Section 5.09 Managed Companies Counsel. Buyer expressly acknowledges that counsel who have appeared for or represented the Managed Companies prior to the execution of this Agreement shall withdraw as counsel from any existing litigation and shall be replaced by counsel of Buyer's choice or designation. The Managed Companies existing counsel shall cooperate with Buyer's designated replacement counsel in all respects, including filing any necessary pleadings or motions with the applicable court and turning over all documents, correspondence or other work product heretofore generated in connection with any such existing litigation to Buyer's designated replacement counsel; *provided* that Buyer acknowledges existing counsel may retain one copy of each such document, correspondence or work product for record keeping purposes.

ARTICLE VI
INDEMNIFICATION AND OTHER REMEDIES

Section 6.01 Indemnification by Buyer. Buyer shall defend and indemnify each Seller Releasee against, and hold each Seller Releasee harmless from, all Claims (other than Excluded Claims), including those related to Seller's ownership of the Interests or any actions or inaction by any Company, any Managed Company, any Client Fund or the SALI Fund.

Section 6.02 Indemnification by Seller. Seller shall have no obligations of indemnification with respect to any Claims (other than Excluded Claims), including those related to this Agreement or the transactions contemplated hereby.

Section 6.03 Intentionally Blank

Section 6.04 Exclusive Remedies. The parties acknowledge and agree that their sole and exclusive remedy with respect to any and all Claims for any breach of any representation,

warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this ARTICLE VI. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their affiliates arising under or based upon any law, except pursuant to the indemnification and other provisions set forth in this ARTICLE VI. Nothing in this Section 6.04 shall limit any person's right to seek and obtain any equitable relief to which such person shall be entitled or to seek any remedy on account of any fraud by any party hereto. The provisions of this Articles VI shall survive the execution hereof.

ARTICLE VII
MISCELLANEOUS

Section 7.01 Expenses. All costs and expenses incurred in connection with the preparation and negotiation of this Agreement and the transactions contemplated hereby shall be paid by Buyer at Closing.

Section 7.02 Notices. All notices, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the second day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid, if sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7.02):

If to Seller:

John Honis
42 Regatta View Drive
Saratoga Springs, NY 12866
Email: jwhonis@icloud.com

with a copy (which shall not constitute notice) to:

Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, NY 10176
Attn: Steven Huttler
Email: SHuttler@sadis.com

If to Buyer:

Rand Advisors Holding Corp.
6716 Glenhurst Dr.
Dallas, TX 75254

Email: mpatricktax1040@gmail.com
Attention: Mark Patrick

with a copy (which shall not constitute notice) to:

Leggett Clemons Crandall, PLLC
5700 Granite Parkway, Ste. 950
Plano, TX 75024
Email: sclemons@lcclawfirm.com
Attention: Steve H. Clemons

Section 7.03 Interpretation; Headings. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 7.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement.

Section 7.05 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

Section 7.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations hereunder without the prior written consent of the other parties. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 7.07 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise or delay in exercising, any right or remedy arising from this Agreement shall operate or be construed as a waiver thereof. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

Section 7.08 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.08(c).

Section 7.09 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 7.10 AS-IS, WHERE-IS. Except as expressly set forth in this Agreement to the contrary, Buyer is expressly purchasing the Interests "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and Seller has no obligation to determine or correct any such facts, circumstances, conditions, or defects or to compensate Buyer for same. Except as expressly set forth in this Agreement, Seller has specifically bargained for the assumption by Buyer of all responsibility to investigate Seller, the Companies, the Client Funds, the SALI Fund, the Managed Companies and the Interests, and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. Except for the representations set forth in ARTICLE III, Buyer is and will be relying strictly and solely on its own inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers. Except as set forth

in ARTICLE III and otherwise in this Agreement, Buyer assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to Seller, any Company, any Client Fund, the SALI Fund, any Managed Company or the Interests. The provisions of this Section 7.10 shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

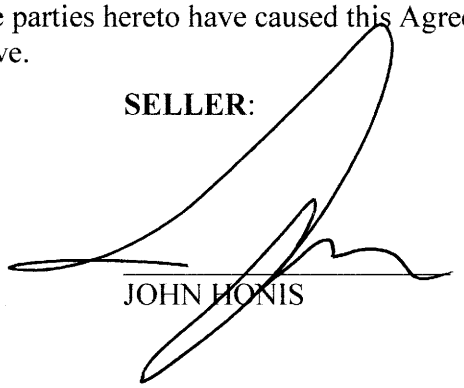
Section 7.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 7.12 Privileges; Conflicts. It is acknowledged by each of the parties hereto that the Seller has retained Sadis & Goldberg LLP ("**Sadis**") to act as their counsel in connection with the transactions contemplated hereby and that Sadis has not acted as counsel for Buyer, any Company, any Client Fund, SALI Fund, any Managed Company or any of their respective affiliates in connection with the transactions contemplated hereby and that no other party has the status of a client of Sadis for conflict of interest or any other purposes as a result thereof. Buyer hereby agrees that, in the event that a dispute arises between Buyer or any of its affiliates (including, after the Closing, the Companies) and the Seller or any of his affiliates, Sadis may represent the Seller or any such affiliate in such dispute even though the interests of the Seller or such affiliate may be directly adverse to Buyer or any of its affiliates (including, after the Closing, the Companies), and even though Sadis may have represented such Company in a matter substantially related to such dispute, or may be handling ongoing matters for the Companies, and Buyer and the Companies hereby waive, on behalf of themselves and each of their affiliates, any claim they have or may have that Sadis has a conflict of interest in connection with, or is otherwise prohibited from engaging in, such representation. Buyer further agrees that, as to all communications among Sadis, Seller, any Company, or their respective affiliates that relate in any way to the transactions contemplated by this Agreement, the attorney-client privilege, the expectation of client confidence and all other rights to any evidentiary privilege belong to Seller and may be controlled by Seller and shall not pass to or be claimed by Buyer, any Company or their affiliates. Buyer agrees to take, and to cause its affiliates to take, all reasonable steps necessary to implement the intent of this Section 7.12. Buyer and Seller further agree that Sadis and its partners and employees are third-party beneficiaries of this Section 7.12.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

SELLER:



JOHN HONIS

BUYER:

RAND ADVISORS HOLDING CORP

By_____
Name: Mark Patrick
Title: Director

GUARANTOR:

CLO HOLDCO, LTD.,
a Cayman limited company

By_____
Name: Mark Patrick
Title: Director

EXHIBIT 7

LIMITED LIABILITY COMPANY AGREEMENT

OF

ATLAS IDF GP, LLC

This Limited Liability Company Agreement (this "**Agreement**") of Atlas IDF GP, LLC (the "**Company**") is entered into as of October 29, 2015 by and between the Company and John Honis (the "**Managing Member**", and collectively with any individuals and/or entities who subsequently become members of the Company in the future in accordance with the terms hereof, "**Members**"), pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.), as amended from time to time (the "**Act**").

Section 1 **Name**. The name of the limited liability company governed hereby is Atlas IDF GP, LLC.

Section 2 **Certificates**. The Managing Member, as an authorized person within the meaning of the Act, has executed, delivered and filed the certificate of formation of the Company (the "**Certificate of Formation**") with the Secretary of State of the State of Delaware on October 29, 2015. Upon the execution of this Agreement, the Managing Member shall thereafter be designated as an authorized person within the meaning of the Act. Hereafter, the Managing Member shall have the power to execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

Section 3 **Purpose**. The Company was formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in all lawful activities for which limited liability companies may be formed under the Act, including, without limitation of the foregoing, serving as the general partner of Atlas IDF, LP, a Delaware limited partnership.

Section 4 **Powers**. The Company shall have the power to do any and all acts reasonably necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purpose and business described herein and for the protection and benefit of the Company, and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Company by the Managing Member pursuant to this Agreement.

Section 5 **Principal Business Office**. The principal place of business and office of the Company shall be located at, and the Company's business shall be conducted from 87 Railroad Place, Suite 403, Saratoga Springs, NY 12866, or elsewhere as the Managing Member may from time to time determine.

Section 6 **Registered Office**. The address of the registered office of the Company in the State of Delaware is: c/o Stellar Corporate Services LLC, 3500 South DuPont Highway, County of Kent, Dover, Delaware 19901.

Section 7 **Registered Agent**. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is: c/o Stellar Corporate Services LLC, 3500 South DuPont Highway, County of Kent, Dover, Delaware 19901.

Section 8 **Members**. The names, the nature of the interests held, the mailing addresses, the initial capital contributions and the Percentage Interests (as defined below) of the Members are as set

forth in **Schedule A** attached hereto.

Section 9 **Term**. The term of the Company commenced on the date of filing of the Certificate of Formation in accordance with the Act and shall continue until dissolution of the Company in accordance with **Section 23** of this Agreement.

Section 10 **Limited Liability**. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and none of the Members, any Officer (as hereinafter defined), employee or agent of the Company (including a person having more than one such capacity) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of acting in such capacity.

Section 11 **Initial Capital Contributions**. Each Member is deemed admitted as a Member of the Company upon his, her or its execution and delivery of this Agreement. The initial capital contributions of the Members are set forth on **Schedule A** attached hereto.

Section 12 **Additional Capital Contributions**. The Members are not required to make any capital contributions to the Company beyond their initial capital contributions, unless otherwise determined by the Managing Member.

Section 13 **Capital Accounts**. Separate capital accounts shall be maintained for each Member on the books of the Company, which accounts shall set forth the capital of such Member in the Company. Each capital account shall be adjusted to reflect such Member's share of allocations and distributions as provided in **Sections 14 and 15** of this Agreement, and any additional capital contributions to the Company or withdrawals of capital from the Company. Such capital accounts shall further be adjusted to conform to the Treasury Regs. under Section 704(b) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), as interpreted in good faith by the Managing Member.

Section 14 **Allocations of Profit and Loss**. All items of income, gain, loss, deduction and credit shall be allocated among the Members in accordance with their percentage interests as set forth on **Schedule A** attached hereto ("**Percentage Interests**").

Section 15 **Distributions**. Distributions shall be made to the Members at such times and in such amounts as may be determined in the sole discretion of the Managing Member. Distributions shall be allocated among the Members in accordance with their Percentage Interests. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to the Members on account of their interest in the Company if such distribution would violate Section 18-607 of the Act or other applicable law.

Section 16 **Management**.

(a) The business and affairs of the Company shall be managed by the Managing Member. Subject to the express limitations contained in any provision of this Agreement, the Managing Member shall have complete and absolute control of the affairs and business of the Company, and the Managing Member shall possess all powers necessary, convenient or appropriate to carrying out the purposes and business of the Company, including, without limitation, doing all things and taking all actions necessary to carrying out the terms and provisions of this Agreement.

(b) Subject to the rights and powers of the Managing Member and the limitations thereon contained herein, the Managing Member may delegate to any person any or all of his powers,

rights and obligations under this Agreement, and the Managing Member may appoint, contract or otherwise deal with any person to perform any acts or services for the Company as the Managing Member may reasonably determine.

(c) No Member (other than the Managing Member) shall participate in the management or control of the business of, or shall have any rights or powers with respect to, the Company except those expressly granted to it by, or pursuant to the terms of, this Agreement, or those conferred on it by law.

(d) The Managing Member shall hold office until the earliest to occur of his death, disability or other inability to act in such capacity, at which time a successor Managing Member may be appointed by Members owning at least a majority of the Percentage Interests.

Section 17 **Officers**. The Managing Member may, from time to time as he deems advisable, appoint officers of the Company (the "**Officers**") and assign in writing titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Unless the Managing Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this **Section 17** may be revoked at any time by the Managing Member.

Section 18 **Other Business**. The Members (including, for the avoidance of doubt, the Managing Member) may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. Neither the Company nor any other Member shall have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 19 **Exculpation and Indemnification**. The Managing Member shall not be liable to the Company or to the other Members for any action taken or omitted to be taken in connection with the business or affairs of the Company, so long as he acted in good faith and is not found to be guilty of gross negligence or willful misconduct with respect thereto, as determined by a final non-appealable decision of a court of competent jurisdiction. To the fullest extent permitted by law, the Company agrees to indemnify and hold harmless: (i) the Managing Member, and (ii) in the discretion of the Managing Member, the Company's managers, shareholders, partners, officers, employees, agents and affiliates and/or the other Members (each, an "**Indemnified Party**") from and against any and all claims, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding related to any action taken or omitted to be taken by any of them in connection with the business and affairs of the Company (including the settlement of any such claim or legal proceeding); *provided, however*, that the party against whom the claim is made or legal proceeding is directed is not guilty of gross negligence or willful misconduct, as determined by a final non-appealable decision of a court of competent jurisdiction. Any indemnity under this **Section 19** shall be provided out of and to the extent of Company assets only, and no Member (including the Managing Member) shall have personal liability on account thereof.

Section 20 **Admission of Additional Members**. Additional Members may be admitted to the Company only with the written consent of the Managing Member. The capital contribution required of, and the Percentage Interests assigned to, such newly-admitted Member shall be determined by the Managing Member.

Section 21 **Effect of Bankruptcy, Dissolution, Death or Incompetence of a Member**. The bankruptcy, dissolution, death or disability of a Member, or an adjudication that such Member is

incompetent (a Member experiencing any such event, a "**Disabled Member**"), shall not cause the termination or dissolution of the Company, and the business of the Company shall continue. If a Member is dissolved or becomes bankrupt, the trustee or receiver of such Disabled Member's estate or, if a Member dies, such Disabled Member's executor, administrator or trustee, or, if such Member is adjudicated incompetent, such Disabled Member's committee, guardian or conservator, or the personal representative of such Disabled Member, as applicable, shall have the rights of such Disabled Member for the purposes of settling or managing such Disabled Member's estate or property and such power as the Disabled Member possessed to dispose of all or any part of such Member's interest in the Company, and to join with any assignee in satisfying conditions precedent to the admission of the assignee as a substitute Member.

Section 22 **Assignments**. A Member may not transfer, assign, pledge or hypothecate, in whole or in part, his, her or its limited liability company interest without the prior written consent of the Managing Member.

Section 23 **Dissolution**.

(a) The Company shall dissolve, and its affairs shall be wound-up upon the first to occur of the following: (i) the written consent of the Managing Member; (ii) the death, disability, bankruptcy or withdrawal of the Managing Member, in the event no successor managing member is appointed pursuant to **Section 16(d)**; and (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind-up its affairs (including the sale of the assets of the Company in an orderly manner).

Section 24 **Tax Matters Partner**. John Honis shall be the tax matters partner within the meaning of Section 6231(a)(7) of the Code. All expenses incurred by the tax matters partner in connection with his duties as tax matters partner shall be expenses of the Company.

Section 25 **Elections**. The Managing Member shall determine the accounting methods and conventions under the tax laws of any and all applicable jurisdictions as to the treatment of income, gain, loss, deduction and credit of the Company or any other method or procedure related to the preparation of such tax returns. The Managing Member may cause the Company to make or refrain from making any and all elections permitted by such tax laws, and the Managing Member shall not be liable for any consequences to any previously admitted or subsequently admitted Members resulting from making or failing to make any such elections.

Section 26 **Separability of Provisions**. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 27 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement.

Section 28 **Entire Agreement**. This Agreement constitutes the entire agreement of the Members with respect to the subject matter hereof and shall supersede all prior and contemporaneous agreements, understandings and discussions with respect thereto.

Section 29 **Governing Law, Personal Jurisdiction and Venue**. The parties acknowledge and agree that any claim, controversy, dispute or action relating in any way to this Agreement or the subject matter of this Agreement shall be governed solely by the laws of the State of Delaware, without regard to any conflict of laws doctrines. The parties irrevocably consent to and submit to being served with legal process issued from the state and federal courts located in the State of New York and irrevocably consent to the exclusive personal jurisdiction of the federal and state courts situated in the State of New York. The parties irrevocably waive any objections to the personal jurisdiction of these courts. The federal and state courts of the State of New York in New York County shall have sole and exclusive jurisdiction over any and all claims, controversies, disputes and actions which in any way relate to this Agreement or the subject matter of this Agreement. Any such claim, controversy, dispute or action must first be brought in the federal court of the State of New York in New York County, unless the federal courts do not have subject matter jurisdiction as a matter of law, in which case it must first be brought in the Commercial Division of the New York State Supreme Court in New York County (and can only proceed in New York County outside the Commercial Division if the Commercial Division rejects it). The parties also irrevocably waive any objections that these courts constitute an oppressive, unfair, or inconvenient forum and agree not to seek to change venue on these grounds or any other grounds.

Section 30 **Amendments**. This Agreement may be modified, altered, supplemented or amended in the sole discretion of the Managing Member.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the date first written above.

THE COMPANY:

ATLAS IDF GP, LLC

By: _____
Name: John Honis
Title: Managing Member

MANAGING MEMBER:

_____
Name: John Honis

Schedule A

Members of Atlas IDF GP, LLC

As of October 29, 2015

NAME	NATURE OF INTEREST	MAILING ADDRESS	INITIAL CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
John Honis	Managing Member	87 Railroad Place, Suite 403 Saratoga Springs, NY 12866	$100	100%

EXHIBIT 8

AMENDED AND RESTATED COMPANY AGREEMENT

of

ATLAS IDF GP, LLC

A Delaware Limited Liability Company

AMENDED AND RESTATED COMPANY AGREEMENT

of

ATLAS IDF GP, LLC

A Delaware Limited Liability Company

This AMENDED AND RESTATED COMPANY AGREEMENT (collectively, the "Agreement," which shall include all amendments and exhibits hereto) dated effective as of the 1st day of August, 2022 (the "Effective Date"), are entered into by and among those Persons executing the signature page hereto as the Members of ATLAS IDF GP, LLC, a Delaware limited liability company (the "Company"). All capitalized terms not defined in the instance of first usage shall have the respective meanings associated with such terms in Section 1.04 below.

ARTICLE I

INTRODUCTION

1.01 Formation of Limited Liability Company The Company was formed by the filing of the Certificate of Formation (the "Certificate") with the Secretary of State of Delaware on the October 29, 2015. The Company's business shall be conducted under the name "ATLAS IDF GP, LLC" until such time as the Members shall hereafter designate otherwise and file amendments to the Certificate in accordance with applicable law. This Agreement amends and replaces, in its entirety, all prior governing agreements for the Company, including any and all amendments thereto.

This Agreement is subject to, and governed by, the Delaware laws governing limited liability companies (the "DELAWARE LAWS") and the Certificate. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the DELAWARE LAWS or the provisions of the Certificate, such provisions of the DELAWARE LAWS or the Certificate, as the case may be, will be controlling.

1.02 Registered Office and Agent The registered office and registered agent of the Company initially shall be as set forth in the Certificate and may be changed from time to time by the appropriate filing by the Company in the office of the Secretary of State of Delaware.

1.03 Other Offices The Company may also have offices at such other places, both within and without the State of Delaware, as the Board of Managers may from time to time determine or the business of the Company may require.

1.04 Defined Terms The terms used in this Agreement with their initial letter capitalized shall, unless the context requires otherwise, have the meanings specified in this Section 1.04. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires. When used in this Agreement, the following terms shall have the meanings set forth below:

(a) "DELAWARE LAWS" shall mean the Delaware laws governing limited liability companies, as the same may be amended from time to time.

(b) "Affiliate" shall mean, as to any Person, any Person controlled by, controlling, or under common control with such Person, and, in the case of a Person who is an individual, a member of the family of such individual consisting of a spouse, sibling, in-law, lineal descendant, or ancestor (including by adoption). For purposes of this definition, "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, alone or in concert with others, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise, and no Person shall be deemed in control of another solely by virtue of being a director, officer or holder of voting securities of any entity. A Person shall be presumed to control any partnership of which such Person is a general partner.

(c) "Bankruptcy" shall mean, and a Member shall be deemed a "Bankrupt Member," upon (i) the entry of a decree or order for relief against the Member by a court of competent jurisdiction in any involuntary case brought against the Member under any Debtor Relief Laws; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other similar agent under applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property; (iii) the ordering of the winding up or liquidation of the Member's affairs; (iv) the filing of a petition in any involuntary bankruptcy case, which petition remains undismissed for a period of 180 days or which is not dismissed or suspended pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement by the Member of a voluntary case under any applicable Debtor Relief Law now or hereafter in effect; (vi) the consent by the Member to the entry of an order for relief in an involuntary case under any such law or to the appointment of or the taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or other similar agent under any applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property; or (vii) the making by a Member of any general assignment for the benefit of its creditors.

(d) "Book Depreciation" for any asset shall mean for any Fiscal Year or other period an amount that bears the same ratio to the Book Value of that asset at the beginning of such Fiscal Year or other period as the federal income tax depreciation, amortization, or other cost recovery deduction allowable for that asset for such year or other period bears to the adjusted tax basis of that asset at the beginning of such year or other period. If the federal income tax depreciation, amortization, or other cost recovery deduction allowable for any asset for such year or other period is zero, then Book Depreciation for that asset shall be determined with reference to such beginning Book Value using any reasonable method selected by the Board of Managers.

(e) "Book Value" shall mean for any asset the asset's adjusted tax basis, except as follows:

(i) the initial Book Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Board of Managers;

(ii) the Book Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board of Managers, as of one of the following times: (1) on the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; (2) on the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an Interest in the Company if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (3) on the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations;

(iii) the Book Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution;

(iv) the Book Values of Company assets shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations and Section 8.02(d) hereof; provided, however, that Book Values shall not be adjusted pursuant to this Section 1.04(e)(iv) to the extent the Board of Managers determines that an adjustment pursuant to Section 1.04(e)(ii) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 1.04(e)(iv); and

(v) if the Book Value of an asset has been determined or adjusted pursuant to Section 1.04(e)(i),1.04(e)(ii), or 1.04(e)(iv) hereof, such Book Value shall thereafter be adjusted by the Book Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(f) "Capital Contribution" shall mean the total value of cash and Book Value (except as otherwise herein provided) of property contributed and agreed to be contributed to the Company by each Member, as shown in Exhibit A, attached hereto and incorporated herein for all purposes, as the same may be amended from time to time. Any reference in this Agreement to the Capital Contribution of a then Member shall include a Capital Contribution previously made by any

prior Member for the interest of such then Member, reduced by any distribution to such Member in return of its capital as contemplated herein.

(g) "Class A Interest" shall refer to the Interest of a Class A Member in the Profits, Losses, Distributable Cash, and assets upon liquidation of the Company as described in this Agreement.

(h) "Class A Members" shall mean those Persons listed on Exhibit A and designated as "Class A Members." The Class A Members shall have such additional rights as a Member as are specifically described and granted in Exhibit A, as amended from time to time.

(i) Intentionally Blank.

(j) Intentionally Blank.

(k) "Code" shall mean the Internal Revenue Code of 1986, as amended. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding law.

(l) "Company" shall refer to the limited liability company created by virtue of the Certificate and this Agreement and any successor in interest.

(m) "Debtor Relief Laws" shall mean any federal or state bankruptcy, insolvency, or similar laws generally affecting the rights of creditors and the relief of debtors now or hereafter in effect.

(n) Intentionally Blank.

(o) "Distributable Cash" of the Company shall mean all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions by the Members and cash funds obtained from loans to the Company) after (i) payment of all operating expenses of the Company as of such time; (ii) provision for payment of all outstanding and unpaid current obligations of the Company as of such time; and (iii) provision for a working cash reserve in accordance with Section 8.07 below.

(p) "Fiscal Year" shall mean the calendar year.

(q) "Former Member" shall mean a member that causes a Dissolution Event.

(r) "Interest" in the Company shall mean the entire ownership interest of a Member in the Company at any particular time, including such Member's Capital Account, allocable share of Profits, Losses, and Distributable Cash, and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

(s) Intentionally Blank

(t) "Manager" shall mean an individual elected to the Board of Managers of the Company pursuant to Sections 3.02 and 3.04 below.

(u) "Member(s)" shall mean all Members admitted to the Company hereafter as Members who shall consent to the terms hereof and shall be admitted pursuant to the provisions hereof. The names, business or residence addresses, Capital Contributions, Percentage Interest, and class of Interest of the Members shall be set forth on Exhibit B, attached hereto and incorporated herein by reference. Reference to a "Member" shall be to any one of the Members.

(v) "Percentage Interest" of a Member shall mean the percentage of such Member set forth opposite the name of such Member under the column "Percentage Interest" in Exhibit B, as such percentage may be adjusted from time to time pursuant to the terms hereof.

(w) "Person" shall mean any individual, corporation, partnership, limited liability company or partnership, association, organization, trust, estate, or other entity.

(x) "Pro Rata Part" shall mean the percentage expression of a fraction the numerator of which is a Member's respective Percentage Interest and the denominator of which is the aggregate Percentage Interests of all Members involved in the respective transaction or having a respective right or option.

(y) "Profits" and "Losses" shall mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.04(y) shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B), or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.04(y), shall be subtracted from such taxable income or loss;

(iii) if the Book Value of any Company asset is adjusted pursuant to Section 1.04(e)(ii) or Section 1.04(e)(iii), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(iv) gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(v) in lieu of the deduction for depreciation, cost recovery, or amortization taken into account in computing such taxable income or loss, there shall be taken into account Book Depreciation; and

(vi) notwithstanding any other provision of this Section 1.04(y), any items that are specially allocated pursuant to Section 8.02 or Section 8.03 shall not be taken into account in computing Profits and Losses.

(z) "Regulatory Allocations" shall mean the special allocations of items of income, gain, loss, and deduction, if any, set forth in Section 8.02 hereof.

(aa) "Transfer" or "Transferred" shall mean the sale, assignment, conveyance, gift, bequest, devise, transfer under the rules of intestate succession, pledge, mortgage, or other encumbrance. In addition, the term "Transfer" or "Transferred" shall mean an "ownership change" of a Member as defined in Section 382(g) of the Code in effect as of the Effective Date, except that the term "Member" shall be substituted for "shareholder" wherever it appears.

(bb) "Treasury Regulations" shall mean regulations issued by the Department of the Treasury interpreting the Code.

(cc) "Unanimous Consent" shall mean the written consent of all of the then Members of the Company.

ARTICLE II

MEMBERS AND MEMBERSHIP INTERESTS

2.01 Members. The Members of the Company shall be those Persons listed on Exhibit B. Except as otherwise may be provided in Exhibit A or Exhibit B, and except as provided in Section 7.05 below, a Person may be admitted as a Member to the Company only upon the affirmative vote of the Managers, plus one or more Members whose Percentage Interests total more than fifty percent (50%); provided, however, that no Person will be recognized as a Member of the

Company until he/she shall have executed this Agreement, or a counterpart hereto, and agrees to be bound by all of the terms and conditions hereof.

2.02 Annual Meetings An annual meeting of the Members of the Company shall be held during each calendar year on such date and at such time as shall be designated from time to time by the Board of Managers and stated in the notice of the meeting, and if a legal holiday, then on the next business day following, at the time specified in the notice of the meeting. At such meeting, the Members shall elect Managers and transact such other business as may properly be brought before the meeting.

2.03 Special Meetings A special meeting of the Members may be called at any time by the President, the Board of Managers, or one or more Members whose Percentage Interests total at least 10%. Only such business shall be transacted at a special meeting as may be stated or indicated in the notice of such meeting.

2.04 Place of Meetings The annual meeting of Members may be held at any place within or without the State of Delaware as may be designated by the Board of Managers. Special meetings of Members may be held at any place within or without the State of Delaware as may be designated by the person or persons calling such special meeting as provided in Section 2.03. If no place for a meeting is designated, it shall be held at the registered office of the Company.

2.05 Notice. Written or printed notice stating the place, day, and hour of each meeting of Members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 days or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the person calling the meeting, to each Member of record entitled to vote at such meeting.

2.06 Voting List At least 10 days before each meeting of Members, the Secretary shall prepare a complete list of Members entitled to vote at such meeting, arranged in alphabetical order, including the address of each Member and the number of voting Interests held by each Member. For a period of 10 days prior to such meeting, such list shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member during usual business hours. Such list shall be produced at such meeting, and at all times during such meeting shall be subject to inspection by any Member. The membership interest transfer books shall be prima facie evidence as to who are the Members entitled to examine such list or membership interest transfer books.

2.07 Voting of Interests. Interests held by the Company in treasury, Interests owned by a Person the majority of the voting interests of which are owned or controlled by the Company, and Interests held by the Company in a fiduciary capacity shall not be Interests entitled to vote or to be counted in determining the total number of outstanding Interests of the Company. Interests held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without transfer of such Interests into his or her name so long as such Interests form a part of the estate and are in the possession of the estate being served by him or her. Interests standing in the name of a trustee may be voted by him or her, either in person or by proxy, only after the Interests have been transferred into his or her name as trustee. Interests standing in the name of a receiver may be voted by such receiver, and Interests held by or under the control of a receiver may be voted by such receiver without transfer of such Interests into his or her name if authority to do so is contained in the court order by which such receiver was appointed. Interests standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent, or proxy as the bylaws of such corporation may provide or, in the absence of such provision, as the board of directors of such corporation may by resolution determine. A Member whose Interests are pledged shall be entitled to vote such Interests until they have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote such Interests.

2.08 Quorum. The presence in person or by proxy of one or more Members whose Percentage Interests total more than fifty percent (50%) shall constitute a quorum at any meeting of Members, except as otherwise provided by law, the Certificate, or this Agreement. At any reconvening of an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that could have been transacted at the original meeting if a quorum had been present or represented.

2.09 Vote; Withdrawal of Quorum. If a quorum is present in person or represented by proxy at any meeting, except as otherwise may be provided in Exhibit A or Exhibit B, the vote of one or more Members whose Percentage Interests total more than fifty percent (50%) of all Members, whether or not they are present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one on which, by express provision of law, the

Certificate, or this Agreement a different vote is required, in which event such express provision shall govern and control the decision of such question. The Members present at a duly convened meeting may continue to transact business until adjournment, notwithstanding any withdrawal of Members that may leave less than a quorum remaining.

2.10 Method of Voting; Proxies. Except as otherwise may be provided in Exhibit A or Exhibit B, each Member shall be entitled to that number of votes on each matter submitted to the Members for their vote equal to such Member's Percentage Interest multiplied by 100. At any meeting of Members, every Member having the right to vote may vote either in person or by a proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Each such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. If no date is stated on a proxy, such proxy shall be presumed to have been executed on the date of the meeting at which it is to be voted. Each proxy shall be revocable unless expressly provided therein to be irrevocable or unless otherwise made irrevocable by law.

2.11 Closing of Transfer Books; Record Date . For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or any reconvening thereof, or entitled to receive payment of any distribution, or in order to make a determination of Members for any other proper purpose, the Board of Managers may provide that the membership interest transfer books of the Company shall be closed for a stated period but not to exceed in any event 50 days. If the membership interest transfer books are closed for the purpose of determining Members entitled to notice of, or to vote at, a meeting of Members, such books shall be closed for at least 10 days immediately preceding such meeting. In lieu of closing the membership interest transfer books, the Board of Managers may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than 50 days and not less than 10 days prior to the date on which the particular action requiring such determination of Members is to be taken. If the membership interest transfer books are not closed and if no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or entitled to receive payment of a distribution, the date on which the notice of the meeting is to be mailed or the date on which the resolution of the Board of Managers declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members.

2.12 Presiding Officials at Meetings The President shall preside at, and the Secretary shall prepare minutes of, each meeting of Members, and in the absence of either such officer, his other duties shall be performed by some person appointed at the meeting.

ARTICLE III

MANAGERS

3.01 Management. The business and affairs of the Company shall be managed EXCLUSIVELY by the Board of Managers. Subject to the restrictions imposed by law, the Certificate, or this Agreement, the Board of Managers may exercise all the powers of the Company.

3.02 Number; Election; Term; Qualification. The first Board of Managers shall consist of the number of Managers named in the Certificate and or otherwise in the Company documents. Thereafter, except as otherwise may be restricted by this Agreement, the number of Managers that shall constitute the entire Board of Managers shall be determined by resolution of the Board of Managers at any meeting thereof or by the Members at any meeting thereof, but shall never be less than one (1). At each annual meeting of Members, Managers shall be elected to hold office until the next annual meeting of Members and until their successors are elected and qualified. No Manager need be a Member, a resident of the State of Delaware, or a citizen of the United States.

3.03 Removal Except as otherwise may be provided by the Members, at any meeting of Members called expressly for that purpose, any Manager or the entire Board of Managers may be removed, with or without cause, by a vote of one or more Members whose Percentage Interests total more than fifty percent (50%).

3.04 Change in Number; Vacancies. No decrease in the number of Managers constituting the entire Board of Managers shall have the effect of shortening the term of any incumbent Manager. In the case of any increase in the number of Managers, or in the case of the death, retirement, resignation, or removal of a Manager, the vacancies to be filled by such increase or death, retirement, resignation, or removal may be filled by (a) the Board of Managers for a term of office

continuing only until the next election of one or more Managers by the Members; or (b) the Members at any annual or special meeting of the Members. A Manager elected to fill a vacancy shall be elected to serve for the unexpired term of his predecessor in office.

3.05 Place of Meetings . The Board of Managers may hold its meetings in such place or places, including by telephonic or other electronic method of communication, within or without the State of Delaware as the Board of Managers may from time to time determine.

3.06 First Meeting . Each newly elected Board of Managers may hold its first meeting, if a quorum is present, for the purpose of organization and the transaction of business immediately after and at the same place as the annual meeting of Members, and no notice of such meeting shall be necessary.

3.07 Regular Meetings . Regular meetings of the Board of Managers may be held without notice at such times and places, including by telephonic or other electronic method of communication, as may be designated from time to time by resolution of the Board of Managers and communicated to all Managers. Regular meetings of the Board of Managers may be held when and if needed, and no more than one regular meeting of the Board of Managers shall be required in any calendar year.

3.08 Special Meetings . A special meeting of the Board of Managers shall be held whenever called by any Manager at such time and place, including by telephonic or other electronic method of communication, as such Manager shall designate in the notice of such special meeting. The Manager calling any special meeting shall cause notice of such special meeting to be given to each Manager at least 24 hours before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Managers need be specified in the notice or waiver of notice of any special meeting.

3.09 Quorum; Vote . At all meetings of the Board of Managers, a majority of the Managers fixed in the manner provided in this Agreement shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting, a majority of the Managers present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The vote of a majority of the Managers present at a meeting at which a quorum is in attendance shall be the act of the Board of Managers, unless the vote of a different number is required by law, the Certificate, or this Agreement.

3.10 Procedure; Minutes . At meetings of the Board of Managers, business shall be transacted in such order as the Board of Managers may determine from time to time. The Board of Managers shall appoint at each meeting a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting that shall be delivered to the Secretary of the Company for placement in the minute book of the Company.

3.11 Presumption of Assent . A Manager of the Company who is present at any meeting of the Board of Managers at which action on any matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof, or shall forward any dissent by certified or registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

3.12 Compensation . Except as otherwise may be restricted in this Agreement, Managers, in their capacity as Managers, may receive, by resolution of the Board of Managers, a stated salary or a fixed sum and expenses of attendance, if any, for attending meetings of the Board of Managers. No Manager shall be precluded from serving the Company in any other capacity or receiving compensation therefor.

ARTICLE IV

COMMITTEES

4.01 Designation . The Board of Managers may, by a resolution adopted by a majority of the entire Board of Managers, designate executive and other committees.

4.02 Number; Qualification; Term . Each committee shall consist of one or more Managers appointed by resolution adopted by a majority of the entire Board of Managers. The number of committee members may be increased or decreased from time to time by resolution adopted by a majority of the entire Board of Managers. Each committee member shall serve as such until the expiration of his term as a Manager or his earlier resignation, unless sooner removed as a committee member or as a Manager.

4.03 Authority . The executive committee, to the extent provided in the resolution establishing such committee, shall have and may exercise all of the authority of the Board of Managers in the management of the business and affairs of the Company. Each other committee, to the extent expressly provided for in the resolution establishing such committee, shall have and may exercise all of the authority of the Board of Managers in such other matters and affairs concerning the Company. However, no committee shall have the authority of the Board of Managers in reference to any of the following:

(a) amending the Certificate;

(b) approving a plan of merger or consolidation;

(c) recommending to the Members the sale, lease, or exchange of all or substantially all of the property and assets of the Company other than in the usual and regular course of its business;

(d) recommending to the Members a voluntary dissolution of the Company or a liquidation thereof;

(e) filling vacancies in, or removing members of, the Board of Managers or of any committee thereof;

(f) filling any vacancy to be filled by reason of an increase in the number of Managers;

(g) electing or removing officers or committee members;

(h) fixing the compensation of any committee member; or

(i) altering or repealing any resolution of the Board of Managers that, by its term, provides that it shall not be amendable or repealable.

4.04 Committee Changes . The Board of Managers shall have the power at any time to fill vacancies in, to change the Membership of, and to discharge any committee. However, a committee member may be removed by the Board of Managers only if, in the judgment of the Board of Managers, the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4.05 Regular Meetings . Regular meetings of any committee may be held without notice at such times and places, including by telephonic or other electronic methods of communication, as may be designated from time to time by resolution of the committee and communicated to all committee members.

4.06 Special Meetings . A special meeting of any committee may be held whenever called by any committee member at such time and place, including by telephonic or other electronic methods of communication, as such committee member shall designate in the notice of such special meeting. The committee member calling any special meeting shall cause notice of such special meeting to be given to each committee member at least 24 hours before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of any committee need be specified in the notice or waiver of notice of any special meeting.

4.07 Quorum; Majority Vote . At all meetings of any committee, a majority of the number of committee members designated by the Board of Managers shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting of any committee, a majority of the committee members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The vote of a majority of the committee members present at any meeting at which a quorum is in attendance shall be the act of a committee, unless the vote of a different number is required by law, the Certificate, or this Agreement.

4.08 Minutes . Each committee shall cause minutes of its proceedings to be prepared and shall report the same to the Board of Managers. The minutes of the proceedings of each committee shall be delivered to the Secretary of the Company for placement in the minute books of the Company.

4.09 Compensation . Except as otherwise may be restricted in this Agreement, committee members may, by resolution of the Board of Managers, be allowed a stated salary or a fixed sum and expenses of attendance, if any, for attending any committee meetings.

4.10 Responsibility . The designation of any committee and the delegation of authority to it shall not operate to relieve the Board of Managers or any Manager of any responsibility imposed upon it or such Manager by law.

ARTICLE V

GENERAL PROVISIONS RELATING TO MEETINGS

5.01 Notice Whenever by law, the Certificate, or this Agreement notice is required to be given to any Member, Manager, or committee member and no provision is made as to how such notice shall be given, it shall be construed to mean that notice may be given either (a) in person; (b) in writing, by mail; (c) by telegram, telex, cable, telecopy or facsimile transmission, or similar means; or (d) by any other method permitted by law. Any notice required or permitted to be given hereunder (other than personal notice) shall be addressed to such Member, Manager, or committee member at his address as it appears on the books on the Company or, in the case of a Member, on the membership interest transfer records of the Company or at such other place as such Member, Manager, or committee member is known to be at the time notice is mailed or transmitted. Any notice required or permitted to be given by mail shall be deemed to be delivered and given at the time when such notice is deposited in the United States mail, postage prepaid. Any notice required or permitted to be given by telegram, telex, cable, telecopy or facsimile transmission, or similar means shall be deemed to be delivered and given at the time transmitted.

5.02 Waiver of Notice . Whenever by law, the Certificate, or this Agreement any notice is required to be given to any Member, Manager, or committee member of the Company, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time notice should have been given, shall be equivalent to the giving of such notice. Attendance of a Manager or Member at a meeting shall constitute a waiver of notice of such meeting, except where a Manager or Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.03 Telephone and Similar Meetings Members, Managers, or committee members may participate in and hold a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.04 Action Without Meeting . Any action that may be taken, or is required by law, the Certificate, or this Agreement to be taken at a meeting of the Members, the Board of Managers, or a committee thereof may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the Members owning the required Percentage Interests of all Members (as set forth herein for the respective action or decision), a majority of the Managers or committee members, as the case may be, entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a vote of such Members, Managers, or committee members, as the case may be, and may be stated as such in any document filed with the Secretary of State of Delaware or in any certificate or other document delivered to any person. The consent may be in one or more counterparts so long as each Member, Manager, or committee member signs one of the counterparts. The signed consent shall be placed in the minute books of the Company.

ARTICLE VI

OFFICERS AND OTHER AGENTS

6.01 Number; Titles; Election; Term The Company shall have a president, one or more vice presidents (and, in the case of each vice president, with such descriptive title, if any, as the Board of Managers shall determine), a secretary, a treasurer, and such officers and agents as the Board of Managers may deem desirable. The Board of Managers shall elect a president, vice president, treasurer, and secretary at its first meeting at which a quorum shall be present after the annual meeting of Members or whenever a vacancy exists. The Board of Managers then, or from time to time, may also elect or appoint one or more other officers or agents as it shall deem advisable. Except as otherwise may be provided by separate agreement, each officer and agent shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified. Unless otherwise provided in the resolution of the Board of Managers electing or appointing an officer or agent, his term of office shall extend to and expire at the meeting of the Board of Managers following the next annual meeting of Members or, if earlier, at his death, resignation, or removal. Any two or more offices may be held by the same person. No officer or agent need be a Member, a Manager, a resident of the State of Delaware, or a citizen of the United States.

6.02 Removal . Any officer or agent elected or appointed by the Board of Managers may be removed by a majority of the Board of Managers only if, in the judgment of a majority of the Board of Managers, the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

6.03 Vacancies . Any vacancy occurring in any office of the Company may be filled by the Board of Managers.

6.04 Authority . Officers shall have such authority and perform such duties in the management of the Company as are provided in this Agreement or as may be determined by resolution of the Board of Managers not inconsistent with this Agreement.

6.05 Compensation . Except as otherwise may be provided by separate agreement, the compensation, if any, of officers or any salaried employee shall be fixed, increased, or decreased from time to time by the Board of Managers, provided, however, that the Board of Managers may by resolution delegate to any one or more officers of the Company the authority to fix such compensation.

6.06 Chairman of the Board . The Chairman of the Board, if any, shall be an officer of the Company and, subject to the direction of the Board of Managers, shall perform such executive, supervisory, and management functions and duties as may be assigned to him from time to time by the Board of Managers.

6.07 President, CEO and COO . The Board of Managers may designate and appoint a President, CEO and/or COO, with rights, duties and responsibilities established by the Board of Managers.

6.08 Vice Presidents . Each Vice President shall have such powers and duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President and (in the order as designated by the Board of Managers, or in the absence of such designation, as determined by the length of time each has held the office of Vice President continuously) shall exercise the powers of the President during that officer's absence or inability to act.

6.09 Treasurer . The Treasurer shall have custody of the Company's funds and securities, shall keep full and accurate accounts of receipts and disbursements, and shall deposit all moneys and valuable effects in the name and to the credit of the Company in such depository or depositories as may be designated by the Board of Managers. The Treasurer shall audit all payrolls and vouchers of the Company; shall receive, audit, and consolidate all operating and financial statements of the Company and its various departments; shall supervise the accounting and auditing practices of the Company; and shall have charge of matters relating to taxation. Additionally, the Treasurer shall have the power to endorse for deposit, collection, or otherwise all checks, drafts, notes, bills of exchange, and other commercial paper payable to the Company and to give proper receipts and discharges for all payments to the Company. The Treasurer shall perform such other duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President.

6.10 Assistant Treasurers . Each Assistant Treasurer shall perform such duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President. The Assistant Treasurers (in the order as designated by the Board of Managers or, in the absence of such designation, as determined by the length of time each has held the office of Assistant Treasurer continuously) shall exercise the powers of the Treasurer.

6.11 Secretary . The Secretary shall maintain minutes of all meetings of the Board of Managers, of any committee, and of the Members, or consents in lieu of such minutes, in the Company's minute books, and shall cause notice of such meetings to be given when requested by any person authorized to call such meetings. The Secretary may sign with the President, in the name of the Company, all contracts of the Company and affix the seal of the Company thereto. The Secretary shall have charge of the certificate books, membership interest transfer books, and other documents as the Board of Managers may direct, all of which shall at all reasonable times be open to inspection by any Manager at the office of the Company during normal business hours. The Secretary shall perform such other duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President.

6.12 Assistant Secretaries . Each Assistant Secretary shall perform such duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President. The Assistant Secretaries (in the order designated by the Board of Managers or, in the absence of such designation, as determined by the length of time each has held the office of Assistant Secretary continuously) shall exercise the powers of the Secretary during that officer's absence or inability to act.

ARTICLE VII

CAPITALIZATION AND CAPITAL ACCOUNTS

7.01 Capital Contributions . The Capital Contributions of the Members, as set forth in the books and records of the Company, shall be paid or transferred to the Company in cash and/or property on the terms and in the manner specified by the Board of Managers. No Member shall be entitled to make any additional Capital Contributions except as provided in Section 7.02 and 7.03 below.

7.02 Additional Capital Contributions . If the Board of Managers determine that additional capital is required for the purposes of the Company, as set forth herein, the Board of Managers may notify the Members of the need for such additional capital and shall state the specific purposes for which the call for such additional capital is being made. Thereupon, all Members shall have the right (but not the obligation) to make additional Capital Contributions in cash and/or property to the Company aggregating the amount of additional capital needed by the Company in the proportion of their respective Percentage Interests in the Company at the time notice is given. The Board of Managers shall use the additional capital so contributed solely for the purposes stated in the notice to the Members.

7.03 Failure to Make Additional Capital Contributions . If any Member chooses not to contribute its share of the additional capital needed by the Company within 14 days after notice is given to the Members of the need for such additional capital (a “Non-Contributing Member”), then the other Members shall be entitled (but not obligated) to contribute the share of such Non-Contributing Member (such Members being referred to as “Contributing Members”) of the additional capital needed pro rata according to such Contributing Members' Percentage Interests at such time or such other share as otherwise agreed upon by the Contributing Members.

7.04 Effect of Failure to Make Additional Capital Contributions . In the event of a Non-Contributing Member, the Percentage Interests of all of the Members shall be recomputed on the following basis: Each Member's Percentage Interest immediately following the computation shall equal the percentage expression of a fraction, the numerator of which is the total Capital Contributions of such Member plus the additional Capital Contribution, if any, made by such Member pursuant to Sections 7.02 and 7.03 above, and the denominator of which is the total Capital Contributions of all of the Members plus the additional Capital Contributions made by all of the Members pursuant to Sections 7.02 and 7.03 above.

7.05 Recapitalization by Admission of Additional Members . If additional capital is required for the purposes of the Company as set forth herein and the Board of Managers is unable to finance such capital needs by borrowing the required amounts or through notice to the existing Members of the necessity for additional Capital Contributions as provided in Section 7.02 and 7.03 above, the Board of Managers shall have the right to admit additional Members to the Company, upon receiving the other approvals required herein. Following the admission of one or more new Members, the Percentage Interest of each Member, including the newly admitted Member(s), shall be computed as follows: Each Member's Percentage Interest immediately following the computation shall equal the percentage expression of a fraction, the numerator of which is the total Capital Contributions of such Member and the denominator of which is the total Capital Contributions of all of the Members, including the newly admitted Members.

7.06 Maintenance of Capital Accounts . The Company shall maintain for each Member a separate Capital Account in accordance with this Section 7.06, which shall control the allocation of Profits and Losses and the division of assets upon liquidation of the Company as provided in Section 12.01. Each Capital Account shall be maintained in accordance with the following provisions:

(a) a Member's Capital Account shall initially be zero and shall be increased by the cash amount or Book Value of any property contributed by such Member to the Company pursuant to this Agreement, such Member's allocable share of Profits and any items in the nature of income or gains that are specially allocated to such Member pursuant to Section 8.02 and Section 8.03 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member;

(b) such Capital Account shall be decreased by the cash amount or Book Value of any property distributed to such Member pursuant to this Agreement, such Member's allocable share of Losses and any items in the nature of deductions or losses that are specially allocated to such Member pursuant to Section 8.02 and Section 8.03 hereof, and the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by such Member to the Company; and

(c) if all or a portion of an Interest in the Company is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest, provided, however, that if the Transfer causes a termination of the Company under Code Section 708(b)(1)(B), the assets of the Company shall be deemed to have been distributed to the Members (including the transferee of the Interest) in liquidation of the Company and recontributed by such Members and transferees in reconstitution of the Company. Such deemed liquidation and reconstitution shall not cause the Company to be dissolved and/or reconstituted for purposes other than maintenance of the Capital Accounts and federal income tax.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 1.704-1(b) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Board of Managers determines that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases to the Capital Accounts, are computed in order to comply with such Treasury Regulations, the Board of Managers may authorize such modifications, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Sections 8.06 and 12.01 hereof.

7.07 Negative Capital Accounts . If any Member has a deficit balance in its Capital Account, such Member shall have no obligation to restore such negative balance or to make any Capital Contribution to the Company by reason thereof, and such negative balance shall not be considered an asset of the Company or of any Member.

7.08 Interest . No interest shall be paid by the Company on Capital Contributions or on balances in Capital Accounts.

7.09 No Withdrawal . No Member shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Company, except as provided in Sections 11.02 and 12.01 of this Agreement.

7.10 Loans From Members . Loans by a Member to the Company shall not be considered Capital Contributions.

ARTICLE VIII

ALLOCATIONS AND DISTRIBUTIONS

8.01 Allocation of Profits and Losses.

(a) Allocation of Profits. Except as provided on any Exhibit hereto, after giving effect to the allocations set forth in Section 8.02 and Section 8.03, and after giving effect to all distributions of cash or property (other than cash or

property to be distributed pursuant to Section 12.01), Profits for any Fiscal Year shall be allocated to the Members in the following manner:

(i) first, to each Member with a negative balance in its Capital Account, pro rata in accordance with such negative Capital Account balances, until such negative Capital Account balances have been eliminated;

(ii) next, to all of the Members in accordance with their respective Percentage Interests.

(b) Allocation of Losses. Except as provided in any Exhibit hereto, after giving effect to the allocations set forth in Section 8.02 and Section 8.03, Losses for any Fiscal Year shall be allocated to the Members in the following manner:

(i) to all of the Members in accordance with their respective Percentage Interests.

8.02 Special Allocations of Profits and Losses .

(a) Minimum Gain Chargeback–Company Nonrecourse Liabilities. If there is a net decrease in Company minimum gain during any Fiscal Year, certain items of income and gain shall be allocated (on a gross basis) to the Members in the amounts and manner described in Treasury Regulations Section 1.704-2(f) and (j)(2)(i) and (ii), subject to the exemptions set forth in Treasury Regulations Section 1.704-2(f)(2), (3), (4) and (5). This Section 8.02(a) is intended to comply with the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(f) relating to Company nonrecourse liabilities, as defined in Treasury Regulations Section 1.704-2(b)(3) and shall be so interpreted.

(b) Minimum Gain Chargeback–Member Nonrecourse Debt. If there is a net decrease in Member minimum gain during any Fiscal Year, certain items of income and gain shall be allocated (on a gross basis) as quickly as possible to those Members who had a share of the Member minimum gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5) in the amounts and manner described in Treasury Regulations Sections 1.704-2(i)(4), (j)(2)(ii), and (j)(2)(iii). This Section 8.02(b) is intended to comply with the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(i)(4) relating to Member nonrecourse debt, as defined in Treasury Regulations Section 1.704-2(b)(4) and shall be so interpreted.

(c) Qualified Income Offset. If, after applying Section 8.02(a) and Section 8.02(b), any Member has an adjusted Capital Account deficit, items of Company income and gain shall be specially allocated (on a gross basis) to each such Member in an amount and manner sufficient to eliminate the adjusted Capital Account deficit of such Member as quickly as possible. This Section 8.02(c) is intended to comply with the "qualified income offset" requirement set for the in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be so interpreted.

(d) Optional Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken in to account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(f) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions shall be allocated pursuant to Treasury Regulations Section 1.704-2(b)(4) and (i)(1) to the Member who bears the economic risk of loss with respect to such deductions.

8.03 Curative Allocations . The Regulatory Allocations are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 8.03. Therefore, notwithstanding any other provisions of this Article VIII, the Board of Managers shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 8.01(a) and Section 8.01(b) hereof.

8.04 Tax Allocations: Code Section 704(c) .

(a) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value.

(b) If the Book Value of any Company asset is adjusted pursuant to Section 1.04(e)(ii) hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

(c) Any elections or other decisions relating to such allocation shall be made by the Board of Managers. Allocations pursuant to this Section 8.04 are solely for purposes of federal, state, and local taxes and shall not affect or in any way be taken into account in computing any Member's Capital Account, or share of Profits, Losses, and other items or distribution pursuant to any provision of this Agreement.

8.05 Other Allocation Rules .

(a) For purposes of determining the Profits, Losses, or any other item allocable to any period, Profits, Losses, and any such other item shall be determined on a daily, monthly, or other basis, as determined by the Board of Managers using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

(b) For federal income tax purposes, every item of income, gain, loss, and deduction shall be allocated among the Members in accordance with the allocations under Sections 8.01, 8.02, 8.03, and 8.04.

(c) The Members are aware of the income tax consequences of the allocations made by this Article VIII and hereby agree to be bound by the provisions of this Article VIII in reporting their shares of Company income and loss for income tax purposes.

(d) It is intended that the allocations in Sections 8.01, 8.02, 8.03, and 8.04 hereof effect an allocation for federal income tax purposes consistent with Section 704 of the Code and comply with any limitations or restrictions therein.

8.06 Distributions of Distributable Cash . Except as otherwise may be provided in this Agreement, the Board of Managers shall cause the Company to make distributions of Distributable Cash at such intervals and in such amounts as the Board of Managers in its sole discretion shall determine by majority vote. Distributions of Distributable Cash shall be made to all of the Members in accordance with their respective Percentage Interests.

8.07 Working Cash Reserve . The Board of Managers may from time to time establish a working cash reserve for capital expenditures, unforeseen contingencies, projected operating deficits, and other corporate purposes and may increase or decrease the amount in such reserve in its business judgment.

ARTICLE IX

CERTIFICATES

9.01 Certificated and Uncertificated Interests. The membership interests of the Company may be either certificated interests or uncertificated interests. As used herein, the term "certificated interests" means Interests represented by instruments in bearer or registered form, and the term "uncertificated interests" means Interests not represented by such instruments and the transfers of which are registered upon books maintained for that purpose by or on behalf of the Company.

9.02 Certificates for Certificated Interests . The certificates for certificated interests shall be in such form as shall be approved by the Board of Managers in conformity with law. The certificates shall be consecutively numbered, shall be entered as they are issued in the books of the Company or in the records of the Company's designated transfer agent, if any, and shall state the Member's name, the class of Interests, the Percentage Interest that such Interest represents, and such

other matters as may be required by law. The certificates shall be signed by the President or any Vice President and also by the Secretary, an Assistant Secretary, or any other officer, and may be sealed with the seal of the Company or a facsimile thereof. If any certificate is countersigned by a transfer agent or registered by a registrar, either of which is other than the Company itself or an employee of the Company, the signatures of the foregoing officers may be a facsimile.

9.03 Lost, Stolen, or Destroyed Certificates . The Company shall issue a new certificate in place of any certificate for Interests previously issued if the registered owner of the certificate satisfies the following requirements:

(a) the registered owner makes proof in affidavit form that a previously issued certificate for Interests has been lost, destroyed, or stolen;

(b) the registered owner requests the issuance of a new certificate before the Company has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(c) the registered owner gives a bond in such form, and with such surety or sureties, with fixed or open penalty, as the Board of Managers may direct, in its discretion, to indemnify the Company (and its transfer agent and registrar, if any) against any claim that may be made on account of the alleged loss, destruction, or theft of the certificate; and

(d) the registered owner satisfies any other reasonable requirements imposed by the Board of Managers.

When a certificate has been lost, destroyed, or stolen and the Member of record fails to notify the Company within a reasonable time after he has notice of it, if the Company registers a transfer of the Interests represented by the certificate before receiving such notification, the Member of record is precluded from making any claim against the Company for the transfer or for a new certificate.

9.04 Transfer of Interests . Interests of the Company shall be transferable only on the books of the Company by the Members thereof in person or by their duly authorized attorneys or legal representatives, but only as authorized in this COMPANY AGREEMENT. With respect to certificated interests, upon surrender to the Company or the transfer agent of the Company of a certificate representing Interests duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, the Company or its agent shall issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction upon its books. With respect to uncertificated interests, upon delivery to the Company of proper evidence of succession, assignment, or authority to transfer, the Company or its agent shall record the transaction upon its books.

9.05 Registered Members . The Company shall be entitled to treat the Member of record as the Member in fact of any Interests and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Interests on the part of any other Person, whether or not it shall have actual or other notice thereof, except as otherwise provided by law.

9.06 Legends . If the Company is authorized to issue Interests of more than one class, each certificate representing Interests issued by the Company (a) shall conspicuously set forth on the face or back of the certificate a full statement of all of the designations, preferences, limitations, and relative rights of the Interests of each class authorized to be issued; or (b) shall conspicuously state on the face or back of the certificate that (i) such a statement is set forth in the Certificate on file in the office of the Secretary of State or in this Agreement; and (ii) the Company will furnish a copy of such statements to the record holder of the certificate without charge on written request to the Company at its principal place of business or registered office.

If the Company issues any Interests that are not registered under the Securities Act of 1933, the transfer of any such interests shall be restricted in accordance with an appropriate legend.

In the event any restriction on the transfer, or registration of the transfer, of Interests shall be imposed or agreed to by the Company, each certificate representing Interests so restricted (a) shall conspicuously set forth a full or summary statement of the restriction on the face of the certificate; (b) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate; or (c) shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document and (i) that the Company will furnish to the record holder of the certificate without charge upon written request to the Company at its principal place of business or registered

office a copy of the specified document; or (ii) if such document is one required or permitted by law to be and has been filed, that such specified document is on file in the office of the Secretary of State and contains a full statement of such restriction.

ARTICLE X

ACCOUNTING AND RECORDS

10.01 Records and Accounting . The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods elected to be followed by the Company for federal income tax purposes. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business.

10.02 Access to Accounting Records . All books and records of the Company shall be maintained at any office of the Company or at the Company's principal place of business, and each Member owning a Percentage Interest of at least ten percent (10%), and his duly authorized representative, shall have access to them at such office of the Company and the right to inspect and copy them at reasonable times.

10.03 Annual and Tax Information . The Company shall deliver to each Member within 90 days after the end of each Fiscal Year all information necessary for the preparation of such Member's federal income tax return. The Company shall prepare, within 120 days after the end of each Fiscal Year, a financial report of the Company for such Fiscal Year, containing a statement of the year then ended, a statement of sources and applications of funds, and a statement of reconciliation of the Capital Accounts of the Members.

10.04 Accounting Decisions . All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Board of Managers. The Members may rely upon the advice of their accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

10.05 Federal Income Tax Elections . The Company may make all elections for federal income tax purposes, including, but not limited to, the following:

(a) to the extent permitted by applicable law and regulations, the election to use an accelerated depreciation method on any depreciable unit of the assets of the Company; and

(b) in case of a transfer of all or part of the Interest of any Member, the election pursuant to Section 734, 743, and 754 of the Code, as amended (or corresponding provisions of future law) to adjust the basis of the assets of the Company.

ARTICLE XI

CHANGES IN MEMBERS

The provisions of this Article XI are subject to, and may be superceded by, one or more separate agreements entered into by and among one or more Members. The provisions of this Article XI shall continue to control with respect to matters not covered by, or Members not parties to, such agreement(s).

11.01 Intentionally Blank .

11.02 Transfer and Assignment of Members' Interest . Except as approved by the Manager, plus a Member or Members owning a Percentage Interest greater than fifty percent (50%), no Member shall be entitled to Transfer any part of its Interest in the Company. The Company and, if applicable, the remaining Members shall be entitled to match the terms of the proposed Transfer, with consideration being only set forth in traditional monetary terms. If the Company and the remaining Members fail to match the proposed Transfer with regard to the purchase of the entire Interest, or portion thereof, the Member proposing to make the Transfer may move forward with the proposed Transfer. Transfers in violation of this Section 11.02 shall be effective only to the extent set forth in Section 11.05(b) hereof.

11.03 Further Restrictions on Transfer . No Member shall Transfer any part of his Interest in the Company: (i) without registration under applicable federal and state securities laws, or unless he delivers an opinion of counsel satisfactory to the Company that registration under such laws is not required; or (ii) if the Interest to be sold or exchanged, when added to the total of all other Interests to be sold or exchanged in the preceding 12 consecutive months prior thereto, would result in the termination of the Company under Code Section 708.

11.04 Substitute Members . A transferee shall have the right to become a substitute Member if (a) the requirements of Section 11.02 and 11.03 hereof are met; (b) such person executes an instrument satisfactory to the remaining Members accepting and adopting the terms and provisions of this Agreement; and (c) such person pays any reasonable expenses in connection with his or her admission as a Member.

11.05 Effect of Transfer .

(a) Any permitted Transfer of all or any portion of a Member's Interest in the Company will take effect on the first day of the month following receipt by the Members of written notice of Transfer. Any transferee of an Interest in the Company shall take subject to the restrictions on Transfer imposed by this Agreement.

(b) Upon any Transfer of a Member's Interest in the Company in violation of this Agreement, and if such Member's Interest is not purchased pursuant to Section 11.01, the transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, but such transferee shall be entitled to receive only the allocable share of Profits, Losses, Distributive Cash, and other items to which the transferor of such Interest in the Company would otherwise be entitled.

11.06 No Dissolution or Withdrawal: Advanced Consent . Upon the occurrence of a Dissolution Event with regard to a respective Member, all remaining Members shall be deemed to automatically consent to the continuation of the business of the Company. By executing this Agreement, however, all Members hereby consent that they shall not voluntarily cause a Dissolution Event or demand the return of Member's capital. If any Member shall breach the agreement represented by this Section 11.06, the agreement of such breaching Member shall not be specifically performable, but shall be actionable for damages, and shall be deemed an offer of the Interest of such breaching Member for sale pursuant hereto. The parties agree that a reasonable approximation of the damage that the Company shall experience due to breach hereof is 20% of the value of the breaching Member's Interest, or as otherwise set forth herein (whichever is greater), which shall be deducted from any payments to such Member upon dissolution or purchase of such Member's Interest hereunder. The value of the breaching Member's Interest shall be determined pursuant to Section 11.01, to which value the said discount may then be applied in determining payments due to the breaching Member pursuant to the deemed offer of sale occurring under this Section 11.06.

ARTICLE XII

TERMINATION

12.01 Termination of the Company .

(a) The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following events:

(i) a determination by the Managers, plus the Unanimous Consent of the Members that the Company should be dissolved;

(ii) a sale of all or substantially all of the assets of the Company;

(iii) the expiration of the Company’s term as stated in its Certificate; or

(iv) at such earlier time as provided by applicable law.

(b) In settling accounts of the Company after dissolution, the liabilities of the Company shall be entitled to payment and the assets of the Company remaining thereafter shall be distributed to the Members in the following order, all as required by the DELAWARE LAWS:

(i) those to creditors, in the order of priority as provided by law, except those to Members of the Company on account of their Capital Contributions;

(ii) to the Members, pro rata, in accordance with the positive balances, if any, in their Capital Accounts; and

(iii) to the Members in proportion to their relative Percentage Interests.

ARTICLE XIII

INDEMNIFICATION

13.01 Indemnification of Members, Managers, and Other Persons .

(a) To the greatest extent not inconsistent with the laws and public policies of Delaware, the Company shall indemnify any Member, Manager, or officer of the Company made a party to any proceeding because such individual is or was a Member, Manager, or officer of the Company (an "Indemnitee"), as a matter of right, against all liability incurred by such individual in connection with any proceeding; provided that it shall be determined in the specific case in accordance with subsection (d) of this Section 13.01 that indemnification of such individual is permissible in the circumstances because the individual has met the standard of conduct for indemnification set forth in subsection (c) of this Section 13.01. The Company shall advance, pay for, or reimburse the reasonable expenses incurred by an Indemnitee in connection with any such proceeding in advance of final disposition thereof if (i) the Indemnitee furnishes the Company a written affirmation of the Indemnitee's good faith belief that he or she has met the standard of conduct for indemnification described in subsection (c) of this Section 13.01; (ii) the Indemnitee furnishes the Company a written undertaking, executed personally or on such Indemnitee's behalf, to repay the advance if it is ultimately determined that such individual did not meet such standard of conduct; and (iii) a determination is made in accordance with subsection (d) that based upon facts then known to those making the determination, indemnification would not be precluded under this Section 13.01. The undertaking described in subsection (a)(ii) above must be a general obligation of the Indemnitee, subject to such reasonable limitations as the Company may permit, but need not be secured and may be accepted without reference to financial ability to make repayment. The Company shall indemnify an Indemnitee who is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without the requirement of a determination as set forth in subsection (c) of this Section 13.01. Upon demand by an Indemnitee for indemnification or advancement of expenses, as the case may be, the Company shall expeditiously determine whether the Indemnitee is entitled thereto in accordance with this Section 13.01. The indemnification and advancement of expenses provided for under this Section 13.01 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Section 13.01.

(b) The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Member, Manager, or officer of the Company.

(c) Indemnification is permissible under this Section 13.01 only if (i) the Indemnitee conducted himself in good faith; (ii) he or she reasonably believed that his conduct was in, or at least not opposed to, the Company's best interest; (iii) in the case of any criminal proceeding, he or she had no reasonable cause to believe his conduct was unlawful; and (iv) such Indemnitee is not adjudged in any such proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Indemnitee did not meet the standard of conduct described in this subsection (c).

(d) A determination as to whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

(i) by the Board of Managers or by a majority vote consisting of Members not at the time parties to the proceeding; or

(ii) by special legal counsel selected by the Members in the manner prescribed in subsection (d)(i) above.

(e) An Indemnitee of the Company who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice the court considers necessary, may order indemnification if it determines:

(i) in a proceeding in which the Indemnitee is wholly successful, on the merits or otherwise, the Indemnitee is entitled to indemnification under this Section 13.01, in which case the court shall order the Company to pay the Indemnitee his or her reasonable expenses incurred to obtain such court ordered indemnification; or

(ii) the Indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Indemnitee met the standard of conduct set forth in subsection (c) of this Section 13.01.

(f) Indemnification shall also be provided for an Indemnitee's conduct with respect to an employee benefit plan if the individual reasonably believed his or her conduct to be in the interests of the participants in and beneficiaries of plan.

(g) Nothing contained in this Section 13.01 shall limit or preclude the exercise or be deemed exclusive of any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any individual who is or was a Member, Manager, or officer of the Company or is or was serving at the Company's request as a director, officer, partner, manager, trustee, employee, or agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not. Nothing contained in this Section 13.01 shall limit the ability of the Company to otherwise indemnify or advance expenses to any individual. It is the intent of this Section 13.01 to provide indemnification to Indemnitees to the fullest extent now or hereafter permitted by the law consistent with the terms and conditions of this Section 13.01. Indemnification shall be provided in accordance with this Section 13.01 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

(h) For purposes of this Section 13.01:

(i) The term "expenses" includes all direct and indirect costs (including, without limitation, counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or establishing or enforcing a right to indemnification under this Section 13.01, applicable law, or otherwise.

(ii) The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(iii) The term "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(iv) The term "proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(v) The Company may purchase and maintain insurance for its benefit, the benefit of any individual who is entitled to indemnification under this Section 13.01, or both, against any liability asserted against or incurred by such individual in any capacity or arising out of such individual's service with the Company, whether or not the Company would have the power to indemnify such individual against such liability.

ARTICLE XIV

MISCELLANEOUS

14.01 Complete Agreement . This Agreement, the Certificate, and all other organizational documents signed by all of the Members constitute the complete and exclusive statement of agreement among the Members with respect to the matters herein. This Agreement and the Certificate replace and supersede all prior agreements by and among the Members or any of them, and no representation, statement, or condition or warranty not contained in this Agreement or the Certificate will be binding on the Members or have any force or effect whatsoever.

14.02 Governing Law . This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Delaware.

14.03 Binding Effect . Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective distributes, successors, and assigns.

14.04 Terms . Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require. Any reference to the DELAWARE LAWS, the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

14.05 Headings . All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

14.06 Severability . If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

14.07 Multiple Counterparts . This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof hereof it will be necessary to produce only one copy hereof signed by the party to be charged.

14.08 Additional Documents and Acts . Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

14.09 No Third-Party Beneficiary . This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

14.10 References to this Agreement . Numbered or lettered articles, sections, and subsections herein contained refer to articles, sections, and subsections of this Agreement unless otherwise expressly stated.

14.11 Notices . Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement must be in writing and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member at the address specified in Exhibit B hereto. Any Member or the Company may, at any time by giving five days' prior written notice to the other Members and the Company, designate any other address in substitution of the foregoing address to which such notice will be given.

14.12 Amendments . Except as otherwise may be provided in this Agreement, all amendments to this Agreement must be approved by the Managers, plus one or more Members whose aggregate Percentage Interests total more than fifty percent (50%).

14.13 Title to Company Property . Legal title to all property of the Company will be held and conveyed in the name of the Company.

14.14 Reliance on Authority of Person Signing Agreement . In the event that a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual; or (b) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

14.15 S-Corp Election. In the event the Company elects to be treated as a S-Corporation for federal tax purposes, the provisions in this Company Agreement addressing tax treatment shall be automatically amended and modified as required in order to pertain to a S-corporation.

14.16 Company Indemnification. In the event any Member is personally liable for any debt or obligations associated with a Company asset, then the Company agrees to indemnify such Member for any such debt or obligation in excess of his or her proportionate amount of such debt or obligation that he/she is required to pay or perform, as measured by the Percentage Interest of the Members, except as otherwise agreed by the Members.

14.17 Management by Members. The Certificate of the Company and other Company documents/agreements on file and/or executed by the Member may reflect management by members, and not management by managers. As a result, if such is the case and the Certificate is not amended to reflect management by managers, this Agreement shall be interpreted in such a manner that all references herein to a Manager, or Managers or Board of Managers, shall be referring to the managing member(s), and as of the Effective Date hereof, since the sole member is Rand Advisors Holding Corp., a Delaware corporation, all decisions shall be made by such member, with Mark Patrick as the Director and President.

IN WITNESS WHEREOF, the Members have executed this Agreement to be effective as of the date first written above.

THE MEMBER (OR MANAGING MEMBER)

RAND ADVISORS HOLDING CORP.,
a Delaware corporation

By: _____
Mark Patrick, Director and President

EXHIBIT A

THE CLASS A MEMBERS AND INTERESTS

The sole Class A Member shall be RAND ADVISORS HOLDING CORP., a Delaware corporation, and it shall own the Percentage Interest set forth on Exhibit "B" hereto. In addition to such other rights as a Member described in this Agreement, the holders of record of the Class A Interests shall have no additional rights.

EXHIBIT B

The Members

Members and Addresses	Date Admitted	Class A Interest	Percentage Interest
RAND ADVISORS HOLDING CORP. 2101 Cedar Springs Road Suite 1200, Dallas, TX 75201 Attn: Mark Patrick	8/1/2022	100%	100%

EXHIBIT 9

MEMBER AND MANAGER CONSENT
OF
ATLAS IDF GP, LLC

October 13, 2022

THE UNDERSIGNED sole member (the "**Member**") and sole manager (the "**Manager**") of ATLAS IDF GP, LLC, a Delaware limited liability company (the "**General Partner**"), the general partner of ATLAS IDF, LP, a Delaware limited partnership (the "**Partnership**"), acting pursuant to the Delaware Limited Liability Company Act and the Amended and Restated Company Agreement of the General Partner, do hereby consent and agree, to take the following actions and adopt the following resolutions:

RESOLVED, that pursuant to that certain Membership Interest Purchase Agreement dated as August 1, 2022 (the "Purchase Agreement"), by and among JOHN HONIS (as "Seller"), the Sole Member (as "Buyer"), and CLO HOLDCO, LTD. a Cayman limited company (as "Guarantor"), the Sole Member purchased from Seller all of the issued and outstanding membership interests in the General Partner;

RESOLVED, that the following individual be, and hereby is, duly appointed and qualified to hold the office(s) set forth next to his name, and shall serve in such capacity until such person's successor(s) shall have been duly appointed and qualified, or until his earlier resignation or removal (each, an "**Officer**"):

Name	**Office**
Mark Patrick	Sole Manager, President, Secretary and Treasurer

RESOLVED, that the certificate of formation of the Company and other Company documents/agreements on file and/or executed by the Member may reflect management by members, and not management by managers. As a result, if such is the case and the certificate is not amended to reflect management by managers, the Company and all governing documents shall be interpreted in such a manner that all references therein to a Manager, or Managers or Board of Managers, shall be referring to the managing member(s), and as of the Effective Date hereof, since the sole member is Rand Advisors Holding Corp., a Delaware corporation, all decisions shall be made by such member, with Mark Patrick as the Director and President;

RESOLVED FURTHER, that any individual previously appointed as a manager and/or as an officer of the General Partner but not named above is hereby removed from the office of the General Partner;

RESOLVED FURTHER, that each Officer and manager is hereby, authorized, empowered and directed, in the name and on behalf of the General Partner and the Partnership, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions;

RESOLVED FURTHER, that that all authorized acts and deeds of the Officers, managers and agents on behalf of the General Partner and/or the Partnership prior to the date

hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the acts and deeds of the General Partner and/or the Partnership; and

RESOLVED FURTHER, that the foregoing authorization shall remain in effect until further written notice from the General Partner.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned Sole Member and Sole Manager have executed this Consent to be effective as of the date first set forth above.

MEMBER

RAND ADVISORS HOLDING CORP.,
a Delaware corporation



By:_____
Mark Patrick, Sole Director

SOLE MANAGER



_____
Mark Patrick

Signature Page

EXHIBIT 10

LIMITED LIABILITY COMPANY AGREEMENT

OF

RAND PE FUND MANAGEMENT, LLC

This Limited Liability Company Agreement (this "**Agreement**") of Rand PE Fund Management, LLC (the "**Company**") is entered into as of October 29, 2015 by and between the Company and John Honis (the "**Managing Member**", and collectively with any individuals and/or entities who subsequently become members of the Company in the future in accordance with the terms hereof, "**Members**"), pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.), as amended from time to time (the "**Act**").

Section 1 **Name**. The name of the limited liability company governed hereby is Rand PE Fund Management, LLC.

Section 2 **Certificates**. The Managing Member, as an authorized person within the meaning of the Act, has executed, delivered and filed the certificate of formation of the Company (the "**Certificate of Formation**") with the Secretary of State of the State of Delaware on September 18, 2015. Upon the execution of this Agreement, the Managing Member shall thereafter be designated as an authorized person within the meaning of the Act. Hereafter, the Managing Member shall have the power to execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

Section 3 **Purpose**. The Company was formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in all lawful activities for which limited liability companies may be formed under the Act, including, without limitation of the foregoing, serving as the general partner of Rand PE Fund I, L.P., a Delaware limited partnership.

Section 4 **Powers**. The Company shall have the power to do any and all acts reasonably necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purpose and business described herein and for the protection and benefit of the Company, and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Company by the Managing Member pursuant to this Agreement.

Section 5 **Principal Business Office**. The principal place of business and office of the Company shall be located at, and the Company's business shall be conducted from 87 Railroad Place, Suite 403, Saratoga Springs, NY 12866, or elsewhere as the Managing Member may from time to time determine.

Section 6 **Registered Office**. As of the date hereof, the address of the registered office of the Company in the State of Delaware is: c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801.

Section 7 **Registered Agent**. As of the date hereof, the name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is: The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801.

Section 8 **Members**. The names, the nature of the interests held, the mailing addresses, the

initial capital contributions and the Percentage Interests (as defined below) of the Members are as set forth in **Schedule A** attached hereto.

Section 9 **Term**. The term of the Company commenced on the date of filing of the Certificate of Formation in accordance with the Act and shall continue until dissolution of the Company in accordance with **Section 23** of this Agreement.

Section 10 **Limited Liability**. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and none of the Members, any Officer (as hereinafter defined), employee or agent of the Company (including a person having more than one such capacity) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of acting in such capacity.

Section 11 **Initial Capital Contributions**. Each Member is deemed admitted as a Member of the Company upon his, her or its execution and delivery of this Agreement. The initial capital contributions of the Members are set forth on **Schedule A** attached hereto.

Section 12 **Additional Capital Contributions**. The Members are not required to make any capital contributions to the Company beyond their initial capital contributions, unless otherwise determined by the Managing Member.

Section 13 **Capital Accounts**. Separate capital accounts shall be maintained for each Member on the books of the Company, which accounts shall set forth the capital of such Member in the Company. Each capital account shall be adjusted to reflect such Member's share of allocations and distributions as provided in **Sections 14 and 15** of this Agreement, and any additional capital contributions to the Company or withdrawals of capital from the Company. Such capital accounts shall further be adjusted to conform to the Treasury Regs. under Section 704(b) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), as interpreted in good faith by the Managing Member.

Section 14 **Allocations of Profit and Loss**. All items of income, gain, loss, deduction and credit shall be allocated among the Members in accordance with their percentage interests as set forth on **Schedule A** attached hereto ("**Percentage Interests**").

Section 15 **Distributions**. Distributions shall be made to the Members at such times and in such amounts as may be determined in the sole discretion of the Managing Member. Distributions shall be allocated among the Members in accordance with their Percentage Interests. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to the Members on account of their interest in the Company if such distribution would violate Section 18-607 of the Act or other applicable law.

Section 16 **Management**.

(a) The business and affairs of the Company shall be managed by the Managing Member. Subject to the express limitations contained in any provision of this Agreement, the Managing Member shall have complete and absolute control of the affairs and business of the Company, and the Managing Member shall possess all powers necessary, convenient or appropriate to carrying out the purposes and business of the Company, including, without limitation, doing all things and taking all actions necessary to carrying out the terms and provisions of this Agreement.

(b) Subject to the rights and powers of the Managing Member and the limitations

thereon contained herein, the Managing Member may delegate to any person any or all of his powers, rights and obligations under this Agreement, and the Managing Member may appoint, contract or otherwise deal with any person to perform any acts or services for the Company as the Managing Member may reasonably determine.

(c) No Member (other than the Managing Member) shall participate in the management or control of the business of, or shall have any rights or powers with respect to, the Company except those expressly granted to it by, or pursuant to the terms of, this Agreement, or those conferred on it by law.

(d) The Managing Member shall hold office until the earliest to occur of his death, disability or other inability to act in such capacity, at which time a successor Managing Member may be appointed by Members owning at least a majority of the Percentage Interests.

Section 17 **Officers**. The Managing Member may, from time to time as he deems advisable, appoint officers of the Company (the "**Officers**") and assign in writing titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Unless the Managing Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this **Section 17** may be revoked at any time by the Managing Member.

Section 18 **Other Business**. The Members (including, for the avoidance of doubt, the Managing Member) may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. Neither the Company nor any other Member shall have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 19 **Exculpation and Indemnification**. The Managing Member shall not be liable to the Company or to the other Members for any action taken or omitted to be taken in connection with the business or affairs of the Company, so long as he acted in good faith and is not found to be guilty of gross negligence or willful misconduct with respect thereto, as determined by a final non-appealable decision of a court of competent jurisdiction. To the fullest extent permitted by law, the Company agrees to indemnify and hold harmless: (i) the Managing Member, and (ii) in the discretion of the Managing Member, the Company's managers, shareholders, partners, officers, employees, agents and affiliates and/or the other Members (each, an "**Indemnified Party**") from and against any and all claims, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding related to any action taken or omitted to be taken by any of them in connection with the business and affairs of the Company (including the settlement of any such claim or legal proceeding); *provided, however*, that the party against whom the claim is made or legal proceeding is directed is not guilty of gross negligence or willful misconduct, as determined by a final non-appealable decision of a court of competent jurisdiction. Any indemnity under this **Section 19** shall be provided out of and to the extent of Company assets only, and no Member (including the Managing Member) shall have personal liability on account thereof.

Section 20 **Admission of Additional Members**. Additional Members may be admitted to the Company only with the written consent of the Managing Member. The capital contribution required of, and the Percentage Interests assigned to, such newly-admitted Member shall be determined by the Managing Member.

Section 21 **Effect of Bankruptcy, Dissolution, Death or Incompetence of a Member**.

The bankruptcy, dissolution, death or disability of a Member, or an adjudication that such Member is incompetent (a Member experiencing any such event, a "**Disabled Member**"), shall not cause the termination or dissolution of the Company, and the business of the Company shall continue. If a Member is dissolved or becomes bankrupt, the trustee or receiver of such Disabled Member's estate or, if a Member dies, such Disabled Member's executor, administrator or trustee, or, if such Member is adjudicated incompetent, such Disabled Member's committee, guardian or conservator, or the personal representative of such Disabled Member, as applicable, shall have the rights of such Disabled Member for the purposes of settling or managing such Disabled Member's estate or property and such power as the Disabled Member possessed to dispose of all or any part of such Member's interest in the Company, and to join with any assignee in satisfying conditions precedent to the admission of the assignee as a substitute Member.

Section 22 **Assignments**. A Member may not transfer, assign, pledge or hypothecate, in whole or in part, his, her or its limited liability company interest without the prior written consent of the Managing Member.

Section 23 **Dissolution**.

(a) The Company shall dissolve, and its affairs shall be wound-up upon the first to occur of the following: (i) the written consent of the Managing Member; (ii) the death, disability, bankruptcy or withdrawal of the Managing Member, in the event no successor managing member is appointed pursuant to **Section 16(d)**; and (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind-up its affairs (including the sale of the assets of the Company in an orderly manner).

Section 24 **Tax Matters Partner**. John Honis shall be the tax matters partner within the meaning of Section 6231(a)(7) of the Code. All expenses incurred by the tax matters partner in connection with his duties as tax matters partner shall be expenses of the Company.

Section 25 **Elections**. The Managing Member shall determine the accounting methods and conventions under the tax laws of any and all applicable jurisdictions as to the treatment of income, gain, loss, deduction and credit of the Company or any other method or procedure related to the preparation of such tax returns. The Managing Member may cause the Company to make or refrain from making any and all elections permitted by such tax laws, and the Managing Member shall not be liable for any consequences to any previously admitted or subsequently admitted Members resulting from making or failing to make any such elections.

Section 26 **Separability of Provisions**. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 27 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement.

Section 28 **Entire Agreement**. This Agreement constitutes the entire agreement of the Members with respect to the subject matter hereof and shall supersede all prior and contemporaneous agreements, understandings and discussions with respect thereto.

Section 29 **Governing Law, Personal Jurisdiction and Venue**. The parties acknowledge and agree that any claim, controversy, dispute or action relating in any way to this Agreement or the subject matter of this Agreement shall be governed solely by the laws of the State of Delaware, without regard to any conflict of laws doctrines. The parties irrevocably consent to and submit to being served with legal process issued from the state and federal courts located in the State of New York and irrevocably consent to the exclusive personal jurisdiction of the federal and state courts situated in the State of New York. The parties irrevocably waive any objections to the personal jurisdiction of these courts. The federal and state courts of the State of New York in New York County shall have sole and exclusive jurisdiction over any and all claims, controversies, disputes and actions which in any way relate to this Agreement or the subject matter of this Agreement. Any such claim, controversy, dispute or action must first be brought in the federal court of the State of New York in New York County, unless the federal courts do not have subject matter jurisdiction as a matter of law, in which case it must first be brought in the Commercial Division of the New York State Supreme Court in New York County (and can only proceed in New York County outside the Commercial Division if the Commercial Division rejects it). The parties also irrevocably waive any objections that these courts constitute an oppressive, unfair, or inconvenient forum and agree not to seek to change venue on these grounds or any other grounds.

Section 30 **Amendments**. This Agreement may be modified, altered, supplemented or amended in the sole discretion of the Managing Member.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the date first written above.

THE COMPANY:

RAND PE FUND MANAGEMENT, LLC

By: _____
Name: John Honis
Title: Managing Member

MANAGING MEMBER:

_____
Name: John Honis

Schedule A

Members of Rand PE Fund Management, LLC

As of October 29, 2015

NAME	NATURE OF INTEREST	MAILING ADDRESS	INITIAL CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
John Honis	Managing Member	87 Railroad Place, Suite 403 Saratoga Springs, NY 12866	$100	100%

EXHIBIT 11

AMENDED AND RESTATED COMPANY AGREEMENT

of

RAND PE FUND MANAGEMENT, LLC

A Delaware Limited Liability Company

AMENDED AND RESTATED COMPANY AGREEMENT

of

RAND PE FUND MANAGEMENT, LLC

A Delaware Limited Liability Company

This AMENDED AND RESTATED COMPANY AGREEMENT (collectively, the "Agreement," which shall include all amendments and exhibits hereto) dated effective as of the 1st day of August, 2022 (the "Effective Date"), are entered into by and among those Persons executing the signature page hereto as the Members of RAND PE FUND MANAGEMENT, LLC, a Delaware limited liability company (the "Company"). All capitalized terms not defined in the instance of first usage shall have the respective meanings associated with such terms in Section 1.04 below.

ARTICLE I

INTRODUCTION

1.01 Formation of Limited Liability Company The Company was formed by the filing of the Certificate of Formation (the "Certificate") with the Secretary of State of Delaware on the September 18, 2015. The Company's business shall be conducted under the name "RAND PE FUND MANAGEMENT, LLC" until such time as the Members shall hereafter designate otherwise and file amendments to the Certificate in accordance with applicable law. This Agreement amends and replaces, in its entirety, all prior governing agreements for the Company, including any and all amendments thereto.

This Agreement is subject to, and governed by, the Delaware laws governing limited liability companies (the "DELAWARE LAWS") and the Certificate. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the DELAWARE LAWS or the provisions of the Certificate, such provisions of the DELAWARE LAWS or the Certificate, as the case may be, will be controlling.

1.02 Registered Office and Agent The registered office and registered agent of the Company initially shall be as set forth in the Certificate and may be changed from time to time by the appropriate filing by the Company in the office of the Secretary of State of Delaware.

1.03 Other Offices The Company may also have offices at such other places, both within and without the State of Delaware, as the Board of Managers may from time to time determine or the business of the Company may require.

1.04 Defined Terms The terms used in this Agreement with their initial letter capitalized shall, unless the context requires otherwise, have the meanings specified in this Section 1.04. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires. When used in this Agreement, the following terms shall have the meanings set forth below:

(a) "DELAWARE LAWS" shall mean the Delaware laws governing limited liability companies, as the same may be amended from time to time.

(b) "Affiliate" shall mean, as to any Person, any Person controlled by, controlling, or under common control with such Person, and, in the case of a Person who is an individual, a member of the family of such individual consisting of a spouse, sibling, in-law, lineal descendant, or ancestor (including by adoption). For purposes of this definition, "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, alone or in concert with others, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise, and no Person shall be deemed in control of another solely by virtue of being a director, officer or holder of voting securities of any entity. A Person shall be presumed to control any partnership of which such Person is a general partner.

(c) "Bankruptcy" shall mean, and a Member shall be deemed a "Bankrupt Member," upon (i) the entry of a decree or order for relief against the Member by a court of competent jurisdiction in any involuntary case brought against the Member under any Debtor Relief Laws; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other similar agent under applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property; (iii) the ordering of the winding up or liquidation of the Member's affairs; (iv) the filing of a petition in any involuntary bankruptcy case, which petition remains undismissed for a period of 180 days or which is not dismissed or suspended pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement by the Member of a voluntary case under any applicable Debtor Relief Law now or hereafter in effect; (vi) the consent by the Member to the entry of an order for relief in an involuntary case under any such law or to the appointment of or the taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or other similar agent under any applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property; or (vii) the making by a Member of any general assignment for the benefit of its creditors.

(d) "Book Depreciation" for any asset shall mean for any Fiscal Year or other period an amount that bears the same ratio to the Book Value of that asset at the beginning of such Fiscal Year or other period as the federal income tax depreciation, amortization, or other cost recovery deduction allowable for that asset for such year or other period bears to the adjusted tax basis of that asset at the beginning of such year or other period. If the federal income tax depreciation, amortization, or other cost recovery deduction allowable for any asset for such year or other period is zero, then Book Depreciation for that asset shall be determined with reference to such beginning Book Value using any reasonable method selected by the Board of Managers.

(e) "Book Value" shall mean for any asset the asset's adjusted tax basis, except as follows:

(i) the initial Book Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Board of Managers;

(ii) the Book Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board of Managers, as of one of the following times: (1) on the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; (2) on the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an Interest in the Company if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (3) on the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations;

(iii) the Book Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution;

(iv) the Book Values of Company assets shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations and Section 8.02(d) hereof; provided, however, that Book Values shall not be adjusted pursuant to this Section 1.04(e)(iv) to the extent the Board of Managers determines that an adjustment pursuant to Section 1.04(e)(ii) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 1.04(e)(iv); and

(v) if the Book Value of an asset has been determined or adjusted pursuant to Section 1.04(e)(i),1.04(e)(ii), or 1.04(e)(iv) hereof, such Book Value shall thereafter be adjusted by the Book Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(f) "Capital Contribution" shall mean the total value of cash and Book Value (except as otherwise herein provided) of property contributed and agreed to be contributed to the Company by each Member, as shown in Exhibit A, attached hereto and incorporated herein for all purposes, as the same may be amended from time to time. Any reference in this Agreement to the Capital Contribution of a then Member shall include a Capital Contribution previously made by any

prior Member for the interest of such then Member, reduced by any distribution to such Member in return of its capital as contemplated herein.

(g) “Class A Interest” shall refer to the Interest of a Class A Member in the Profits, Losses, Distributable Cash, and assets upon liquidation of the Company as described in this Agreement.

(h) “Class A Members” shall mean those Persons listed on Exhibit A and designated as “Class A Members.” The Class A Members shall have such additional rights as a Member as are specifically described and granted in Exhibit A, as amended from time to time.

(i) Intentionally Blank.

(j) Intentionally Blank.

(k) "Code" shall mean the Internal Revenue Code of 1986, as amended. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding law.

(l) "Company" shall refer to the limited liability company created by virtue of the Certificate and this Agreement and any successor in interest.

(m) “Debtor Relief Laws” shall mean any federal or state bankruptcy, insolvency, or similar laws generally affecting the rights of creditors and the relief of debtors now or hereafter in effect.

(n) Intentionally Blank.

(o) "Distributable Cash" of the Company shall mean all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions by the Members and cash funds obtained from loans to the Company) after (i) payment of all operating expenses of the Company as of such time; (ii) provision for payment of all outstanding and unpaid current obligations of the Company as of such time; and (iii) provision for a working cash reserve in accordance with Section 8.07 below.

(p) “Fiscal Year” shall mean the calendar year.

(q) “Former Member” shall mean a member that causes a Dissolution Event.

(r) "Interest" in the Company shall mean the entire ownership interest of a Member in the Company at any particular time, including such Member’s Capital Account, allocable share of Profits, Losses, and Distributable Cash, and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

(s) Intentionally Blank

(t) "Manager" shall mean an individual elected to the Board of Managers of the Company pursuant to Sections 3.02 and 3.04 below.

(u) "Member(s)" shall mean all Members admitted to the Company hereafter as Members who shall consent to the terms hereof and shall be admitted pursuant to the provisions hereof. The names, business or residence addresses, Capital Contributions, Percentage Interest, and class of Interest of the Members shall be set forth on Exhibit B, attached hereto and incorporated herein by reference. Reference to a "Member" shall be to any one of the Members.

(v) "Percentage Interest" of a Member shall mean the percentage of such Member set forth opposite the name of such Member under the column "Percentage Interest" in Exhibit B, as such percentage may be adjusted from time to time pursuant to the terms hereof.

(w) “Person” shall mean any individual, corporation, partnership, limited liability company or partnership, association, organization, trust, estate, or other entity.

(x) "Pro Rata Part" shall mean the percentage expression of a fraction the numerator of which is a Member's respective Percentage Interest and the denominator of which is the aggregate Percentage Interests of all Members involved in the respective transaction or having a respective right or option.

(y) "Profits" and "Losses" shall mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.04(y) shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B), or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.04(y), shall be subtracted from such taxable income or loss;

(iii) if the Book Value of any Company asset is adjusted pursuant to Section 1.04(e)(ii) or Section 1.04(e)(iii), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(iv) gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(v) in lieu of the deduction for depreciation, cost recovery, or amortization taken into account in computing such taxable income or loss, there shall be taken into account Book Depreciation; and

(vi) notwithstanding any other provision of this Section 1.04(y), any items that are specially allocated pursuant to Section 8.02 or Section 8.03 shall not be taken into account in computing Profits and Losses.

(z) "Regulatory Allocations" shall mean the special allocations of items of income, gain, loss, and deduction, if any, set forth in Section 8.02 hereof.

(aa) "Transfer" or "Transferred" shall mean the sale, assignment, conveyance, gift, bequest, devise, transfer under the rules of intestate succession, pledge, mortgage, or other encumbrance. In addition, the term "Transfer" or "Transferred" shall mean an "ownership change" of a Member as defined in Section 382(g) of the Code in effect as of the Effective Date, except that the term "Member" shall be substituted for "shareholder" wherever it appears.

(bb) "Treasury Regulations" shall mean regulations issued by the Department of the Treasury interpreting the Code.

(cc) "Unanimous Consent" shall mean the written consent of all of the then Members of the Company.

ARTICLE II

MEMBERS AND MEMBERSHIP INTERESTS

2.01 Members. The Members of the Company shall be those Persons listed on Exhibit B. Except as otherwise may be provided in Exhibit A or Exhibit B, and except as provided in Section 7.05 below, a Person may be admitted as a Member to the Company only upon the affirmative vote of the Managers, plus one or more Members whose Percentage Interests total more than fifty percent (50%); provided, however, that no Person will be recognized as a Member of the

Company until he/she shall have executed this Agreement, or a counterpart hereto, and agrees to be bound by all of the terms and conditions hereof.

2.02 Annual Meetings An annual meeting of the Members of the Company shall be held during each calendar year on such date and at such time as shall be designated from time to time by the Board of Managers and stated in the notice of the meeting, and if a legal holiday, then on the next business day following, at the time specified in the notice of the meeting. At such meeting, the Members shall elect Managers and transact such other business as may properly be brought before the meeting.

2.03 Special Meetings A special meeting of the Members may be called at any time by the President, the Board of Managers, or one or more Members whose Percentage Interests total at least 10%. Only such business shall be transacted at a special meeting as may be stated or indicated in the notice of such meeting.

2.04 Place of Meetings The annual meeting of Members may be held at any place within or without the State of Delaware as may be designated by the Board of Managers. Special meetings of Members may be held at any place within or without the State of Delaware as may be designated by the person or persons calling such special meeting as provided in Section 2.03. If no place for a meeting is designated, it shall be held at the registered office of the Company.

2.05 Notice. Written or printed notice stating the place, day, and hour of each meeting of Members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 days or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the person calling the meeting, to each Member of record entitled to vote at such meeting.

2.06 Voting List At least 10 days before each meeting of Members, the Secretary shall prepare a complete list of Members entitled to vote at such meeting, arranged in alphabetical order, including the address of each Member and the number of voting Interests held by each Member. For a period of 10 days prior to such meeting, such list shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member during usual business hours. Such list shall be produced at such meeting, and at all times during such meeting shall be subject to inspection by any Member. The membership interest transfer books shall be prima facie evidence as to who are the Members entitled to examine such list or membership interest transfer books.

2.07 Voting of Interests. Interests held by the Company in treasury, Interests owned by a Person the majority of the voting interests of which are owned or controlled by the Company, and Interests held by the Company in a fiduciary capacity shall not be Interests entitled to vote or to be counted in determining the total number of outstanding Interests of the Company. Interests held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without transfer of such Interests into his or her name so long as such Interests form a part of the estate and are in the possession of the estate being served by him or her. Interests standing in the name of a trustee may be voted by him or her, either in person or by proxy, only after the Interests have been transferred into his or her name as trustee. Interests standing in the name of a receiver may be voted by such receiver, and Interests held by or under the control of a receiver may be voted by such receiver without transfer of such Interests into his or her name if authority to do so is contained in the court order by which such receiver was appointed. Interests standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent, or proxy as the bylaws of such corporation may provide or, in the absence of such provision, as the board of directors of such corporation may by resolution determine. A Member whose Interests are pledged shall be entitled to vote such Interests until they have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote such Interests.

2.08 Quorum. The presence in person or by proxy of one or more Members whose Percentage Interests total more than fifty percent (50%) shall constitute a quorum at any meeting of Members, except as otherwise provided by law, the Certificate, or this Agreement. At any reconvening of an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that could have been transacted at the original meeting if a quorum had been present or represented.

2.09 Vote; Withdrawal of Quorum. If a quorum is present in person or represented by proxy at any meeting, except as otherwise may be provided in Exhibit A or Exhibit B, the vote of one or more Members whose Percentage Interests total more than fifty percent (50%) of all Members, whether or not they are present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one on which, by express provision of law, the

Certificate, or this Agreement a different vote is required, in which event such express provision shall govern and control the decision of such question. The Members present at a duly convened meeting may continue to transact business until adjournment, notwithstanding any withdrawal of Members that may leave less than a quorum remaining.

2.10 Method of Voting; Proxies. Except as otherwise may be provided in Exhibit A or Exhibit B, each Member shall be entitled to that number of votes on each matter submitted to the Members for their vote equal to such Member's Percentage Interest multiplied by 100. At any meeting of Members, every Member having the right to vote may vote either in person or by a proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Each such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. If no date is stated on a proxy, such proxy shall be presumed to have been executed on the date of the meeting at which it is to be voted. Each proxy shall be revocable unless expressly provided therein to be irrevocable or unless otherwise made irrevocable by law.

2.11 Closing of Transfer Books; Record Date . For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or any reconvening thereof, or entitled to receive payment of any distribution, or in order to make a determination of Members for any other proper purpose, the Board of Managers may provide that the membership interest transfer books of the Company shall be closed for a stated period but not to exceed in any event 50 days. If the membership interest transfer books are closed for the purpose of determining Members entitled to notice of, or to vote at, a meeting of Members, such books shall be closed for at least 10 days immediately preceding such meeting. In lieu of closing the membership interest transfer books, the Board of Managers may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than 50 days and not less than 10 days prior to the date on which the particular action requiring such determination of Members is to be taken. If the membership interest transfer books are not closed and if no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or entitled to receive payment of a distribution, the date on which the notice of the meeting is to be mailed or the date on which the resolution of the Board of Managers declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members.

2.12 Presiding Officials at Meetings The President shall preside at, and the Secretary shall prepare minutes of, each meeting of Members, and in the absence of either such officer, his other duties shall be performed by some person appointed at the meeting.

ARTICLE III

MANAGERS

3.01 Management. The business and affairs of the Company shall be managed EXCLUSIVELY by the Board of Managers. Subject to the restrictions imposed by law, the Certificate, or this Agreement, the Board of Managers may exercise all the powers of the Company.

3.02 Number; Election; Term; Qualification. The first Board of Managers shall consist of the number of Managers named in the Certificate and or otherwise in the Company documents. Thereafter, except as otherwise may be restricted by this Agreement, the number of Managers that shall constitute the entire Board of Managers shall be determined by resolution of the Board of Managers at any meeting thereof or by the Members at any meeting thereof, but shall never be less than one (1). At each annual meeting of Members, Managers shall be elected to hold office until the next annual meeting of Members and until their successors are elected and qualified. No Manager need be a Member, a resident of the State of Delaware, or a citizen of the United States.

3.03 Removal Except as otherwise may be provided by the Members, at any meeting of Members called expressly for that purpose, any Manager or the entire Board of Managers may be removed, with or without cause, by a vote of one or more Members whose Percentage Interests total more than fifty percent (50%).

3.04 Change in Number; Vacancies. No decrease in the number of Managers constituting the entire Board of Managers shall have the effect of shortening the term of any incumbent Manager. In the case of any increase in the number of Managers, or in the case of the death, retirement, resignation, or removal of a Manager, the vacancies to be filled by such increase or death, retirement, resignation, or removal may be filled by (a) the Board of Managers for a term of office

continuing only until the next election of one or more Managers by the Members; or (b) the Members at any annual or special meeting of the Members. A Manager elected to fill a vacancy shall be elected to serve for the unexpired term of his predecessor in office.

3.05 Place of Meetings . The Board of Managers may hold its meetings in such place or places, including by telephonic or other electronic method of communication, within or without the State of Delaware as the Board of Managers may from time to time determine.

3.06 First Meeting . Each newly elected Board of Managers may hold its first meeting, if a quorum is present, for the purpose of organization and the transaction of business immediately after and at the same place as the annual meeting of Members, and no notice of such meeting shall be necessary.

3.07 Regular Meetings . Regular meetings of the Board of Managers may be held without notice at such times and places, including by telephonic or other electronic method of communication, as may be designated from time to time by resolution of the Board of Managers and communicated to all Managers. Regular meetings of the Board of Managers may be held when and if needed, and no more than one regular meeting of the Board of Managers shall be required in any calendar year.

3.08 Special Meetings . A special meeting of the Board of Managers shall be held whenever called by any Manager at such time and place, including by telephonic or other electronic method of communication, as such Manager shall designate in the notice of such special meeting. The Manager calling any special meeting shall cause notice of such special meeting to be given to each Manager at least 24 hours before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Managers need be specified in the notice or waiver of notice of any special meeting.

3.09 Quorum; Vote . At all meetings of the Board of Managers, a majority of the Managers fixed in the manner provided in this Agreement shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting, a majority of the Managers present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The vote of a majority of the Managers present at a meeting at which a quorum is in attendance shall be the act of the Board of Managers, unless the vote of a different number is required by law, the Certificate, or this Agreement.

3.10 Procedure; Minutes . At meetings of the Board of Managers, business shall be transacted in such order as the Board of Managers may determine from time to time. The Board of Managers shall appoint at each meeting a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting that shall be delivered to the Secretary of the Company for placement in the minute book of the Company.

3.11 Presumption of Assent . A Manager of the Company who is present at any meeting of the Board of Managers at which action on any matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof, or shall forward any dissent by certified or registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

3.12 Compensation . Except as otherwise may be restricted in this Agreement, Managers, in their capacity as Managers, may receive, by resolution of the Board of Managers, a stated salary or a fixed sum and expenses of attendance, if any, for attending meetings of the Board of Managers. No Manager shall be precluded from serving the Company in any other capacity or receiving compensation therefor.

ARTICLE IV

COMMITTEES

4.01 Designation . The Board of Managers may, by a resolution adopted by a majority of the entire Board of Managers, designate executive and other committees.

4.02 Number; Qualification; Term . Each committee shall consist of one or more Managers appointed by resolution adopted by a majority of the entire Board of Managers. The number of committee members may be increased or decreased from time to time by resolution adopted by a majority of the entire Board of Managers. Each committee member shall serve as such until the expiration of his term as a Manager or his earlier resignation, unless sooner removed as a committee member or as a Manager.

4.03 Authority . The executive committee, to the extent provided in the resolution establishing such committee, shall have and may exercise all of the authority of the Board of Managers in the management of the business and affairs of the Company. Each other committee, to the extent expressly provided for in the resolution establishing such committee, shall have and may exercise all of the authority of the Board of Managers in such other matters and affairs concerning the Company. However, no committee shall have the authority of the Board of Managers in reference to any of the following:

(a) amending the Certificate;

(b) approving a plan of merger or consolidation;

(c) recommending to the Members the sale, lease, or exchange of all or substantially all of the property and assets of the Company other than in the usual and regular course of its business;

(d) recommending to the Members a voluntary dissolution of the Company or a liquidation thereof;

(e) filling vacancies in, or removing members of, the Board of Managers or of any committee thereof;

(f) filling any vacancy to be filled by reason of an increase in the number of Managers;

(g) electing or removing officers or committee members;

(h) fixing the compensation of any committee member; or

(i) altering or repealing any resolution of the Board of Managers that, by its term, provides that it shall not be amendable or repealable.

4.04 Committee Changes . The Board of Managers shall have the power at any time to fill vacancies in, to change the Membership of, and to discharge any committee. However, a committee member may be removed by the Board of Managers only if, in the judgment of the Board of Managers, the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4.05 Regular Meetings . Regular meetings of any committee may be held without notice at such times and places, including by telephonic or other electronic methods of communication, as may be designated from time to time by resolution of the committee and communicated to all committee members.

4.06 Special Meetings . A special meeting of any committee may be held whenever called by any committee member at such time and place, including by telephonic or other electronic methods of communication, as such committee member shall designate in the notice of such special meeting. The committee member calling any special meeting shall cause notice of such special meeting to be given to each committee member at least 24 hours before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of any committee need be specified in the notice or waiver of notice of any special meeting.

4.07 Quorum; Majority Vote . At all meetings of any committee, a majority of the number of committee members designated by the Board of Managers shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting of any committee, a majority of the committee members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The vote of a majority of the committee members present at any meeting at which a quorum is in attendance shall be the act of a committee, unless the vote of a different number is required by law, the Certificate, or this Agreement.

4.08 Minutes . Each committee shall cause minutes of its proceedings to be prepared and shall report the same to the Board of Managers. The minutes of the proceedings of each committee shall be delivered to the Secretary of the Company for placement in the minute books of the Company.

4.09 Compensation . Except as otherwise may be restricted in this Agreement, committee members may, by resolution of the Board of Managers, be allowed a stated salary or a fixed sum and expenses of attendance, if any, for attending any committee meetings.

4.10 Responsibility . The designation of any committee and the delegation of authority to it shall not operate to relieve the Board of Managers or any Manager of any responsibility imposed upon it or such Manager by law.

ARTICLE V

GENERAL PROVISIONS RELATING TO MEETINGS

5.01 Notice Whenever by law, the Certificate, or this Agreement notice is required to be given to any Member, Manager, or committee member and no provision is made as to how such notice shall be given, it shall be construed to mean that notice may be given either (a) in person; (b) in writing, by mail; (c) by telegram, telex, cable, telecopy or facsimile transmission, or similar means; or (d) by any other method permitted by law. Any notice required or permitted to be given hereunder (other than personal notice) shall be addressed to such Member, Manager, or committee member at his address as it appears on the books on the Company or, in the case of a Member, on the membership interest transfer records of the Company or at such other place as such Member, Manager, or committee member is known to be at the time notice is mailed or transmitted. Any notice required or permitted to be given by mail shall be deemed to be delivered and given at the time when such notice is deposited in the United States mail, postage prepaid. Any notice required or permitted to be given by telegram, telex, cable, telecopy or facsimile transmission, or similar means shall be deemed to be delivered and given at the time transmitted.

5.02 Waiver of Notice . Whenever by law, the Certificate, or this Agreement any notice is required to be given to any Member, Manager, or committee member of the Company, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time notice should have been given, shall be equivalent to the giving of such notice. Attendance of a Manager or Member at a meeting shall constitute a waiver of notice of such meeting, except where a Manager or Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.03 Telephone and Similar Meetings Members, Managers, or committee members may participate in and hold a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.04 Action Without Meeting . Any action that may be taken, or is required by law, the Certificate, or this Agreement to be taken at a meeting of the Members, the Board of Managers, or a committee thereof may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the Members owning the required Percentage Interests of all Members (as set forth herein for the respective action or decision), a majority of the Managers or committee members, as the case may be, entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a vote of such Members, Managers, or committee members, as the case may be, and may be stated as such in any document filed with the Secretary of State of Delaware or in any certificate or other document delivered to any person. The consent may be in one or more counterparts so long as each Member, Manager, or committee member signs one of the counterparts. The signed consent shall be placed in the minute books of the Company.

ARTICLE VI

OFFICERS AND OTHER AGENTS

6.01 Number; Titles; Election; Term The Company shall have a president, one or more vice presidents (and, in the case of each vice president, with such descriptive title, if any, as the Board of Managers shall determine), a secretary, a treasurer, and such officers and agents as the Board of Managers may deem desirable. The Board of Managers shall elect a president, vice president, treasurer, and secretary at its first meeting at which a quorum shall be present after the annual meeting of Members or whenever a vacancy exists. The Board of Managers then, or from time to time, may also elect or appoint one or more other officers or agents as it shall deem advisable. Except as otherwise may be provided by separate agreement, each officer and agent shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified. Unless otherwise provided in the resolution of the Board of Managers electing or appointing an officer or agent, his term of office shall extend to and expire at the meeting of the Board of Managers following the next annual meeting of Members or, if earlier, at his death, resignation, or removal. Any two or more offices may be held by the same person. No officer or agent need be a Member, a Manager, a resident of the State of Delaware, or a citizen of the United States.

6.02 Removal . Any officer or agent elected or appointed by the Board of Managers may be removed by a majority of the Board of Managers only if, in the judgment of a majority of the Board of Managers, the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

6.03 Vacancies . Any vacancy occurring in any office of the Company may be filled by the Board of Managers.

6.04 Authority . Officers shall have such authority and perform such duties in the management of the Company as are provided in this Agreement or as may be determined by resolution of the Board of Managers not inconsistent with this Agreement.

6.05 Compensation . Except as otherwise may be provided by separate agreement, the compensation, if any, of officers or any salaried employee shall be fixed, increased, or decreased from time to time by the Board of Managers, provided, however, that the Board of Managers may by resolution delegate to any one or more officers of the Company the authority to fix such compensation.

6.06 Chairman of the Board . The Chairman of the Board, if any, shall be an officer of the Company and, subject to the direction of the Board of Managers, shall perform such executive, supervisory, and management functions and duties as may be assigned to him from time to time by the Board of Managers.

6.07 President, CEO and COO . The Board of Managers may designate and appoint a President, CEO and/or COO, with rights, duties and responsibilities established by the Board of Managers.

6.08 Vice Presidents . Each Vice President shall have such powers and duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President and (in the order as designated by the Board of Managers, or in the absence of such designation, as determined by the length of time each has held the office of Vice President continuously) shall exercise the powers of the President during that officer's absence or inability to act.

6.09 Treasurer . The Treasurer shall have custody of the Company's funds and securities, shall keep full and accurate accounts of receipts and disbursements, and shall deposit all moneys and valuable effects in the name and to the credit of the Company in such depository or depositories as may be designated by the Board of Managers. The Treasurer shall audit all payrolls and vouchers of the Company; shall receive, audit, and consolidate all operating and financial statements of the Company and its various departments; shall supervise the accounting and auditing practices of the Company; and shall have charge of matters relating to taxation. Additionally, the Treasurer shall have the power to endorse for deposit, collection, or otherwise all checks, drafts, notes, bills of exchange, and other commercial paper payable to the Company and to give proper receipts and discharges for all payments to the Company. The Treasurer shall perform such other duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President.

6.10 Assistant Treasurers . Each Assistant Treasurer shall perform such duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President. The Assistant Treasurers (in the order as designated by the Board of Managers or, in the absence of such designation, as determined by the length of time each has held the office of Assistant Treasurer continuously) shall exercise the powers of the Treasurer.

6.11 Secretary . The Secretary shall maintain minutes of all meetings of the Board of Managers, of any committee, and of the Members, or consents in lieu of such minutes, in the Company's minute books, and shall cause notice of such meetings to be given when requested by any person authorized to call such meetings. The Secretary may sign with the President, in the name of the Company, all contracts of the Company and affix the seal of the Company thereto. The Secretary shall have charge of the certificate books, membership interest transfer books, and other documents as the Board of Managers may direct, all of which shall at all reasonable times be open to inspection by any Manager at the office of the Company during normal business hours. The Secretary shall perform such other duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President.

6.12 Assistant Secretaries . Each Assistant Secretary shall perform such duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President. The Assistant Secretaries (in the order designated by the Board of Managers or, in the absence of such designation, as determined by the length of time each has held the office of Assistant Secretary continuously) shall exercise the powers of the Secretary during that officer's absence or inability to act.

ARTICLE VII

CAPITALIZATION AND CAPITAL ACCOUNTS

7.01 Capital Contributions . The Capital Contributions of the Members, as set forth in the books and records of the Company, shall be paid or transferred to the Company in cash and/or property on the terms and in the manner specified by the Board of Managers. No Member shall be entitled to make any additional Capital Contributions except as provided in Section 7.02 and 7.03 below.

7.02 Additional Capital Contributions . If the Board of Managers determine that additional capital is required for the purposes of the Company, as set forth herein, the Board of Managers may notify the Members of the need for such additional capital and shall state the specific purposes for which the call for such additional capital is being made. Thereupon, all Members shall have the right (but not the obligation) to make additional Capital Contributions in cash and/or property to the Company aggregating the amount of additional capital needed by the Company in the proportion of their respective Percentage Interests in the Company at the time notice is given. The Board of Managers shall use the additional capital so contributed solely for the purposes stated in the notice to the Members.

7.03 Failure to Make Additional Capital Contributions . If any Member chooses not to contribute its share of the additional capital needed by the Company within 14 days after notice is given to the Members of the need for such additional capital (a "Non-Contributing Member"), then the other Members shall be entitled (but not obligated) to contribute the share of such Non-Contributing Member (such Members being referred to as "Contributing Members") of the additional capital needed pro rata according to such Contributing Members' Percentage Interests at such time or such other share as otherwise agreed upon by the Contributing Members.

7.04 Effect of Failure to Make Additional Capital Contributions . In the event of a Non-Contributing Member, the Percentage Interests of all of the Members shall be recomputed on the following basis: Each Member's Percentage Interest immediately following the computation shall equal the percentage expression of a fraction, the numerator of which is the total Capital Contributions of such Member plus the additional Capital Contribution, if any, made by such Member pursuant to Sections 7.02 and 7.03 above, and the denominator of which is the total Capital Contributions of all of the Members plus the additional Capital Contributions made by all of the Members pursuant to Sections 7.02 and 7.03 above.

7.05 Recapitalization by Admission of Additional Members . If additional capital is required for the purposes of the Company as set forth herein and the Board of Managers is unable to finance such capital needs by borrowing the required amounts or through notice to the existing Members of the necessity for additional Capital Contributions as provided in Section 7.02 and 7.03 above, the Board of Managers shall have the right to admit additional Members to the Company, upon receiving the other approvals required herein. Following the admission of one or more new Members, the Percentage Interest of each Member, including the newly admitted Member(s), shall be computed as follows: Each Member's Percentage Interest immediately following the computation shall equal the percentage expression of a fraction, the numerator of which is the total Capital Contributions of such Member and the denominator of which is the total Capital Contributions of all of the Members, including the newly admitted Members.

7.06 Maintenance of Capital Accounts . The Company shall maintain for each Member a separate Capital Account in accordance with this Section 7.06, which shall control the allocation of Profits and Losses and the division of assets upon liquidation of the Company as provided in Section 12.01. Each Capital Account shall be maintained in accordance with the following provisions:

(a) a Member's Capital Account shall initially be zero and shall be increased by the cash amount or Book Value of any property contributed by such Member to the Company pursuant to this Agreement, such Member's allocable share of Profits and any items in the nature of income or gains that are specially allocated to such Member pursuant to Section 8.02 and Section 8.03 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member;

(b) such Capital Account shall be decreased by the cash amount or Book Value of any property distributed to such Member pursuant to this Agreement, such Member's allocable share of Losses and any items in the nature of deductions or losses that are specially allocated to such Member pursuant to Section 8.02 and Section 8.03 hereof, and the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by such Member to the Company; and

(c) if all or a portion of an Interest in the Company is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest, provided, however, that if the Transfer causes a termination of the Company under Code Section 708(b)(1)(B), the assets of the Company shall be deemed to have been distributed to the Members (including the transferee of the Interest) in liquidation of the Company and recontributed by such Members and transferees in reconstitution of the Company. Such deemed liquidation and reconstitution shall not cause the Company to be dissolved and/or reconstituted for purposes other than maintenance of the Capital Accounts and federal income tax.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 1.704-1(b) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Board of Managers determines that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases to the Capital Accounts, are computed in order to comply with such Treasury Regulations, the Board of Managers may authorize such modifications, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Sections 8.06 and 12.01 hereof.

7.07 Negative Capital Accounts . If any Member has a deficit balance in its Capital Account, such Member shall have no obligation to restore such negative balance or to make any Capital Contribution to the Company by reason thereof, and such negative balance shall not be considered an asset of the Company or of any Member.

7.08 Interest . No interest shall be paid by the Company on Capital Contributions or on balances in Capital Accounts.

7.09 No Withdrawal . No Member shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Company, except as provided in Sections 11.02 and 12.01 of this Agreement.

7.10 Loans From Members . Loans by a Member to the Company shall not be considered Capital Contributions.

ARTICLE VIII

ALLOCATIONS AND DISTRIBUTIONS

8.01 Allocation of Profits and Losses.

(a) Allocation of Profits. Except as provided on any Exhibit hereto, after giving effect to the allocations set forth in Section 8.02 and Section 8.03, and after giving effect to all distributions of cash or property (other than cash or

property to be distributed pursuant to Section 12.01), Profits for any Fiscal Year shall be allocated to the Members in the following manner:

(i) first, to each Member with a negative balance in its Capital Account, pro rata in accordance with such negative Capital Account balances, until such negative Capital Account balances have been eliminated;

(ii) next, to all of the Members in accordance with their respective Percentage Interests.

(b) Allocation of Losses. Except as provided in any Exhibit hereto, after giving effect to the allocations set forth in Section 8.02 and Section 8.03, Losses for any Fiscal Year shall be allocated to the Members in the following manner:

(i) to all of the Members in accordance with their respective Percentage Interests.

8.02 Special Allocations of Profits and Losses .

(a) Minimum Gain Chargeback–Company Nonrecourse Liabilities. If there is a net decrease in Company minimum gain during any Fiscal Year, certain items of income and gain shall be allocated (on a gross basis) to the Members in the amounts and manner described in Treasury Regulations Section 1.704-2(f) and (j)(2)(i) and (ii), subject to the exemptions set forth in Treasury Regulations Section 1.704-2(f)(2), (3), (4) and (5). This Section 8.02(a) is intended to comply with the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(f) relating to Company nonrecourse liabilities, as defined in Treasury Regulations Section 1.704-2(b)(3) and shall be so interpreted.

(b) Minimum Gain Chargeback–Member Nonrecourse Debt. If there is a net decrease in Member minimum gain during any Fiscal Year, certain items of income and gain shall be allocated (on a gross basis) as quickly as possible to those Members who had a share of the Member minimum gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5) in the amounts and manner described in Treasury Regulations Sections 1.704-2(i)(4), (j)(2)(ii), and (j)(2)(iii). This Section 8.02(b) is intended to comply with the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(i)(4) relating to Member nonrecourse debt, as defined in Treasury Regulations Section 1.704-2(b)(4) and shall be so interpreted.

(c) Qualified Income Offset. If, after applying Section 8.02(a) and Section 8.02(b), any Member has an adjusted Capital Account deficit, items of Company income and gain shall be specially allocated (on a gross basis) to each such Member in an amount and manner sufficient to eliminate the adjusted Capital Account deficit of such Member as quickly as possible. This Section 8.02(c) is intended to comply with the "qualified income offset" requirement set for the in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be so interpreted.

(d) Optional Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken in to account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(f) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions shall be allocated pursuant to Treasury Regulations Section 1.704-2(b)(4) and (i)(1) to the Member who bears the economic risk of loss with respect to such deductions.

8.03 Curative Allocations . The Regulatory Allocations are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 8.03. Therefore, notwithstanding any other provisions of this Article VIII, the Board of Managers shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 8.01(a) and Section 8.01(b) hereof.

8.04 Tax Allocations: Code Section 704(c) .

(a) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value.

(b) If the Book Value of any Company asset is adjusted pursuant to Section 1.04(e)(ii) hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

(c) Any elections or other decisions relating to such allocation shall be made by the Board of Managers. Allocations pursuant to this Section 8.04 are solely for purposes of federal, state, and local taxes and shall not affect or in any way be taken into account in computing any Member's Capital Account, or share of Profits, Losses, and other items or distribution pursuant to any provision of this Agreement.

8.05 Other Allocation Rules .

(a) For purposes of determining the Profits, Losses, or any other item allocable to any period, Profits, Losses, and any such other item shall be determined on a daily, monthly, or other basis, as determined by the Board of Managers using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

(b) For federal income tax purposes, every item of income, gain, loss, and deduction shall be allocated among the Members in accordance with the allocations under Sections 8.01, 8.02, 8.03, and 8.04.

(c) The Members are aware of the income tax consequences of the allocations made by this Article VIII and hereby agree to be bound by the provisions of this Article VIII in reporting their shares of Company income and loss for income tax purposes.

(d) It is intended that the allocations in Sections 8.01, 8.02, 8.03, and 8.04 hereof effect an allocation for federal income tax purposes consistent with Section 704 of the Code and comply with any limitations or restrictions therein.

8.06 Distributions of Distributable Cash . Except as otherwise may be provided in this Agreement, the Board of Managers shall cause the Company to make distributions of Distributable Cash at such intervals and in such amounts as the Board of Managers in its sole discretion shall determine by majority vote. Distributions of Distributable Cash shall be made to all of the Members in accordance with their respective Percentage Interests.

8.07 Working Cash Reserve . The Board of Managers may from time to time establish a working cash reserve for capital expenditures, unforeseen contingencies, projected operating deficits, and other corporate purposes and may increase or decrease the amount in such reserve in its business judgment.

ARTICLE IX

CERTIFICATES

9.01 Certificated and Uncertificated Interests. The membership interests of the Company may be either certificated interests or uncertificated interests. As used herein, the term "certificated interests" means Interests represented by instruments in bearer or registered form, and the term "uncertificated interests" means Interests not represented by such instruments and the transfers of which are registered upon books maintained for that purpose by or on behalf of the Company.

9.02 Certificates for Certificated Interests . The certificates for certificated interests shall be in such form as shall be approved by the Board of Managers in conformity with law. The certificates shall be consecutively numbered, shall be entered as they are issued in the books of the Company or in the records of the Company's designated transfer agent, if any, and shall state the Member's name, the class of Interests, the Percentage Interest that such Interest represents, and such

other matters as may be required by law. The certificates shall be signed by the President or any Vice President and also by the Secretary, an Assistant Secretary, or any other officer, and may be sealed with the seal of the Company or a facsimile thereof. If any certificate is countersigned by a transfer agent or registered by a registrar, either of which is other than the Company itself or an employee of the Company, the signatures of the foregoing officers may be a facsimile.

9.03 Lost, Stolen, or Destroyed Certificates . The Company shall issue a new certificate in place of any certificate for Interests previously issued if the registered owner of the certificate satisfies the following requirements:

(a) the registered owner makes proof in affidavit form that a previously issued certificate for Interests has been lost, destroyed, or stolen;

(b) the registered owner requests the issuance of a new certificate before the Company has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(c) the registered owner gives a bond in such form, and with such surety or sureties, with fixed or open penalty, as the Board of Managers may direct, in its discretion, to indemnify the Company (and its transfer agent and registrar, if any) against any claim that may be made on account of the alleged loss, destruction, or theft of the certificate; and

(d) the registered owner satisfies any other reasonable requirements imposed by the Board of Managers.

When a certificate has been lost, destroyed, or stolen and the Member of record fails to notify the Company within a reasonable time after he has notice of it, if the Company registers a transfer of the Interests represented by the certificate before receiving such notification, the Member of record is precluded from making any claim against the Company for the transfer or for a new certificate.

9.04 Transfer of Interests . Interests of the Company shall be transferable only on the books of the Company by the Members thereof in person or by their duly authorized attorneys or legal representatives, but only as authorized in this COMPANY AGREEMENT. With respect to certificated interests, upon surrender to the Company or the transfer agent of the Company of a certificate representing Interests duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, the Company or its agent shall issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction upon its books. With respect to uncertificated interests, upon delivery to the Company of proper evidence of succession, assignment, or authority to transfer, the Company or its agent shall record the transaction upon its books.

9.05 Registered Members . The Company shall be entitled to treat the Member of record as the Member in fact of any Interests and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Interests on the part of any other Person, whether or not it shall have actual or other notice thereof, except as otherwise provided by law.

9.06 Legends . If the Company is authorized to issue Interests of more than one class, each certificate representing Interests issued by the Company (a) shall conspicuously set forth on the face or back of the certificate a full statement of all of the designations, preferences, limitations, and relative rights of the Interests of each class authorized to be issued; or (b) shall conspicuously state on the face or back of the certificate that (i) such a statement is set forth in the Certificate on file in the office of the Secretary of State or in this Agreement; and (ii) the Company will furnish a copy of such statements to the record holder of the certificate without charge on written request to the Company at its principal place of business or registered office.

If the Company issues any Interests that are not registered under the Securities Act of 1933, the transfer of any such interests shall be restricted in accordance with an appropriate legend.

In the event any restriction on the transfer, or registration of the transfer, of Interests shall be imposed or agreed to by the Company, each certificate representing Interests so restricted (a) shall conspicuously set forth a full or summary statement of the restriction on the face of the certificate; (b) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate; or (c) shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document and (i) that the Company will furnish to the record holder of the certificate without charge upon written request to the Company at its principal place of business or registered

office a copy of the specified document; or (ii) if such document is one required or permitted by law to be and has been filed, that such specified document is on file in the office of the Secretary of State and contains a full statement of such restriction.

ARTICLE X

ACCOUNTING AND RECORDS

10.01 Records and Accounting . The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods elected to be followed by the Company for federal income tax purposes. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business.

10.02 Access to Accounting Records . All books and records of the Company shall be maintained at any office of the Company or at the Company's principal place of business, and each Member owning a Percentage Interest of at least ten percent (10%), and his duly authorized representative, shall have access to them at such office of the Company and the right to inspect and copy them at reasonable times.

10.03 Annual and Tax Information . The Company shall deliver to each Member within 90 days after the end of each Fiscal Year all information necessary for the preparation of such Member's federal income tax return. The Company shall prepare, within 120 days after the end of each Fiscal Year, a financial report of the Company for such Fiscal Year, containing a statement of the year then ended, a statement of sources and applications of funds, and a statement of reconciliation of the Capital Accounts of the Members.

10.04 Accounting Decisions . All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Board of Managers. The Members may rely upon the advice of their accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

10.05 Federal Income Tax Elections . The Company may make all elections for federal income tax purposes, including, but not limited to, the following:

(a) to the extent permitted by applicable law and regulations, the election to use an accelerated depreciation method on any depreciable unit of the assets of the Company; and

(b) in case of a transfer of all or part of the Interest of any Member, the election pursuant to Section 734, 743, and 754 of the Code, as amended (or corresponding provisions of future law) to adjust the basis of the assets of the Company.

ARTICLE XI

CHANGES IN MEMBERS

The provisions of this Article XI are subject to, and may be superceded by, one or more separate agreements entered into by and among one or more Members. The provisions of this Article XI shall continue to control with respect to matters not covered by, or Members not parties to, such agreement(s).

11.01 Intentionally Blank .

11.02 Transfer and Assignment of Members' Interest . Except as approved by the Manager, plus a Member or Members owning a Percentage Interest greater than fifty percent (50%), no Member shall be entitled to Transfer any part of its Interest in the Company. The Company and, if applicable, the remaining Members shall be entitled to match the terms of the proposed Transfer, with consideration being only set forth in traditional monetary terms. If the Company and the remaining Members fail to match the proposed Transfer with regard to the purchase of the entire Interest, or portion thereof, the Member proposing to make the Transfer may move forward with the proposed Transfer. Transfers in violation of this Section 11.02 shall be effective only to the extent set forth in Section 11.05(b) hereof.

11.03 Further Restrictions on Transfer . No Member shall Transfer any part of his Interest in the Company: (i) without registration under applicable federal and state securities laws, or unless he delivers an opinion of counsel satisfactory to the Company that registration under such laws is not required; or (ii) if the Interest to be sold or exchanged, when added to the total of all other Interests to be sold or exchanged in the preceding 12 consecutive months prior thereto, would result in the termination of the Company under Code Section 708.

11.04 Substitute Members . A transferee shall have the right to become a substitute Member if (a) the requirements of Section 11.02 and 11.03 hereof are met; (b) such person executes an instrument satisfactory to the remaining Members accepting and adopting the terms and provisions of this Agreement; and (c) such person pays any reasonable expenses in connection with his or her admission as a Member.

11.05 Effect of Transfer .

(a) Any permitted Transfer of all or any portion of a Member's Interest in the Company will take effect on the first day of the month following receipt by the Members of written notice of Transfer. Any transferee of an Interest in the Company shall take subject to the restrictions on Transfer imposed by this Agreement.

(b) Upon any Transfer of a Member's Interest in the Company in violation of this Agreement, and if such Member's Interest is not purchased pursuant to Section 11.01, the transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, but such transferee shall be entitled to receive only the allocable share of Profits, Losses, Distributive Cash, and other items to which the transferor of such Interest in the Company would otherwise be entitled.

11.06 No Dissolution or Withdrawal: Advanced Consent . Upon the occurrence of a Dissolution Event with regard to a respective Member, all remaining Members shall be deemed to automatically consent to the continuation of the business of the Company. By executing this Agreement, however, all Members hereby consent that they shall not voluntarily cause a Dissolution Event or demand the return of Member's capital. If any Member shall breach the agreement represented by this Section 11.06, the agreement of such breaching Member shall not be specifically performable, but shall be actionable for damages, and shall be deemed an offer of the Interest of such breaching Member for sale pursuant hereto. The parties agree that a reasonable approximation of the damage that the Company shall experience due to breach hereof is 20% of the value of the breaching Member's Interest, or as otherwise set forth herein (whichever is greater), which shall be deducted from any payments to such Member upon dissolution or purchase of such Member's Interest hereunder. The value of the breaching Member's Interest shall be determined pursuant to Section 11.01, to which value the said discount may then be applied in determining payments due to the breaching Member pursuant to the deemed offer of sale occurring under this Section 11.06.

ARTICLE XII

TERMINATION

12.01 Termination of the Company .

(a) The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following events:

(i) a determination by the Managers, plus the Unanimous Consent of the Members that the Company should be dissolved;

(ii) a sale of all or substantially all of the assets of the Company;

(iii) the expiration of the Company’s term as stated in its Certificate; or

(iv) at such earlier time as provided by applicable law.

(b) In settling accounts of the Company after dissolution, the liabilities of the Company shall be entitled to payment and the assets of the Company remaining thereafter shall be distributed to the Members in the following order, all as required by the DELAWARE LAWS:

(i) those to creditors, in the order of priority as provided by law, except those to Members of the Company on account of their Capital Contributions;

(ii) to the Members, pro rata, in accordance with the positive balances, if any, in their Capital Accounts; and

(iii) to the Members in proportion to their relative Percentage Interests.

ARTICLE XIII

INDEMNIFICATION

13.01 Indemnification of Members, Managers, and Other Persons .

(a) To the greatest extent not inconsistent with the laws and public policies of Delaware, the Company shall indemnify any Member, Manager, or officer of the Company made a party to any proceeding because such individual is or was a Member, Manager, or officer of the Company (an "Indemnitee"), as a matter of right, against all liability incurred by such individual in connection with any proceeding; provided that it shall be determined in the specific case in accordance with subsection (d) of this Section 13.01 that indemnification of such individual is permissible in the circumstances because the individual has met the standard of conduct for indemnification set forth in subsection (c) of this Section 13.01. The Company shall advance, pay for, or reimburse the reasonable expenses incurred by an Indemnitee in connection with any such proceeding in advance of final disposition thereof if (i) the Indemnitee furnishes the Company a written affirmation of the Indemnitee's good faith belief that he or she has met the standard of conduct for indemnification described in subsection (c) of this Section 13.01; (ii) the Indemnitee furnishes the Company a written undertaking, executed personally or on such Indemnitee's behalf, to repay the advance if it is ultimately determined that such individual did not meet such standard of conduct; and (iii) a determination is made in accordance with subsection (d) that based upon facts then known to those making the determination, indemnification would not be precluded under this Section 13.01. The undertaking described in subsection (a)(ii) above must be a general obligation of the Indemnitee, subject to such reasonable limitations as the Company may permit, but need not be secured and may be accepted without reference to financial ability to make repayment. The Company shall indemnify an Indemnitee who is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without the requirement of a determination as set forth in subsection (c) of this Section 13.01. Upon demand by an Indemnitee for indemnification or advancement of expenses, as the case may be, the Company shall expeditiously determine whether the Indemnitee is entitled thereto in accordance with this Section 13.01. The indemnification and advancement of expenses provided for under this Section 13.01 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Section 13.01.

(b) The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Member, Manager, or officer of the Company.

(c) Indemnification is permissible under this Section 13.01 only if (i) the Indemnitee conducted himself in good faith; (ii) he or she reasonably believed that his conduct was in, or at least not opposed to, the Company's best interest; (iii) in the case of any criminal proceeding, he or she had no reasonable cause to believe his conduct was unlawful; and (iv) such Indemnitee is not adjudged in any such proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Indemnitee did not meet the standard of conduct described in this subsection (c).

(d) A determination as to whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

(i) by the Board of Managers or by a majority vote consisting of Members not at the time parties to the proceeding; or

(ii) by special legal counsel selected by the Members in the manner prescribed in subsection (d)(i) above.

(e) An Indemnitee of the Company who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice the court considers necessary, may order indemnification if it determines:

(i) in a proceeding in which the Indemnitee is wholly successful, on the merits or otherwise, the Indemnitee is entitled to indemnification under this Section 13.01, in which case the court shall order the Company to pay the Indemnitee his or her reasonable expenses incurred to obtain such court ordered indemnification; or

(ii) the Indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Indemnitee met the standard of conduct set forth in subsection (c) of this Section 13.01.

(f) Indemnification shall also be provided for an Indemnitee's conduct with respect to an employee benefit plan if the individual reasonably believed his or her conduct to be in the interests of the participants in and beneficiaries of plan.

(g) Nothing contained in this Section 13.01 shall limit or preclude the exercise or be deemed exclusive of any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any individual who is or was a Member, Manager, or officer of the Company or is or was serving at the Company's request as a director, officer, partner, manager, trustee, employee, or agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not. Nothing contained in this Section 13.01 shall limit the ability of the Company to otherwise indemnify or advance expenses to any individual. It is the intent of this Section 13.01 to provide indemnification to Indemnitees to the fullest extent now or hereafter permitted by the law consistent with the terms and conditions of this Section 13.01. Indemnification shall be provided in accordance with this Section 13.01 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

(h) For purposes of this Section 13.01:

(i) The term "expenses" includes all direct and indirect costs (including, without limitation, counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or establishing or enforcing a right to indemnification under this Section 13.01, applicable law, or otherwise.

(ii) The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(iii) The term "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(iv) The term "proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(v) The Company may purchase and maintain insurance for its benefit, the benefit of any individual who is entitled to indemnification under this Section 13.01, or both, against any liability asserted against or incurred by such individual in any capacity or arising out of such individual's service with the Company, whether or not the Company would have the power to indemnify such individual against such liability.

ARTICLE XIV

MISCELLANEOUS

14.01 Complete Agreement . This Agreement, the Certificate, and all other organizational documents signed by all of the Members constitute the complete and exclusive statement of agreement among the Members with respect to the matters herein. This Agreement and the Certificate replace and supersede all prior agreements by and among the Members or any of them, and no representation, statement, or condition or warranty not contained in this Agreement or the Certificate will be binding on the Members or have any force or effect whatsoever.

14.02 Governing Law . This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Delaware.

14.03 Binding Effect . Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective distributes, successors, and assigns.

14.04 Terms . Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require. Any reference to the DELAWARE LAWS, the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

14.05 Headings . All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

14.06 Severability . If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

14.07 Multiple Counterparts . This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof hereof it will be necessary to produce only one copy hereof signed by the party to be charged.

14.08 Additional Documents and Acts . Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

14.09 No Third-Party Beneficiary . This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

14.10 References to this Agreement . Numbered or lettered articles, sections, and subsections herein contained refer to articles, sections, and subsections of this Agreement unless otherwise expressly stated.

14.11 Notices . Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement must be in writing and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member at the address specified in Exhibit B hereto. Any Member or the Company may, at any time by giving five days' prior written notice to the other Members and the Company, designate any other address in substitution of the foregoing address to which such notice will be given.

14.12 Amendments . Except as otherwise may be provided in this Agreement, all amendments to this Agreement must be approved by the Managers, plus one or more Members whose aggregate Percentage Interests total more than fifty percent (50%).

14.13 Title to Company Property . Legal title to all property of the Company will be held and conveyed in the name of the Company.

14.14 Reliance on Authority of Person Signing Agreement . In the event that a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual; or (b) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

14.15 S-Corp Election. In the event the Company elects to be treated as a S-Corporation for federal tax purposes, the provisions in this Company Agreement addressing tax treatment shall be automatically amended and modified as required in order to pertain to a S-corporation.

14.16 Company Indemnification. In the event any Member is personally liable for any debt or obligations associated with a Company asset, then the Company agrees to indemnify such Member for any such debt or obligation in excess of his or her proportionate amount of such debt or obligation that he/she is required to pay or perform, as measured by the Percentage Interest of the Members, except as otherwise agreed by the Members.

14.17 Management by Members. The Certificate of the Company and other Company documents/agreements on file and/or executed by the Member may reflect management by members, and not management by managers. As a result, if such is the case and the Certificate is not amended to reflect management by managers, this Agreement shall be interpreted in such a manner that all references herein to a Manager, or Managers or Board of Managers, shall be referring to the managing member(s), and as of the Effective Date hereof, since the sole member is Rand Advisors Holding Corp., a Delaware corporation, all decisions shall be made by such member, with Mark Patrick as the Director and President.

IN WITNESS WHEREOF, the Members have executed this Agreement to be effective as of the date first written above.

THE MEMBER (OR MANAGING MEMBER)

RAND ADVISORS HOLDING CORP.,
a Delaware corporation

By: _____
Mark Patrick, Director and President

EXHIBIT A

THE CLASS A MEMBERS AND INTERESTS

The sole Class A Member shall be RAND ADVISORS HOLDING CORP., a Delaware corporation, and it shall own the Percentage Interest set forth on Exhibit "B" hereto. In addition to such other rights as a Member described in this Agreement, the holders of record of the Class A Interests shall have no additional rights.

EXHIBIT B

The Members

Members and Addresses	Date Admitted	Class A Interest	Percentage Interest
RAND ADVISORS HOLDING CORP. 2101 Cedar Springs Road Suite 1200, Dallas, TX 75201 Attn: Mark Patrick	8/1/2022	100%	100%

EXHIBIT 12

MEMBER AND MANAGER CONSENT
OF
RAND PE FUND MANAGEMENT, LLC

October 13, 2022

THE UNDERSIGNED sole member (the "**Member**") and sole manager (the "**Manager**") of RAND PE FUND MANAGEMENT, LLC, a Delaware limited liability company (the "**General Partner**"), the general partner of RAND PE FUND I, L.P., a Delaware limited partnership (the "**Partnership**"), acting pursuant to the Delaware Limited Liability Company Act and the Amended and Restated Company Agreement of the General Partner, do hereby consent and agree, to take the following actions and adopt the following resolutions:

RESOLVED, that pursuant to that certain Membership Interest Purchase Agreement dated as August 1, 2022 (the "Purchase Agreement"), by and among JOHN HONIS (as "Seller"), the Sole Member (as "Buyer"), and CLO HOLDCO, LTD. a Cayman limited company (as "Guarantor"), the Sole Member purchased from Seller all of the issued and outstanding membership interests in the General Partner;

RESOLVED, that the following individual be, and hereby is, duly appointed and qualified to hold the office(s) set forth next to his name, and shall serve in such capacity until such person's successor(s) shall have been duly appointed and qualified, or until his earlier resignation or removal (each, an "**Officer**"):

Name	**Office**
Mark Patrick	Sole Manager, President, Secretary and Treasurer

RESOLVED, that the certificate of formation of the Company and other Company documents/agreements on file and/or executed by the Member may reflect management by members, and not management by managers. As a result, if such is the case and the certificate is not amended to reflect management by managers, the Company and all governing documents shall be interpreted in such a manner that all references therein to a Manager, or Managers or Board of Managers, shall be referring to the managing member(s), and as of the Effective Date hereof, since the sole member is Rand Advisors Holding Corp., a Delaware corporation, all decisions shall be made by such member, with Mark Patrick as the Director and President;

RESOLVED FURTHER, that any individual previously appointed as a manager and/or as an officer of the General Partner but not named above is hereby removed from the office of the General Partner;

RESOLVED FURTHER, that each Officer and manager is hereby, authorized, empowered and directed, in the name and on behalf of the General Partner and the Partnership, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions;

RESOLVED FURTHER, that that all authorized acts and deeds of the Officers, managers and agents on behalf of the General Partner and/or the Partnership prior to the date

hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the acts and deeds of the General Partner and/or the Partnership; and

RESOLVED FURTHER, that the foregoing authorization shall remain in effect until further written notice from the General Partner.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned Sole Member and Sole Manager have executed this Consent to be effective as of the date first set forth above.

MEMBER

RAND ADVISORS HOLDING CORP.,
a Delaware corporation



By:_____
Mark Patrick, Sole Director

SOLE MANAGER



_____
Mark Patrick

EXHIBIT 13

LIMITED LIABILITY COMPANY AGREEMENT
OF
RAND ADVISORS, LLC

This LIMITED LIABILITY COMPANY AGREEMENT (this "***Agreement***") is entered into as of the 28th day of August, 2013 by John Honis, an individual (the "***Member***"), as the sole member of Rand Advisors, LLC, a limited liability company formed pursuant to the Delaware Limited Liability Company Act (the "***Act***"). The Member desires to form a limited liability company pursuant to the Act upon the following terms and conditions:

ARTICLE 1
NAME, REGISTERED AGENT AND OFFICES

The name of the Company is Rand Advisors, LLC (the "***Company***"). Its registered office in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, in the County of New Castle. The name of its registered agent at such address is The Corporation Trust Company. The principal office of the Company shall be located at such place within or without the State of Delaware, and the Company shall maintain such records as the Member shall determine from time to time. The Company may have such other offices as the Member may designate from time to time.

ARTICLE 2
BUSINESS, PURPOSE, AND TERM OF COMPANY

Section 2.1 Purposes. The purpose of the Company shall be to do all such things for which limited liability companies may be formed under the Act.

Section 2.2 Term. The term of the Company shall commence on the date the Certificate of Formation is filed with the Delaware Secretary of State in accordance with the provisions *of* the Act and shall continue on a perpetual basis unless dissolved pursuant to ARTICLE 6 of this Agreement. Matt McGraner is hereby designed as an "Authorized Person" for the purpose of executing the Certificate of Formation and arranging for its filing.

Section 2.3 Powers. In addition to the purpose set forth in Section 2.1 above, the Company shall have the power:

(a) to conduct its business, carry on its operations and have and exercise the powers granted to a limited liability company by the Act in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(b) to acquire, by purchase, mortgage, lease, contribution of property or otherwise, and to own, hold, operate, maintain, finance, improve, lease, sell, convey, mortgage, transfer or dispose of any real or personal property that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(c) to enter into, perform and carry out contracts of any kind, including, without limitation, contracts with the Member or any person or other entity that directly or indirectly controls, is controlled by, or is under common control with the Member, or any agent of the Company necessary to, in connection with, convenient to, or incidental to, the accomplishment of the purpose of the Company;

(d) to lend or borrow money and to invest its funds;

(e) to sue and be sued;

(f) to appoint employees and fix their compensation;

(g) to indemnify any person; and

(h) to guarantee obligations of an affiliate or subsidiary.

ARTICLE 3
CAPITAL CONTRIBUTIONS

Section 3.1 Capital Contribution by Members. Upon the formation of the Company, the Member shall not be required to make a Capital Contribution. Capital Contributions shall be made from time to time as the Member shall determine.

Section 3.2 Capital Accounts. A Capital Account shall be maintained for the Member to which shall be credited (i) the Member's Capital Contributions, if any and (ii) all Company revenues. The Capital Account shall be debited with (i) all costs, expenses, and losses of the Company and (ii) the amount of any distributions (including return of capital) made to the Member. No interest shall be paid on the Member's Capital Account.

ARTICLE 4
ALLOCATIONS OF PROFITS AND DISTRIBUTIONS

Section 4.1 Allocation of Profits and Losses. All profits and losses of the Company shall be allocated to the Member.

Section 4.2 Allocation of Distributions. All distributions of cash or other assets of the Company shall be made to the Member when and as determined by the Member.

ARTICLE 5
MANAGEMENT OF THE COMPANY

Section 5.1 General. The Member shall be the Managing Member and shall be responsible for the management of the Company. The Managing Member shall have the right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company.

Section 5.2 Delegation of Powers of Managing Member. The Managing Member shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to delegate the management, control, administration, and operation of the business and affairs of the Company or the custody of the Company's assets for all purposes stated in this Agreement. Such delegation shall be as provided in such documentation as the Managing Member shall determine. Any such delegation shall not cause the Managing Member to cease to be the Managing Member.

Section 5.3 Officers. The Managing Member may appoint individuals with or without such titles as it may elect, including the titles of President, Vice President, Treasurer, and Secretary, to act on behalf of the Company with such power and authority as the Managing Member may delegate in writing to any such persons.

Section 5.4 Powers of Managing Member. The Managing Member shall have the right, power and authority, in the management of the business and affairs of the Company, to do or cause to be done any and all acts deemed by the Managing Member to be necessary or appropriate to effectuate the business, purposes and objectives of the Company at the expense of the Company, including but not limited to the execution of all documents or instruments in all matters necessary, desirable, convenient or incidental to the purpose of the Company or the making of investments of Company funds.

Section 5.5 Reliance by Third Parties. Any person or entity dealing with the Company may rely on a certificate signed by the Managing Member as to:

(a) the identity of the Managing Member;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Managing Member or are in any matter germane to the affairs of the Company;

(c) the persons who or entities which are authorized to execute and deliver any instrument or document of or on behalf of the Company; or

(d) any act or failure to act by the Company or as to any other matter whatsoever involving the Company.

Section 5.6 Actions Requiring Member Approval. Notwithstanding any other provision of this Agreement, the written consent of the Member shall be required to approve the following matters:

(a) the dissolution or winding up of the Company;

(b) the merger or consolidation of the Company;

(c) the sale, transfer, contribution, exchange, mortgage, pledge, encumbrance, lease or other disposition or transfer of all or substantially all of the assets of the Company;

(d) the declaration of any distributions by the Company; and

(e) amendments to this Agreement.

ARTICLE 6
DISSOLUTION

The Company shall be dissolved, and shall terminate and wind up its affairs, upon the first to occur of the following:

(a) the determination by the Member to dissolve the Company; or

(b) the entry of a decree of judicial dissolution pursuant to Section 18.802 of the Act.

ARTICLE 7
GOVERNING LAW AND JURISDICTION

This Agreement, including its existence, validity, construction and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to principles of conflicts of laws).

ARTICLE 8
INDEMNIFICATION

Section 8.1 Indemnification and Liability.

(a) To the maximum extent permitted by applicable law, the Managing Member shall not be liable to the Company or any other third party (i) for mistakes of judgment, (ii) for any act or omission suffered or taken by it, or (iii) for losses due to any such mistakes, action or inaction.

(b) Except as may be restricted by applicable law, the Managing Member shall not be liable for and the Company shall indemnify the Managing Member against, and agrees to hold the Managing Member harmless from, all liabilities and claims (including reasonable attorney's fees and expenses in defending against such liabilities and claims) against the Managing Member, arising from the Managing Member's performance of its duties in conformance with the terms of this Agreement.

(c) The Managing Member may consult with legal counsel or accountants selected by the Managing Member and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and in accordance with the written opinion or advice of any such counsel or accountants (provided such counsel or accountants have been selected with reasonable care) shall be fully protected and justified with respect to the action or omission so suffered or taken.

(d) The Company shall also have the power to indemnify the Trustee to the extent, and under the conditions and terms, as may be provided in the Trust Agreement.

ARTICLE 9
ASSIGNMENT OF INTERESTS

The Member may Transfer all or part of its Membership Interest in the Company.

ARTICLE 10
WINDING UP AND DISTRIBUTION OF ASSETS

Section 10.1 Winding Up. If the Company is dissolved, the Member shall wind up the affairs of the Company.

Section 10.2 Distribution of Assets. Upon the winding up of the Company, subject to the provisions of the Act, the Member shall pay or make reasonable provision to pay all claims and obligations of the Company, including all costs and expenses of the liquidation and all contingent, conditional or unmatured claims and obligations that are known to the Member but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefore. Any remaining assets shall be distributed to the Member.

ARTICLE 11
DEFINITIONS

As used herein, the following terms shall have the indicated definitions.

"***Act***" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 et seq., as may be amended from time to time.

"***Agreement***" means this Limited Liability Company Agreement, as may be amended from time to time.

"***Capital Account***" means a separate accounting maintained with respect to the Member pursuant to section 3.2 of this Agreement.

"***Capital Contribution***" means the contribution by the Member to capital of the Company.

"***Certificate of Formation***" means the Certificate of Formation of the Company as filed with the Delaware Secretary of State on August 27, 2013, as the same may be amended from time to time.

"***Company***" means Rand Advisors, LLC, a Delaware limited liability company.

"***Managing Member***" means the Member.

"***Member***" means John Honis, an individual.

"***Membership Interest***" means the ownership interest of the Member in the Company, including any and all rights, powers, benefits, duties or obligations conferred or imposed on the Member under the Act or this Agreement.

"***Transfer***" means a transfer, assignment, pledge or encumbrance relative to any Membership Interest in the Company.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Member has executed and delivered this Agreement the day and year first above written.

SOLE MEMBER

JOHN HONIS

EXHIBIT 14

AMENDED AND RESTATED COMPANY AGREEMENT

of

RAND ADVISORS, LLC

A Delaware Limited Liability Company

AMENDED AND RESTATED COMPANY AGREEMENT

of

RAND ADVISORS, LLC

A Delaware Limited Liability Company

This AMENDED AND RESTATED COMPANY AGREEMENT (collectively, the "Agreement," which shall include all amendments and exhibits hereto) dated effective as of the 1st day of August, 2022 (the "Effective Date"), are entered into by and among those Persons executing the signature page hereto as the Members of RAND ADVISORS, LLC, a Delaware limited liability company (the "Company"). All capitalized terms not defined in the instance of first usage shall have the respective meanings associated with such terms in Section 1.04 below.

ARTICLE I

INTRODUCTION

1.01 Formation of Limited Liability Company The Company was formed by the filing of the Certificate of Formation (the "Certificate") with the Secretary of State of Delaware on the August 27, 2013. The Company's business shall be conducted under the name "RAND ADVISORS, LLC" until such time as the Members shall hereafter designate otherwise and file amendments to the Certificate in accordance with applicable law. This Agreement amends and replaces, in its entirety, all prior governing agreements for the Company, including but not limited to that certain Amended and Restated Limited Liability Company Agreement dated March 1, 2016, and any and all amendments thereto.

This Agreement is subject to, and governed by, the Delaware laws governing limited liability companies (the "DELAWARE LAWS") and the Certificate. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the DELAWARE LAWS or the provisions of the Certificate, such provisions of the DELAWARE LAWS or the Certificate, as the case may be, will be controlling.

1.02 Registered Office and Agent The registered office and registered agent of the Company initially shall be as set forth in the Certificate and may be changed from time to time by the appropriate filing by the Company in the office of the Secretary of State of Delaware.

1.03 Other Offices The Company may also have offices at such other places, both within and without the State of Delaware, as the Board of Managers may from time to time determine or the business of the Company may require.

1.04 Defined Terms The terms used in this Agreement with their initial letter capitalized shall, unless the context requires otherwise, have the meanings specified in this Section 1.04. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires. When used in this Agreement, the following terms shall have the meanings set forth below:

(a) "DELAWARE LAWS" shall mean the Delaware laws governing limited liability companies, as the same may be amended from time to time.

(b) "Affiliate" shall mean, as to any Person, any Person controlled by, controlling, or under common control with such Person, and, in the case of a Person who is an individual, a member of the family of such individual consisting of a spouse, sibling, in-law, lineal descendant, or ancestor (including by adoption). For purposes of this definition, "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, alone or in concert with others, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise, and no Person shall be deemed in control of another solely by virtue of being a director, officer or holder of voting securities of any entity. A Person shall be presumed to control any partnership of which such Person is a general partner.

(c) "Bankruptcy" shall mean, and a Member shall be deemed a "Bankrupt Member," upon (i) the entry of a decree or order for relief against the Member by a court of competent jurisdiction in any involuntary case brought against the Member under any Debtor Relief Laws; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other similar agent under applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property; (iii) the ordering of the winding up or liquidation of the Member's affairs; (iv) the filing of a petition in any involuntary bankruptcy case, which petition remains undismissed for a period of 180 days or which is not dismissed or suspended pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement by the Member of a voluntary case under any applicable Debtor Relief Law now or hereafter in effect; (vi) the consent by the Member to the entry of an order for relief in an involuntary case under any such law or to the appointment of or the taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or other similar agent under any applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property; or (vii) the making by a Member of any general assignment for the benefit of its creditors.

(d) "Book Depreciation" for any asset shall mean for any Fiscal Year or other period an amount that bears the same ratio to the Book Value of that asset at the beginning of such Fiscal Year or other period as the federal income tax depreciation, amortization, or other cost recovery deduction allowable for that asset for such year or other period bears to the adjusted tax basis of that asset at the beginning of such year or other period. If the federal income tax depreciation, amortization, or other cost recovery deduction allowable for any asset for such year or other period is zero, then Book Depreciation for that asset shall be determined with reference to such beginning Book Value using any reasonable method selected by the Board of Managers.

(e) "Book Value" shall mean for any asset the asset's adjusted tax basis, except as follows:

(i) the initial Book Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Board of Managers;

(ii) the Book Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board of Managers, as of one of the following times: (1) on the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; (2) on the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an Interest in the Company if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (3) on the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations;

(iii) the Book Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution;

(iv) the Book Values of Company assets shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations and Section 8.02(d) hereof; provided, however, that Book Values shall not be adjusted pursuant to this Section 1.04(e)(iv) to the extent the Board of Managers determines that an adjustment pursuant to Section 1.04(e)(ii) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 1.04(e)(iv); and

(v) if the Book Value of an asset has been determined or adjusted pursuant to Section 1.04(e)(i),1.04(e)(ii), or 1.04(e)(iv) hereof, such Book Value shall thereafter be adjusted by the Book Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(f) "Capital Contribution" shall mean the total value of cash and Book Value (except as otherwise herein provided) of property contributed and agreed to be contributed to the Company by each Member, as shown in Exhibit A, attached hereto and incorporated herein for all purposes, as the same may be amended from time to time. Any reference in this Agreement to the Capital Contribution of a then Member shall include a Capital Contribution previously made by any

prior Member for the interest of such then Member, reduced by any distribution to such Member in return of its capital as contemplated herein.

(g) “Class A Interest” shall refer to the Interest of a Class A Member in the Profits, Losses, Distributable Cash, and assets upon liquidation of the Company as described in this Agreement.

(h) “Class A Members” shall mean those Persons listed on Exhibit A and designated as “Class A Members.” The Class A Members shall have such additional rights as a Member as are specifically described and granted in Exhibit A, as amended from time to time.

(i) Intentionally Blank.

(j) Intentionally Blank.

(k) "Code" shall mean the Internal Revenue Code of 1986, as amended. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding law.

(l) "Company" shall refer to the limited liability company created by virtue of the Certificate and this Agreement and any successor in interest.

(m) “Debtor Relief Laws” shall mean any federal or state bankruptcy, insolvency, or similar laws generally affecting the rights of creditors and the relief of debtors now or hereafter in effect.

(n) Intentionally Blank.

(o) "Distributable Cash" of the Company shall mean all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions by the Members and cash funds obtained from loans to the Company) after (i) payment of all operating expenses of the Company as of such time; (ii) provision for payment of all outstanding and unpaid current obligations of the Company as of such time; and (iii) provision for a working cash reserve in accordance with Section 8.07 below.

(p) “Fiscal Year” shall mean the calendar year.

(q) “Former Member” shall mean a member that causes a Dissolution Event.

(r) "Interest" in the Company shall mean the entire ownership interest of a Member in the Company at any particular time, including such Member’s Capital Account, allocable share of Profits, Losses, and Distributable Cash, and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

(s) Intentionally Blank

(t) "Manager" shall mean an individual elected to the Board of Managers of the Company pursuant to Sections 3.02 and 3.04 below.

(u) "Member(s)" shall mean all Members admitted to the Company hereafter as Members who shall consent to the terms hereof and shall be admitted pursuant to the provisions hereof. The names, business or residence addresses, Capital Contributions, Percentage Interest, and class of Interest of the Members shall be set forth on Exhibit B, attached hereto and incorporated herein by reference. Reference to a "Member" shall be to any one of the Members.

(v) "Percentage Interest" of a Member shall mean the percentage of such Member set forth opposite the name of such Member under the column "Percentage Interest" in Exhibit B, as such percentage may be adjusted from time to time pursuant to the terms hereof.

(w) “Person” shall mean any individual, corporation, partnership, limited liability company or partnership, association, organization, trust, estate, or other entity.

(x) "Pro Rata Part" shall mean the percentage expression of a fraction the numerator of which is a Member's respective Percentage Interest and the denominator of which is the aggregate Percentage Interests of all Members involved in the respective transaction or having a respective right or option.

(y) "Profits" and "Losses" shall mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.04(y) shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B), or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.04(y), shall be subtracted from such taxable income or loss;

(iii) if the Book Value of any Company asset is adjusted pursuant to Section 1.04(e)(ii) or Section 1.04(e)(iii), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(iv) gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(v) in lieu of the deduction for depreciation, cost recovery, or amortization taken into account in computing such taxable income or loss, there shall be taken into account Book Depreciation; and

(vi) notwithstanding any other provision of this Section 1.04(y), any items that are specially allocated pursuant to Section 8.02 or Section 8.03 shall not be taken into account in computing Profits and Losses.

(z) "Regulatory Allocations" shall mean the special allocations of items of income, gain, loss, and deduction, if any, set forth in Section 8.02 hereof.

(aa) "Transfer" or "Transferred" shall mean the sale, assignment, conveyance, gift, bequest, devise, transfer under the rules of intestate succession, pledge, mortgage, or other encumbrance. In addition, the term "Transfer" or "Transferred" shall mean an "ownership change" of a Member as defined in Section 382(g) of the Code in effect as of the Effective Date, except that the term "Member" shall be substituted for "shareholder" wherever it appears.

(bb) "Treasury Regulations" shall mean regulations issued by the Department of the Treasury interpreting the Code.

(cc) "Unanimous Consent" shall mean the written consent of all of the then Members of the Company.

ARTICLE II

MEMBERS AND MEMBERSHIP INTERESTS

2.01 Members. The Members of the Company shall be those Persons listed on Exhibit B. Except as otherwise may be provided in Exhibit A or Exhibit B, and except as provided in Section 7.05 below, a Person may be admitted as a Member to the Company only upon the affirmative vote of the Managers, plus one or more Members whose Percentage Interests total more than fifty percent (50%); provided, however, that no Person will be recognized as a Member of the

Company until he/she shall have executed this Agreement, or a counterpart hereto, and agrees to be bound by all of the terms and conditions hereof.

2.02 Annual Meetings An annual meeting of the Members of the Company shall be held during each calendar year on such date and at such time as shall be designated from time to time by the Board of Managers and stated in the notice of the meeting, and if a legal holiday, then on the next business day following, at the time specified in the notice of the meeting. At such meeting, the Members shall elect Managers and transact such other business as may properly be brought before the meeting.

2.03 Special Meetings A special meeting of the Members may be called at any time by the President, the Board of Managers, or one or more Members whose Percentage Interests total at least 10%. Only such business shall be transacted at a special meeting as may be stated or indicated in the notice of such meeting.

2.04 Place of Meetings The annual meeting of Members may be held at any place within or without the State of Delaware as may be designated by the Board of Managers. Special meetings of Members may be held at any place within or without the State of Delaware as may be designated by the person or persons calling such special meeting as provided in Section 2.03. If no place for a meeting is designated, it shall be held at the registered office of the Company.

2.05 Notice. Written or printed notice stating the place, day, and hour of each meeting of Members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 days or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the person calling the meeting, to each Member of record entitled to vote at such meeting.

2.06 Voting List At least 10 days before each meeting of Members, the Secretary shall prepare a complete list of Members entitled to vote at such meeting, arranged in alphabetical order, including the address of each Member and the number of voting Interests held by each Member. For a period of 10 days prior to such meeting, such list shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member during usual business hours. Such list shall be produced at such meeting, and at all times during such meeting shall be subject to inspection by any Member. The membership interest transfer books shall be prima facie evidence as to who are the Members entitled to examine such list or membership interest transfer books.

2.07 Voting of Interests. Interests held by the Company in treasury, Interests owned by a Person the majority of the voting interests of which are owned or controlled by the Company, and Interests held by the Company in a fiduciary capacity shall not be Interests entitled to vote or to be counted in determining the total number of outstanding Interests of the Company. Interests held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without transfer of such Interests into his or her name so long as such Interests form a part of the estate and are in the possession of the estate being served by him or her. Interests standing in the name of a trustee may be voted by him or her, either in person or by proxy, only after the Interests have been transferred into his or her name as trustee. Interests standing in the name of a receiver may be voted by such receiver, and Interests held by or under the control of a receiver may be voted by such receiver without transfer of such Interests into his or her name if authority to do so is contained in the court order by which such receiver was appointed. Interests standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent, or proxy as the bylaws of such corporation may provide or, in the absence of such provision, as the board of directors of such corporation may by resolution determine. A Member whose Interests are pledged shall be entitled to vote such Interests until they have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote such Interests.

2.08 Quorum. The presence in person or by proxy of one or more Members whose Percentage Interests total more than fifty percent (50%) shall constitute a quorum at any meeting of Members, except as otherwise provided by law, the Certificate, or this Agreement. At any reconvening of an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that could have been transacted at the original meeting if a quorum had been present or represented.

2.09 Vote; Withdrawal of Quorum. If a quorum is present in person or represented by proxy at any meeting, except as otherwise may be provided in Exhibit A or Exhibit B, the vote of one or more Members whose Percentage Interests total more than fifty percent (50%) of all Members, whether or not they are present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one on which, by express provision of law, the

Certificate, or this Agreement a different vote is required, in which event such express provision shall govern and control the decision of such question. The Members present at a duly convened meeting may continue to transact business until adjournment, notwithstanding any withdrawal of Members that may leave less than a quorum remaining.

2.10 Method of Voting; Proxies. Except as otherwise may be provided in Exhibit A or Exhibit B, each Member shall be entitled to that number of votes on each matter submitted to the Members for their vote equal to such Member's Percentage Interest multiplied by 100. At any meeting of Members, every Member having the right to vote may vote either in person or by a proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Each such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. If no date is stated on a proxy, such proxy shall be presumed to have been executed on the date of the meeting at which it is to be voted. Each proxy shall be revocable unless expressly provided therein to be irrevocable or unless otherwise made irrevocable by law.

2.11 Closing of Transfer Books; Record Date . For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or any reconvening thereof, or entitled to receive payment of any distribution, or in order to make a determination of Members for any other proper purpose, the Board of Managers may provide that the membership interest transfer books of the Company shall be closed for a stated period but not to exceed in any event 50 days. If the membership interest transfer books are closed for the purpose of determining Members entitled to notice of, or to vote at, a meeting of Members, such books shall be closed for at least 10 days immediately preceding such meeting. In lieu of closing the membership interest transfer books, the Board of Managers may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than 50 days and not less than 10 days prior to the date on which the particular action requiring such determination of Members is to be taken. If the membership interest transfer books are not closed and if no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or entitled to receive payment of a distribution, the date on which the notice of the meeting is to be mailed or the date on which the resolution of the Board of Managers declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members.

2.12 Presiding Officials at Meetings The President shall preside at, and the Secretary shall prepare minutes of, each meeting of Members, and in the absence of either such officer, his other duties shall be performed by some person appointed at the meeting.

ARTICLE III

MANAGERS

3.01 Management. The business and affairs of the Company shall be managed EXCLUSIVELY by the Board of Managers. Subject to the restrictions imposed by law, the Certificate, or this Agreement, the Board of Managers may exercise all the powers of the Company.

3.02 Number; Election; Term; Qualification. The first Board of Managers shall consist of the number of Managers named in the Certificate and or otherwise in the Company documents. Thereafter, except as otherwise may be restricted by this Agreement, the number of Managers that shall constitute the entire Board of Managers shall be determined by resolution of the Board of Managers at any meeting thereof or by the Members at any meeting thereof, but shall never be less than one (1). At each annual meeting of Members, Managers shall be elected to hold office until the next annual meeting of Members and until their successors are elected and qualified. No Manager need be a Member, a resident of the State of Delaware, or a citizen of the United States.

3.03 Removal Except as otherwise may be provided by the Members, at any meeting of Members called expressly for that purpose, any Manager or the entire Board of Managers may be removed, with or without cause, by a vote of one or more Members whose Percentage Interests total more than fifty percent (50%).

3.04 Change in Number; Vacancies. No decrease in the number of Managers constituting the entire Board of Managers shall have the effect of shortening the term of any incumbent Manager. In the case of any increase in the number of Managers, or in the case of the death, retirement, resignation, or removal of a Manager, the vacancies to be filled by such increase or death, retirement, resignation, or removal may be filled by (a) the Board of Managers for a term of office

continuing only until the next election of one or more Managers by the Members; or (b) the Members at any annual or special meeting of the Members. A Manager elected to fill a vacancy shall be elected to serve for the unexpired term of his predecessor in office.

3.05 Place of Meetings . The Board of Managers may hold its meetings in such place or places, including by telephonic or other electronic method of communication, within or without the State of Delaware as the Board of Managers may from time to time determine.

3.06 First Meeting . Each newly elected Board of Managers may hold its first meeting, if a quorum is present, for the purpose of organization and the transaction of business immediately after and at the same place as the annual meeting of Members, and no notice of such meeting shall be necessary.

3.07 Regular Meetings . Regular meetings of the Board of Managers may be held without notice at such times and places, including by telephonic or other electronic method of communication, as may be designated from time to time by resolution of the Board of Managers and communicated to all Managers. Regular meetings of the Board of Managers may be held when and if needed, and no more than one regular meeting of the Board of Managers shall be required in any calendar year.

3.08 Special Meetings . A special meeting of the Board of Managers shall be held whenever called by any Manager at such time and place, including by telephonic or other electronic method of communication, as such Manager shall designate in the notice of such special meeting. The Manager calling any special meeting shall cause notice of such special meeting to be given to each Manager at least 24 hours before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Managers need be specified in the notice or waiver of notice of any special meeting.

3.09 Quorum; Vote . At all meetings of the Board of Managers, a majority of the Managers fixed in the manner provided in this Agreement shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting, a majority of the Managers present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The vote of a majority of the Managers present at a meeting at which a quorum is in attendance shall be the act of the Board of Managers, unless the vote of a different number is required by law, the Certificate, or this Agreement.

3.10 Procedure; Minutes . At meetings of the Board of Managers, business shall be transacted in such order as the Board of Managers may determine from time to time. The Board of Managers shall appoint at each meeting a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting that shall be delivered to the Secretary of the Company for placement in the minute book of the Company.

3.11 Presumption of Assent . A Manager of the Company who is present at any meeting of the Board of Managers at which action on any matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof, or shall forward any dissent by certified or registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

3.12 Compensation . Except as otherwise may be restricted in this Agreement, Managers, in their capacity as Managers, may receive, by resolution of the Board of Managers, a stated salary or a fixed sum and expenses of attendance, if any, for attending meetings of the Board of Managers. No Manager shall be precluded from serving the Company in any other capacity or receiving compensation therefor.

ARTICLE IV

COMMITTEES

4.01 Designation . The Board of Managers may, by a resolution adopted by a majority of the entire Board of Managers, designate executive and other committees.

4.02 Number; Qualification; Term . Each committee shall consist of one or more Managers appointed by resolution adopted by a majority of the entire Board of Managers. The number of committee members may be increased or decreased from time to time by resolution adopted by a majority of the entire Board of Managers. Each committee member shall serve as such until the expiration of his term as a Manager or his earlier resignation, unless sooner removed as a committee member or as a Manager.

4.03 Authority . The executive committee, to the extent provided in the resolution establishing such committee, shall have and may exercise all of the authority of the Board of Managers in the management of the business and affairs of the Company. Each other committee, to the extent expressly provided for in the resolution establishing such committee, shall have and may exercise all of the authority of the Board of Managers in such other matters and affairs concerning the Company. However, no committee shall have the authority of the Board of Managers in reference to any of the following:

(a) amending the Certificate;

(b) approving a plan of merger or consolidation;

(c) recommending to the Members the sale, lease, or exchange of all or substantially all of the property and assets of the Company other than in the usual and regular course of its business;

(d) recommending to the Members a voluntary dissolution of the Company or a liquidation thereof;

(e) filling vacancies in, or removing members of, the Board of Managers or of any committee thereof;

(f) filling any vacancy to be filled by reason of an increase in the number of Managers;

(g) electing or removing officers or committee members;

(h) fixing the compensation of any committee member; or

(i) altering or repealing any resolution of the Board of Managers that, by its term, provides that it shall not be amendable or repealable.

4.04 Committee Changes . The Board of Managers shall have the power at any time to fill vacancies in, to change the Membership of, and to discharge any committee. However, a committee member may be removed by the Board of Managers only if, in the judgment of the Board of Managers, the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4.05 Regular Meetings . Regular meetings of any committee may be held without notice at such times and places, including by telephonic or other electronic methods of communication, as may be designated from time to time by resolution of the committee and communicated to all committee members.

4.06 Special Meetings . A special meeting of any committee may be held whenever called by any committee member at such time and place, including by telephonic or other electronic methods of communication, as such committee member shall designate in the notice of such special meeting. The committee member calling any special meeting shall cause notice of such special meeting to be given to each committee member at least 24 hours before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of any committee need be specified in the notice or waiver of notice of any special meeting.

4.07 Quorum; Majority Vote . At all meetings of any committee, a majority of the number of committee members designated by the Board of Managers shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting of any committee, a majority of the committee members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The vote of a majority of the committee members present at any meeting at which a quorum is in attendance shall be the act of a committee, unless the vote of a different number is required by law, the Certificate, or this Agreement.

4.08 Minutes . Each committee shall cause minutes of its proceedings to be prepared and shall report the same to the Board of Managers. The minutes of the proceedings of each committee shall be delivered to the Secretary of the Company for placement in the minute books of the Company.

4.09 Compensation . Except as otherwise may be restricted in this Agreement, committee members may, by resolution of the Board of Managers, be allowed a stated salary or a fixed sum and expenses of attendance, if any, for attending any committee meetings.

4.10 Responsibility . The designation of any committee and the delegation of authority to it shall not operate to relieve the Board of Managers or any Manager of any responsibility imposed upon it or such Manager by law.

ARTICLE V

GENERAL PROVISIONS RELATING TO MEETINGS

5.01 Notice Whenever by law, the Certificate, or this Agreement notice is required to be given to any Member, Manager, or committee member and no provision is made as to how such notice shall be given, it shall be construed to mean that notice may be given either (a) in person; (b) in writing, by mail; (c) by telegram, telex, cable, telecopy or facsimile transmission, or similar means; or (d) by any other method permitted by law. Any notice required or permitted to be given hereunder (other than personal notice) shall be addressed to such Member, Manager, or committee member at his address as it appears on the books on the Company or, in the case of a Member, on the membership interest transfer records of the Company or at such other place as such Member, Manager, or committee member is known to be at the time notice is mailed or transmitted. Any notice required or permitted to be given by mail shall be deemed to be delivered and given at the time when such notice is deposited in the United States mail, postage prepaid. Any notice required or permitted to be given by telegram, telex, cable, telecopy or facsimile transmission, or similar means shall be deemed to be delivered and given at the time transmitted.

5.02 Waiver of Notice . Whenever by law, the Certificate, or this Agreement any notice is required to be given to any Member, Manager, or committee member of the Company, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time notice should have been given, shall be equivalent to the giving of such notice. Attendance of a Manager or Member at a meeting shall constitute a waiver of notice of such meeting, except where a Manager or Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.03 Telephone and Similar Meetings Members, Managers, or committee members may participate in and hold a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.04 Action Without Meeting . Any action that may be taken, or is required by law, the Certificate, or this Agreement to be taken at a meeting of the Members, the Board of Managers, or a committee thereof may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the Members owning the required Percentage Interests of all Members (as set forth herein for the respective action or decision), a majority of the Managers or committee members, as the case may be, entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a vote of such Members, Managers, or committee members, as the case may be, and may be stated as such in any document filed with the Secretary of State of Delaware or in any certificate or other document delivered to any person. The consent may be in one or more counterparts so long as each Member, Manager, or committee member signs one of the counterparts. The signed consent shall be placed in the minute books of the Company.

ARTICLE VI

OFFICERS AND OTHER AGENTS

6.01 Number; Titles; Election; Term The Company shall have a president, one or more vice presidents (and, in the case of each vice president, with such descriptive title, if any, as the Board of Managers shall determine), a secretary, a treasurer, and such officers and agents as the Board of Managers may deem desirable. The Board of Managers shall elect a president, vice president, treasurer, and secretary at its first meeting at which a quorum shall be present after the annual meeting of Members or whenever a vacancy exists. The Board of Managers then, or from time to time, may also elect or appoint one or more other officers or agents as it shall deem advisable. Except as otherwise may be provided by separate agreement, each officer and agent shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified. Unless otherwise provided in the resolution of the Board of Managers electing or appointing an officer or agent, his term of office shall extend to and expire at the meeting of the Board of Managers following the next annual meeting of Members or, if earlier, at his death, resignation, or removal. Any two or more offices may be held by the same person. No officer or agent need be a Member, a Manager, a resident of the State of Delaware, or a citizen of the United States.

6.02 Removal . Any officer or agent elected or appointed by the Board of Managers may be removed by a majority of the Board of Managers only if, in the judgment of a majority of the Board of Managers, the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

6.03 Vacancies . Any vacancy occurring in any office of the Company may be filled by the Board of Managers.

6.04 Authority . Officers shall have such authority and perform such duties in the management of the Company as are provided in this Agreement or as may be determined by resolution of the Board of Managers not inconsistent with this Agreement.

6.05 Compensation . Except as otherwise may be provided by separate agreement, the compensation, if any, of officers or any salaried employee shall be fixed, increased, or decreased from time to time by the Board of Managers, provided, however, that the Board of Managers may by resolution delegate to any one or more officers of the Company the authority to fix such compensation.

6.06 Chairman of the Board . The Chairman of the Board, if any, shall be an officer of the Company and, subject to the direction of the Board of Managers, shall perform such executive, supervisory, and management functions and duties as may be assigned to him from time to time by the Board of Managers.

6.07 President, CEO and COO . The Board of Managers may designate and appoint a President, CEO and/or COO, with rights, duties and responsibilities established by the Board of Managers.

6.08 Vice Presidents . Each Vice President shall have such powers and duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President and (in the order as designated by the Board of Managers, or in the absence of such designation, as determined by the length of time each has held the office of Vice President continuously) shall exercise the powers of the President during that officer's absence or inability to act.

6.09 Treasurer . The Treasurer shall have custody of the Company's funds and securities, shall keep full and accurate accounts of receipts and disbursements, and shall deposit all moneys and valuable effects in the name and to the credit of the Company in such depository or depositories as may be designated by the Board of Managers. The Treasurer shall audit all payrolls and vouchers of the Company; shall receive, audit, and consolidate all operating and financial statements of the Company and its various departments; shall supervise the accounting and auditing practices of the Company; and shall have charge of matters relating to taxation. Additionally, the Treasurer shall have the power to endorse for deposit, collection, or otherwise all checks, drafts, notes, bills of exchange, and other commercial paper payable to the Company and to give proper receipts and discharges for all payments to the Company. The Treasurer shall perform such other duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President.

6.10 Assistant Treasurers . Each Assistant Treasurer shall perform such duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President. The Assistant Treasurers (in the order as designated by the Board of Managers or, in the absence of such designation, as determined by the length of time each has held the office of Assistant Treasurer continuously) shall exercise the powers of the Treasurer.

6.11 Secretary . The Secretary shall maintain minutes of all meetings of the Board of Managers, of any committee, and of the Members, or consents in lieu of such minutes, in the Company's minute books, and shall cause notice of such meetings to be given when requested by any person authorized to call such meetings. The Secretary may sign with the President, in the name of the Company, all contracts of the Company and affix the seal of the Company thereto. The Secretary shall have charge of the certificate books, membership interest transfer books, and other documents as the Board of Managers may direct, all of which shall at all reasonable times be open to inspection by any Manager at the office of the Company during normal business hours. The Secretary shall perform such other duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President.

6.12 Assistant Secretaries . Each Assistant Secretary shall perform such duties as may be prescribed from time to time by the Board of Managers or as may be delegated from time to time by the President. The Assistant Secretaries (in the order designated by the Board of Managers or, in the absence of such designation, as determined by the length of time each has held the office of Assistant Secretary continuously) shall exercise the powers of the Secretary during that officer's absence or inability to act.

ARTICLE VII

CAPITALIZATION AND CAPITAL ACCOUNTS

7.01 Capital Contributions . The Capital Contributions of the Members, as set forth in the books and records of the Company, shall be paid or transferred to the Company in cash and/or property on the terms and in the manner specified by the Board of Managers. No Member shall be entitled to make any additional Capital Contributions except as provided in Section 7.02 and 7.03 below.

7.02 Additional Capital Contributions . If the Board of Managers determine that additional capital is required for the purposes of the Company, as set forth herein, the Board of Managers may notify the Members of the need for such additional capital and shall state the specific purposes for which the call for such additional capital is being made. Thereupon, all Members shall have the right (but not the obligation) to make additional Capital Contributions in cash and/or property to the Company aggregating the amount of additional capital needed by the Company in the proportion of their respective Percentage Interests in the Company at the time notice is given. The Board of Managers shall use the additional capital so contributed solely for the purposes stated in the notice to the Members.

7.03 Failure to Make Additional Capital Contributions . If any Member chooses not to contribute its share of the additional capital needed by the Company within 14 days after notice is given to the Members of the need for such additional capital (a “Non-Contributing Member”), then the other Members shall be entitled (but not obligated) to contribute the share of such Non-Contributing Member (such Members being referred to as “Contributing Members”) of the additional capital needed pro rata according to such Contributing Members' Percentage Interests at such time or such other share as otherwise agreed upon by the Contributing Members.

7.04 Effect of Failure to Make Additional Capital Contributions . In the event of a Non-Contributing Member, the Percentage Interests of all of the Members shall be recomputed on the following basis: Each Member's Percentage Interest immediately following the computation shall equal the percentage expression of a fraction, the numerator of which is the total Capital Contributions of such Member plus the additional Capital Contribution, if any, made by such Member pursuant to Sections 7.02 and 7.03 above, and the denominator of which is the total Capital Contributions of all of the Members plus the additional Capital Contributions made by all of the Members pursuant to Sections 7.02 and 7.03 above.

7.05 Recapitalization by Admission of Additional Members . If additional capital is required for the purposes of the Company as set forth herein and the Board of Managers is unable to finance such capital needs by borrowing the required amounts or through notice to the existing Members of the necessity for additional Capital Contributions as provided in Section 7.02 and 7.03 above, the Board of Managers shall have the right to admit additional Members to the Company, upon receiving the other approvals required herein. Following the admission of one or more new Members, the Percentage Interest of each Member, including the newly admitted Member(s), shall be computed as follows: Each Member's Percentage Interest immediately following the computation shall equal the percentage expression of a fraction, the numerator of which is the total Capital Contributions of such Member and the denominator of which is the total Capital Contributions of all of the Members, including the newly admitted Members.

7.06 Maintenance of Capital Accounts . The Company shall maintain for each Member a separate Capital Account in accordance with this Section 7.06, which shall control the allocation of Profits and Losses and the division of assets upon liquidation of the Company as provided in Section 12.01. Each Capital Account shall be maintained in accordance with the following provisions:

(a) a Member's Capital Account shall initially be zero and shall be increased by the cash amount or Book Value of any property contributed by such Member to the Company pursuant to this Agreement, such Member's allocable share of Profits and any items in the nature of income or gains that are specially allocated to such Member pursuant to Section 8.02 and Section 8.03 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member;

(b) such Capital Account shall be decreased by the cash amount or Book Value of any property distributed to such Member pursuant to this Agreement, such Member's allocable share of Losses and any items in the nature of deductions or losses that are specially allocated to such Member pursuant to Section 8.02 and Section 8.03 hereof, and the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by such Member to the Company; and

(c) if all or a portion of an Interest in the Company is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest, provided, however, that if the Transfer causes a termination of the Company under Code Section 708(b)(1)(B), the assets of the Company shall be deemed to have been distributed to the Members (including the transferee of the Interest) in liquidation of the Company and recontributed by such Members and transferees in reconstitution of the Company. Such deemed liquidation and reconstitution shall not cause the Company to be dissolved and/or reconstituted for purposes other than maintenance of the Capital Accounts and federal income tax.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 1.704-1(b) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Board of Managers determines that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases to the Capital Accounts, are computed in order to comply with such Treasury Regulations, the Board of Managers may authorize such modifications, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Sections 8.06 and 12.01 hereof.

7.07 Negative Capital Accounts . If any Member has a deficit balance in its Capital Account, such Member shall have no obligation to restore such negative balance or to make any Capital Contribution to the Company by reason thereof, and such negative balance shall not be considered an asset of the Company or of any Member.

7.08 Interest . No interest shall be paid by the Company on Capital Contributions or on balances in Capital Accounts.

7.09 No Withdrawal . No Member shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Company, except as provided in Sections 11.02 and 12.01 of this Agreement.

7.10 Loans From Members . Loans by a Member to the Company shall not be considered Capital Contributions.

ARTICLE VIII

ALLOCATIONS AND DISTRIBUTIONS

8.01 Allocation of Profits and Losses.

(a) Allocation of Profits. Except as provided on any Exhibit hereto, after giving effect to the allocations set forth in Section 8.02 and Section 8.03, and after giving effect to all distributions of cash or property (other than cash or

property to be distributed pursuant to Section 12.01), Profits for any Fiscal Year shall be allocated to the Members in the following manner:

(i) first, to each Member with a negative balance in its Capital Account, pro rata in accordance with such negative Capital Account balances, until such negative Capital Account balances have been eliminated;

(ii) next, to all of the Members in accordance with their respective Percentage Interests.

(b) Allocation of Losses. Except as provided in any Exhibit hereto, after giving effect to the allocations set forth in Section 8.02 and Section 8.03, Losses for any Fiscal Year shall be allocated to the Members in the following manner:

(i) to all of the Members in accordance with their respective Percentage Interests.

8.02 Special Allocations of Profits and Losses .

(a) Minimum Gain Chargeback–Company Nonrecourse Liabilities. If there is a net decrease in Company minimum gain during any Fiscal Year, certain items of income and gain shall be allocated (on a gross basis) to the Members in the amounts and manner described in Treasury Regulations Section 1.704-2(f) and (j)(2)(i) and (ii), subject to the exemptions set forth in Treasury Regulations Section 1.704-2(f)(2), (3), (4) and (5). This Section 8.02(a) is intended to comply with the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(f) relating to Company nonrecourse liabilities, as defined in Treasury Regulations Section 1.704-2(b)(3) and shall be so interpreted.

(b) Minimum Gain Chargeback–Member Nonrecourse Debt. If there is a net decrease in Member minimum gain during any Fiscal Year, certain items of income and gain shall be allocated (on a gross basis) as quickly as possible to those Members who had a share of the Member minimum gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5) in the amounts and manner described in Treasury Regulations Sections 1.704-2(i)(4), (j)(2)(ii), and (j)(2)(iii). This Section 8.02(b) is intended to comply with the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(i)(4) relating to Member nonrecourse debt, as defined in Treasury Regulations Section 1.704-2(b)(4) and shall be so interpreted.

(c) Qualified Income Offset. If, after applying Section 8.02(a) and Section 8.02(b), any Member has an adjusted Capital Account deficit, items of Company income and gain shall be specially allocated (on a gross basis) to each such Member in an amount and manner sufficient to eliminate the adjusted Capital Account deficit of such Member as quickly as possible. This Section 8.02(c) is intended to comply with the "qualified income offset" requirement set for the in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be so interpreted.

(d) Optional Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken in to account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(f) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions shall be allocated pursuant to Treasury Regulations Section 1.704-2(b)(4) and (i)(1) to the Member who bears the economic risk of loss with respect to such deductions.

8.03 Curative Allocations . The Regulatory Allocations are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 8.03. Therefore, notwithstanding any other provisions of this Article VIII, the Board of Managers shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 8.01(a) and Section 8.01(b) hereof.

8.04 Tax Allocations: Code Section 704(c) .

(a) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value.

(b) If the Book Value of any Company asset is adjusted pursuant to Section 1.04(e)(ii) hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

(c) Any elections or other decisions relating to such allocation shall be made by the Board of Managers. Allocations pursuant to this Section 8.04 are solely for purposes of federal, state, and local taxes and shall not affect or in any way be taken into account in computing any Member's Capital Account, or share of Profits, Losses, and other items or distribution pursuant to any provision of this Agreement.

8.05 Other Allocation Rules .

(a) For purposes of determining the Profits, Losses, or any other item allocable to any period, Profits, Losses, and any such other item shall be determined on a daily, monthly, or other basis, as determined by the Board of Managers using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

(b) For federal income tax purposes, every item of income, gain, loss, and deduction shall be allocated among the Members in accordance with the allocations under Sections 8.01, 8.02, 8.03, and 8.04.

(c) The Members are aware of the income tax consequences of the allocations made by this Article VIII and hereby agree to be bound by the provisions of this Article VIII in reporting their shares of Company income and loss for income tax purposes.

(d) It is intended that the allocations in Sections 8.01, 8.02, 8.03, and 8.04 hereof effect an allocation for federal income tax purposes consistent with Section 704 of the Code and comply with any limitations or restrictions therein.

8.06 Distributions of Distributable Cash . Except as otherwise may be provided in this Agreement, the Board of Managers shall cause the Company to make distributions of Distributable Cash at such intervals and in such amounts as the Board of Managers in its sole discretion shall determine by majority vote. Distributions of Distributable Cash shall be made to all of the Members in accordance with their respective Percentage Interests.

8.07 Working Cash Reserve . The Board of Managers may from time to time establish a working cash reserve for capital expenditures, unforeseen contingencies, projected operating deficits, and other corporate purposes and may increase or decrease the amount in such reserve in its business judgment.

ARTICLE IX

CERTIFICATES

9.01 Certificated and Uncertificated Interests. The membership interests of the Company may be either certificated interests or uncertificated interests. As used herein, the term "certificated interests" means Interests represented by instruments in bearer or registered form, and the term "uncertificated interests" means Interests not represented by such instruments and the transfers of which are registered upon books maintained for that purpose by or on behalf of the Company.

9.02 Certificates for Certificated Interests . The certificates for certificated interests shall be in such form as shall be approved by the Board of Managers in conformity with law. The certificates shall be consecutively numbered, shall be entered as they are issued in the books of the Company or in the records of the Company's designated transfer agent, if any, and shall state the Member's name, the class of Interests, the Percentage Interest that such Interest represents, and such

other matters as may be required by law. The certificates shall be signed by the President or any Vice President and also by the Secretary, an Assistant Secretary, or any other officer, and may be sealed with the seal of the Company or a facsimile thereof. If any certificate is countersigned by a transfer agent or registered by a registrar, either of which is other than the Company itself or an employee of the Company, the signatures of the foregoing officers may be a facsimile.

9.03 Lost, Stolen, or Destroyed Certificates . The Company shall issue a new certificate in place of any certificate for Interests previously issued if the registered owner of the certificate satisfies the following requirements:

(a) the registered owner makes proof in affidavit form that a previously issued certificate for Interests has been lost, destroyed, or stolen;

(b) the registered owner requests the issuance of a new certificate before the Company has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(c) the registered owner gives a bond in such form, and with such surety or sureties, with fixed or open penalty, as the Board of Managers may direct, in its discretion, to indemnify the Company (and its transfer agent and registrar, if any) against any claim that may be made on account of the alleged loss, destruction, or theft of the certificate; and

(d) the registered owner satisfies any other reasonable requirements imposed by the Board of Managers.

When a certificate has been lost, destroyed, or stolen and the Member of record fails to notify the Company within a reasonable time after he has notice of it, if the Company registers a transfer of the Interests represented by the certificate before receiving such notification, the Member of record is precluded from making any claim against the Company for the transfer or for a new certificate.

9.04 Transfer of Interests . Interests of the Company shall be transferable only on the books of the Company by the Members thereof in person or by their duly authorized attorneys or legal representatives, but only as authorized in this COMPANY AGREEMENT. With respect to certificated interests, upon surrender to the Company or the transfer agent of the Company of a certificate representing Interests duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, the Company or its agent shall issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction upon its books. With respect to uncertificated interests, upon delivery to the Company of proper evidence of succession, assignment, or authority to transfer, the Company or its agent shall record the transaction upon its books.

9.05 Registered Members . The Company shall be entitled to treat the Member of record as the Member in fact of any Interests and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Interests on the part of any other Person, whether or not it shall have actual or other notice thereof, except as otherwise provided by law.

9.06 Legends . If the Company is authorized to issue Interests of more than one class, each certificate representing Interests issued by the Company (a) shall conspicuously set forth on the face or back of the certificate a full statement of all of the designations, preferences, limitations, and relative rights of the Interests of each class authorized to be issued; or (b) shall conspicuously state on the face or back of the certificate that (i) such a statement is set forth in the Certificate on file in the office of the Secretary of State or in this Agreement; and (ii) the Company will furnish a copy of such statements to the record holder of the certificate without charge on written request to the Company at its principal place of business or registered office.

If the Company issues any Interests that are not registered under the Securities Act of 1933, the transfer of any such interests shall be restricted in accordance with an appropriate legend.

In the event any restriction on the transfer, or registration of the transfer, of Interests shall be imposed or agreed to by the Company, each certificate representing Interests so restricted (a) shall conspicuously set forth a full or summary statement of the restriction on the face of the certificate; (b) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate; or (c) shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document and (i) that the Company will furnish to the record holder of the certificate without charge upon written request to the Company at its principal place of business or registered

office a copy of the specified document; or (ii) if such document is one required or permitted by law to be and has been filed, that such specified document is on file in the office of the Secretary of State and contains a full statement of such restriction.

ARTICLE X

ACCOUNTING AND RECORDS

10.01 Records and Accounting . The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods elected to be followed by the Company for federal income tax purposes. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business.

10.02 Access to Accounting Records . All books and records of the Company shall be maintained at any office of the Company or at the Company's principal place of business, and each Member owning a Percentage Interest of at least ten percent (10%), and his duly authorized representative, shall have access to them at such office of the Company and the right to inspect and copy them at reasonable times.

10.03 Annual and Tax Information . The Company shall deliver to each Member within 90 days after the end of each Fiscal Year all information necessary for the preparation of such Member's federal income tax return. The Company shall prepare, within 120 days after the end of each Fiscal Year, a financial report of the Company for such Fiscal Year, containing a statement of the year then ended, a statement of sources and applications of funds, and a statement of reconciliation of the Capital Accounts of the Members.

10.04 Accounting Decisions . All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Board of Managers. The Members may rely upon the advice of their accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

10.05 Federal Income Tax Elections . The Company may make all elections for federal income tax purposes, including, but not limited to, the following:

(a) to the extent permitted by applicable law and regulations, the election to use an accelerated depreciation method on any depreciable unit of the assets of the Company; and

(b) in case of a transfer of all or part of the Interest of any Member, the election pursuant to Section 734, 743, and 754 of the Code, as amended (or corresponding provisions of future law) to adjust the basis of the assets of the Company.

ARTICLE XI

CHANGES IN MEMBERS

The provisions of this Article XI are subject to, and may be superceded by, one or more separate agreements entered into by and among one or more Members. The provisions of this Article XI shall continue to control with respect to matters not covered by, or Members not parties to, such agreement(s).

11.01 Intentionally Blank .

11.02 Transfer and Assignment of Members' Interest . Except as approved by the Manager, plus a Member or Members owning a Percentage Interest greater than fifty percent (50%), no Member shall be entitled to Transfer any part of its Interest in the Company. The Company and, if applicable, the remaining Members shall be entitled to match the terms of the proposed Transfer, with consideration being only set forth in traditional monetary terms. If the Company and the remaining Members fail to match the proposed Transfer with regard to the purchase of the entire Interest, or portion thereof, the Member proposing to make the Transfer may move forward with the proposed Transfer. Transfers in violation of this Section 11.02 shall be effective only to the extent set forth in Section 11.05(b) hereof.

11.03 Further Restrictions on Transfer . No Member shall Transfer any part of his Interest in the Company: (i) without registration under applicable federal and state securities laws, or unless he delivers an opinion of counsel satisfactory to the Company that registration under such laws is not required; or (ii) if the Interest to be sold or exchanged, when added to the total of all other Interests to be sold or exchanged in the preceding 12 consecutive months prior thereto, would result in the termination of the Company under Code Section 708.

11.04 Substitute Members . A transferee shall have the right to become a substitute Member if (a) the requirements of Section 11.02 and 11.03 hereof are met; (b) such person executes an instrument satisfactory to the remaining Members accepting and adopting the terms and provisions of this Agreement; and (c) such person pays any reasonable expenses in connection with his or her admission as a Member.

11.05 Effect of Transfer .

(a) Any permitted Transfer of all or any portion of a Member's Interest in the Company will take effect on the first day of the month following receipt by the Members of written notice of Transfer. Any transferee of an Interest in the Company shall take subject to the restrictions on Transfer imposed by this Agreement.

(b) Upon any Transfer of a Member's Interest in the Company in violation of this Agreement, and if such Member's Interest is not purchased pursuant to Section 11.01, the transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, but such transferee shall be entitled to receive only the allocable share of Profits, Losses, Distributive Cash, and other items to which the transferor of such Interest in the Company would otherwise be entitled.

11.06 No Dissolution or Withdrawal: Advanced Consent . Upon the occurrence of a Dissolution Event with regard to a respective Member, all remaining Members shall be deemed to automatically consent to the continuation of the business of the Company. By executing this Agreement, however, all Members hereby consent that they shall not voluntarily cause a Dissolution Event or demand the return of Member's capital. If any Member shall breach the agreement represented by this Section 11.06, the agreement of such breaching Member shall not be specifically performable, but shall be actionable for damages, and shall be deemed an offer of the Interest of such breaching Member for sale pursuant hereto. The parties agree that a reasonable approximation of the damage that the Company shall experience due to breach hereof is 20% of the value of the breaching Member's Interest, or as otherwise set forth herein (whichever is greater), which shall be deducted from any payments to such Member upon dissolution or purchase of such Member's Interest hereunder. The value of the breaching Member's Interest shall be determined pursuant to Section 11.01, to which value the said discount may then be applied in determining payments due to the breaching Member pursuant to the deemed offer of sale occurring under this Section 11.06.

ARTICLE XII

TERMINATION

12.01 Termination of the Company .

(a) The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following events:

(i) a determination by the Managers, plus the Unanimous Consent of the Members that the Company should be dissolved;

(ii) a sale of all or substantially all of the assets of the Company;

(iii) the expiration of the Company’s term as stated in its Certificate; or

(iv) at such earlier time as provided by applicable law.

(b) In settling accounts of the Company after dissolution, the liabilities of the Company shall be entitled to payment and the assets of the Company remaining thereafter shall be distributed to the Members in the following order, all as required by the DELAWARE LAWS:

(i) those to creditors, in the order of priority as provided by law, except those to Members of the Company on account of their Capital Contributions;

(ii) to the Members, pro rata, in accordance with the positive balances, if any, in their Capital Accounts; and

(iii) to the Members in proportion to their relative Percentage Interests.

ARTICLE XIII

INDEMNIFICATION

13.01 Indemnification of Members, Managers, and Other Persons .

(a) To the greatest extent not inconsistent with the laws and public policies of Delaware, the Company shall indemnify any Member, Manager, or officer of the Company made a party to any proceeding because such individual is or was a Member, Manager, or officer of the Company (an "Indemnitee"), as a matter of right, against all liability incurred by such individual in connection with any proceeding; provided that it shall be determined in the specific case in accordance with subsection (d) of this Section 13.01 that indemnification of such individual is permissible in the circumstances because the individual has met the standard of conduct for indemnification set forth in subsection (c) of this Section 13.01. The Company shall advance, pay for, or reimburse the reasonable expenses incurred by an Indemnitee in connection with any such proceeding in advance of final disposition thereof if (i) the Indemnitee furnishes the Company a written affirmation of the Indemnitee's good faith belief that he or she has met the standard of conduct for indemnification described in subsection (c) of this Section 13.01; (ii) the Indemnitee furnishes the Company a written undertaking, executed personally or on such Indemnitee's behalf, to repay the advance if it is ultimately determined that such individual did not meet such standard of conduct; and (iii) a determination is made in accordance with subsection (d) that based upon facts then known to those making the determination, indemnification would not be precluded under this Section 13.01. The undertaking described in subsection (a)(ii) above must be a general obligation of the Indemnitee, subject to such reasonable limitations as the Company may permit, but need not be secured and may be accepted without reference to financial ability to make repayment. The Company shall indemnify an Indemnitee who is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without the requirement of a determination as set forth in subsection (c) of this Section 13.01. Upon demand by an Indemnitee for indemnification or advancement of expenses, as the case may be, the Company shall expeditiously determine whether the Indemnitee is entitled thereto in accordance with this Section 13.01. The indemnification and advancement of expenses provided for under this Section 13.01 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Section 13.01.

(b) The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Member, Manager, or officer of the Company.

(c) Indemnification is permissible under this Section 13.01 only if (i) the Indemnitee conducted himself in good faith; (ii) he or she reasonably believed that his conduct was in, or at least not opposed to, the Company's best interest; (iii) in the case of any criminal proceeding, he or she had no reasonable cause to believe his conduct was unlawful; and (iv) such Indemnitee is not adjudged in any such proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Indemnitee did not meet the standard of conduct described in this subsection (c).

(d) A determination as to whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

(i) by the Board of Managers or by a majority vote consisting of Members not at the time parties to the proceeding; or

(ii) by special legal counsel selected by the Members in the manner prescribed in subsection (d)(i) above.

(e) An Indemnitee of the Company who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice the court considers necessary, may order indemnification if it determines:

(i) in a proceeding in which the Indemnitee is wholly successful, on the merits or otherwise, the Indemnitee is entitled to indemnification under this Section 13.01, in which case the court shall order the Company to pay the Indemnitee his or her reasonable expenses incurred to obtain such court ordered indemnification; or

(ii) the Indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Indemnitee met the standard of conduct set forth in subsection (c) of this Section 13.01.

(f) Indemnification shall also be provided for an Indemnitee's conduct with respect to an employee benefit plan if the individual reasonably believed his or her conduct to be in the interests of the participants in and beneficiaries of plan.

(g) Nothing contained in this Section 13.01 shall limit or preclude the exercise or be deemed exclusive of any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any individual who is or was a Member, Manager, or officer of the Company or is or was serving at the Company's request as a director, officer, partner, manager, trustee, employee, or agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not. Nothing contained in this Section 13.01 shall limit the ability of the Company to otherwise indemnify or advance expenses to any individual. It is the intent of this Section 13.01 to provide indemnification to Indemnitees to the fullest extent now or hereafter permitted by the law consistent with the terms and conditions of this Section 13.01. Indemnification shall be provided in accordance with this Section 13.01 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

(h) For purposes of this Section 13.01:

(i) The term "expenses" includes all direct and indirect costs (including, without limitation, counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or establishing or enforcing a right to indemnification under this Section 13.01, applicable law, or otherwise.

(ii) The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(iii) The term "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(iv) The term "proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(v) The Company may purchase and maintain insurance for its benefit, the benefit of any individual who is entitled to indemnification under this Section 13.01, or both, against any liability asserted against or incurred by such individual in any capacity or arising out of such individual's service with the Company, whether or not the Company would have the power to indemnify such individual against such liability.

ARTICLE XIV

MISCELLANEOUS

14.01 Complete Agreement . This Agreement, the Certificate, and all other organizational documents signed by all of the Members constitute the complete and exclusive statement of agreement among the Members with respect to the matters herein. This Agreement and the Certificate replace and supersede all prior agreements by and among the Members or any of them, and no representation, statement, or condition or warranty not contained in this Agreement or the Certificate will be binding on the Members or have any force or effect whatsoever.

14.02 Governing Law . This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Delaware.

14.03 Binding Effect . Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective distributes, successors, and assigns.

14.04 Terms . Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require. Any reference to the DELAWARE LAWS, the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

14.05 Headings . All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

14.06 Severability . If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

14.07 Multiple Counterparts . This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof hereof it will be necessary to produce only one copy hereof signed by the party to be charged.

14.08 Additional Documents and Acts . Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

14.09 No Third-Party Beneficiary . This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

14.10 References to this Agreement . Numbered or lettered articles, sections, and subsections herein contained refer to articles, sections, and subsections of this Agreement unless otherwise expressly stated.

14.11 Notices . Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement must be in writing and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member at the address specified in Exhibit B hereto. Any Member or the Company may, at any time by giving five days' prior written notice to the other Members and the Company, designate any other address in substitution of the foregoing address to which such notice will be given.

14.12 Amendments . Except as otherwise may be provided in this Agreement, all amendments to this Agreement must be approved by the Managers, plus one or more Members whose aggregate Percentage Interests total more than fifty percent (50%).

14.13 Title to Company Property . Legal title to all property of the Company will be held and conveyed in the name of the Company.

14.14 Reliance on Authority of Person Signing Agreement . In the event that a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual; or (b) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

14.15 S-Corp Election. In the event the Company elects to be treated as a S-Corporation for federal tax purposes, the provisions in this Company Agreement addressing tax treatment shall be automatically amended and modified as required in order to pertain to a S-corporation.

14.16 Company Indemnification. In the event any Member is personally liable for any debt or obligations associated with a Company asset, then the Company agrees to indemnify such Member for any such debt or obligation in excess of his or her proportionate amount of such debt or obligation that he/she is required to pay or perform, as measured by the Percentage Interest of the Members, except as otherwise agreed by the Members.

14.17 Management by Members. The Certificate of the Company and other Company documents/agreements on file and/or executed by the Member may reflect management by members, and not management by managers. As a result, if such is the case and the Certificate is not amended to reflect management by managers, this Agreement shall be interpreted in such a manner that all references herein to a Manager, or Managers or Board of Managers, shall be referring to the managing member(s), and as of the Effective Date hereof, since the sole member is Rand Advisors Holding Corp., a Delaware corporation, all decisions shall be made by such member, with Mark Patrick as the Director and President.

IN WITNESS WHEREOF, the Members have executed this Agreement to be effective as of the date first written above.

THE MEMBER (OR MANAGING MEMBER)

RAND ADVISORS HOLDING CORP.,
a Delaware corporation

By: _____
Mark Patrick, Director and President

EXHIBIT A

THE CLASS A MEMBERS AND INTERESTS

The sole Class A Member shall be RAND ADVISORS HOLDING CORP., a Delaware corporation, and it shall own the Percentage Interest set forth on Exhibit "B" hereto. In addition to such other rights as a Member described in this Agreement, the holders of record of the Class A Interests shall have no additional rights.

EXHIBIT B

The Members

Members and Addresses	Date Admitted	Class A Interest	Percentage Interest
RAND ADVISORS HOLDING CORP. 2101 Cedar Springs Road Suite 1200, Dallas, TX 75201 Attn: Mark Patrick	8/1/2022	100%	100%

EXHIBIT 15

MEMBER AND MANAGER CONSENT
OF
RAND ADVISORS, LLC

October 13, 2022

THE UNDERSIGNED sole member (the "**Member**") and sole manager (the "**Manager**") of RAND ADVISORS, LLC, a Delaware limited liability company (the "**Company**"), acting pursuant to the Delaware Limited Liability Company Act, do hereby consent and agree, to take the following actions and adopt the following resolutions:

RESOLVED, that pursuant to that certain Membership Interest Purchase Agreement dated as August 1, 2022 (the "Purchase Agreement"), by and among JOHN HONIS (as "Seller"), the Sole Member (as "Buyer"), and CLO HOLDCO, LTD. a Cayman limited company (as "Guarantor"), the Sole Member purchased from Seller all of the issued and outstanding membership interests in the Company;

RESOLVED, that the following individual be, and hereby is, duly appointed and qualified to hold the office(s) set forth next to his name, and shall serve in such capacity until such person's successor(s) shall have been duly appointed and qualified, or until his earlier resignation or removal (each, an "**Officer**"):

Name	**Office**
Mark Patrick	Sole Manager, President, Secretary and Treasurer

RESOLVED, that the certificate of formation of the Company and other Company documents/agreements on file and/or executed by the Member may reflect management by members, and not management by managers. As a result, if such is the case and the certificate is not amended to reflect management by managers, the Company and all governing documents shall be interpreted in such a manner that all references therein to a Manager, or Managers or Board of Managers, shall be referring to the managing member(s), and as of the Effective Date hereof, since the sole member is Rand Advisors Holding Corp., a Delaware corporation, all decisions shall be made by such member, with Mark Patrick as the Director and President;

RESOLVED FURTHER, that any individual previously appointed as a manager and/or as an officer of the Company but not named above is hereby removed from the office of the Company;

RESOLVED FURTHER, that each Officer and manager is hereby, authorized, empowered and directed, in the name and on behalf of the Company, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions;

RESOLVED FURTHER, that that all authorized acts and deeds of the Officers, managers and agents on behalf of the Company prior to the date hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the acts and deeds of the Company; and

RESOLVED FURTHER, that the foregoing authorization shall remain in effect until further written notice from the Company.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned Sole Member and Sole Manager have executed this Consent to be effective as of the date first set forth above.

SOLE MEMBER

RAND ADVISORS HOLDING CORP.,
a Delaware corporation



By:_____
Mark Patrick, Sole Director

SOLE MANAGER



_____
Mark Patrick

Signature Page

EXHIBIT 16

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

Primary Business Name: RAND ADVISORS, LLC	**CRD Number: 172839**
Annual Amendment - All Sections	**Rev. 10/2021**
3/17/2025 8:51:05 AM	

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 4.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you. If you are filing an *umbrella registration*, the information in Item 1 should be provided for the *filing adviser* only. General Instruction 5 provides information to assist you with filing an *umbrella registration*.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
RAND ADVISORS, LLC

B. (1) Name under which you primarily conduct your advisory business, if different from Item 1.A.
RAND ADVISORS, LLC

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

(2) If you are using this Form ADV to register more than one investment adviser under an *umbrella registration*, check this box ☐

If you check this box, complete a Schedule R for each relying adviser.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.(1)), enter the new name and specify whether the name change is of
☐ your legal name or ☐ your primary business name:

D. (1) If you are registered with the SEC as an investment adviser, your SEC file number: **801-80265**

(2) If you report to the SEC as an *exempt reporting adviser*, your SEC file number:

(3) If you have one or more Central Index Key numbers assigned by the SEC ("CIK Numbers"), all of your CIK numbers:

CIK Number
1660386
1660401

E. (1) If you have a number ("*CRD* Number") assigned by the *FINRA's CRD* system or by the IARD system, your *CRD* number: **172839**

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

(2) If you have additional *CRD* Numbers, your additional *CRD* numbers:

No Information Filed

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

Number and Street 1:		Number and Street 2:	
2101 CEDAR SPRINGS ROAD		SUITE 1200	
City:	State:	Country:	ZIP+4/Postal Code:
DALLAS	Texas	United States	75201

If this address is a private residence, check this box: ☐

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for SEC registration, if you are registered only with the SEC, or if you are reporting to the SEC as an exempt reporting adviser, list the largest twenty-five offices in terms of numbers of employees as of the end of your most recently completed fiscal year.

(2) Days of week that you normally conduct business at your *principal office and place of business:*
◉ Monday - Friday ○ Other:

Normal business hours at this location:
9AM-5PM

(3) Telephone number at this location:
214-908-8130

(4) Facsimile number at this location, if any:

214-550-4459

(5) What is the total number of offices, other than your *principal office and place of business*, from which you conduct investment advisory business as of the end of your most recently completed fiscal year?
0

G. Mailing address, if different from your *principal office and place of business* address:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

If this address is a private residence, check this box: ☐

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

	Yes	No
I. Do you have one or more websites or accounts on publicly available social media platforms (including, but not limited to, Twitter, Facebook and LinkedIn)?	◉	○

If "yes," list all firm website addresses and the address for each of the firm's accounts on publicly available social media platforms on Section 1.I. of Schedule D. If a website address serves as a portal through which to access other information you have published on the web, you may list the portal without listing addresses for all of the other information. You may need to list more than one portal address. Do not provide the addresses of websites or accounts on publicly available social media platforms where you do not control the content. Do not provide the individual electronic mail (e-mail) addresses of employees or the addresses of employee accounts on publicly available social media platforms.

J. Chief Compliance Officer

(1) Provide the name and contact information of your Chief Compliance Officer. If you are an *exempt reporting adviser*, you must provide the contact information for your Chief Compliance Officer, if you have one. If not, you must complete Item 1.K. below.

Name: Other titles, if any:

Telephone number: Facsimile number, if any:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

Electronic mail (e-mail) address, if Chief Compliance Officer has one:

(2) If your Chief Compliance Officer is compensated or employed by any *person* other than you, a *related person* or an investment company registered under the Investment Company Act of 1940 that you advise for providing chief compliance officer services to you, provide the *person's* name and IRS Employer Identification Number (if any):

Name:

IRS Employer Identification Number:

K. Additional Regulatory Contact Person: If a person other than the Chief Compliance Officer is authorized to receive information and respond to questions about this Form ADV, you may provide that information here.

Name: Titles:

Telephone number: Facsimile number, if any:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

Electronic mail (e-mail) address, if contact person has one:

	Yes	No
L. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?	◉	○

If "yes," complete Section 1.L. of Schedule D.

	Yes	No
M. Are you registered with a *foreign financial regulatory authority*?	○	◉

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.M. of Schedule D.

	Yes	No
N. Are you a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934?	○	◉

	Yes	No
O. Did you have $1 billion or more in assets on the last day of your most recent fiscal year?	○	◉

If yes, what is the approximate amount of your assets:

- ○ $1 billion to less than $10 billion
- ○ $10 billion to less than $50 billion
- ○ $50 billion or more

For purposes of Item 1.O. only, "assets" refers to your total assets, rather than the assets you manage on behalf of clients. Determine your total assets using the total assets shown on the balance sheet for your most recent fiscal year end.

P. Provide your *Legal Entity Identifier* if you have one:

A *legal entity identifier* is a unique number that companies use to identify each other in the financial marketplace. You may not have a *legal entity identifier*.

SECTION 1.B. Other Business Names

No Information Filed

SECTION 1.F. Other Offices

No Information Filed

SECTION 1.I. Website Addresses

List your website addresses, including addresses for accounts on publicly available social media platforms where you control the content (including, but not limited to, Twitter, Facebook and/or LinkedIn). You must complete a separate Schedule D Section 1.I. for each website or account on a publicly available social media platform.

Address of Website/Account on Publicly Available Social Media Platform: HTTP://WWW.RANDADVISORS.COM/

SECTION 1.L. Location of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D, Section 1.L. for each location.

Name of entity where books and records are kept:
HIGHGATE CONSULTING GROUP INC

Number and Street 1:		Number and Street 2:	
2101 CEDAR SPRINGS RD		SUITE 1200	
City:	State:	Country:	ZIP+4/Postal Code:
DALLAS	Texas	United States	75201

If this address is a private residence, check this box: ☐

Telephone Number:	Facsimile number, if any:
214-550-4459	

This is (check one):

- ○ one of your branch offices or affiliates.
- ◉ a third-party unaffiliated recordkeeper.
- ○ other.

Briefly describe the books and records kept at this location.
ALL BOOKS AND RECORDS OF THE ADVISER

SECTION 1.M. Registration with Foreign Financial Regulatory Authorities

Item 2 SEC Registration / Reporting

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2.A. only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration. If you are filing an *umbrella registration*, the information in Item 2 should be provided for the *filing adviser* only.

A. To register (or remain registered) with the SEC, you must check **at least one** of the Items 2.A.(1) through 2.A.(12), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A.(13). Part 1A Instruction 2 provides information to help you determine whether you may affirmatively respond to each of these items.

You (the adviser):

☑ (1) are a **large advisory firm** that either:

(a) has regulatory assets under management of $100 million (in U.S. dollars) or more; or

(b) has regulatory assets under management of $90 million (in U.S. dollars) or more at the time of filing its most recent *annual updating amendment* and is registered with the SEC;

☐ (2) are a **mid-sized advisory firm** that has regulatory assets under management of $25 million (in U.S. dollars) or more but less than $100 million (in U.S. dollars) and you are either:

(a) not required to be registered as an adviser with the *state securities authority* of the state where you maintain your *principal office and place of business*; or

(b) not subject to examination by the *state securities authority* of the state where you maintain your *principal office and place of business*;

*Click **HERE** for a list of states in which an investment adviser, if registered, would not be subject to examination by the state securities authority.*

(3) Reserved

☐ (4) have your *principal office and place of business* **outside the United States**;

☐ (5) are **an investment adviser (or subadviser) to an investment company** registered under the Investment Company Act of 1940;

☐ (6) are **an investment adviser to a company which has elected to be a business development company** pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn the election, and you have at least $25 million of regulatory assets under management;

☐ (7) are a **pension consultant** with respect to assets of plans having an aggregate value of at least $200,000,000 that qualifies for the exemption in rule 203A-2(a);

☐ (8) are a **related adviser** under rule 203A-2(b) that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

If you check this box, complete Section 2.A.(8) of Schedule D.

☐ (9) are an **adviser** relying on rule 203A-2(c) because you **expect to be eligible for SEC registration within 120 days;**

If you check this box, complete Section 2.A.(9) of Schedule D.

☐ (10) are a **multi-state adviser** that is required to register in 15 or more states and is relying on rule 203A-2(d);

If you check this box, complete Section 2.A.(10) of Schedule D.

☐ (11) are an **Internet adviser** relying on rule 203A-2(e);

If you check this box, complete Section 2.A.(11) of Schedule D.

☐ (12) have **received an SEC order** exempting you from the prohibition against registration with the SEC;

If you check this box, complete Section 2.A.(12) of Schedule D.

☐ (13) are **no longer eligible** to remain registered with the SEC.

State Securities Authority Notice Filings* and State Reporting by *Exempt Reporting Advisers

C. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. In addition, *exempt reporting advisers* may be required to provide *state securities authorities* with a copy of reports and any amendments they file with the SEC. If this is an initial application or report, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to direct your *notice filings* or reports to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* or reports from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

Jurisdictions

☐ AL	☐ IL	☐ NE	☐ SC
☐ AK	☐ IN	☐ NV	☐ SD
☐ AZ	☐ IA	☐ NH	☐ TN
☐ AR	☐ KS	☐ NJ	☑ TX

☐ CA	☐ KY	☐ NM	☐ UT
☐ CO	☐ LA	☐ NY	☐ VT
☐ CT	☐ ME	☐ NC	☐ VI
☐ DE	☐ MD	☐ ND	☐ VA
☐ DC	☐ MA	☐ OH	☐ WA
☐ FL	☐ MI	☐ OK	☐ WV
☐ GA	☐ MN	☐ OR	☐ WI
☐ GU	☐ MS	☐ PA	☐ WY
☐ HI	☐ MO	☐ PR	
☐ ID	☐ MT	☐ RI	

If you are amending your registration to stop your notice filings or reports from going to a state that currently receives them and you do not want to pay that state's notice filing or report filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

SECTION 2.A.(8) Related Adviser

If you are relying on the exemption in rule 203A-2(b) from the prohibition on registration because you *control*, are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser

CRD Number of Registered Investment Adviser

SEC Number of Registered Investment Adviser
-

SECTION 2.A.(9) Investment Adviser Expecting to be Eligible for Commission Registration within 120 Days

If you are relying on rule 203A-2(c), the exemption from the prohibition on registration available to an adviser that expects to be eligible for SEC registration within 120 days, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.

☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

SECTION 2.A.(10) Multi-State Adviser

If you are relying on rule 203A-2(d), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 15 or more states to register as an investment adviser with the *state securities authorities* in those states.

☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 15 states to register as an investment adviser with the *state securities authorities* of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 15 states to register as an investment adviser with the *state securities authorities* in those states.

SECTION 2.A.(11) Internet Adviser

If you are relying on rule 203A-2(e), the Internet adviser exemption from the prohibition on registration, you are required to make a representation about your eligibility for SEC registration. By checking the appropriate box, you will be deemed to have made the required representation.

If you are applying for registration as an investment adviser with the SEC or changing your existing Item 2 response regarding your eligibility for SEC registration, you must make this representation:

☐ I will provide investment advice on an ongoing basis to more than one client exclusively through an *operational interactive website*.

If you are filing an annual updating amendment to your existing registration and are continuing to rely on the Internet adviser exemption for SEC registration, you must make this representation:

☐ I have provided and will continue to provide investment advice on an ongoing basis to more than one client exclusively through an *operational interactive website*.

SECTION 2.A.(12) SEC Exemptive Order

If you are relying upon an SEC *order* exempting you from the prohibition on registration, provide the following information:

Application Number:

803-

Date of *order*:

Item 3 Form of Organization

If you are filing an *umbrella registration*, the information in Item 3 should be provided for the *filing adviser* only.

A. How are you organized?

- ○ Corporation
- ○ Sole Proprietorship
- ○ Limited Liability Partnership (LLP)
- ○ Partnership
- ◉ Limited Liability Company (LLC)
- ○ Limited Partnership (LP)
- ○ Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

B. In what month does your fiscal year end each year?
DECEMBER

C. Under the laws of what state or country are you organized?

State	Country
Delaware	United States

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

	Yes	No
A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser, including, for example, a change of your structure or legal status (e.g., form of organization or state of incorporation)?	○	◉

If "yes", complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

SECTION 4 Successions

No Information Filed

Item 5 Information About Your Advisory Business - Employees, Clients, and Compensation

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly formed advisers for completing this Item 5.

Employees

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Item 5.A. and Items 5.B.(1), (2), (3), (4), and (5). If an employee performs more than one function, you should count that employee in each of your responses to Items 5.B.(1), (2), (3), (4), and (5).

A. Approximately how many *employees* do you have? Include full- and part-time *employees* but do not include any clerical workers.

1

B. (1) Approximately how many of the *employees* reported in 5.A. perform investment advisory functions (including research)?

1

(2) Approximately how many of the *employees* reported in 5.A. are registered representatives of a broker-dealer?

0

(3) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives*?

0

(4) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives* for an investment adviser other than you?

0

(5) Approximately how many of the *employees* reported in 5.A. are licensed agents of an insurance company or agency?

0

(6) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?

0

In your response to Item 5.B.(6), do not count any of your employees and count a firm only once – do not count each of the firm's employees that solicit on your behalf.

Clients

In your responses to Items 5.C. and 5.D. do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

C. (1) To approximately how many *clients* for whom you do not have regulatory assets under management did you provide investment advisory services during your most recently completed fiscal year?

0

(2) Approximately what percentage of your *clients* are non-*United States persons*?

0%

D. *For purposes of this Item 5.D., the category "individuals" includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.*
The category "business development companies" consists of companies that have made an election pursuant to section 54 of the Investment Company Act of 1940. Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, do not answer (1)(d) or (3)(d) below.

Indicate the approximate number of your *clients* and amount of your total regulatory assets under management (reported in Item 5.F. below) attributable to each of the following type of *client*. If you have fewer than 5 *clients* in a particular category (other than (d), (e), and (f)) you may check Item 5.D.(2) rather than respond to Item 5.D.(1).

The aggregate amount of regulatory assets under management reported in Item 5.D.(3) should equal the total amount of regulatory assets under management reported in Item 5.F.(2)(c) below.

If a *client* fits into more than one category, select one category that most accurately represents the *client* to avoid double counting *clients* and assets. If you advise a registered investment company, business development company, or pooled investment vehicle, report those assets in categories (d), (e), and (f) as applicable.

Type of *Client*	**(1) Number of *Client(s)***	**(2) Fewer than 5 *Clients***	**(3) Amount of Regulatory Assets under Management**
(a) Individuals (other than *high net worth individuals*)	0	☐	$ 0
(b) *High net worth individuals*	0	☐	$ 0
(c) Banking or thrift institutions	0	☐	$ 0
(d) Investment companies	0		$ 0
(e) Business development companies	0		$ 0
(f) Pooled investment vehicles (other than investment companies and business development companies)	3		$ 153,660,847
(g) Pension and profit sharing plans (but not the plan participants or government pension plans)	0	☐	$ 0
(h) Charitable organizations	0	☐	$ 0
(i) State or municipal *government entities* (including government pension plans)	0	☐	$ 0
(j) Other investment advisers	0	☐	$ 0

(k) Insurance companies	0	☐	$ 0
(l) Sovereign wealth funds and foreign official institutions	0	☐	$ 0
(m) Corporations or other businesses not listed above	0	☐	$ 0
(n) Other:	0	☐	$ 0

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☑ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☐ (4) Fixed fees (other than subscription fees)
- ☐ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify):

Item 5 Information About Your Advisory Business - Regulatory Assets Under Management

Regulatory Assets Under Management

	Yes	No
F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios?	◉	○

(2) If yes, what is the amount of your regulatory assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) $ 153,660,847	(d) 80
Non-Discretionary:	(b) $ 0	(e) 0
Total:	(c) $ 153,660,847	(f) 80

Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management. You must follow these instructions carefully when completing this Item.

(3) What is the approximate amount of your total regulatory assets under management (reported in Item 5.F.(2)(c) above) attributable to *clients* who are non-*United States persons*?

$ 0

Item 5 Information About Your Advisory Business - Advisory Activities

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☐ (2) Portfolio management for individuals and/or small businesses
- ☐ (3) Portfolio management for investment companies (as well as "business development companies" that have made an election pursuant to section 54 of the Investment Company Act of 1940)
- ☑ (4) Portfolio management for pooled investment vehicles (other than investment companies)
- ☐ (5) Portfolio management for businesses (other than small businesses) or institutional *clients* (other than registered investment companies and other pooled investment vehicles)
- ☐ (6) Pension consulting services
- ☐ (7) Selection of other advisers (including *private fund* managers)
- ☐ (8) Publication of periodicals or newsletters
- ☐ (9) Security ratings or pricing services
- ☐ (10) Market timing services
- ☐ (11) Educational seminars/workshops
- ☐ (12) Other(specify):

Do not check Item 5.G.(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, including as a subadviser. If you check Item 5.G.(3), report the 811 or 814 number of the investment company or investment companies to which you provide advice in Section 5.G.(3) of Schedule D.

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

- ○ 0
- ○ 1 - 10
- ○ 11 - 25
- ○ 26 - 50
- ○ 51 - 100
- ○ 101 - 250
- ○ 251 - 500
- ○ More than 500

If more than 500, how many?
(round to the nearest 500)

In your responses to this Item 5.H., do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

		Yes	No
I.	(1) Do you participate in a *wrap fee program*?	○	◉

(2) If you participate in a *wrap fee program*, what is the amount of your regulatory assets under management attributable to acting as:

(a) *sponsor* to a *wrap fee program*
$

(b) portfolio manager for a *wrap fee program*?
$

(c) *sponsor* to and portfolio manager for the same *wrap fee program*?
$

If you report an amount in Item 5.I.(2)(c), do not report that amount in Item 5.I.(2)(a) or Item 5.I.(2)(b).

If you are a portfolio manager for a wrap fee program, list the names of the programs, their sponsors and related information in Section 5.I.(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check Item 5.I.(1) or enter any amounts in response to Item 5.I.(2).

		Yes	No
J.	(1) In response to Item 4.B. of Part 2A of Form ADV, do you indicate that you provide investment advice only with respect to limited types of investments?	○	◉
	(2) Do you report *client* assets in Item 4.E. of Part 2A that are computed using a different method than the method used to compute your regulatory assets under management?	○	◉

K. Separately Managed Account *Clients*

	Yes	No
(1) Do you have regulatory assets under management attributable to *clients* other than those listed in Item 5.D.(3)(d)-(f) (separately managed account *clients*)?	○	◉

If yes, complete Section 5.K.(1) of Schedule D.

(2) Do you engage in borrowing transactions on behalf of any of the separately managed account *clients* that you advise?	○	◉

If yes, complete Section 5.K.(2) of Schedule D.

(3) Do you engage in derivative transactions on behalf of any of the separately managed account *clients* that you advise?	○	◉

If yes, complete Section 5.K.(2) of Schedule D.

(4) After subtracting the amounts in Item 5.D.(3)(d)-(f) above from your total regulatory assets under management, does any custodian hold ten percent or more of this remaining amount of regulatory assets under management?	○	◉

If yes, complete Section 5.K.(3) of Schedule D for each custodian.

L. Marketing Activities

	Yes	No
(1) Do any of your *advertisements* include:		
(a) Performance results?	○	◉
(b) A reference to specific investment advice provided by you (as that phrase is used in rule 206(4)-1(a)(5))?	○	◉
(c) *Testimonials* (other than those that satisfy rule 206(4)-1(b)(4)(ii))?	○	◉
(d) *Endorsements* (other than those that satisfy rule 206(4)-1(b)(4)(ii))?	○	◉
(e) *Third-party ratings*?	○	◉
(2) If you answer "yes" to L(1)(c), (d), or (e) above, do you pay or otherwise provide cash or non-cash compensation, directly or indirectly, in connection with the use of *testimonials*, *endorsements*, or *third-party ratings*?	○	○
(3) Do any of your *advertisements* include *hypothetical performance* ?	○	◉

(4) Do any of your *advertisements* include *predecessor performance* ? ○ ◉

SECTION 5.G.(3) Advisers to Registered Investment Companies and Business Development Companies

No Information Filed

SECTION 5.I.(2) *Wrap Fee Programs*

No Information Filed

SECTION 5.K.(1) Separately Managed Accounts

After subtracting the amounts reported in Item 5.D.(3)(d)-(f) from your total regulatory assets under management, indicate the approximate percentage of this remaining amount attributable to each of the following categories of assets. If the remaining amount is at least $10 billion in regulatory assets under management, complete Question (a). If the remaining amount is less than $10 billion in regulatory assets under management, complete Question (b).

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment* . Mid-year is the date six months before the end of year date. Each column should add up to 100% and numbers should be rounded to the nearest percent.

Investments in derivatives, registered investment companies, business development companies, and pooled investment vehicles should be reported in those categories. Do not report those investments based on related or underlying portfolio assets. Cash equivalents include bank deposits, certificates of deposit, bankers' acceptances and similar bank instruments.

Some assets could be classified into more than one category or require discretion about which category applies. You may use your own internal methodologies and the conventions of your service providers in determining how to categorize assets, so long as the methodologies or conventions are consistently applied and consistent with information you report internally and to current and prospective clients. However, you should not double count assets, and your responses must be consistent with any instructions or other guidance relating to this Section.

(a)

Asset Type	Mid-year	End of year
(i) Exchange-Traded Equity Securities	%	%
(ii) Non Exchange-Traded Equity Securities	%	%
(iii) U.S. Government/Agency Bonds	%	%
(iv) U.S. State and Local Bonds	%	%
(v) *Sovereign Bonds*	%	%
(vi) Investment Grade Corporate Bonds	%	%
(vii) Non-Investment Grade Corporate Bonds	%	%
(viii) Derivatives	%	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	%	%
(xi) Cash and Cash Equivalents	%	%
(xii) Other	%	%

Generally describe any assets included in "Other"

(b)

Asset Type	End of year
(i) Exchange-Traded Equity Securities	%
(ii) Non Exchange-Traded Equity Securities	%
(iii) U.S. Government/Agency Bonds	%
(iv) U.S. State and Local Bonds	%
(v) *Sovereign Bonds*	%
(vi) Investment Grade Corporate Bonds	%
(vii) Non-Investment Grade Corporate Bonds	%
(viii) Derivatives	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development	%

	Companies)	
(xi)	Cash and Cash Equivalents	%
(xii)	Other	%

Generally describe any assets included in "Other"

SECTION 5.K.(2) Separately Managed Accounts - Use of *Borrowings* and Derivatives

☑ **No information is required to be reported in this Section 5.K.(2) per the instructions of this Section 5.K.(2)**

If your regulatory assets under management attributable to separately managed accounts are at least $10 billion, you should complete Question (a). If your regulatory assets under management attributable to separately managed accounts are at least $500 million but less than $10 billion, you should complete Question (b).

(a) In the table below, provide the following information regarding the separately managed accounts you advise. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise. End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

In column 3, provide aggregate *gross notional value* of derivatives divided by the aggregate regulatory assets under management of the accounts included in column 1 with respect to each category of derivatives specified in 3(a) through (f).

You may, but are not required to, complete the table with respect to any separately managed account with regulatory assets under management of less than $10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

(i) Mid-Year

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) *Borrowings*	(3) Derivative Exposures					
			(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
Less than 10%	$	$	%	%	%	%	%	%
10-149%	$	$	%	%	%	%	%	%
150% or more	$	$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

(ii) End of Year

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) *Borrowings*	(3) Derivative Exposures					
			(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
Less than 10%	$	$	%	%	%	%	%	%
10-149%	$	$	%	%	%	%	%	%
150% or more	$	$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

(b) In the table below, provide the following information regarding the separately managed accounts you advise as of the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

You may, but are not required to, complete the table with respect to any separately managed accounts with regulatory assets under management of less than $10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) *Borrowings*
Less than 10%	$	$
10-149%	$	$
150% or more	$	$

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

SECTION 5.K.(3) Custodians for Separately Managed Accounts

No Information Filed

Item 6 Other Business Activities

In this Item, we request information about your firm's other business activities.

A. You are actively engaged in business as a (check all that apply):

- ☐ (1) broker-dealer (registered or unregistered)
- ☐ (2) registered representative of a broker-dealer
- ☐ (3) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (4) futures commission merchant
- ☐ (5) real estate broker, dealer, or agent
- ☐ (6) insurance broker or agent
- ☐ (7) bank (including a separately identifiable department or division of a bank)
- ☐ (8) trust company
- ☐ (9) registered municipal advisor
- ☐ (10) registered security-based swap dealer
- ☐ (11) major security-based swap participant
- ☐ (12) accountant or accounting firm
- ☐ (13) lawyer or law firm
- ☐ (14) other financial product salesperson (specify):

If you engage in other business using a name that is different from the names reported in Items 1.A. or 1.B.(1), complete Section 6.A. of Schedule D.

		Yes	No
B. (1)	Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)?	○	◉
(2)	If yes, is this other business your primary business?	○	○

If "yes," describe this other business on Section 6.B.(2) of Schedule D, and if you engage in this business under a different name, provide that name.

		Yes	No
(3)	Do you sell products or provide services other than investment advice to your advisory *clients*?	○	◉

If "yes," describe this other business on Section 6.B.(3) of Schedule D, and if you engage in this business under a different name, provide that name.

SECTION 6.A. Names of Your Other Businesses

No Information Filed

SECTION 6.B.(2) Description of Primary Business

Describe your primary business (not your investment advisory business):

If you engage in that business under a different name, provide that name:

SECTION 6.B.(3) Description of Other Products and Services

Describe other products or services you sell to your *client*. You may omit products and services that you listed in Section 6.B.(2) above.

If you engage in that business under a different name, provide that name:

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

A. This part of Item 7 requires you to provide information about you and your *related persons*, including foreign affiliates. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

You have a *related person* that is a (check all that apply):

- ☐ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered)
- ☐ (2) other investment adviser (including financial planners)
- ☐ (3) registered municipal advisor
- ☐ (4) registered security-based swap dealer
- ☐ (5) major security-based swap participant
- ☐ (6) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (7) futures commission merchant
- ☐ (8) banking or thrift institution
- ☐ (9) trust company
- ☐ (10) accountant or accounting firm
- ☐ (11) lawyer or law firm
- ☐ (12) insurance company or agency
- ☐ (13) pension consultant
- ☐ (14) real estate broker or dealer
- ☐ (15) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
- ☐ (16) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

Note that Item 7.A. should not be used to disclose that some of your employees perform investment advisory functions or are registered representatives of a broker-dealer. The number of your firm's employees who perform investment advisory functions should be disclosed under Item 5.B.(1). The number of your firm's employees who are registered representatives of a broker-dealer should be disclosed under Item 5.B.(2).

Note that if you are filing an umbrella registration, you should not check Item 7.A.(2) with respect to your relying advisers, and you do not have to complete Section 7.A. in Schedule D for your relying advisers. You should complete a Schedule R for each relying adviser.

For each related person, including foreign affiliates that may not be registered or required to be registered in the United States, complete Section 7.A. of Schedule D.

You do not need to complete Section 7.A. of Schedule D for any related person if: (1) you have no business dealings with the related person in connection with advisory services you provide to your clients; (2) you do not conduct shared operations with the related person; (3) you do not refer clients or business to the related person, and the related person does not refer prospective clients or business to you; (4) you do not share supervised persons or premises with the related person; and (5) you have no reason to believe that your relationship with the related person otherwise creates a conflict of interest with your clients.

You must complete Section 7.A. of Schedule D for each related person acting as qualified custodian in connection with advisory services you provide to your clients (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)), regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

SECTION 7.A. Financial Industry Affiliations

No Information Filed

Item 7 *Private Fund* Reporting

	Yes	No
B. Are you an adviser to any *private fund*?	◉	○

If "yes," then for each private fund that you advise, you must complete a Section 7.B.(1) of Schedule D, except in certain circumstances described in the next sentence and in Instruction 6 of the Instructions to Part 1A. If you are registered or applying for registration with the SEC or reporting as an SEC exempt reporting adviser, and another SEC-registered adviser or SEC exempt reporting adviser reports this information with respect to any such private fund in Section 7.B.(1) of Schedule D of its Form ADV (e.g., if you are a subadviser), do not complete Section 7.B.(1) of Schedule D with respect to that private fund. You must, instead, complete Section 7.B.(2) of Schedule D.

In either case, if you seek to preserve the anonymity of a private fund client by maintaining its identity in your books and records in numerical or alphabetical code, or similar designation, pursuant to rule 204-2(d), you may identify the private fund in Section 7.B.(1) or 7.B.(2) of Schedule D using the same code or designation in place of the fund's name.

SECTION 7.B.(1) *Private Fund* Reporting

Funds per Page: 15 Total Funds: 2

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*:
ATLAS IDF, LP

(b) *Private fund* identification number:
(include the "805-" prefix also)
805-9274628204

2. Under the laws of what state or country is the *private fund* organized:

State:	Country:
Delaware	United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director
ATLAS IDF GP, LLC

(b) If filing an *umbrella registration*, identify the *filing adviser* and/or *relying adviser(s)* that sponsor(s) or manage(s) this *private fund*.

No Information Filed

4. The *private fund* (check all that apply; you must check at least one):

☐ (1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

☑ (2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

No Information Filed

	Yes	No
6. (a) Is this a "master fund" in a master-feeder arrangement?	○	◉

(b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

No Information Filed

	Yes	No
(c) Is this a "feeder fund" in a master-feeder arrangement?	○	◉

(d) If yes, what is the name and *private fund* identification number (if any) of the master fund in which this *private fund* invests?
Name of *private fund*:

Private fund identification number:
(include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

	Yes	No
8. (a) Is this *private fund* a "fund of funds"?	○	◉

NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also *private funds* or registered investment companies.

	Yes	No
(b) If yes, does the *private fund* invest in funds managed by you or by a *related person*?	○	○

	Yes	No
9. During your last fiscal year, did the *private fund* invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)?	○	◉

10. What type of fund is the *private fund*?

○ hedge fund ○ liquidity fund ◉ private equity fund ○ real estate fund ○ securitized asset fund ○ venture capital fund ○ Other *private fund*:

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the *private fund*:

$ 29,902,788

Ownership

12. Minimum investment commitment required of an investor in the *private fund*:

$ 500,000

NOTE: Report the amount routinely required of investors who are not your *related persons* (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the *private fund's* beneficial owners:

2

14. What is the approximate percentage of the *private fund* beneficially owned by you and your *related persons*:

0%

15. (a) What is the approximate percentage of the *private fund* beneficially owned (in the aggregate) by funds of funds:

0%

	Yes	No
(b) If the private fund qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to *qualified clients*?	○	○

16. What is the approximate percentage of the *private fund* beneficially owned by non-*United States persons*:

100%

Your Advisory Services

	Yes	No
17. (a) Are you a subadviser to this *private fund*?	○	◉

(b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the *private fund*. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

	Yes	No
18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the *private fund*?	○	◉

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the *private fund*. If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

	Yes	No
19. Are your *clients* solicited to invest in the *private fund*?	○	◉

NOTE: For purposes of this question, do not consider feeder funds of the private fund.

20. Approximately what percentage of your *clients* has invested in the *private fund*?

0%

Private Offering

Yes No

21. Has the *private fund* ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933? (●) Yes ( ) No

22. If yes, provide the *private fund's* Form D file number (if any):

No Information Filed

B. SERVICE PROVIDERS

Auditors

	Yes	No
23. (a) (1) Are the *private fund's* financial statements subject to an annual audit?	(●)	( )
(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP?	(●)	( )

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:

COHEN & CO.

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country):

City:	State:	Country:
AKRON	Ohio	United States

	Yes	No
(d) Is the auditing firm an *independent public accountant*?	(●)	( )
(e) Is the auditing firm registered with the Public Company Accounting Oversight Board?	(●)	( )

If yes, Public Company Accounting Oversight Board-Assigned Number:

925

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules?	(●)	( )

	Yes	No
(g) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors?	(●)	( )

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions?

(●) Yes ( ) No ( ) Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

	Yes	No
24. (a) Does the *private fund* use one or more prime brokers?	( )	(●)

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

	Yes	No
25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets?	(●)	( )

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:
US BANK

(c) Primary business name of custodian:
US BANK

(d) The location of the custodian's office responsible for *custody* of the *private fund's* assets (city, state and country):

City:	State:	Country:
DALLAS	Texas	United States

	Yes	No
(e) Is the custodian a *related person* of your firm?	○	◉

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):
-
CRD Number (if any):

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

	Yes	No
26. (a) Does the *private fund* use an administrator other than your firm?	◉	○

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:
HIGHGATE CONSULTING GROUP INC

(c) Location of administrator (city, state and country):

City:	State:	Country:
DALLAS	Texas	United States

	Yes	No
(d) Is the administrator a *related person* of your firm?	○	◉

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?
◉ Yes (provided to all investors) ○ Some (provided to some but not all investors) ○ No (provided to no investors)

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?
100%
Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

	Yes	No
28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes?	○	◉

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*:

RAND PE FUND I, L.P.

(b) *Private fund* identification number:
(include the "805-" prefix also)

805-7357834832

2. Under the laws of what state or country is the *private fund* organized:

State:	Country:
Delaware	United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director
RAND PE FUND MANAGEMENT, LLC

(b) If filing an *umbrella registration*, identify the *filing adviser* and/or *relying adviser(s)* that sponsor(s) or manage(s) this *private fund*.

No Information Filed

4. The *private fund* (check all that apply; you must check at least one):

☑ (1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

☑ (2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

No Information Filed

	Yes	No
6. (a) Is this a "master fund" in a master-feeder arrangement?	○	◉

(b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

No Information Filed

	Yes	No
(c) Is this a "feeder fund" in a master-feeder arrangement?	○	◉

(d) If yes, what is the name and *private fund* identification number (if any) of the master fund in which this *private fund* invests?

Name of *private fund*:

Private fund identification number:
(include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their

assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

	Yes	No
8. (a) Is this *private fund* a "fund of funds"?	○	◉

NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also *private funds* or registered investment companies.

	Yes	No
(b) If yes, does the *private fund* invest in funds managed by you or by a *related person*?	○	○

	Yes	No
9. During your last fiscal year, did the *private fund* invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)?	○	◉

10. What type of fund is the *private fund*?

○ hedge fund ○ liquidity fund ◉ private equity fund ○ real estate fund ○ securitized asset fund ○ venture capital fund ○ Other *private fund*:

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the *private fund*:

$ 0

Ownership

12. Minimum investment commitment required of an investor in the *private fund*:

$ 500,000

NOTE: Report the amount routinely required of investors who are not your *related persons* (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the *private fund's* beneficial owners:

3

14. What is the approximate percentage of the *private fund* beneficially owned by you and your *related persons*:

0%

15. (a) What is the approximate percentage of the *private fund* beneficially owned (in the aggregate) by funds of funds:

0%

	Yes	No
(b) If the private fund qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to *qualified clients*?	◉	○

16. What is the approximate percentage of the *private fund* beneficially owned by non-*United States persons*:

100%

Your Advisory Services

	Yes	No
17. (a) Are you a subadviser to this *private fund*?	○	◉

(b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the *private fund*. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

	Yes	No
18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the *private fund*?	○	◉

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the *private fund*. If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

	Yes	No
19. Are your *clients* solicited to invest in the *private fund*?	○	◉

NOTE: For purposes of this question, do not consider feeder funds of the private fund.

20. Approximately what percentage of your *clients* has invested in the *private fund*?

0%

Private Offering

	Yes	No
21. Has the *private fund* ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933?	◉	○

22. If yes, provide the *private fund's* Form D file number (if any):

No Information Filed

B. SERVICE PROVIDERS

Auditors

	Yes	No
23. (a) (1) Are the *private fund's* financial statements subject to an annual audit?	◉	○
(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP?	◉	○

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:

COHEN & CO

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country):

City:	State:	Country:
AKRON	Ohio	United States

	Yes	No
(d) Is the auditing firm an *independent public accountant*?	◉	○
(e) Is the auditing firm registered with the Public Company Accounting Oversight Board?	◉	○

If yes, Public Company Accounting Oversight Board-Assigned Number:

925

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules?	◉	○

	Yes	No
(g) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors?	◉	○

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions?

◉ Yes ○ No ○ Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

	Yes	No
24. (a) Does the *private fund* use one or more prime brokers?	○	◉

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

	Yes	No
25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets?	◉	○

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:
STATE STREET GLOBAL MARKETS, LLC

(c) Primary business name of custodian:
STATE STREET GLOBAL MARKETS, LLC

(d) The location of the custodian's office responsible for *custody* of the *private fund's* assets (city, state and country):

City:	State:	Country:
BOSTON	Massachusetts	United States

	Yes	No
(e) Is the custodian a *related person* of your firm?	○	◉

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):
8 - 69862
CRD Number (if any):
285852

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

	Yes	No
26. (a) Does the *private fund* use an administrator other than your firm?	◉	○

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:
HIGHGATE CONSULTING GROUP INC

(c) Location of administrator (city, state and country):

City:	State:	Country:
DALLAS	Texas	United States

	Yes	No
(d) Is the administrator a *related person* of your firm?	○	◉

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?
◉ Yes (provided to all investors) ○ Some (provided to some but not all investors) ○ No (provided to no investors)

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?
100%
Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

	Yes	No
28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes?	○	◉

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

Funds per Page: 15 Total Funds: 2

SECTION 7.B.(2) *Private Fund* Reporting

1. Name of the *private fund*:
   RAND ADVISORS SERIES I INSURANCE FUND SERIES INTERESTS OF THE SALI MULTISERIES

2. *Private fund* identification number:
   (include the "805-" prefix also)
   805-9425927696

3. Name and SEC File number of adviser that provides information about this *private fund* in Section 7.B.(1) of Schedule D of its Form ADV filing
   Name:
   SALI FUND SERVICES
   SEC File Number:
   801 - 61702

	Yes	No
4. Are your *clients* solicited to invest in this *private fund*?	○	◉

In answering this question, disregard feeder funds' investment in a master fund. For purposes of this question, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients*' transactions. This information identifies additional areas in which conflicts of interest may occur between you and your *clients*. Newly-formed advisers should base responses to these questions on the types of participation and interest that you expect to engage in during the next year.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*, including foreign affiliates.

Proprietary Interest in *Client* Transactions

A. Do you or any *related person*:	Yes	No
(1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?	○	◉
(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?	◉	○
(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A.(1) or (2))?	◉	○

Sales Interest in *Client* Transactions

B. Do you or any *related person*:	Yes	No
(1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?	○	◉
(2) recommend to advisory *clients*, or act as a purchaser representative for advisory *clients* with respect to, the purchase of securities for which you or any *related person* serves as underwriter or general or managing partner?	◉	○
(3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)?	○	◉

Investment or Brokerage Discretion

C. Do you or any *related person* have *discretionary authority* to determine the:	Yes	No
(1) securities to be bought or sold for a *client's* account?	◉	○

(2) amount of securities to be bought or sold for a *client's* account? ◉ ○

(3) broker or dealer to be used for a purchase or sale of securities for a *client's* account? ◉ ○

(4) commission rates to be paid to a broker or dealer for a *client's* securities transactions? ◉ ○

D. If you answer "yes" to C.(3) above, are any of the brokers or dealers *related persons*? ○ ◉

E. Do you or any *related person* recommend brokers or dealers to *clients*? ◉ ○

F. If you answer "yes" to E. above, are any of the brokers or dealers *related persons*? ○ ◉

G. (1) Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party ("soft dollar benefits") in connection with *client* securities transactions? ◉ ○

(2) If "yes" to G.(1) above, are all the "soft dollar benefits" you or any *related persons* receive eligible "research or brokerage services" under section 28(e) of the Securities Exchange Act of 1934? ◉ ○

H. (1) Do you or any *related person*, directly or indirectly, compensate any *person* that is not an *employee* for *client* referrals? ○ ◉

(2) Do you or any *related person*, directly or indirectly, provide any *employee* compensation that is specifically related to obtaining *clients* for the firm (cash or non-cash compensation in addition to the *employee's* regular salary)? ○ ◉

I. Do you or any *related person*, including any *employee*, directly or indirectly, receive compensation from any *person* (other than you or any *related person*) for *client* referrals? ○ ◉

In your response to Item 8.I., do not include the regular salary you pay to an employee.

In responding to Items 8.H. and 8.I., consider all cash and non-cash compensation that you or a related person gave to (in answering Item 8.H.) or received from (in answering Item 8.I.) any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* (other than *clients* that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

A. (1) Do you have *custody* of any advisory *clients'*: **Yes** **No**

(a) cash or bank accounts? ◉ ○

(b) securities? ◉ ○

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you have custody solely because (i) you deduct your advisory fees directly from your clients' accounts, or (ii) a related person has custody of client assets in connection with advisory services you provide to clients, but you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 206(4)-2(d)(5)) from the related person.

(2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $ 153,649,022	(b) 3

If you are registering or registered with the SEC and you have custody solely because you deduct your advisory fees directly from your clients' accounts, do not include the amount of those assets and the number of those clients in your response to Item 9.A.(2). If your related person has custody of client assets in connection with advisory services you provide to clients, do not include the amount of those assets and number of those clients in your response to 9.A.(2). Instead, include that information in your response to Item 9.B.(2).

B. (1) In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*: **Yes** **No**

(a) cash or bank accounts? ○ ◉

(b) securities? ○ ◉

You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which your *related persons* have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $	(b)

C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following that apply:

(1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage. ☐

(2) An *independent public accountant* audits annually the pooled investment vehicle(s) that you manage and the audited financial statements ☑

are distributed to the investors in the pools.

(3) An *independent public accountant* conducts an annual surprise examination of *client* funds and securities. ☐

(4) An *independent public accountant* prepares an internal control report with respect to custodial services when you or your *related persons* are qualified custodians for *client* funds and securities. ☐

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

		Yes	No
D.	Do you or your *related person(s)* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?		
	(1) you act as a qualified custodian	○	◉
	(2) your *related person(s)* act as qualified custodian(s)	○	◉

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

E. If you are filing your *annual updating amendment* and you were subject to a surprise examination by an *independent public accountant* during your last fiscal year, provide the date (MM/YYYY) the examination commenced:

F. If you or your *related persons* have *custody* of *client* funds or securities, how many *persons*, including, but not limited to, you and your *related persons,* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients?*
2

SECTION 9.C. *Independent Public Accountant*

No Information Filed

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you. If you are filing an *umbrella registration*, the information in Item 10 should be provided for the *filing adviser* only.

If you are submitting an initial application or report, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application or report, you must complete Schedule C.

		Yes	No
A.	Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies?	○	◉

If yes, complete Section 10.A. of Schedule D.

B. If any *person* named in Schedules A, B, or C or in Section 10.A. of Schedule D is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, please complete Section 10.B. of Schedule D.

SECTION 10.A. *Control Persons*

No Information Filed

SECTION 10.B. *Control Person* Public Reporting Companies

No Information Filed

Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below. In accordance with General Instruction 5 to Form ADV, "you" and "your" include the *filing adviser* and all *relying advisers* under an *umbrella registration*.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you.

If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC or if you are an exempt reporting adviser, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A.(1), 11.A.(2), 11.B.(1), 11.B.(2), 11.D.(4), and 11.H.(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

	Yes	No
Do any of the events below involve you or any of your *supervised persons*?	○	◉

For "yes" answers to the following questions, complete a Criminal Action DRP:

	Yes	No
A. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?	○	◉
(2) been *charged* with any *felony*?	○	◉

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.A.(2) to charges that are currently pending.

B. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	○	◉
(2) been *charged* with a *misdemeanor* listed in Item 11.B.(1)?	○	◉

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.B.(2) to charges that are currently pending.

For "yes" answers to the following questions, complete a Regulatory Action DRP:

	Yes	No
C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	○	◉
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?	○	◉
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?	○	◉
(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?	○	◉
D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:		
(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?	○	◉
(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	○	◉
(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?	○	◉
(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity?	○	◉
E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	○	◉
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)?	○	◉
(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities?	○	◉
F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended?	○	◉
G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.?	○	◉

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

	Yes	No
H. (1) Has any domestic or foreign court:		

(a) in the past ten years, *enjoined* you or any *advisory affiliate* in connection with any *investment-related* activity?	○	◉
(b) ever *found* that you or any *advisory affiliate* were *involved* in a violation of *investment-related* statutes or regulations?	○	◉
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you or any *advisory affiliate* by a state or *foreign financial regulatory authority*?	○	◉
(2) Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 11.H.(1)?	○	◉

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC **and** you indicated in response to Item 5.F.(2)(c) that you have regulatory assets under management of less than $25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- *Control* means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to *control* the other *person*.

	Yes	No
A. Did you have total assets of $5 million or more on the last day of your most recent fiscal year?	○	○
If "yes," you do not need to answer Items 12.B. and 12.C.		
B. Do you:		
(1) *control* another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year?	○	○
(2) *control* another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	○	○
C. Are you:		
(1) *controlled* by or under common *control* with another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year?	○	○
(2) *controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	○	○

Schedule A

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application or report. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer(Chief Compliance Officer is required if you are registered or applying for registration and cannot be more than one individual), director, and any other individuals with similar status or functions;
   (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);
   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
   (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
   (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
   (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.
3. Do you have any indirect owners to be reported on Schedule B? ◉ Yes ○ No
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.
5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
   A - 5% but less than 10% C - 25% but less than 50% E - 75% or more
7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does

not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
CHARITABLE DAF HOLDINGS CORP.	DE	OWNER	08/2022	E	Y	N	
Patrick, Mark	I	CCO	08/2022	NA	Y	N	7626259

Schedule B

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application or report. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.
2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:
   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
   (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;
   (c) in the case of an owner that is a trust, the trust and each trustee; and
   (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.
3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are: C - 25% but less than 50% E - 75% or more
   D - 50% but less than 75% F - Other (general partner, trustee, or elected manager)
7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
LIBERTY CLO HOLDCO, LTD.	FE	CHARITABLE DAF HOLDINGS CORP.	OWNER OF CHARITABLE DAF HOLDINGS CORP.	04/2023	E	Y	N	
CHARITABLE DAF HOLDCO LTD.	FE	LIBERTY CLO HOLDCO, LTD.	OWNER OF CHARITABLE DAF FUND, L.P.	11/2011	E	Y	N	
CDH GP, LTD	DE	LIBERTY CLO HOLDCO, LTD.	GNEREAL PARTNER OF CHARITABLE DAF FUND, L.P	03/2024	F	Y	N	
Patrick, Mark	I	CDH GP, LTD	SOLE OWNER AND SOLE DIRECTOR OF CDH GP, LTD.	03/2024	E	Y	N	7626259

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

Schedule R

No Information Filed

DRP Pages

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

Part 2

Exemption from brochure delivery requirements for SEC-registered advisers

SEC rules exempt SEC-registered advisers from delivering a firm brochure to some kinds of clients. If these exemptions excuse you from delivering a brochure to *all* of your advisory clients, you do not have to prepare a brochure.

	Yes	No
Are you exempt from delivering a brochure to all of your clients under these rules?	○	◉

If no, complete the ADV Part 2 filing below.

Amend, retire or file new brochures:

Brochure ID	Brochure Name	Brochure Type(s)
400181	ADV PART 2A	Private funds or pools
409351	ADV PART 2	Private funds or pools

Part 3

CRS	Type(s)	Affiliate Info	Retire

There are no CRS filings to display.

Execution Pages

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: SHAWN RAVER	Date: MM/DD/YYYY 03/17/2025
Printed Name: SHAWN RAVER	Title: OPERATIONS

NON-RESIDENT **INVESTMENT ADVISER EXECUTION PAGE**

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. *Non-Resident* Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:

Date: MM/DD/YYYY

Printed Name:

Title:

Adviser *CRD* Number:
172839

EXHIBIT 17

AGREEMENT OF LIMITED PARTNERSHIP

OF

RAND PE FUND I, L.P.

This Agreement of Limited Partnership (this "**Agreement**") of Rand PE Fund I, L.P., is entered into as of October 29, 2015 by and among: (i) Rand PE Fund Management, LLC, a Delaware limited liability company (the "**General Partner**"), and (ii) John Honis (collectively with any individuals who may become limited partners of the Partnership in the future, the "**Limited Partners**"; and, collectively with the General Partner, the "**Partners**") pursuant to and in accordance with the Delaware Revised Uniform Limited Partnership Act (6 Del.C. § 17-101, et seq.), as amended from time to time (the "**Act**").

1. **Name**. The name of the partnership governed hereby is Rand PE Fund I, L.P. (the "**Partnership**").

2. **Certificate of Limited Partnership**. The General Partner filed a Certificate of Limited Partnership for the Partnership with the Secretary of State of the State of Delaware on September 18, 2015, and the Partners shall take such further actions as shall be appropriate to comply with all requirements of law for the formation and operation of a limited partnership in the State of Delaware, and all other counties and states where the Partnership may elect to do business.

3. **Purpose**. The Partnership is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Partnership is, engaging in all lawful activities for which partnerships may be formed under the Act, including, without limitation of the foregoing, serving as a private insurance-dedicated investment fund.

4. **Powers**. The Partnership shall have the power to do any and all acts reasonably necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purpose and business described herein and for the protection and benefit of the Partnership and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Partnership by the General Partner pursuant to this Agreement.

5. **Principal Business Office**. The principal place of business and office of the Partnership shall be located at, and the Partnership's business shall be conducted from, such place or places as may hereafter be determined by the General Partner.

6. **Registered Office**. The address of the registered office of the Partnership in the State of Delaware is: c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801.

7. **Registered Agent**. The name and address of the registered agent of the Partnership for service of process on the Partnership in the State of Delaware is: The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801.

8. **Term**. The term of the Partnership commenced on the date of filing of the Certificate of Limited Partnership of the Partnership in accordance with the Act and shall continue until dissolution of the Partnership in accordance with **Section 21** of this Agreement.

9. **Limitation on Liabilities of Limited Partners**. Notwithstanding any provision

of this Agreement, the Limited Partners shall not be liable for any of the losses, debts or liabilities of the Partnership in excess of their respective capital contributions.

10. **Capital Contributions**. Each Partner is deemed admitted as a Partner of the Partnership upon his, her or its execution and delivery of this Agreement. The initial capital contributions of the Partners consist of the assets set forth on Schedule A attached hereto.

11. **Additional Contributions**. The Partners are not required to make additional capital contributions to the Partnership, beyond their initial contributions.

12. **Capital Accounts**. Separate capital accounts shall be maintained for each Partner on the books of the Partnership. Each capital account shall be adjusted to reflect such Partner's shares of allocations and distributions as provided in **Section 13** of this Agreement, and any additional capital contributions to the Partnership or withdrawals of capital from the Partnership. Such capital accounts shall further be adjusted to conform to the Treasury Regulations under Section 704(b) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), as interpreted in good faith by the General Partner.

13. **Allocations and Distributions**.

(i) *Allocations of Profit and Loss*. All items of income, gain, loss, deduction and credit shall be allocated among the Partners in accordance with their Percentage Interests (as indicated on Schedule A attached hereto).

(ii) *Distributions*. Distributions shall be made to the Partners at such times and in such amounts as may be determined in the sole discretion of the General Partner. Distributions shall be shared among the Partners in accordance with their Percentage Interests. Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not make a distribution to the Partners on account of their interest in the Partnership if such distribution would violate Section 17-607 of the Act or other applicable law.

14. **Management**.

(i) The business and affairs of the Partnership shall be managed by the General Partner. Subject to the express limitations contained in any provision of this Agreement, the General Partner shall have complete and absolute control of the affairs and business of the Partnership, and shall possess all powers necessary, convenient or appropriate to carrying out the purposes and business of the Partnership, including, without limitation, doing all things and taking all actions necessary to carrying out the terms and provisions of this Agreement. The General Partner has the authority to bind the Partnership.

(ii) Subject to the rights and powers of the General Partner and the limitations thereon contained herein, the General Partner may delegate to any person any or all of its powers, rights and obligations under this Agreement and may appoint, contract or otherwise deal with any person to perform any acts or services for the Partnership as the General Partner may reasonably determine.

(iii) No Partner (other than the General Partner) shall participate in the management or control of the business of, or shall have any rights or powers with respect to, the Partnership except those expressly granted to it by the terms of this Agreement, or those conferred on it by law.

(iv) The General Partner shall remain general partner of the Partnership until the earliest to occur of its termination, dissolution or other inability to act in such capacity, at which time a majority in Percentage Interests of the Limited Partners shall appoint a successor general partner. Upon the termination, dissolution or other inability of such successor General Partner to act in such capacity, a successor general partner will be appointed by the designee of the General Partner.

15. **Officers**. The General Partner may, from time to time as it deems advisable, appoint officers of the Partnership (the "**Officers**") and assign in writing titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Unless the General Partner decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this **Section 15** may be revoked at any time by the General Partner.

16. **Other Business**. The Partners may engage in or possess an interest in other business ventures (unconnected with the Partnership) of every kind and description, independently or with others. The Partnership shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

17. **Liability of General Partner**.

(i) None of the General Partner or the Officers shall be liable, responsible or accountable in damages to the Limited Partner or the Partnership for: (x) any act or omission on behalf of the Partnership performed or omitted to be taken by it in good faith and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement and in, or not opposed to, the best interests of the Partnership; *provided* that the General Partner is not guilty of gross negligence or willful misconduct, (y) any action or omission taken or suffered by any other Partner, or (z) any mistake, negligence, dishonesty or bad faith of any broker or other agent of the Partnership selected by the General Partner with reasonable care. To the extent that, at law or in equity, the General Partner has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to another Partner, the General Partner acting under this Agreement shall not be liable to the Partnership or such other Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they expand or restrict the duties and liabilities of the General Partner otherwise existing at law or in equity, are agreed by the Partners to modify to that extent such other duties and liabilities of the General Partner. To the fullest extent permitted by law, the Partnership shall indemnify the General Partner against any loss, damage or expense (including amounts paid in satisfaction of judgments, in settlements, as fines and penalties and legal and other costs and expenses of investigation or defense) incurred by it by reason of any act or omission so performed or omitted by it (and not involving gross negligence or willful misconduct) and any such amount shall be paid by the Partnership to the extent assets are available, but the Limited Partner shall not have any personal liability to the General Partner or the Partnership on account of such loss, damage or expense.

(ii) The General Partner may consult with legal counsel, accountants and other professional experts selected by it and any act or omission suffered or taken by it on behalf of the Partnership or in furtherance of the interests of the Partnership in good faith in reliance upon and in accordance with the advice of such counsel, accountants or other professional experts shall be full justification for any such act or omission, and the General Partner shall be fully protected in so acting or omitting to act; *provided* that such counsel, accountants or other professional experts were selected with reasonable care.

(iii) To the fullest extent permitted by law, expenses incurred by the General Partner

in defense or settlement of any claim that may, at the determination of the General Partner, be subject to a right of indemnification hereunder may be paid by the Partnership in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of the General Partner to repay such amount to the Partnership if it shall be determined, by a court of competent jurisdiction pursuant to a final non-appealable judgment, order or decree, that the General Partner is not entitled to be indemnified hereunder.

18. **Admission of Additional Partners**. One (1) or more additional persons may be admitted to the Partnership as Partners with the written consent of the General Partner.

19. **Dissolution of Partners**. Subject to **Section 21**, the termination, dissolution, death, bankruptcy or adjudicated incompetency of a Partner shall not cause a dissolution of the Partnership, but the rights of such Partner to share in the allocations and distributions pursuant to the terms hereof and to assign his, her or its interest in the Partnership pursuant to the terms hereof shall, on the happening of such an event, devolve on his, her or its legal representative for the purpose of settling his estate or administering its property.

20. **Assignments**. A Partner may not transfer, assign, pledge or hypothecate, in whole or in part, his, her or its limited partnership interest without the prior written consent of the General Partner.

21. **Dissolution**.

(i) The Partnership shall dissolve, and its affairs shall be wound-up upon the first to occur of the following: (A) the written consent of the General Partner, (B) the death, disability, termination, dissolution, bankruptcy or withdrawal of the last remaining General Partner (subject to **Section 14(iv)**), and (C) the entry of a decree of judicial dissolution under Section 17-802 of the Act.

(ii) In the event of dissolution, the Partnership shall conduct only such activities as are necessary to wind-up its affairs (including the sale of the assets of the Partnership in an orderly manner).

22. **Tax Matters Partner**. The General Partner shall be the tax matters partner within the meaning of Section 6231(a)(7) of the Code. All expenses incurred by the tax matters partner in connection with its duties as tax matters partner shall be expenses of the Partnership.

23. **Elections**. The General Partner shall determine the accounting methods and conventions under the tax laws of any and all applicable jurisdictions as to the treatment of income, gain, loss, deduction and credit of the Partnership or any other method or procedure related to the preparation of such tax returns. The General Partner may cause the Partnership to make or refrain from making any and all elections permitted by such tax laws, and the General Partner shall not be liable for any consequences to any previously admitted or subsequently admitted Partners resulting from their making or failing to make any such elections.

24. **Separability of Provisions**. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

25. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement.

26. **Entire Agreement**. This Agreement constitutes the entire agreement of the Partners with respect to the subject matter hereof and shall supersede all prior and contemporaneous agreements, understandings and discussions with respect thereto.

27. **Governing Law, Personal Jurisdiction and Venue**. The parties acknowledge and agree that any claim, controversy, dispute or action relating in any way to this Agreement or the subject matter of this Agreement shall be governed solely by the laws of the State of Delaware, without regard to any conflict of laws doctrines. The parties irrevocably consent to and submit to being served with legal process issued from the state and federal courts located in the State of New York and irrevocably consent to the exclusive personal jurisdiction of the federal and state courts situated in the State of New York. The parties irrevocably waive any objections to the personal jurisdiction of these courts. The federal and state courts of the State of New York in New York County shall have sole and exclusive jurisdiction over any and all claims, controversies, disputes and actions which in any way relate to this Agreement or the subject matter of this Agreement. Any such claim, controversy, dispute or action must first be brought in the federal court of the State of New York in New York County, unless the federal courts do not have subject matter jurisdiction as a matter of law, in which case it must first be brought in the Commercial Division of the New York State Supreme Court in New York County (and can only proceed in New York County outside the Commercial Division if the Commercial Division rejects it). The parties also irrevocably waive any objections that these courts constitute an oppressive, unfair, or inconvenient forum and agree not to seek to change venue on these grounds or any other grounds.

28. **Amendments**. This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Partners.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement of Limited Partnership as of the date first written above.

GENERAL PARTNER:

Rand PE Fund Management, LLC

By: _____
Name: John Honis
Title: Managing Member

LIMITED PARTNER:

_____
Name: John Honis

Schedule A

As of October 29, 2015

NAME	MAILING ADDRESS	INITIAL CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
John Honis	87 Railroad Place, Suite 403 Saratoga Springs, NY 12866	$99	99%
Rand PE Fund Management, LLC	87 Railroad Place, Suite 403 Saratoga Springs, NY 12866	$1	1%

EXHIBIT 18

SadisGoldberg LLP

FOR THE EXCLUSIVE USE OF:	

COPY NO.	

Rand PE Fund I, L.P.

A DELAWARE "SERIES" LIMITED PARTNERSHIP

GENERAL PARTNER:
RAND PE FUND MANAGEMENT, LLC

INVESTMENT MANAGER:
RAND ADVISORS, LLC

OFFERING OF SERIES 1 LIMITED PARTNERSHIP INTERESTS

November 30, 2015

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

THIS IS NOT AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY THE INTERESTS DESCRIBED HEREIN IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SALE.

DIRECTORY

INVESTMENT MANAGER
RAND ADVISORS, LLC
87 RAILROAD PLACE, SUITE 403
SARATOGA SPRINGS, NY 12866
ATTENTION: JOHN HONIS
TELEPHONE: (214) 335-7969
EMAIL: JHONIS@RANDADVISORS.COM

GENERAL PARTNER
RAND PE FUND MANAGEMENT, LLC
87 RAILROAD PLACE, SUITE 403
SARATOGA SPRINGS, NY 12866
ATTENTION: JOHN HONIS
TELEPHONE: (214) 335-7969
EMAIL: JHONIS@RANDADVISORS.COM

LEGAL COUNSEL
SADIS & GOLDBERG LLP
551 FIFTH AVENUE, 21ST FLOOR
NEW YORK, NEW YORK 10176
ATTENTION: STEVEN HUTTLER, ESQ.
TELEPHONE: (212) 573-8424
FACSIMILE: (212) 573-8151
EMAIL: SHUTTLER@SGLAWYERS.COM

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EXHIBITS

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT	EXHIBIT A
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PART 2 OF RAND ADVISORS, LLC'S FORM ADV	EXHIBIT C

DESCRIPTION OF INTERESTS AND STRUCTURE

Rand PE Fund I, L.P. ("**Partnership**"), a "series" limited partnership organized under the Delaware Revised Uniform Limited Partnership Act, is offering limited partner interests in the Partnership ("**Interests**") in a private placement pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended ("**Securities Act**"), and Regulation D promulgated thereunder. The Partnership may offer Interests in separate Series (as defined and described herein). Only Series 1 Interests (as defined herein) are offered at this time pursuant to this Memorandum.

Only persons that are Accredited Investors (as defined in Rule 501 of Regulation D promulgated under the Securities Act), Qualified Clients (as defined in Rule 205-3 promulgated under the Investment Advisers Act of 1940, as amended ("**Advisers Act**")), and Qualified Purchasers (as defined under Section 2(a)(51) of the Investment Company Act of 1940, as amended ("**Investment Company Act**")) may purchase Interests. The Subscription Documents (as defined below) set forth in detail the definitions of Accredited Investor, Qualified Client and Qualified Purchaser.

The Partnership was formed to pool investment funds of its investors (each, a "**Limited Partner**" and, collectively, "**Limited Partners**"; and, together with the General Partner (as defined below), "**Partners**") for the purpose of investing and trading in a wide variety of securities, financial instruments and other assets and investments, including other investment vehicles, as more fully described herein.

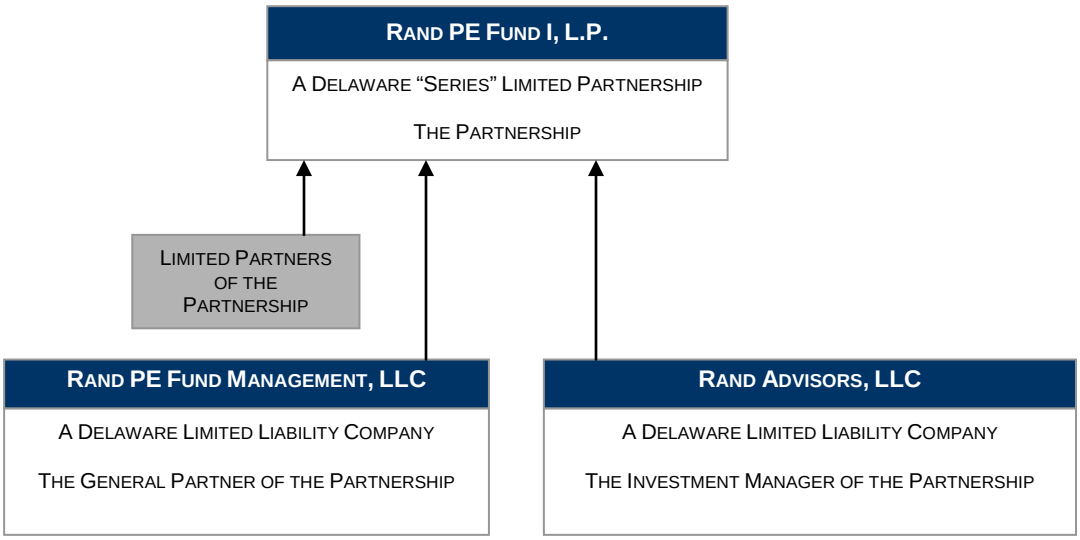
Rand PE Fund Management, LLC, a Delaware limited liability company ("**General Partner**"), is the general partner of the Partnership and is responsible for the management of the Partnership's affairs.

Rand Advisors, LLC, a Delaware limited liability company ("**Investment Manager**"), is the investment manager of the Partnership and has discretionary investment authority over the Partnership's assets. The Investment Manager is registered as an investment adviser with the U.S. Securities and Exchange Commission ("**SEC**"). A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

As the managing member and controlling person of the General Partner and the Investment Manager, John Honis controls all of the Partnership's operations and activities.

The minimum initial capital contribution that will be accepted from a new Limited Partner is $500,000. The minimum additional capital contribution that will be accepted from an existing Limited Partner is $500,000. In each case, the General Partner has discretion to accept lesser amounts. Generally, new Limited Partners will be admitted on the first day of each month, and withdrawals may be made on the last day of each calendar quarter upon 91 days' prior written notice, subject to certain restrictions as described herein (unless, in each case, the General Partner, in its sole discretion, permits subscriptions or withdrawals at another time).

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INVESTMENT OBJECTIVE AND STRATEGY

The Partnership's primary objective is to seek consistent above-average returns primarily through capital appreciation. The Investment Manager intends to invest the Partnership's portfolio in small- to medium-sized companies (i.e., generally with market capitalization of under $1 billion) that are involved in (or are the target of) acquisition attempts or tender offers, and/or in companies involved in work-outs, liquidations, spin-offs, reorganizations, bankruptcies or similar transactions. The Investment Manager intends to use a disciplined investment philosophy by combining thorough fundamental research and in-depth analysis of investment opportunities. The Partnership (x) is expected to initially invest all or substantially all of the assets attributable to Series 1 in the Highland Transaction (as defined herein), if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction. **No assurance can be given, however, that the Investment Manager will achieve the Partnership's investment objective, and investment results may vary substantially over time and from period to period.** See "INVESTMENT PROGRAM" herein for further details.

RISK FACTORS, CONFLICTS OF INTERESTS AND OTHER CONSIDERATIONS

Before purchasing an Interest in the Partnership, you should carefully consider various risk factors and conflicts of interest, as well as suitability requirements, restrictions on transfers and withdrawals of Interests and various legal, tax and other considerations, all of which are discussed elsewhere in this Confidential Private Placement Memorandum (this "**Memorandum**").

IMPORTANT GENERAL CONSIDERATIONS

You should not construe the contents of this Memorandum as legal, tax or investment advice and, if you acquire an Interest, you will be required to make a representation to that effect. You should review the proposed investment and the legal, tax and other consequences thereof with your own professional advisors. The purchase of an Interest involves certain risks and conflicts of interest among the General Partner, the Investment Manager and the Partnership. See "RISK FACTORS AND CONFLICTS OF INTEREST". The General Partner reserves the right to refuse any subscription for any reason.

In making an investment decision, you must rely on your own examination of the Partnership and the terms of the offering of Interests, including the merits and risks involved. You and your representative(s), if any, are invited to ask questions and obtain additional information from the General Partner concerning the terms and conditions of the offering, the Partnership, and any other relevant matters to the extent that the General Partner possesses such information or can acquire it without unreasonable effort or expense.

Neither the SEC nor any state securities commission has passed upon the merits of participating in the Partnership, nor has the SEC or any state securities commission passed upon the adequacy or accuracy of this Memorandum. Any representation to the contrary is a criminal offense. The General Partner anticipates that: (i) the offer and sale of the Interests will be exempt from registration under the Securities Act and the various state securities laws; (ii) the Partnership will not be registered as an investment company under the Investment Company Act, pursuant to an exemption provided by Section 3(c)(7) thereunder; and (iii) neither the General Partner nor the Investment Manager will be registered as a commodity pool operator under the Commodity Exchange Act, as amended ("CEA"), based upon an exemption available under Rule 4.13(a)(3) thereunder. Consequently, you will not be entitled to certain protections afforded by those statutes.

The Investment Manager is registered as an investment adviser with the SEC. A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

Pursuant to Rule 4.13(a)(3) of the CEA, each of the General Partner and the Investment Manager is exempt from registration with the Commodity Futures Trading Commission ("CFTC") as a commodity pool operator and therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document (as such term is defined under CFTC rules) and a certified annual report to participants in the pool. The foregoing registration exemption is based on the Partnership's limited commodity trading activity and its undertaking that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions, determined at the time the most recent position was established, will not exceed 5% of the liquidation value of the Partnership's portfolio, after taking into account unrealized profits and losses on any such positions; or (b) the aggregate net notional value of the Partnership's commodity interest positions, determined at the time the most recent position was established, will not exceed 100% of the liquidation value of the Partnership's portfolio, after taking into account unrealized profits and losses on any such positions. Certain types of swaps are included in the definition of "commodity interests". These swaps include interest rate swaps, currency swaps, energy and metal swaps, agricultural swaps, swaps on broad-based indices, swaps on government securities and certain mixed swaps.

As a Limited Partner, you may withdraw from the Partnership and receive payment for your Interests, subject to certain restrictions, as specified in the Amended and Restated Limited Partnership Agreement of the Partnership (as the same may be amended and/or restated from time to time, the "Partnership Agreement"), a copy of

which is attached hereto as Exhibit A.

The offering of Interests is made only by delivery of a copy of this Memorandum to the person whose name appears hereon. The offering is made only to potential investors who are Accredited Investors, Qualified Clients and Qualified Purchasers. By accepting delivery of this Memorandum, you agree not to reproduce or divulge its contents, in whole or in part, and, if you do not purchase any Interests, to return this Memorandum and the exhibits attached hereto to the General Partner or the Partnership's administrator, a provider of administrative services ("Administrator"), as further set forth herein under "SERVICE PROVIDERS—Administrator".

Notwithstanding any provision in this Memorandum to the contrary, prospective Limited Partners (and their employees, representatives, and other agents) may disclose to any and all persons the U.S. federal income tax treatment and tax structure of the Interests offered hereby. For this purpose, "tax structure" is limited to facts relevant to the U.S. federal income tax treatment of the Interests, and does not include information relating to the identity of the issuer, its affiliates, agents or advisors.

There is no public market for the Interests nor is any expected to develop. Even if such a market develops, no distribution, resale or transfer of an Interest will be permitted, except in accordance with the provisions of the Securities Act, the rules and regulations promulgated thereunder, any applicable state securities laws and the terms and conditions of the Partnership Agreement. Any transfer of an Interest by a Limited Partner, public or private, will require the consent of the General Partner. Accordingly, if you purchase an Interest, you will be required to represent and warrant that you have read this Memorandum and are aware of and can afford the risks of an investment in the Partnership for an indefinite period of time. You will also be required to represent that you are acquiring the Interest for your own account, for investment purposes only, and not with any intention to resell or transfer all or any part of the Interest. This investment is suitable for you only if you have adequate means of providing for your current and future needs, have no need for liquidity in this investment and can afford to lose the entire amount of your investment.

Although this Memorandum contains summaries of certain terms of certain documents pertaining to the Partnership, you should refer to the actual documents (copies of which are attached hereto or are available from the General Partner or the Administrator) for complete information concerning the rights and obligations of the parties thereto. All such summaries are qualified in their entirety by the terms of the actual documents. No person has been authorized to make any representations or furnish any information with respect to the Partnership or the Interests, other than the representations and information set forth in this Memorandum or other documents or information furnished by the General Partner upon request, as described above.

Certain information contained in this Memorandum constitutes "forward-looking statements", which can be identified by the use of forward-looking terminology, such as "may", "will", "seek", "should", "expect", "anticipate", "project", "estimate", "intend", "continue" or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those set forth under "RISK FACTORS AND CONFLICTS OF INTEREST", actual events or results or the actual performance of the Partnership may differ materially from those reflected or contemplated in such forward-looking statements.

No rulings have been sought from the Internal Revenue Service ("IRS") with respect to any tax matters discussed in this Memorandum. You are cautioned that the views contained herein are subject to material qualifications and subject to possible changes in regulations by the IRS or by the U.S. Congress in existing tax statutes or in the interpretation of existing statutes and regulations.

The information contained herein is current only as of the date hereof and you should not, under any circumstances, assume that there has not been any change in the matters discussed herein since the date hereof.

SUMMARY OF OFFERING AND PARTNERSHIP TERMS

The following summary is qualified in its entirety by other information contained elsewhere in this Confidential Private Placement Memorandum (this "**Memorandum**") and by Amended and Restated the Limited Partnership Agreement of the Partnership (as defined below) (as the same may be amended and/or restated from time to time, the "**Partnership Agreement**"), a copy of which is attached to this Memorandum as Exhibit A. You should read this entire Memorandum and the Partnership Agreement, carefully before making any investment decision regarding the Partnership and should pay particular attention to the information under the heading "RISK FACTORS AND CONFLICTS OF INTEREST". In addition, you should consult your own advisors in order to understand fully the consequences of an investment in the Partnership.

The Partnership

Rand PE Fund I, L.P., a Delaware "series" limited partnership ("**Partnership**"), was formed to pool investment funds of its investors (each, a "**Limited Partner**" and, collectively, "**Limited Partners**"; and, together with the General Partner (as defined below), "**Partners**") for the purpose of investing and trading in a wide variety of securities, financial instruments and other assets and investments, including other investment vehicles, as more fully described herein.

The Partnership (x) is expected to initially invest all or substantially all of the assets attributable to Series 1 in all or substantially all of the non-voting limited partnership interests in Highland Capital Management, L.P. which the Partnership currently expects to acquire after the launch of its operations (such purchase or other acquisition, if any, collectively, the "**Highland Transaction**"), and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction.

See "INVESTMENT PROGRAM" and "RISK FACTORS AND CONFLICTS OF INTEREST—Conflicts of Interest—Certain Potential Conflicts Between the Principal and Highland Related to the Series 1 Interests" herein.

The Partnership may offer Interests in separate Series (as defined and described herein). Only Series 1 Interests (as defined herein) are offered at this time pursuant to this Memorandum.

Management

Rand PE Fund Management, LLC, a Delaware limited liability company ("**General Partner**"), is the general partner of the Partnership and is responsible for the management of the Partnership's affairs.

Rand Advisors, LLC, a Delaware limited liability company ("**Investment Manager**"), is the investment manager of the Partnership and has discretionary investment authority over the Partnership's assets. The Investment Manager is registered as an investment adviser with the U.S. Securities and Exchange Commission ("**SEC**"). A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

As the managing member and controlling person of the General Partner and the Investment Manager, John Honis ("**Principal**") controls all of the Partnership's operations and activities. See "MANAGEMENT" for additional information.

Issuance of Interests in Multiple Series

The Interests will be offered in separate series ("**Series**"). The Partnership is currently offering one Series of Interests: "**Series 1 Interests**". Each Series of Interests will have separate rights and obligations. In addition, each Series of Interests may correspond to a separate portfolio of assets, which may have different investment objectives and strategies. The Partnership may issue additional Series of Interests in the future, which may have rights and obligations that differ from those of the Series 1 Interests with respect to any matters, including without limitation, fees, withdrawal rights, participation in Side Pocket Accounts (as defined herein) and other rights and terms. The terms of such additional Series will be determined by the General Partner, in its sole discretion.

Each Series shall have separate rights, powers and duties with respect to its investment portfolio and other property and obligations and the profits and losses associated with

such portfolio, property and obligations. The Partnership will maintain separate and distinct records for each Series and shall hold and account for the assets and liabilities of such Series separately from other Series.

Under Delaware law, (i) the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular Series shall be enforceable against the assets of such Series only, and not against the assets of any other Series, and (ii) none of the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to the Partnership generally or any other Series shall be enforceable against the assets of such Series.

Unless the context otherwise requires, Series 1 Interests and any other Series of Interests shall be collectively referred to throughout this Memorandum as the "**Interests**." As the context may require, the holders of Series 1 Interests may be referred to herein as "**Series 1 Limited Partners**". Series 1 Limited Partners and, to the extent applicable, all the Limited Partners of other Series shall be collectively referred to throughout this Memorandum as the "**Limited Partners**".

References herein to the Partnership shall include, where appropriate, each Series of the Partnership. The terms of the other Series may be set forth in an amended version of this Memorandum and/or in a separate supplement hereto.

The Offering

The Partnership is offering limited partner interests in the Partnership ("**Interests**") to persons who are Accredited Investors (as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended ("**Securities Act**")), Qualified Clients (as defined in Rule 205-3 promulgated under the Investment Advisers Act of 1940, as amended ("**Advisers Act**")), and Qualified Purchasers (as defined under Section 2(a)(51) of the Investment Company Act of 1940, as amended ("**Investment Company Act**")). Interests represent a percentage interest in the Partnership proportionate to the capital accounts of all Partners.

Marketing Fees and Sales Charges. The General Partner and/or the Investment Manager may sell Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the capital contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. If a Limited Partner is introduced to the Partnership through a broker-dealer that is not affiliated with the General Partner and/or the Investment Manager, the arrangement, if any, with such broker-dealer will be disclosed to, and acknowledged by, such Limited Partner. See "BROKERAGE PRACTICES—Referral of Investors and Sales Charges".

How to Subscribe

Attached as Exhibit B to this Memorandum are the subscription documents and instructions for subscribing ("**Subscription Documents**"). In order to subscribe for Interests, you must complete the Subscription Documents and return them to the Partnership's administrator, a provider of administrative services ("**Administrator**"), as further set forth herein under "SERVICE PROVIDERS—Administrator". You must pay 100% of your investment at the time you subscribe. Payment must be made by wire transfer of immediately available funds to the Partnership. To ensure compliance with applicable laws, regulations and other requirements relating to money laundering, the General Partner and/or the Administrator may require additional information to verify the identity of any person who subscribes for an Interest in the Partnership.

If the General Partner consents to a Limited Partner's contribution of securities (and/or other investments) to the Partnership, the Partnership may, in the General Partner's discretion, assess a special charge against such Limited Partner equal to the actual costs incurred by the Partnership in connection with accepting such contributed securities (and/or other investments), including the costs of liquidating, or otherwise adjusting the

Partnership's portfolio to accommodate, such securities (and/or other investments). Such special charge will be assessed as of such dates deemed appropriate by the General Partner. Any investor who contributes securities (and/or other investments) in lieu of cash to the Partnership should consult with such person's counsel or advisors as to the tax effect of such contribution.

Eligible Investors and Suitability

In order to invest in the Partnership, you must meet certain minimum suitability requirements, including qualifying as an Accredited Investor under the Securities Act, a Qualified Client under the Advisers Act and a Qualified Purchaser under the Investment Company Act. The Subscription Documents set forth in detail the definitions of Accredited Investor, Qualified Client and Qualified Purchaser. You must check the appropriate places in the Subscription Documents to represent to the Partnership that you are an Accredited Investor, a Qualified Client and a Qualified Purchaser in order to be able to purchase Interests. The General Partner, in its sole discretion, can accept or reject any initial subscriptions from prospective Limited Partners and any additional capital contributions from existing Limited Partners for any reason or for no reason.

Entities subject to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and other tax-exempt entities may purchase Interests. However, investment in the Partnership by such entities requires special consideration. Trustees or administrators of such entities should consult their own legal and tax advisors. The General Partner intends to use reasonable efforts to limit equity participation by "benefit plan investors" in the Partnership to less than 25% of the value of any class of Interests in the Partnership. See "ERISA CONSIDERATIONS" and "TAXATION—Tax-Exempt Investors".

Minimum Investment

The minimum initial capital contribution that will be accepted from a new Limited Partner is $500,000. The minimum additional capital contribution that will be accepted from an existing Limited Partner is $500,000. In each case, the General Partner has discretion to accept lesser amounts. Limited Partners are not required to make any additional capital contributions to the Partnership. There is no minimum or maximum aggregate amount of funds that must or may be contributed by all Partners to the Partnership.

Admission of Limited Partners

Capital contributions generally will be accepted as of the first day of each month, although the General Partner, in its sole discretion, has the right to admit new Limited Partners and to accept additional funds from existing Limited Partners at any time. Upon such admission or receipt of additional capital contributions, the Interests of the Partners will be readjusted in accordance with their capital accounts.

In connection with an additional capital contribution by an existing Limited Partner, the General Partner will: (i) treat such additional capital contribution as a capital contribution with respect to one of such Limited Partner's existing capital accounts, or (ii) establish a new capital account to which such capital contribution will be credited and which will be maintained for the benefit of such Limited Partner separately from any existing capital account of such Limited Partner. Such separate capital accounts may be maintained for any purpose, in the discretion of the General Partner.

Management Fee

The Partnership has entered into an investment management agreement (as the same may be amended and/or restated from time to time, the "**Investment Management Agreement**") by and among the Partnership and the Investment Manager. In consideration for services provided pursuant to the Investment Management Agreement, the Investment Manager will receive a quarterly management fee ("**Management Fee**"), equal to a percentage of each Limited Partner's share of the Partnership's Net Asset Value (as defined herein), and based on the Partnership's total Net Asset Value, as follows:

Partnership's Total Net Asset Value	Management Fee (per annum)
$0 - $99,999,999	0.5500%
$100,000,000 - $199,999,999	0.5000%

$200,000,000 - $249,999,999	0.4500%
$250,000,000 - $499,999,999	0.3500%
> $500,000,000	0.3400%

For the avoidance of doubt, the Management Fee calculated based on the foregoing schedule will be calculated on a "progressive" basis. For example, if the Partnership's Net Asset Value reaches $150,000,000, the initial $99,999,999 will always be charged a Management Fee of 0.55000% annually. The benefit of the declining Management Fee schedule above is intended to benefit all Limited Partners as each capital account will be charged a blended Management Fee based on the above schedule.

The Management Fee will be calculated and payable to the Investment Manager quarterly, in advance, as of the first day of each calendar quarter. A *pro rata* Management Fee will be charged to Limited Partners on any amounts accepted by the General Partner during a calendar quarter. No part of the Management Fee will be refunded in the event that a Limited Partner withdraws, whether voluntarily or involuntarily, all or any of the value in such Limited Partner's capital account during any calendar quarter. Management Fees will be payable with respect to the Interests of a Limited Partner in any Side Pocket Account (as defined below). For purposes of calculating the Management Fee with respect to Side Pocket Accounts, Illiquid Investments (as defined herein) will be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

With respect to any Limited Partner who has requested to withdraw all of its Interests from the Partnership, with the exception of any Interests maintained in a Side Pocket Account, the Partnership may reserve an amount from the withdrawing Limited Partner's withdrawal proceeds in order to cover the estimated accrued Management Fees and expenses attributable to the Limited Partner's Interests in the Side Pocket Account based on the Investment Manager's estimate of the time period that the Illiquid Investments held in the Side Pocket Account will remain in such Side Pocket Account (collectively, the "**Management Fee Reserve**"). The Management Fee Reserve will be treated as a liability of the Partnership, and the balance of the Management Fee Reserve, if any, will be paid to the withdrawing Limited Partner, without interest, upon such Limited Partner's complete withdrawal from the Side Pocket Account.

Expenses

Organizational and Initial Offering Expenses. The Partnership will pay or reimburse the General Partner, the Investment Manager and/or the Investment Manager Affiliates (as defined herein) for all organizational and initial offering expenses of the Partnership, including, but not limited to, legal and accounting fees, printing and mailing expenses and government filing fees (including "blue sky" filing fees). The Partnership's organizational and initial offering expenses may be, for accounting purposes, capitalized and amortized by the Partnership for up to 60 months from the date the Partnership commences operations. Amortization of such expenses is a divergence from U.S. generally accepted accounting principles ("**GAAP**"). In certain circumstances, this divergence may result in a qualification of the Partnership's annual audited financial statements. In such instances, the Partnership may elect to: (i) avoid the qualification by recognizing the unamortized expenses, or (ii) make GAAP-conforming changes for financial reporting purposes, but capitalize and amortize expenses for purposes of calculating the Partnership's Net Asset Value (resulting in a divergence in fiscal year-end Net Asset Values reported in the Partnership's financial statements, and as otherwise applicable under the provisions of the Partnership Agreement). If the Partnership capitalizes and amortizes such expenses and is then terminated within 60 months of its commencement, any unamortized expenses will be recognized. If a Limited Partner makes a withdrawal prior to the end of the period during which the Partnership is capitalizing and amortizing expenses, the Partnership may, but is not required to, accelerate a proportionate share of the unamortized expenses based upon the amount being withdrawn and reduce withdrawal proceeds accordingly.

Operating Expenses. The Partnership will pay or reimburse the General Partner, the

Investment Manager and/or the Investment Manager Affiliates for: (i) all expenses incurred in connection with the ongoing offer and sale of Interests, including, but not limited to, printing of this Memorandum and exhibits, marketing expenses and documentation of performance and the admission of Limited Partners, (ii) all operating expenses of the Partnership, such as tax preparation fees, governmental fees and taxes, fees to the Administrator, costs of communications with Limited Partners, and ongoing legal, accounting, auditing, bookkeeping, consulting and other professional fees and expenses, (iii) all Partnership research, trading and investment-related costs and expenses (e.g., brokerage commissions, research fees, margin interest, expenses related to short sales, custodial fees, bank service fees, and clearing and settlement charges), (iv) technology-related costs and expenses, including, but not limited to, software licenses, data feeds and colocation expenses, (v) all expenses related to attending any conference or seminar related to alternative investments (e.g., registration, transportation, accommodation or meal expenses), (vi) regulatory and other filing fees and expenses, (vii) travel expenses related to meeting with management teams, or related to any of the other categories of expenses set forth herein, (viii) any costs and expenses incurred by the Partnership in connection with converting from a stand-alone fund into a "feeder fund" as part of a master-feeder structure, (ix) director and officer liability insurance or other insurance premiums for any principal or employee of the Partnership, the General Partner, the Investment Manager or any of the Investment Manager Affiliates, (x) all fees and other expenses incurred in connection with the investigation, prosecution or defense of any claims, assertion of rights or pursuit of remedies, by or against the Partnership, including, without limitation, professional and other advisory and consulting expenses, and (xi) any and all costs and expenses incurred in connection with the dissolution, winding up, or termination of the Partnership.

Each of the General Partner, the Investment Manager or any of the Investment Manager Affiliates, in its sole discretion, may from time to time pay for any of the foregoing Partnership expenses. Any such person may elect to be reimbursed for such expenses, or to waive its right to reimbursement for any such expenses, as well as terminate any such voluntary payment or waiver of reimbursement.

Allocation of Expenses Among Series. The General Partner and/or the Investment Manager will allocate all expenses attributable to the Partnership among the Series on a *pro rata* basis or otherwise in their reasonable discretion.

General Partner's and Investment Manager's Expenses. The General Partner and the Investment Manager will pay their own general operating and overhead expenses associated with providing the management and investment management services required under the Partnership Agreement and the Investment Management Agreement, respectively. These expenses include all expenses incurred by the General Partner and the Investment Manager in providing for their normal operating overhead, including, but not limited to, the cost of providing relevant support and administrative services (e.g., employee compensation and benefits, rent, office equipment, computer systems, insurance (other than as expressly set forth above), utilities, telephone, secretarial and bookkeeping services, etc.), but not including any Partnership operating expenses described above.

The General Partner and the Investment Manager may use "soft dollar" commissions or rebates by brokerage firms of commissions generated by the Partnership's brokerage transactions executed through those firms to pay for certain brokerage and research products and services that fall within the safe harbor under Section 28(e) of the Securities Exchange Act of 1934, as amended ("**Exchange Act**"), as further described herein. See "BROKERAGE PRACTICES—Soft Dollar Arrangements".

Withdrawals

Limited Partner Withdrawals Generally. Subject to certain restrictions described herein, each Limited Partner may withdraw a minimum of $100,000 as of the last day of each calendar quarter and at such other times as the General Partner may determine in its sole discretion (each such date, a "**Withdrawal Date**"), upon at least 91 days' prior written notice to the Administrator, with a copy to the General Partner. Unless the General Partner consents, partial withdrawals may not be made if they would reduce a Limited Partner's capital account balance below $500,000. All withdrawals will be

deemed made prior to the commencement of the following calendar quarter (or other relevant period).

If the General Partner, in its sole discretion, permits a Limited Partner to withdraw capital other than on a regularly scheduled Withdrawal Date, the General Partner may impose an administrative fee to cover the actual legal, accounting, administrative, brokerage, and any other costs and expenses associated with such withdrawal. Such fee will be payable to the relevant Series of the Partnership and will be deducted from the withdrawal proceeds of the withdrawing Limited Partner as of such Withdrawal Date.

Ability to Withdraw Is Not Guaranteed. Notwithstanding the foregoing, the General Partner cannot guarantee that the assets of the Partnership will be invested in a manner which would allow the General Partner to satisfy withdrawal requests. The General Partner may, in its sole discretion: (i) defer withdrawal requests until the Partnership's assets mature or are liquidated in due course, (ii) elect to purchase with its own funds the Interests of the withdrawing Partner, or (iii) borrow from a third party or draw from a line of credit, subject to availability and other factors, in order to fund any withdrawal.

Payments with Respect to Withdrawals; Applicable on a Series-by-Series Basis. A Limited Partner who requests any withdrawal of capital that constitutes, together with prior withdrawals within any fiscal year, less than 90% of the value of such Limited Partner's capital account (excluding any amounts held in any Side Pocket Accounts) will be paid within 90 days after the applicable Withdrawal Date. In the event that a Limited Partner requests a withdrawal of capital that constitutes, together with prior withdrawals within any fiscal year, 90% or more of the value of such Limited Partner's capital account (excluding any amounts held in any Side Pocket Accounts), the General Partner may reduce the amounts paid after any Withdrawal Date so that they constitute, in the aggregate during such fiscal year, 90% of an amount estimated by the General Partner to be the amount to which the withdrawing Limited Partner is entitled in the aggregate (calculated on the basis of unaudited data); such amount will be paid within 90 days after the applicable Withdrawal Date. The balance of the amount payable upon such withdrawal will be paid, without interest, within 90 days after completion of the audited financial statements for the fiscal year in which the withdrawal occurs. Notwithstanding the foregoing, the General Partner may, in its sole discretion, agree to pay up to the full capital account balance (calculated on the basis of unaudited data) to a withdrawing Limited Partner within 90 days after the applicable Withdrawal Date, subject to adjustment based on audited financial statements. To the extent that the sum previously paid to a withdrawing Limited Partner is calculated to have exceeded the amount to which it is entitled, that Limited Partner shall be required to repay to the Partnership the balance.

Upon withdrawal of all of the capital in its capital account (excluding for purposes hereof, any remaining investments held in a Side Pocket Account), a Limited Partner will be deemed to have withdrawn from the Partnership or the relevant Series, and upon notice of such withdrawal, a Limited Partner will not be entitled to exercise any voting rights afforded to Limited Partners under the Partnership Agreement.

The Partnership or the relevant Series has the right to pay cash or in-kind, or a combination of both, to a Limited Partner that makes a withdrawal from such Limited Partner's capital account.

Limitations on Withdrawals. The Partnership or a Series may suspend (or postpone) withdrawals, subscriptions, calculations of Net Asset Value and/or payments upon any withdrawals (in whole or in part) from capital accounts: (i) during the existence of any state of affairs which, in the opinion of the General Partner, makes the disposition of the Partnership's investments impractical or prejudicial to the Partners, or where such state of affairs, in the opinion of the General Partner, makes the determination of the price or value of the Partnership's investments impractical or prejudicial to the Partners; (ii) where any such withdrawals, subscriptions, calculations and/or payments, in the opinion of the General Partner, would result in the violation of any applicable law or regulation; (iii) if the General Partner determines, in its sole discretion, that such suspension or postponement is prudent in order to prevent the Partnership from being subject to adverse tax or regulatory implications; or (iv) for such other reasons or for such other periods as the

General Partner may prudently and in good faith determine.

All Limited Partners will be notified in writing of any such suspension or postponement and the termination thereof. Following any suspension or postponement of withdrawals, a withdrawal request made by a Limited Partner prior to such suspension or postponement will be effected as of the first Withdrawal Date following the recommencement of withdrawals.

Required Withdrawals. The General Partner may, in its sole discretion, require a Limited Partner to withdraw any or all of the value of such Limited Partner's capital accounts on at least five days' notice for any reason or no reason; *provided, however*, that the General Partner may require such a withdrawal on less (or no) notice in order to comply with any laws and regulations applicable to the Partnership and/or its affiliates.

Side Pocket Accounts. A Limited Partner may not withdraw any of the amounts in its capital account that are attributable to the value of an Illiquid Investment held in a Side Pocket Account until such time that such Illiquid Investment (or the sales proceeds thereof) is reallocated to such Limited Partner's capital account. At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event (as defined below). **For the avoidance of doubt, any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

Reserves. All withdrawals shall be subject to the General Partner's power to establish such reserves for the Partnership or a Series as the General Partner shall, in its sole but reasonable discretion, deem appropriate to pay current and future, definite, contingent and possible obligations of the Partnership or a Series (even if such reserves are not in accordance with GAAP), including estimated expenses in connection therewith, which could reduce the amount of a distribution upon withdrawal. See "—Management Fee" for more information on the Management Fee Reserve.

Waiver. The General Partner, in its sole discretion, may waive or modify any of the terms relating to withdrawals, including, without limitation, minimum amounts and notice periods, for all or any of the Limited Partners in its discretion without notice to the other Limited Partners.

Withdrawals, Resignation and Transfers by General Partner and its Affiliates

Each of the General Partner, the Investment Manager and/or any Investment Manager Affiliate may withdraw all or any of the value in its respective capital account at any time, from time to time, without the consent of the Limited Partners and without notice to any of the Limited Partners. The General Partner may resign as the general partner of the Partnership upon 30 days' prior written notice to the Limited Partners. Upon such resignation of the General Partner, or upon its bankruptcy or dissolution, the remaining Limited Partners have the right to appoint a substitute general partner; otherwise, the Partnership will be dissolved pursuant to the procedures set forth in the Partnership Agreement. The Partnership Agreement permits the General Partner to appoint additional general partners and to transfer its general partner interest to an affiliate of the General Partner without the consent of Limited Partners.

Leverage

The Investment Manager may cause the Partnership to undertake leverage. Leverage may take a variety of forms, including, but not limited to, the following: long-term loans, convertible notes and repurchase arrangements. Leverage arrangements used by the Partnership when financing is contingent on the market value of the financed assets may include those which may be subject to mark-to-market collateral or margin calls. See "INVESTMENT PROGRAM" and "RISK FACTORS AND CONFLICTS OF INTEREST" herein.

Determination of Net Asset Value

The net asset value ("**Net Asset Value**") of the Partnership, on a Series-by-Series basis, is determined in accordance with the Partnership Agreement and is generally equal to the amount by which the value of the Partnership's assets exceeds the amount of its liabilities. Net Asset Value calculations will be made by the Administrator (based on the information provided by the Investment Manager) on an accrual basis of accounting, as of the end of each calendar month (or other period, as the case may be), in accordance with

GAAP, consistently applied (except that: (x) organizational and initial offering expenses of the Partnership may be capitalized and amortized over a period of up to 60 months from the date the Partnership commences operations, and (y) reserves may be taken that are inconsistent with GAAP), this Memorandum and the Partnership Agreement.

In making such determinations, securities, commodities and other financial instruments (other than options) that are listed on a national securities, commodities or other exchange, or over-the-counter instruments listed on NASDAQ, will be valued at their last sales prices on such date or, if no sales occurred on such date, at the midpoint between the last "bid" and "ask" prices for such securities, commodities or financial instruments on such date. Options that are listed on a securities or commodities exchange will be valued at their last sales prices on the date of determination on the largest securities or commodities exchange (by trading volume) on which such options shall have traded on such date; *provided* that, if the last sales prices of such options do not fall between the last "bid" and "ask" prices for such options on such date, then such options will be valued at the midpoint between the last "bid" and "ask" prices for such options on such date. Securities, commodities, options and other financial instruments that are not listed on an exchange or quoted on an over-the-counter market, but for which there are available quotations, will be valued based upon quotations obtained from market makers, dealers or pricing services.

The Investment Manager intends to engage an independent third-party valuation agent (in addition to the Administrator) to appraise the Partnership's interests in Illiquid Investments.

If the Investment Manager, in its sole discretion, determines that the valuation of any security, commodity, option or other financial instrument pursuant to the foregoing does not fairly represent its market value, the Investment Manager will value such security, commodity, option or other financial instrument as it reasonably determines. Any securities, commodities, options and other financial instruments that have no public market, investments in other asset classes (including those in Side Pocket Accounts), and all other assets of the Partnership for which a valuation methodology is not specified, will be valued by the Investment Manager in a manner determined in good faith to reflect their fair market value. Absent bad faith or manifest error, all Net Asset Value determinations pursuant to the Partnership Agreement are conclusive and binding as to all Partners.

Allocation of Profit and Loss

To determine how the economic gains and losses of the Partnership will be shared, the Partnership Agreement allocates net income or loss (increases and decreases in Net Asset Value) to each Partner's capital account. Net income or loss includes all portfolio gains and losses, whether realized or unrealized, plus all other Partnership items of income (such as interest) and less all Partnership expenses. Generally, net income and net loss for each month (or other period, as the case may be) will be allocated to the Partners in proportion to their capital account balances as of the start of such month (or such other period). Net income and net losses in any Side Pocket Accounts or other memorandum accounts will be allocated to those Partners participating in such accounts in proportion to their capital account balances in such accounts. All matters concerning the allocation of profits, gains and losses among the parties (including the taxes thereon) and accounting procedures not expressly provided for by the terms of the Partnership Agreement will be determined by the General Partner in its sole discretion. Capital account balances will reflect capital contributions, previous allocations of increases and decreases in Net Asset Value, withdrawals, distributions (if any), and expenses. For the avoidance of doubt, the foregoing provisions will apply on a Series-by-Series basis.

Allocation of Taxable Income and Loss

For income tax purposes, all items of taxable income, gain, loss, deduction and credit will be allocated among the Partners at the end of each fiscal year in a manner consistent with their economic interests in the Partnership. In light of the fact that the Partnership does not intend to make distributions, to the extent that the Partnership's investment activities are successful, Limited Partners should expect to receive allocations of income and loss, and may incur tax liabilities from an investment in the Partnership without receiving cash distributions from the Partnership with which to pay those liabilities. To obtain cash from the Partnership to pay taxes, if any, Limited Partners may be required to make withdrawals, subject to the limitations in the Partnership Agreement. For the

avoidance of doubt, the foregoing provisions will apply on a Series-by-Series basis.

Side Pocket Accounts

The Investment Manager may designate that certain investments held by a Series of the Partnership be carried in one or more separate memorandum accounts (each, a "**Side Pocket Account**") for such period of time as the Investment Manager determines. Such investments may include: (i) privately placed, unregistered securities, commodities, options and other financial instruments, or those investments that, in the opinion of the Investment Manager, do not have a readily ascertainable market value; (ii) other illiquid securities that may be valued but are not freely transferable; and (iii) investments in other asset classes (such as real estate) and other property that are not traded on public exchanges (each, as designated by the Investment Manager, along with follow-on investments, if any, an "**Illiquid Investment**"). Additionally, the Investment Manager, in its sole and absolute discretion, may determine that, for various reasons, an asset that initially was not an Illiquid Investment should be categorized as an Illiquid Investment, or that a follow-on investment should be categorized as a new Illiquid Investment. **For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in Side Pocket Accounts; and (ii) any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.** Illiquid Investments held in a Side Pocket Account will be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event. Upon a Realization Event, such Illiquid Investment (or the sales proceeds thereof) will be reallocated, *pro rata*, from the Side Pocket Account to the capital accounts of participating Partners in accordance with their respective interests in such Side Pocket Account. Until such reallocation, a Limited Partner may not withdraw any of the amounts in its capital account that are attributable to the value of Illiquid Investments held in a Side Pocket Account. Upon such reallocation, a Limited Partner that has withdrawn all of its capital from the Partnership other than the capital attributable to such Side Pocket Account will receive an amount equal to its interest in such Side Pocket Account (net of any accrued Management Fee and accrued expenses (to the extent not covered by the Partnership's reserves, including the Management Fee Reserve) with respect thereto), within 90 days after such reallocation. **For the avoidance of doubt, any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

A "**Realization Event**" occurs: (1) when an Illiquid Investment becomes liquid, as determined in the reasonable discretion of the Investment Manager; (2) when an Illiquid Investment is sold or otherwise disposed of by the Partnership; (3) when circumstances otherwise exist that, in the reasonable judgment of the Investment Manager, conclusively establish a value for an Illiquid Investment, as determined in the reasonable discretion of the Investment Manager (including, without limitation, when additional securities substantially similar to the Illiquid Investment have been issued by the issuer of the Illiquid Investment); or (4) as otherwise determined in the sole discretion of the Investment Manager.

Newly-admitted Limited Partners may not participate in Illiquid Investments that were placed in a Side Pocket Account prior to their admission. Any expenses relating specifically to a Side Pocket Account will be charged to the Partners participating in such account. If the Investment Manager in its discretion designates any investment as a follow-on investment to an existing Illiquid Investment, only the Partners participating in such original investment will participate in such follow-on investment in proportion to their interest in the related Side Pocket Account; *provided, however*, that, if a Partner shall have withdrawn from the Partnership, the General Partner will equitably adjust the interests of the remaining participating Partners to reflect such withdrawn Partner's non-participation in the follow-on investment.

Also see "RISK FACTORS AND CONFLICTS OF INTEREST—Conflicts of Interest" herein.

New Issues Accounts; Other Memorandum Accounts

From time to time, the Partnership may purchase securities that are part of a public distribution. Under rules adopted by the Financial Industry Regulatory Authority ("**FINRA**"), (i) certain persons engaged in the securities, banking or financial services industries (and members of their immediate families) and (ii) certain persons who are affiliated with companies that are current, former or prospective investment banking clients of the Partnership's broker(s) (collectively, "**Restricted Persons**") are restricted from participating in initial public offerings of equity securities ("**New Issues**"), each subject to a *de minimis* exemption. To the extent necessary to comply with FINRA rules, in addition to the Partnership's regular accounts and any Side Pocket Accounts, the General Partner may establish one or more memorandum accounts that are authorized to participate in New Issues (each, a "**New Issues Account**"). Participation in New Issues Accounts will be limited to (i) those Limited Partners who are not Restricted Persons, and (ii) those Limited Partners who are Restricted Persons, but only to the extent that such participation by Restricted Persons does not exceed levels permitted under applicable FINRA rules.

In addition, as a matter of fairness to Partners that do not participate in New Issues, a use-of-funds charge may be debited to the capital accounts of those Partners that do participate in New Issues and credited to the capital accounts of all the Partners. The General Partner may calculate such charge, in its discretion, in any manner consistent with applicable FINRA rules, including, debiting amounts equal to interest, (i) on the funds used to purchase the New Issues at the annual rate being paid by the Partnership, or (ii) that would be paid by the Partnership on borrowed funds during the applicable period.

Upon the sale or other disposition of New Issues (including any transfer of the underlying securities in the New Issues Account to the capital accounts of all of the Partners, after such securities no longer constitute New Issues), any profits or losses resulting from securities transactions in the New Issues Account in any fiscal period will be credited or debited to the capital accounts of Limited Partners participating in the New Issues Account in accordance with their interests therein. Accordingly, the returns to Limited Partners on their investments in the Partnership may differ depending upon whether or not they are a Restricted Person.

In addition to the foregoing with respect to Side Pocket Accounts and New Issues Accounts, to the extent that certain Limited Partners are restricted from participating in any other transactions of the Partnership by applicable laws or regulations, or for any other reason determined by the General Partner in good faith, the General Partner may, in its discretion, establish one or more separate memorandum accounts to hold such investments and isolate ownership away from such restricted Limited Partners. Only those Limited Partners who the General Partner determines are eligible will participate in such accounts.

Side Letters

The Partnership, the General Partner and/or the Investment Manager may from time to time enter into side letters or other similar agreements (collectively, "**Side Letters**") with one or more Limited Partners that provide such Limited Partner(s) with additional and/or different rights (including, without limitation, with respect to access to information, minimum investment amounts and liquidity terms) than such Limited Partner(s) have pursuant to this Memorandum and the Partnership Agreement. Neither the General Partner nor the Investment Manager will be required to notify any or all of the other Limited Partners of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the General Partner or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other Limited Partners.

Reports to Limited Partners

Each Limited Partner will receive the following, with respect to the relevant Series: (i) annual financial statements of the Partnership audited by an independent certified public accounting firm; (ii) quarterly unaudited performance information; (iii) copies of such Limited Partner's Schedule K-1 to the Partnership's tax returns; and (iv) other periodic reports or letters as determined by the General Partner in its sole discretion. The financial statements of the Partnership will be prepared in accordance with GAAP (except to the extent that this Memorandum or the Partnership Agreement states or contemplates that such statements may be inconsistent with GAAP).

The General Partner may at any time choose to change the Partnership's accounting guidelines from GAAP to the International Financial Reporting Standard ("**IFRS**"). In such event, the financial performance of the Partnership, as determined under IFRS, may vary from those determined under GAAP.

The Partnership will bear all fees incurred in providing such tax returns and reports.

The General Partner may agree to provide certain Limited Partners with additional information on the underlying investments of the Partnership, which may affect investment and withdrawal decisions, as well as heightened access to the General Partner, the Investment Manager and their respective employees for relevant information.

Transferability of Interests

As a Limited Partner, you may not assign or transfer your Interest (except by operation of law) without the consent of the General Partner, which consent may be given or withheld in its sole discretion. No transfer of an Interest by a Limited Partner will be permitted if it would result in the termination of the Partnership for federal income tax purposes. Transfers of Interests are subject to other restrictions set forth in the Partnership Agreement, including compliance with ERISA and federal and state securities laws.

Due to these limitations on transferability, Limited Partners may be required to hold their Interests indefinitely, unless they withdraw from the Partnership in accordance with the provisions set forth in the Partnership Agreement.

Distributions; Distributions Upon Termination of the Partnership

The Partnership does not expect to make any distributions to Limited Partners from profits or capital, except pursuant to requests for withdrawals and upon termination of the Partnership or the relevant Series. Upon the termination of the Partnership (as further described in the Partnership Agreement), the assets of the Partnership or the relevant Series will be liquidated (or distributed) and the proceeds of liquidation will be used to pay off known liabilities, establish reserves for contingent liabilities and expenses of liquidation (even if such reserves are not in accordance with GAAP), and any remaining balance will be applied and distributed in proportion to the respective capital accounts of the Partners. The Partnership or the relevant Series may satisfy any distributions to Limited Partners in cash, in-kind or any combination thereof. Additionally, the General Partner may create a liquidating fund entity (e.g., a liquidating trust or similar vehicle) and may transfer all or a portion of the Partnership's assets to such entity for any reason, including an orderly liquidation of any illiquid Partnership or Series assets, including, but not limited to Side Pocket Accounts, and may distribute ownership interests in such entity to Limited Partners.

The termination of the Partnership shall constitute the termination of all Series. For the avoidance of doubt, the termination of an individual Series, however, shall not constitute the termination of the Partnership.

Bank Holding Companies

Limited Partners that are Bank Holding Companies ("**BHC Limited Partners**") (as defined by Section 2(a) of the Bank Holding Company Act of 1956, as amended ("**BHCA**")) are limited to 4.99% of the voting Interest in the Partnership under Section 4(c)(6) of the BHCA. The portion of the Interest in the Partnership held by a BHC Limited Partner in excess of 4.99% of the aggregate outstanding voting Interests of all Limited Partners will be deemed non-voting Interests in the Partnership. BHC Limited Partners holding non-voting Interests in the Partnership are permitted to vote such Interests (i) on any proposal to dissolve or continue the business of the Partnership under the Partnership Agreement and (ii) on matters with respect to which voting rights are not considered to be "voting securities" under 12 C.F.R. § 225.2(q)(2), including such matters which may "significantly and adversely" affect a BHC Limited Partner (such as amendments to the Partnership Agreement or modifications of the terms of its Interest). For the avoidance of doubt, the foregoing provisions shall apply on a Series-by-Series basis. Except with regard to restrictions on voting, non-voting Interests are identical to all other Interests held by Limited Partners.

Voting Rights and Amendments

The voting rights of Limited Partners are very limited. Other than as explicitly set forth in the Partnership Agreement, Limited Partners have no voting rights as to the Partnership or its management. Generally, the Partnership Agreement may be amended only with the

consent of the General Partner and Limited Partners owning more than 50% of all of the outstanding Interests of each Series; *provided* that: (x) for matters only relating to one Series, only the Limited Partners of that Series will vote on such matters, and (y) that the General Partner may amend the Partnership Agreement without the consent of or notice to any of the Limited Partners if, in the opinion of the General Partner, the amendment does not materially adversely affect any Limited Partner.

Liability of Limited Partners

No Limited Partner shall be personally liable or bound for the expenses, liabilities or obligations of the Partnership or the relevant Series beyond the amount in such Limited Partner's capital account in the relevant Series, from time to time, including any amounts thereof attributable to capital contributions, except that such Limited Partner may be obligated to return all or a portion of any distributions (including withdrawal proceeds) received from the Partnership or the relevant Series in an amount up to its aggregate capital contributions (including any income or gains thereon) to the Partnership or the relevant Series in order to pay such Limited Partner's *pro rata* share of any Partnership or Series liabilities that arose while such Limited Partner held Interests. Subject to the foregoing, no Limited Partner shall be obligated to provide any contributions to the Partnership or the relevant Series, other than its initial capital contribution. No Limited Partner shall be obligated to make any loan to the Partnership or a Series.

Under the Delaware Revised Uniform Limited Partnership Act ("**Delaware Act**"), when a Limited Partner receives a return of all or any part of such Limited Partner's capital contribution, the Limited Partner may be liable to the Partnership or a Series for any sum, not in excess of such return of capital (together with interest), if at the time of such distribution the Limited Partner knew that the Partnership or the relevant Series was prohibited from making such distribution pursuant to the Delaware Act.

Brokerage Practices

Portfolio transactions for the Partnership will be allocated by the Investment Manager to brokers on the basis of best execution and in consideration of, among other factors, such brokers' ability to effect transactions, operational efficiency, reputation and financial strength. See "BROKERAGE PRACTICES".

Other Activities of the General Partner, the Investment Manager, the Principal and Affiliates

None of the General Partner, the Investment Manager, the Principal or any of their respective partners, managers, members, directors, officers, employees, agents and affiliates (collectively, "**Investment Manager Affiliates**") is required to manage the Partnership as its sole and exclusive function. In addition to managing the Partnership and its investments, each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may provide investment management and other services to other parties and may manage other accounts and/or establish other private investment funds in the future (both domestic and offshore) (such accounts and funds, collectively, "**Affiliated Funds**"), including those that may employ an investment program and strategy similar to that of the Partnership.

Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to Atlas IDF, LP, a Delaware "series" limited partnership ("**IDF Fund**") that is structured as an insurance-dedicated fund and is expected to invest a portion of its assets in the Partnership; (ii) Atlas IDF GP, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the IDF Fund; (iii) the Principal is the managing member and controlling person of Atlas IDF GP, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series.

See "MANAGEMENT" and "RISK FACTORS AND CONFLICTS OF INTEREST" herein.

Exculpation and Indemnification

The Partnership Agreement provides that none of the General Partner, the Investment Manager or any of the Investment Manager Affiliates will be liable to the Partnership or the Limited Partners for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. The Partnership (but not the Limited Partners individually) is obligated to indemnify the General Partner, the Investment Manager and the Investment Manager

Affiliates (which, for purposes of this indemnity, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any of them in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided* that such indemnity will not extend to conduct determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. For the avoidance of doubt, the foregoing indemnification provisions shall apply on a Series-by-Series basis. The Investment Management Agreement also provides similar protections to the Investment Manager.

Term

The term of the Partnership will continue indefinitely until terminated in accordance with the Partnership Agreement. Under the Partnership Agreement, the Partnership may be terminated at the election of the General Partner.

Fiscal Year

The fiscal year of the Partnership will end on December 31 of each year. However, the fiscal year may be changed at any time by the General Partner, in its sole and absolute discretion.

Auditor

The Partnership intends to engage a nationally recognized public accounting firm to act as the Partnership's auditor. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

Administrator

The Partnership intends to engage a provider of administrative services to acts as the Partnership's Administrator, as further set forth herein. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details. See "SERVICE PROVIDERS—Administrator" herein.

Shared Services Arrangement

In addition, the Investment Manager has entered into a shared services agreement ("**Shared Services Agreement**") with Highland Capital Management, L.P., a Delaware limited partnership (in its capacity with respect to the Shared Services Agreement, the "**Shared Services Provider**"), pursuant to which the Shared Services Provider will provide certain administrative, information technology, accounting, tax, back-office and other services to the Investment Manager. The Partnership will not incur any additional fees as a result of the arrangements with the Shared Services Provider. See "RISK FACTORS AND CONFLICTS OF INTEREST" herein. Also see "SERVICE PROVIDERS—Administrator" herein.

Regulatory Compliance Provider

The Investment Manager intends to engage a reputable regulatory compliance provider for the Investment Manager, the General Partner and certain of their respective affiliates. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

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Legal Counsel

Sadis & Goldberg LLP acts as legal counsel to the General Partner, the Investment Manager, the Partnership and certain of their respective affiliates in connection with the offering of Interests and other ongoing matters. Sadis & Goldberg LLP has been retained to prepare offering documentation in connection with the offering but not to conduct any due diligence on the Principal, the General Partner, the Investment Manager or any of the information in this Memorandum. Sadis & Goldberg LLP does not represent the Limited Partners, and each Limited Partner is urged to consult with its own counsel.

There may exist other matters that could have a bearing on the Partnership as to which Sadis & Goldberg LLP has not been consulted. In addition, Sadis & Goldberg LLP does not undertake to monitor compliance by the Investment Manager, the General Partner, the Principal and their respective affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Sadis & Goldberg LLP monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Sadis & Goldberg's responsibility is limited to matters of U.S. securities and federal tax law and it does not accept responsibility in relation to any other matters referred to or

disclosed in this Memorandum. In the course of advising the Partnership, there are times when the interests of Limited Partners may differ from those of the Partnership. Sadis & Goldberg LLP does not represent the Limited Partners' interests in resolving these issues. Sadis & Goldberg LLP is a party to certain offering related documents to the limited extent that it can benefit from and enforce certain provisions thereof. In preparing this Memorandum, Sadis & Goldberg LLP has relied upon information furnished to it by the General Partner, the Investment Manager and their respective affiliates and is not obligated to investigate or verify the accuracy and completeness of information set forth herein concerning the Partnership.

Furthermore, if a conflict of interest or dispute arises between the General Partner and/or the Investment Manager, on the one hand, and the Partnership or any Limited Partner, on the other hand, by investing in the Partnership, the Limited Partners acknowledge that Sadis & Goldberg LLP may act as counsel to the General Partner and/or the Investment Manager and not counsel to the Partnership or the Limited Partners, notwithstanding the fact that, in certain cases, the fees paid to Sadis & Goldberg LLP are paid through or by the Partnership.

In addition, Sadis & Goldberg LLP has represented Highland and affiliates at different times over a period lasting over a decade. It is currently expected that Sadis & Goldberg LLP will represent the General Partner, the Investment Manager, the Principal and certain of their respective affiliates in connection with the establishment of the Partnership and the IDF Fund, the possible consummation of the Highland Transaction, and certain related matters. The Principal and his affiliates are aware of the representation by Sadis & Goldberg LLP of Highland and affiliates.

Also see "RISK FACTORS AND CONFLICTS OF INTEREST—Conflicts of Interest—Lack of Separate Representation; Potential Conflicts of Counsel" herein.

Address for Inquiries

You are invited to, and it is highly recommended that you do, meet with the General Partner and/or the Administrator (to the extent applicable) for a further explanation of the terms and conditions of this offering of Interests and to obtain any additional information necessary to verify the information contained in this Memorandum, to the extent that the General Partner and/or the Administrator (to the extent applicable) possesses such information or can acquire it without unreasonable effort or expense. Requests for such information should be directed to:

Rand PE Fund Management, LLC
87 Railroad Place, Suite 403
Saratoga Springs, NY 12866
Attention: John Honis
Telephone: (214) 335-7969
Email: Jhonis@RandAdvisors.com

BACKGROUND OF THE GENERAL PARTNER AND THE INVESTMENT MANAGER

The General Partner of the Partnership is Rand PE Fund Management, LLC, a Delaware limited liability company. The General Partner is responsible for the management of the Partnership's affairs.

The Investment Manager of the Partnership is Rand Advisors, LLC, a Delaware limited liability company. The Investment Manager has discretionary investment authority over the Partnership's assets. The Investment Manager is registered as an investment adviser with the SEC. A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

As the managing member and controlling person of the General Partner and the Investment Manager, John Honis controls all of the Partnership's operations and activities.

Limited Partners do not have any right to participate in the management of the Partnership and have very limited voting rights.

BACKGROUND OF THE PRINCIPAL

John Honis, Principal

Mr. Honis has more than 25 years of investment management and business experience. He has a background in the credit markets and private equity. Throughout his career in the investment management industry, Mr. Honis has guided many portfolio companies across several continents. Mr. Honis' business experience includes roles as CEO, CRO and board-level advisory positions to both high-growth and distressed companies, in a wide range of manufacturing and service industries.

Mr. Honis founded Barrier Advisors, a recognized provider of strategic, operational and financial advice to private equity, venture capital and money management institutions. He led many turnarounds and strategic growth initiatives and has attracted many of the nation's reputable turnaround practitioners to the Barrier team.

Previously, Mr. Honis was a high-tech executive, having served as President, CEO or Chief Restructuring Officer of five telecommunications firms. His experiences in all aspects of growth management, strategic/operational turnarounds, financial restructuring, mergers and acquisitions and capital markets were the foundational elements of Barrier Advisors' charter. Mr. Honis was previously a Partner and Co-Head of Private Equity at Highland Capital Management, L.P. ("**Highland**") (which now serves as the Shared Services Provider to the Investment Manager).

Mr. Honis' early career started at J.P. Morgan in New York where he was worked in the firm's global consulting practice. At J.P. Morgan, he specialized in the design and implementation of worldwide corporate finance processes and systems. Mr. Honis received a BA Degree in Economics from Syracuse University.

Mr. Honis currently serves on the Board of Trustees for each of Highland's affiliated registered investment companies and on the Board of Directors for American HomePatient, Inc. and Turtle Bay Resort, LLC, which are portfolio companies of investment funds operated by Highland.

Additional Personnel

The General Partner and the Investment Manager may employ additional personnel in the future.

OTHER ACTIVITIES OF THE GENERAL PARTNER, THE INVESTMENT MANAGER, THE PRINCIPAL AND AFFILIATES

None of the General Partner, the Investment Manager, the Principal or any of the Investment Manager Affiliates is required to manage the Partnership as its sole and exclusive function. Each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may engage in other business activities, including competing ventures and/or other unrelated employment, and is only required to devote such time to the Partnership as the General Partner deems necessary to accomplish the purposes of the Partnership.

In addition to managing the Partnership and its investments, each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may provide investment management and other services to other parties and may manage and/or establish Affiliated Funds in the future, including those that may employ an investment program and strategy similar to that of the Partnership.

Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to the IDF Fund that is structured as an insurance-dedicated fund and is expected to invest a portion of its assets in the Partnership; (ii) Atlas IDF GP, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the IDF Fund; (iii) the Principal is the managing member and controlling person of Atlas IDF GP, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series. See "RISK FACTORS AND CONFLICTS OF INTEREST" herein.

INVESTMENTS BY THE GENERAL PARTNER, THE INVESTMENT MANAGER, THE PRINCIPAL AND AFFILIATES

Capital contributions by the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates will generally be on the same basis as capital contributions made by other investors, except that, in the discretion of the Investment Manager, no Management Fee may be assessed to such persons. Neither the Partnership Agreement nor the Investment Management Agreement requires the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates to maintain any minimum capital account balance.

SERVICE PROVIDERS

ADMINISTRATOR

The Partnership intends to engage an Administrator and enter into an Administration Agreement with the Administrator ("**Administration Agreement**"). The Administrator may be: (x) a nationally recognized provider of administrative services or (y) Highland (i.e., the Shared Services Provider); provided that, for the avoidance of doubt, any Administration Agreement with Highland, to the extent applicable, will be in addition to the Shared Services Agreement. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

The Administration Agreement will include industry-standard provisions relating to scope of services, fees, termination and indemnification.

The Administrator will be a service provider to the Partnership and will not be responsible for the preparation of this Memorandum or the activities of the Partnership, and therefore accepts no responsibility for any information contained in this Memorandum. The Administrator will not participate in the Partnership's investment decision-making process.

AUDITOR

The Partnership intends to engage a nationally recognized public accounting firm to act as the auditor for the Partnership. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

REGULATORY COMPLIANCE PROVIDER

The Investment Manager intends to engage a reputable regulatory compliance provider for the Investment Manager, the General Partner and certain of their respective affiliates. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

LEGAL COUNSEL

Sadis & Goldberg LLP acts as legal counsel to the General Partner, the Investment Manager, the Partnership and certain of their respective affiliates in connection with the offering of Interests and other ongoing matters. Sadis & Goldberg LLP has been retained to prepare offering documentation in connection with the offering but not to conduct any due diligence on the Principal, the General Partner, the Investment Manager or any of the information in this Memorandum. Sadis & Goldberg LLP does not represent the Limited Partners, and each Limited Partner is urged to consult with its own counsel.

There may exist other matters that could have a bearing on the Partnership as to which Sadis & Goldberg LLP has not been consulted. In addition, Sadis & Goldberg LLP does not undertake to monitor compliance by the Investment Manager, the General Partner, the Principal and their respective affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Sadis & Goldberg LLP monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Sadis & Goldberg's responsibility is limited to matters of U.S. securities and federal tax law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Partnership, there are times when the interests of Limited Partners may differ from those of the Partnership. Sadis & Goldberg LLP does not represent the Limited Partners' interests in resolving these issues. Sadis & Goldberg LLP is a party to certain offering related documents to the limited extent that it can benefit from and enforce certain provisions thereof. In preparing this Memorandum, Sadis & Goldberg LLP has relied upon information furnished to it by the General Partner, the Investment Manager and their respective affiliates and is not obligated to investigate or verify the accuracy and completeness of information set forth

herein concerning the Partnership.

Furthermore, if a conflict of interest or dispute arises between the General Partner and/or the Investment Manager, on the one hand, and the Partnership or any Limited Partner, on the other hand, by investing in the Partnership, the Limited Partners acknowledge that Sadis & Goldberg LLP may act as counsel to the General Partner and/or the Investment Manager and not counsel to the Partnership or the Limited Partners, notwithstanding the fact that, in certain cases, the fees paid to Sadis & Goldberg LLP are paid through or by the Partnership.

In addition, Sadis & Goldberg LLP has represented Highland and affiliates at different times over a period lasting over a decade. It is currently expected that Sadis & Goldberg LLP will represent the General Partner, the Investment Manager, the Principal and certain of their respective affiliates in connection with the establishment of the Partnership and the IDF Fund, the possible consummation of the Highland Transaction, and certain related matters. The Principal and his affiliates are aware of the representation by Sadis & Goldberg LLP of Highland and affiliates.

INVESTMENT PROGRAM

INTRODUCTION

The Partnership was organized for the purpose of investing and trading in a wide variety of investments, domestic and foreign, of all kinds and descriptions, whether publicly traded or privately placed, including, but not limited to, the following: common and preferred stocks, bonds and other debt securities, convertible securities, limited partnership interests, other investment funds, CLO securities, mutual fund shares, options, warrants, futures, derivatives (including swaps, forward contracts and structured instruments), monetary instruments, other financial instruments, cash and cash equivalents. The Investment Manager is eligible to trade a limited amount of commodities or financial futures on behalf of the Partnership under a provision in the Commodity Exchange Act, as amended ("**CEA**"), that provides an exemption from registration as a commodity pool operator.

References herein to the Partnership shall include, where appropriate, each Series of the Partnership.

The following is a general description of the principal types of investments which the Investment Manager currently contemplates making for the Partnership, certain trading techniques that it may employ, the investment criteria that it plans to apply, and the guidelines that it has established with respect to the composition of its investment portfolio. The following description is merely a summary, and a Limited Partner should not assume that any descriptions of the specific activities in which the Partnership may engage are intended in any way to limit the types of investment activities which the Partnership may undertake or the allocation of Partnership capital among such investments.

INVESTMENT OBJECTIVE

The Partnership's primary objective is to seek consistent above-average returns primarily through capital appreciation. **No assurance can be given, however, that the Investment Manager will achieve the Partnership's investment objective, and investment results may vary substantially over time and from period to period.**

INVESTMENT STRATEGY

General

The Investment Manager intends to invest the Partnership's portfolio in small- to medium-sized companies (i.e., generally with market capitalization of under $1 billion) that are involved in (or are the target of) acquisition attempts or tender offers, and/or in companies involved in work-outs, liquidations, spin-offs, reorganizations, bankruptcies or similar transactions. The Investment Manager intends to use a disciplined investment philosophy by combining thorough fundamental research and in-depth analysis of investment opportunities. The Partnership (x) is expected to initially invest all or substantially all of the assets attributable to Series 1 in the Highland Transaction, if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction.

Philosophy

The Investment Manager intends to use a disciplined investment philosophy by combining thorough fundamental research and in-depth analysis of investment opportunities. The following principles generally guide the Investment Manager's portfolio management strategy and allocation of capital:

- invest with a long-term perspective, minimize turnover and avoid market-timing;
- hold a concentrated investment portfolio; and

- view each investment relative to other investment opportunities.

Long-Term Perspective. The Investment Manager intends to invest with a long-term perspective, typically holding an ownership position in a company until it reaches its intrinsic value. In general, when the Investment Manager will be looking to invest in a company, it intends to avoid trying to time the market, but rather intends to focus on the intrinsic value of the company and then find the right entry or purchase point.

Concentration. The Investment Manager intends to have a concentrated portfolio of investments. The Investment Manager believes that this may provide the Partnership with a competitive advantage over most other private investment vehicles in that: (i) the Investment Manager's best ideas would be rarely and/or marginally diluted by its lesser ideas; (ii) the extra time saved by not trading may allow the Investment Manager to concentrate on finding other investment ideas; and (iii) careful analysis may allow the Investment Manager to make intelligent and deliberated decisions. **For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in Side Pocket Accounts; and (ii) any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

Relative Analysis. The Investment Manager intends to evaluate potential investments in companies of varying market capitalization in an attempt to isolate those securities with the greatest potential for capital appreciation. As part of its strategy, the Investment Manager intends to invest in those industries, sectors and securities which may provide value on a relative basis. The Investment Manager intends to seek to understand a company and its industry before investing.

Leverage

The Investment Manager may cause the Partnership to undertake leverage. Leverage may take a variety of forms, including, but not limited to, the following: long-term loans, convertible notes and repurchase arrangements. To the extent applicable, entering into short sales and certain types of derivative instruments may also increase the Partnership's use of leverage. Leverage arrangements used by the Partnership when financing is contingent on the market value of the financed assets may include those which may be subject to mark-to-market collateral or margin calls.

Important Notice

The foregoing description of the Partnership's investment program does not purport to be a complete explanation of all the asset classes or securities in which the Partnership may invest. In general, the Investment Manager intends to follow a flexible approach in order to place the Partnership in the best position to capitalize on opportunities in the financial markets. Accordingly, the Investment Manager may employ other strategies and may take advantage of opportunities in diverse asset classes if they meet the Investment Manager's standards of investment merit.

DEVELOPMENT AND RISKS OF INVESTMENT MANAGER'S INVESTMENT STRATEGY

The development of an investment strategy is a continuous process, and the Partnership's investment strategy and methods may therefore be modified from time to time. The Partnership's investment methods are confidential, and the descriptions of them in this Memorandum are not exhaustive. The Partnership's investment strategies may differ from those used by the Investment Manager and its affiliates with respect to other accounts they manage. Investment decisions require the exercise of judgment by the Investment Manager. The Investment Manager may, at times, decide not to make certain investments, thereby foregoing participation in price movements, which would have yielded profits or avoided losses. Limited Partners cannot be assured that the strategies or methods utilized by the Investment Manager will result in profitable investing for the Partnership.

The Partnership's investment program entails substantial risks, and there can be no assurance that its investment objectives will be achieved. The practices of options trading, short selling, the use of leverage and other investment techniques that may be employed by the Partnership can, in certain circumstances, maximize the adverse impact to which the Partnership's investment portfolio may be subject. See "RISK FACTORS AND CONFLICTS OF INTEREST—Market Risks".

BROKERAGE PRACTICES

References herein to the Partnership shall be deemed to apply with respect to the Partnership's traded investments.

BROKERAGE ARRANGEMENTS

The Investment Manager is responsible for the placement of the portfolio transactions of the Partnership and the negotiation of any commissions paid on such transactions. Portfolio securities normally are purchased through brokers on securities exchanges or directly from the issuer or from an underwriter or market maker for the securities. Purchases of portfolio instruments through brokers involve a commission to the broker. Purchases of portfolio securities from dealers serving as market makers include the spread between the "bid" and the "ask" price. The Investment Manager will not commit to provide any level of brokerage business to any broker. The Investment Manager may utilize the services of one or more introducing brokers who will execute the Partnership's brokerage transactions through a broker or custodian who will clear the Partnership's transactions.

Securities transactions for the Partnership are executed through brokers selected by the Investment Manager in its sole discretion and without the consent of the Partnership. In placing portfolio transactions, the Investment Manager will seek to obtain the best execution for the Partnership, taking into account the following factors: the ability to effect prompt and reliable executions at favorable prices (including the applicable dealer spread or commission, if any); the operational efficiency with which transactions are effected and the efficiency of error resolution, taking into account the size of order and difficulty of execution; the financial strength, integrity and stability of the broker; special execution capabilities; reputation; clearance, settlement, on-line pricing, block trading and block positioning capabilities; willingness to execute related or unrelated difficult transactions in the future; order of call; online access to computerized data regarding clients' accounts; performance measurement data; the quality, comprehensiveness and frequency of available brokerage and research products and services considered to be of value; the availability of stocks to borrow for short trades; and the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria.

SOFT DOLLAR ARRANGEMENTS

The term "soft dollars" refers to commissions accumulated by brokers based on an investment manager's transactions, on behalf of its clients, which may be used by the investment manager to acquire various products or services. The use of client commissions, known as soft dollars, to pay for these products and services, including research and brokerage products and services, presents investment managers with potential conflicts of interest and may give incentives for investment managers to use certain brokers without regard to their obligations to their clients.

The Investment Manager may use soft dollars generated by the Partnership's brokerage transactions to pay for brokerage and research products and services that fall within the safe harbor afforded by Section 28(e) of the Exchange Act ("**Section 28(e)**"). Section 28(e) provides a "safe harbor" to investment managers who use soft dollars to obtain investment research and brokerage products and services. In order to qualify for the safe harbor, the products or services must provide assistance to the investment manager in the performance of its investment decision-making responsibilities, or must relate to the execution, clearance or settlement of a trade.

REFERRAL OF INVESTORS AND SALES CHARGES

The Investment Manager may direct some Partnership brokerage business to brokers who refer prospective investors to the Partnership. Because such referrals, if any, are likely to benefit the Investment Manager and its affiliates but will provide an insignificant (if any)

benefit to Limited Partners, the Investment Manager will have a conflict of interest with the Partnership when allocating Partnership brokerage business to a broker who has referred investors to the Partnership. To prevent Partnership brokerage commissions from being used to pay investor referral fees, the Investment Manager will not allocate Partnership brokerage business to a referring broker unless the Investment Manager determines in good faith that the commissions payable to such broker are reasonable in relation to those available from non-referring brokers offering services of substantially equal value to the Partnership.

The General Partner and/or the Investment Manager may sell Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the capital contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. If a Limited Partner is introduced to the Partnership through a broker-dealer that is not affiliated with the Investment Manager and/or the General Partner, the arrangement, if any, with such broker-dealer will be disclosed to, and acknowledged by, such Limited Partner.

ALLOCATION OF INVESTMENT OPPORTUNITIES

The Investment Manager may at times determine that certain investments will be suitable for acquisition by the Partnership and by other accounts managed by the Investment Manager, including Affiliated Funds, the Investment Manager's own accounts or accounts of an affiliate. If that occurs, and the Investment Manager is not able to acquire the desired aggregate amount of such investments on terms and conditions which the Investment Manager deems advisable, the Investment Manager will endeavor to allocate in good faith the limited amount of such investments acquired among the various accounts for which the Investment Manager considers them to be suitable. The Investment Manager may make such allocations among the accounts in any manner which it considers to be fair under the circumstances, including, but not limited to, allocations based on relative account sizes, the degree of risk involved in the investments acquired, and the extent to which such investments are consistent with the investment policies and strategies of the various accounts involved.

AGGREGATION OF ORDERS

The Investment Manager may aggregate purchase and sale orders of investments held by the Partnership with similar orders being made simultaneously for other accounts or entities if, in the Investment Manager's reasonable judgment, such aggregation is reasonably likely to result in an overall economic benefit to the Partnership based on an evaluation that the Partnership will be benefited by relatively better purchase or sale prices, lower commission expenses or beneficial timing of transactions, or a combination of these and other factors.

In some instances, the purchase or sale of investments for the Partnership may be effected simultaneously with the purchase or sale of like investments for other accounts or entities. Such transactions may be made at slightly different prices, due to the volume of investments purchased or sold. In such event, the average price of all investments purchased or sold in such transactions may be determined, at the Investment Manager's sole discretion, and the Partnership may be charged or credited, as the case may be, with the average transaction price.

TRADE ERROR POLICY

The Investment Manager has internal controls in place to prevent trade errors from occurring. On those occasions when such an error nonetheless occurs, the Investment

Manager will use reasonable efforts to correct the error. If the error cannot be corrected, the Investment Manager does not intend to make any adjustment, regardless of whether the error works to the benefit or detriment of the Partnership. The Investment Manager will endeavor to maintain a record of each trade error, including information about the trade and how such error was corrected or attempted to be corrected. The Partnership (and not the General Partner, the Investment Manager or any of the Investment Manager Affiliates) will be responsible for any losses resulting from trading errors and similar human errors, unless such errors are due to gross negligence or willful misconduct, as determined by a final, non-appealable decision of a court of competent jurisdiction.

RISK FACTORS AND CONFLICTS OF INTEREST

An investment in the Partnership (and any Series thereof) involves significant risks not associated with other investment vehicles and is suitable only for persons of adequate financial means who have no need for liquidity in this investment. There can be no assurances or guarantees that: (i) the Partnership's (or any Series') investment strategy will prove successful, or (ii) investors will not lose all or a portion of their investment in the Partnership (or any particular Series).

References herein to the Partnership shall include, where appropriate, each Series of the Partnership.

You should consider the Partnership as a supplement to an overall investment program and should only invest if you are willing to undertake the risks involved. In addition, investors who are subject to income tax should be aware that an investment in the Partnership (or any Series thereof) is likely (if the Partnership (or such Series) is successful) to create taxable income or tax liabilities in excess of cash distributions to pay such liabilities. You should therefore bear in mind the following risk factors and conflicts of interest before purchasing an Interest:

PARTNERSHIP RISKS

Dependence Upon the General Partner, the Investment Manager and the Principal; No Participation in Management. The Partnership's success will depend on the management of the General Partner and the Investment Manager and on the skill and acumen of the Principal. If the Principal should cease to participate in the Partnership's business, the Partnership's ability to select attractive investments and manage its portfolio could be severely impaired.

As a Limited Partner, you should be aware that you will have no right to participate in the management of the Partnership, and you will have no opportunity to select or evaluate any of the Partnership's investments or strategies. Accordingly, you should not invest in the Partnership unless you are willing to entrust all aspects of the management of the Partnership and its investments to the discretion of the General Partner and the Investment Manager.

Limited or Lack of Operating History. Each of the Partnership, the Investment Manager and the General Partner are recently-formed entities that have no operating history upon which prospective investors may evaluate the Partnership's future performance. Although the Principal has experience with investments of the type the Partnership intends to make, any prior performance of the Principal (or the Investment Manager Affiliates) is not necessarily indicative of results that he may achieve with respect to the Partnership. As such, there can be no assurances that the Partnership will be able to implement its investment strategy or achieve its investment objective. In addition, any prior performance of the Principal or the Investment Manager Affiliates is not indicative of the results each may achieve for the Partnership in the future.

Reliance on the Shared Services Provider. The Investment Manager relies on the Shared Services Provider to provide certain administrative and other services. In the event that the Shared Services Agreement is terminated for any reason, the Investment Manager may not be able to engage another third party to provide such services and may not have the resources to continue advising the Partnership without the provision of such services by the Shared Services Provider. In addition, the Shared Services Provider may be (but, as of the date hereof, is not) engaged by the Partnership to act as the Partnership's Administrator, pursuant to a separate Administration Agreement.

Limited Liquidity of Interests. An investment in the Partnership involves substantial restrictions on liquidity, and its Interests are not freely transferable. There is no market for the Interests in the Partnership, and no market is expected to develop. Additionally, transfers are subject to the consent of the General Partner, which consent may be granted or withheld in the General Partner's sole discretion. Consequently, Limited Partners will

be unable to liquidate their Interests except by withdrawing from the Partnership in accordance with the Partnership Agreement. Limited Partners may be unable to liquidate their investment promptly in the event of an emergency or for any other reason. Although a Limited Partner may attempt to increase its liquidity by borrowing from a bank or other institution, Interests may not readily be accepted as collateral for a loan. In addition, the transfer of an Interest as collateral or otherwise to achieve liquidity may result in adverse tax consequences to the transferor.

A portion of the Partnership's assets may be invested in securities and other financial instruments or obligations for which no market exists and/or which are restricted as to their transferability under federal or state securities laws. Such investments may be segregated from other Partnership assets and carried in Side Pocket Accounts, which are subject to restrictions on withdrawals. Because of the absence of any trading market for these investments, the Partnership may take longer to liquidate these positions than would be the case for publicly traded securities. Although these securities may be resold in privately negotiated transactions, the prices realized on these sales could be less than those originally paid by the Partnership. Further, companies whose securities are not publicly traded may not be subject to public disclosure and other investor protection requirements applicable to publicly traded securities.

Lack of Registration. The Interests have neither been registered under the Securities Act nor under the securities laws of any state and, therefore, are subject to transfer restrictions. In connection with your purchase of an Interest, you must represent that you are purchasing the Interest for investment purposes only and not with a view toward resale or distribution. Neither the Partnership nor the General Partner has any plans or assumed any obligation to register the Interests. Accordingly, the Interests may not be transferred without documentation acceptable to the General Partner, which may include an opinion of counsel to the Partnership that the transfer will not involve a violation of the registration requirements of the Securities Act or require registration by the Partnership under the Investment Company Act. These restrictions on transfer are in addition to those found in the Partnership Agreement. Ordinarily, this means that transfers will be restricted to instances of death, gift or passage by operation of law.

Withdrawal of Capital. A Limited Partner's ability to withdraw funds from the Partnership is restricted in accordance with the withdrawal provisions contained in this Memorandum under "SUMMARY OF OFFERING AND PARTNERSHIP TERMS—Withdrawals" and the withdrawal provisions contained in the Partnership Agreement. In addition, substantial withdrawals by investors within a short period of time could require the Partnership to liquidate securities positions and other investments more rapidly than would otherwise be desirable, possibly reducing the value of the Partnership's assets and/or disrupting the Partnership's investment strategy. Reduction in the size of the Partnership could make it more difficult to generate a positive return or to recoup losses due to, among other things, reductions in the Partnership's ability to take advantage of particular investment opportunities or decreases in the ratio of its income to its expenses.

For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in Side Pocket Accounts; and (ii) any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely. In addition, because of the absence of any trading market Illiquid Investments, the Partnership may take longer to liquidate these positions than would be the case for publicly traded securities. Each of the foregoing may impact a Limited Partner's ability to withdraw.

Concentration of Investments. The Investment Manager implements its investment program in a manner which, in light of investment considerations, market risks and other factors, it believes will provide the best opportunity for attractive risk-adjusted returns in the value of the Partnership's assets. The Partnership Agreement does not formally limit the amount of the Partnership's assets that may be invested in a single company, security, country, industry, sector or asset class. **For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in Side Pocket Accounts; and (ii) any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.** The

concentration of the Partnership's portfolio in any manner described above would subject the Partnership to a greater degree of risk with respect to the failure of one or a few investments, or with respect to economic downturns in relation to an individual industry or sector, or single company, security, country, industry, sector or asset class.

Operating Deficits. The expenses of operating the Partnership (including the Management Fee) may exceed its income, thereby requiring that the difference be paid out of the Partnership's capital, reducing the Partnership's investments and potential for profitability.

No Distributions. The General Partner does not intend to make distributions to the Limited Partners, but intends instead to reinvest substantially all Partnership income and gain, if any. Cash that might otherwise be available for distribution will also be reduced by payment of Partnership obligations, payment of Partnership expenses (including fees payable and expense reimbursements to the General Partner) and establishment of appropriate reserves. As a result, if the Partnership is profitable, Limited Partners in all likelihood will be credited with Partnership net income, and will incur the consequent income tax liability (to the extent that they are subject to income tax), even though Limited Partners receive little or no Partnership distributions.

Investment Expenses. The investment expenses (e.g., expenses related to the investment and custody of the Partnership's assets, such as brokerage commissions, custodial fees and other trading and investment charges and fees) as well as other Partnership fees may, in the aggregate, constitute a high percentage relative to other investment entities. The Partnership will bear these costs regardless of its profitability.

Cross-Series Liability. Section 17-218 of the Delaware Act provides that limited partnerships can be established in separate series in a manner that the liabilities and obligations incurred with respect to any series are only enforceable against the assets of such series, and not against the assets of the limited partnership generally or any other series. The relevant provisions of the Delaware Act provide the legal requirements for how limited partnerships can be established and operated to maintain this segregation. The statute includes such requirements as the maintenance of separate books and records for each series, and separation of the assets of each series from other series. Despite these statutory provisions, there may be instances where the assets of a particular Series may be exposed to the liabilities of one or more other Series. For example, there may be certain counterparties which resist entering into a contract with a particular Series and insist that one or more other Series, or the Partnership itself acting on behalf of the Series together, enter into such contract.

Supervision of Trading Operations. The Investment Manager, with assistance from its brokerage and clearing firms, intends to supervise and monitor trading activity in the Partnership's account to ensure compliance with the Partnership's objectives. Despite the Investment Manager's efforts, however, there is a risk that unauthorized or otherwise inappropriate trading activity may occur in the Partnership account.

Impact of Side Letters. The Partnership, the General Partner and/or the Investment Manager may from time to time enter into Side Letters with one or more Limited Partners that provide such Limited Partner(s) with additional and/or different rights (including, without limitation, with respect to access to information, minimum investment amounts and liquidity terms) than such Limited Partner(s) have pursuant to this Memorandum and the Partnership Agreement. Neither the General Partner nor the Investment Manager will be required to notify any or all of the other Limited Partners of any such written agreements or any of the rights and/or terms or provisions thereof, nor will the General Partner or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other Limited Partners. The other Limited Partners will have no recourse against the Partnership, the General Partner, the Investment Manager and/or any of their respective affiliates in the event that certain Limited Partners receive additional and/or different rights and/or terms as a result of such Side Letters.

Broad Discretionary Power to Choose Investments and Strategies. The Investment Management Agreement gives the Investment Manager broad discretionary power to

decide what investments the Partnership will make and what strategies it will use. While the Investment Manager currently intends to use the strategies described in "INVESTMENT PROGRAM", it is not obligated to do so, and it may choose any other investments and strategies that it believes are advisable.

Limitation of Liability and Indemnification of the General Partner, the Investment Manager and Affiliates. The Partnership Agreement provides that none of the General Partner, the Investment Manager, the Principal or any of the Investment Manager Affiliates will be liable to the Partnership or the Limited Partners for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. The Partnership (but not the Limited Partners individually) is obligated to indemnify the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates (which, for purposes of this indemnity, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any of them in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided* that such indemnity will not extend to conduct determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. The Investment Management Agreement also provides similar protections to the Investment Manager. Therefore, a Limited Partner may have a more limited right of action against the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates than a Limited Partner would have had absent these provisions in the Partnership Agreement and the Investment Management Agreement. **It is the policy of the SEC that indemnification for violations of securities laws is against public policy and therefore unenforceable.**

No Minimum Size of Partnership. The Partnership may begin or continue operations without attaining or maintaining any particular level of capitalization. At low asset levels, the Partnership may be unable to make its investments as fully as would otherwise be desirable or to take advantage of potential economies of scale, including the ability to obtain the most timely and valuable research and trading information from securities brokers. It is possible that even if the Partnership operates for a period with substantial capital, investors' withdrawals could diminish the Partnership assets to a level that does not permit the most efficient and effective implementation of the Partnership's investment program. As a result of losses or withdrawals, the Partnership may not have sufficient capital to diversify its investments to the extent desired or currently contemplated by the Investment Manager.

Portfolio Valuation. Valuation of the Partnership's portfolio, which will affect the amount of the Management Fee, involves uncertainties and determinations based on judgments. Third-party pricing information may, at times, not be available regarding certain of the Partnership's investments. A disruption in the secondary markets for the Partnership's investments may limit the ability of the Partnership to obtain accurate market quotations for purposes of valuing its investments. In addition, material events occurring after the close of a principal market upon which a portion of the investments of the Partnership are traded may require it to make a determination of the effect of a material event on the value of the investments traded on the market for purposes of determining the value of the Partnership's investments on a valuation date. Further, because of the overall size and concentrations in particular markets and maturities of positions that may be held by the Partnership from time to time, the liquidation values of the Partnership's securities and other investments may differ significantly from the interim valuations of these investments derived from the valuation methods described herein. Moreover, because of the inherent uncertainty of valuing an illiquid security, the quoted valuation may be higher than the actual final liquidation value, and these differences could be material. If the Partnership's valuation should prove to be incorrect, the value of the Partnership's investments could be adversely affected.

Liability of a Limited Partner for the Return of Capital Contributions. If the Partnership should become insolvent, Limited Partner may be obligated to return all or a portion of any distributions (including withdrawal proceeds) received from the Partnership in an amount up to its aggregate capital contributions (including any income or gains thereon) to the Partnership in order to pay such Limited Partner's *pro rata* share of any Partnership liabilities that arose while such Limited Partner held Interests.

Under the Delaware Act, when a Limited Partner receives a return of all or any part of such Limited Partner's capital contribution, the Limited Partner may be liable to the Partnership for any sum, not in excess of such return of capital (together with interest), if at the time of such distribution the Limited Partner knew that the Partnership was prohibited from making such distribution pursuant to the Delaware Act.

Delayed Schedule K-1s. The General Partner will endeavor to provide a Schedule K-1 to each Limited Partner for any given calendar year prior to April 15 of the following year. In the event that the Schedule K-1 is not available by such date, a Limited Partner may have to request an extension of time to file or may have to pay taxes based on an estimated amount.

Lack of Insurance. The assets of the Partnership are not insured by any government or private insurer, except to the extent portions may be deposited in bank accounts insured by the United States Federal Deposit Insurance Corporation or with brokers insured by the Securities Investor Protection Corporation and such deposits and securities are subject to such insurance coverage (which, in any event, is limited in amount). Therefore, in the event of the insolvency of a depository or custodian, the Partnership may be unable to recover all of its funds or the value of its securities so deposited.

Forward-Looking Statements; Opinions. Statements contained in this Memorandum that are not historical facts are based on current expectations, estimates, projections, opinions and/or beliefs of the Partnership. Such statements involve known and unknown risks, uncertainties and other factors, and undue reliance should not be placed thereon. Moreover, certain information contained in this Memorandum constitutes "forward-looking" statements, which can be identified by the use of forward-looking terminology, such as "may", "will", "seek", "should", "expect", "anticipate", "project", "estimate", "intend", "continue" or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those set forth herein, actual events or results or the actual performance of the Partnership may differ materially from those reflected or contemplated in such forward-looking statements.

MARKET RISKS

General

Competition Generally. The securities industry and the varied strategies and techniques to be engaged in by the Investment Manager are extremely competitive and each involves a degree of risk. The Partnership will compete with firms, including many of the larger securities and investment banking firms, which have substantially greater financial resources and research staffs. Further, lower fees for comparable services may be available from these or other firms.

Market Volatility. The profitability of the Partnership substantially depends upon the Investment Manager correctly assessing the future price movements of bonds, stocks, options on stocks, and other financial instruments, and the movements of interest rates. The Partnership cannot guarantee that the Investment Manager will be successful in accurately predicting those prices and interest rate movements.

Partnership's Investment Activities. The Partnership's investment activities involve a significant degree of risk. The performance of any investment is subject to numerous factors which are neither within the control of nor predictable by the Investment Manager. Such factors include a wide range of economic, political, competitive, technological and other conditions (including natural disasters, acts of terrorism and war) that may affect investments in general or specific industries or companies. The securities markets may

be volatile, which may adversely affect the ability of the Partnership to realize profits. As a result of the nature of the Partnership's investing activities, it is possible that the Partnership's financial performance may fluctuate substantially over time and from period to period.

Terrorist Actions. There is a risk of terrorist attacks on the United States and elsewhere causing significant loss of life and property damage and disruptions in the global market. Economic and diplomatic sanctions may be in place or imposed on certain states and military action may be commenced. The impact of such events is unclear, but could have a material effect on general economic conditions and market liquidity.

Unforeseen Events. The Partnership may be adversely affected by unforeseen events involving such matters as changes in interest rates or the credit status of an issuer, forced withdrawals of securities or acquisition proposals, break-up of planned mergers, unexpected changes in relative value, short squeezes, inability to short stock or changes in tax treatment.

Potential Cybersecurity Breaches and Identity Theft. The Investment Manager relies, to a certain extent, on the use of information technology. The Investment Manager's information and technology systems may be vulnerable to damage and/or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by its professionals, power outages, and/or catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. Although the Investment Manager has implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time and/or cease to function properly, the Investment Manager and/or the Partnership may have to make a significant investment to fix or replace them. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Investment Manager's and/or the Partnership's operations and may result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors (and the beneficial owners of investors). Such a failure could harm the Investment Manager's and/or the Partnership's reputation, subject any such entity and their respective affiliates to legal claims and/or otherwise affect their business and financial performance.

Long-Biased Investment Program. The Investment Manager expects that its strategy with respect to the Partnership will have a long bias. Therefore, any decline in the overall market may result in a decline in the value of the Partnership's assets.

Market Liquidity and Leverage. The Partnership may be adversely affected by a decrease in market liquidity for the instruments in which it invests which may impair the Partnership's ability to adjust its positions. The size of the Partnership's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, deleveraging as a consequence of a decision by any brokers and custodians, or other counterparties with which the Partnership enters into repurchase/reverse repurchase agreements or derivative transactions, to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Partnership's portfolio.

Material Non-Public Information. By reason of their responsibilities in connection with other activities of the Investment Manager and/or its affiliates, the Principal or employees of the Investment Manager and/or its affiliates may acquire confidential or material non-public information or be restricted from initiating transactions in certain securities. The Partnership will not be free to act upon any such information. Due to these restrictions, the Partnership may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it otherwise might have sold.

Accuracy of Public Information. The Investment Manager may select investments for the Partnership, in part, on the basis of information and data filed by issuers with various government regulators or made directly available to the Investment Manager by the issuers or through sources other than the issuers. Although the Investment Manager

evaluates certain such information and data and sometimes seeks independent corroboration when the Investment Manager considers it is appropriate and when it is reasonably available, the Investment Manager is not in a position to confirm the completeness, genuineness or accuracy of such information and data, and in some cases, complete and accurate information is not available. Investments may not perform as expected if information is inaccurate.

Directorships on Boards of Portfolio Companies. The principals and other members and employees of the Investment Manager or its designees may serve as directors of companies the securities of which are purchased or sold on behalf of the Partnership and may be compensated for such service. In the event that material non-public information obtained with respect to such companies becomes subject to trading restrictions pursuant to the internal trading policies of such companies or as a result of applicable law or regulations, the Partnership may be prohibited for a period of time from purchasing or selling the securities of such companies, which prohibition may have an adverse effect on the Partnership.

Short-Swing Liability and Other Limitations. From time to time, the Partnership, acting alone or as part of a group, may acquire beneficial ownership of more than 10% of a certain class of securities of a public company, or may place a director on the board of directors of such a company. As a result, under Section 16 of the Exchange Act, the Partnership may be subject to certain additional reporting requirements and may be required to disgorge certain short-swing profits arising from purchases and sales of such securities. In addition, in such circumstances the Partnership will be prohibited from entering into a short position in such issuer's securities, and therefore limited in its ability to hedge such investments.

Disruptions or Inability to Trade Due to a Failure to Receive Timely and Accurate Market Data from Third-Party Vendors. The Investment Manager's strategy may depend on the receipt of timely and accurate market data from third-party vendors. Any failure to receive such data in a timely manner or the receipt of inaccurate data for any reason could disrupt and adversely affect the Partnership's trading until such failure or inaccuracy is corrected.

Use of Automated Order Routing and Execution Systems Generally. The Investment Manager may use automated order routing and execution systems in its trading. Such systems are typically provided on an "as is" basis. Such systems may experience technical difficulties which may render them temporarily unavailable. In addition, such systems may fail to properly perform. Such failures may result in losses to the Partnership, for which losses the providers of such services have disclaimed all liability. In an effort to mitigate such risks, the Investment Manager intends to closely monitor trades executed through automated order routing and execution systems and the operation of the systems themselves.

Electronic Trading Facilities. The Partnership may make use of electronic trading facilities (including ECNs), which are generally supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Trading on an electronic trading system (including an ECN) may differ not only from trading in an open-outcry market or telephonic market but also from trading on other electronic trading systems. The Partnership, in undertaking transactions on an electronic trading system, will be exposed to risk associated with the system including the failure of hardware and software. The result of any system failure may be that the Partnership's order is either not executed according to its instructions or is not executed at all. The Partnership's ability to limit or recover certain losses may be subject to limits on liability imposed by, without limitation, foreign or domestic law or regulation, the Partnership's own or its broker's internet service provider, other systems providers, market factors, foreign or domestic banking or other market regulations and/or telephonic or other communications providers, foreign or domestic.

Technology Risk. The Investment Manager's investment strategy may rely on the use of proprietary and non-proprietary software, data and intellectual property. Any such reliance

on this technology and data is subject to a number of important risks. First, the Partnership may be severely and adversely affected by the malfunction of the technology and/or data feed. For example, an unforeseeable software or hardware malfunction could occur, as a result of a virus or other outside force, or as result of a design flaw in the Partnership's system or in its continued implementation. In the past, occurrences of this nature to other funds have sometimes resulted in dramatically negative consequences for the portfolio of the related fund. In addition, changes in the market for publicly available data or in regulatory reporting requirements could cause a severe diminution in the data available for the technology to operate as designed. Such events can also have dramatically negative consequences for the Partnership. Furthermore, if any of the Partnership's software, hardware, data and/or other intellectual property is found to infringe on the rights of any third party, the Partnership could be severely and adversely affected.

Trading Errors. The Investment Manager's computerized trading systems rely on the ability of the Investment Manager's personnel to accurately process such systems' outputs and to use the proper trading orders, including stop-loss or limit orders, to execute the transactions called for by the systems. In addition, the Investment Manager relies on its staff to properly operate and maintain the computer and communication systems upon which the trading systems rely. The Investment Manager's systems are accordingly subject to human errors, including the failure to implement, or the inaccurate implementation of any of the Investment Manager's systems, in addition to errors in properly executing transactions. This could cause substantial losses on transactions, and any such losses could substantially and adversely affect the performance of the Partnership. See "BROKERAGE PRACTICES–Trade Error Policy" herein.

Co-Investments with Third Parties. The Partnership may co-invest with third parties through joint ventures or other entities. Such investments may involve risks in connection with such third- party involvement, including the possibility that a third-party co-venturer may have financial difficulties resulting in a negative impact on such investment, economic or business interests or goals that are inconsistent with those of the Partnership or be in a position to take (or block) action in a manner contrary to the Partnership's investment objectives. In those circumstances where such third parties involve a management group, such third parties may enter into compensation arrangements relating to such investments, including incentive compensation arrangements. Such compensation arrangements will reduce the returns to participants in the investments.

Other Investment Vehicles; Limited Recourse. The Investment Manager may allocate a portion of the Partnership's assets to pooled investment vehicles that may be managed by the Investment Manager or its affiliates or unaffiliated managers. Such investment vehicles may trade wholly-independently of one another and may at times hold economically offsetting positions. To the extent that such investment vehicles do, in fact, hold such positions, the Partnership, considered as a whole, may not achieve any gain or loss despite incurring expenses. Additionally, a creditor having a claim that relates to a particular investment held by any such investment vehicle may be able to satisfy such claim against all assets of such investment vehicle, without regard to the participation rights of the Partnership and other investors of such investment vehicle in the assets of such investment vehicle.

Since the Partnership may not have full transparency with respect to the trading activities of such investment vehicles, it may be limited in its ability to hedge its exposure or to prevent concentration of its assets within the same issuer, asset or asset class, industry, section, strategy, currency, country or geographic region. Further, the Investment Manager may be limited with respect to its ability to monitor unaffiliated managers, including their adherence to their respective trading and risk guidelines (if such guidelines exist). Even in the event that such information may be available to the Partnership, the Partnership's investment in such investment vehicles may be "locked up" and subject to limitations on withdrawals, and in light of the broad exculpation and indemnification provisions typically contained in the governing documents of such investment vehicles, may have limited recourse against the managers of such investment vehicles.

Risks Associated with ETFs. The Partnership may invest in ETFs. ETFs represent an

interest in a passively managed portfolio of securities and financial instruments selected to replicate a securities or financial instruments index. Unlike open-end mutual funds, the shares of ETFs are not purchased and redeemed by investors directly with the ETF, but instead are purchased and sold through broker-dealers in transactions on an exchange. Because ETF shares are traded on an exchange, they may trade at a discount from or a premium to the net asset value per share of the underlying portfolio of securities or financial instruments. In addition to bearing the risks related to investments in securities or financial instruments, investors in ETFs intended to replicate an index bear the risk that the ETFs performance may not correctly replicate the performance of the index. Investors in ETFs, closed-end funds and other investment companies bear a proportionate share of the expenses of those funds, including management fees, custodial and accounting costs, and other expenses. As such, the Partnership is subject to layering of such fees. Trading in ETF and closed-end fund shares also entails payment of brokerage commissions and other transaction costs.

Illiquid Securities. From time to time, the Partnership may invest in financial instruments that are not publicly traded. The Partnership may also invest in securities and other financial instruments that trade regularly but may be only thinly traded, either periodically or on an on-going basis. The Partnership may not be able to readily dispose of such financial instruments and, in some cases, may be contractually prohibited from disposing of such financial instruments for a specified period of time. Accordingly, the Partnership may be forced to sell its more liquid positions at a disadvantageous time, resulting in a greater percentage of the portfolio consisting of illiquid securities. In addition, the market prices, if any, for such financial instruments tend to be volatile, and the Partnership may not be able to sell them when it desires to do so or to realize what it perceives to be their fair value in the event of a sale. The sale of illiquid securities also often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Furthermore, there may be limited information available about the assets of such issuers of the financial instruments which may make valuation of such financial instruments difficult or uncertain. It also should be noted that, even those markets which the Investment Manager expects to be liquid can experience periods, possibly extended periods, of illiquidity.

Investments in Securities and Other Assets Believed to Be Undervalued. The Investment Manager's investment program contemplates that a portion of the Partnership's portfolio may be invested in securities and other assets that the Investment Manager believes to be undervalued. The identification of such investment opportunities is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. While such investments offer the opportunities for above-average capital appreciation, they also involve a high degree of financial risk and can result in substantial losses. Returns generated from the Partnership's investments may not adequately compensate for the business and financial risks assumed. The current economic conditions and any future major economic recession can severely disrupt the markets for such investments and significantly impact their value. In addition, any such economic downturn can adversely affect the ability of the issuers of such obligations to repay principal and pay interest thereon and increase the incidence of default for such securities. Additionally, there can be no assurance that other investors will ever come to realize the value of some of these investments, and that they will ever increase in price. Furthermore, the Partnership may be forced to hold such investments for a substantial period of time before realizing their anticipated value. During this period, a portion of the Partnership's funds would be committed to the investments made, thus possibly preventing the Partnership from investing in other opportunities.

Short Sales. The Investment Manager's investment program contemplates that a portion of the Partnership's portfolio may be invested in selling securities short. Although the Investment Manager may sell short a variety of assets, it expects most short trades to be in equity securities. Short selling involves the sale of a security that the Partnership does not own and must borrow in order to make delivery in the hope of purchasing the same security at a later date at a lower price. In order to make delivery to the purchaser, the Partnership must borrow securities from a third-party lender. The Partnership subsequently returns the borrowed securities to the lender by delivering to the lender the

securities it receives in the transaction or by purchasing securities in the open market. The Partnership must generally pledge cash with the lender equal to the market price of the borrowed securities. This deposit may be increased or decreased in accordance with changes in the market price of the borrowed securities. During the period in which the securities are borrowed, the lender typically retains its right to receive interest and dividends accruing to the securities. In exchange, in addition to lending the securities, the lender generally pays the Partnership a fee for the use of the Partnership's cash. This fee is based on prevailing interest rates, the availability of the particular security for borrowing and other market factors.

Theoretically, securities sold short are subject to unlimited risk of loss because there is no limit on the price that a security may appreciate before the short position is closed. In addition, the supply of securities that can be borrowed fluctuates from time to time. The Partnership may be subject to substantial losses if a security lender demands return of the lent securities and an alternative lending source cannot be found.

Small Companies. The Investment Manager may invest a portion of the Partnership's assets in small and/or unseasoned companies with small market capitalizations. While smaller companies generally have potential for rapid growth, they often involve higher risks because they may lack the management experience, financial resources, product diversification and competitive strength of larger companies. In addition, in many instances, the frequency and volume of their trading may be substantially less than is typical of larger companies. As a result, the securities of smaller companies may be subject to wider price fluctuations. When making large sales, the Partnership may have to sell portfolio holdings at discounts from quoted prices or may have to make a series of small sales over an extended period of time due to the lower trading volume of smaller company securities.

Leverage. When deemed appropriate by the Investment Manager and subject to applicable regulations, the Partnership will incur leverage in its investment program, whether directly through the use of borrowed funds, or indirectly through investment in certain types of financial instruments with inherent leverage, such as puts, calls and warrants, which may be purchased for a fraction of the price of the underlying securities while giving the purchaser the full benefit of movement in the market price of those underlying securities. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. To the extent that the Partnership purchases securities with borrowed funds, its net assets will tend to increase or decrease at a greater rate than if borrowed funds are not used. The level of interest rates generally, and the rates at which such funds may be borrowed in particular, could affect the operating results of the Partnership. If the interest expense on this leverage were to exceed the net return on the investments made with borrowed funds, the Partnership's use of leverage would result in a lower rate of return than if the Partnership were not leveraged.

If the amount of leverage which the Partnership may have outstanding at any one time is large in relation to its capital, fluctuations in the market value of the Partnership's portfolio will have disproportionately large effects in relation to the Partnership's capital and the possibilities for profit and the risk of loss will therefore be increased. Any investment gains made with the additional leverage will generally cause the Net Asset Value of the Partnership to rise more rapidly than would otherwise be the case. Conversely, if the investment performance of the leveraged capital fails to cover its cost to the Partnership, the Net Asset Value of the Partnership will generally decline faster than would otherwise be the case.

Certain of the Partnership's trading and investment activities in securities and other financial instruments may be subject to Federal Reserve Board margin requirements, which are computed each day. When the market value of a particular open position changes to a point where the margin on deposit does not satisfy maintenance margin requirements, a "margin call" on the customer is made. If the customer does not deposit additional funds with the broker to meet the margin call within a reasonable time, the customer's position may be closed out. In the event of a precipitous drop in the value of the assets managed by the Partnership, the Partnership might not be able to liquidate

assets quickly enough to pay off the margin debt and might suffer mandatory liquidation of positions in a declining market at relatively low prices, incurring substantial losses. With respect to the Partnership's trading activities, the Partnership, and not the Limited Partners personally, will be subject to margin calls.

Overall, the use of leverage, while providing the opportunity for a higher return on investments, also increases the volatility of such investments and the risk of loss.

Options and Other Derivative Instruments. The Investment Manager may invest, from time to time, a portion of the Partnership's assets in options and derivative instruments, including buying and writing puts and calls on some of the securities held by the Partnership. The prices of many derivative instruments, including many options and swaps, are highly volatile. The value of options and swap agreements depend primarily upon the price of the securities, indexes, currencies or other instruments underlying them. Price movements of options contracts and payments pursuant to swap agreements are also influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. The Partnership is also subject to the risk of the failure of any of the exchanges on which its positions trade or of their clearinghouses or of counterparties. The cost of options is related, in part, to the degree of volatility of the underlying securities, currencies or other assets. Accordingly, options on highly volatile securities, currencies or other assets may be more expensive than options on other investments.

Put options and call options typically have similar structural characteristics and operational mechanics regardless of the underlying instrument or asset on which they are purchased or sold. A put option gives the purchaser of the option, upon payment of a premium, the right to sell, and the writer the obligation to buy, the underlying security, index, currency or other instrument or asset at the exercise price. A call option, upon payment of a premium, gives the purchaser of the option the right to buy, and the seller the obligation to sell, the underlying instrument or asset at the exercise price.

If a put or call option purchased by the Partnership were permitted to expire without being sold or exercised, the Partnership would lose the entire premium it paid for the option. The risk involved in writing a put option is that there could be a decrease in the market value of the underlying instrument or asset caused by rising interest rates or other factors. If this occurred, the option could be exercised and the underlying instrument or asset would then be sold to the Partnership at a higher price than its current market value. The risk involved in writing a call option is that there could be an increase in the market value of the underlying instrument or asset caused by declining interest rates or other factors. If this occurred, the option could be exercised and the underlying instrument or asset would then be sold by the Partnership at a lower price than its current market value.

Purchasing and writing put and call options and, in particular, writing "uncovered" options are highly specialized activities and entail greater than ordinary investment risks. In particular, the writer of an uncovered call option assumes the risk of a theoretically unlimited increase in the market price of the underlying instrument or asset above the exercise price of the option. This risk is enhanced if the instrument or asset being sold short is highly volatile and there is a significant outstanding short interest. These conditions exist in the stocks of many companies. The instrument or asset necessary to satisfy the exercise of the call option may be unavailable for purchase except at much higher prices. Purchasing instruments or assets to satisfy the exercise of the call option can itself cause the price of the instruments or assets to rise further, sometimes by a significant amount, thereby exacerbating the loss. Accordingly, the sale of an uncovered call option could result in a loss by the Partnership of all or a substantial portion of its assets.

Swaps and certain options and other custom instruments are subject to the risk of non-performance by the counterparty, including risks relating to the financial soundness and creditworthiness of the counterparty.

Hedging Transactions. Investments in financial instruments such as options and interest

rate swaps, caps and floors, and other derivatives are commonly utilized by investment funds to hedge against fluctuations in the relative values of its portfolio positions as a result of changes in currency exchange rates, interest rates and/or the equity markets or sectors thereof. Any hedging against a decline in the value of portfolio positions does not eliminate fluctuations in the values of portfolio positions or prevent losses if the values of such positions decline, but establishes other positions designed to gain from those same developments, thus moderating the decline in the portfolio positions' value. Such hedging transactions also limit the opportunity for gain if the value of the portfolio positions should increase. Moreover, it may not be possible for the Partnership to hedge against a fluctuation at a price sufficient to protect the Partnership's assets from the decline in value of the portfolio positions anticipated as a result of such fluctuations. For example, the cost of options is related, in part, to the degree of volatility of the underlying instruments or assets. Accordingly, options on highly volatile instruments or assets may be more expensive than options on other instruments or assets and of limited utility in hedging against fluctuations in their prices.

The Investment Manager is not obligated to establish hedges for portfolio positions and may not do so. To the extent that hedges are implemented, their success is dependent on the Investment Manager's ability to correctly predict movements in the direction of currency and interest rates and the equity markets or sectors thereof.

Market or Interest Rate Risk. The Partnership may, from time to time, invest in fixed income securities and instruments. The price of most fixed income securities move in the opposite direction of the change in interest rates. For example, as interest rates rise, the prices of fixed income securities fall. If the Partnership holds a fixed income security to maturity, the change in its price before maturity may have little impact on the Partnership's performance. However, if the Partnership has to sell the fixed income security before the maturity date, an increase in interest rates could result in a loss to the Partnership.

Callable Securities. Many bonds, including agency, corporate and municipal bonds, and mortgage-backed securities, sometimes contain a provision that allows the issuer to "call" (i.e., redeem) all or part of the issue before the bond's maturity date. The issuer usually retains this right to refinance the bond in the future if market interest rates decline below the coupon rate on the outstanding debt security. From the investor's perspective, there are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Partnership is exposed to reinvestment rate risk – the Partnership will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

Maturity Risk. In certain situations, the Partnership may purchase a bond of a given maturity as an alternative to another bond of a different maturity. Ordinarily, under these circumstances, the Partnership will make an adjustment to account for the interest rate risk differential in the two bonds. This adjustment, however, makes an assumption about how the interest rates at different maturities will move. To the extent that the yield movements deviate from this assumption, there is a yield-curve or maturity risk. Another situation where yield-curve risk should be considered is in the analysis of bond swap transactions where the potential incremental returns are dependent entirely on the parallel shift assumption for the yield curve.

Inflation Risk. Inflation risk results from the variation in the value of cash flows from a fixed income security or instrument due to inflation, as measured in terms of purchasing power. For example, if the Partnership purchases a 5-year bond with a coupon rate of 5%, but the rate of inflation is 6%, then the purchasing power of the cash flow has declined. For all but inflation-linked bonds, adjustable bonds or floating rate bonds, the Partnership is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk.

Downgrades in Fixed Income Debt Securities. Unless required by applicable law, the

Partnership is not required to sell or dispose of any debt security that either loses its rating or has its rating reduced after the Partnership purchases such security.

Investments in Non-U.S. Investments. From time to time, the Investment Manager may invest and trade a portion of the Partnership's assets in non-U.S. securities and other assets (through ADRs and otherwise), which will give rise to risks relating to political, social and economic developments abroad, as well as risks resulting from the differences between the regulations to which U.S. and non-U.S. issuers and markets are subject. Such risks may include:

- Political or social instability, the seizure by foreign governments of company assets, acts of war or terrorism, withholding taxes on dividends and interest, high or confiscatory tax levels, and limitations on the use or transfer of portfolio assets.
- Enforcing legal rights in some foreign countries is difficult, costly and slow, and there are sometimes special problems enforcing claims against foreign governments.
- Non-U.S. securities and other assets often trade in currencies other than the U.S. dollar, and the Partnership may directly hold foreign currencies and purchase and sell foreign currencies through forward exchange contracts. Changes in currency exchange rates will affect the Partnership's Net Asset Value, the value of dividends and interest earned, and gains and losses realized on the sale of investments. An increase in the strength of the U.S. dollar relative to these other currencies may cause the value of the Partnership's investments to decline. Some foreign currencies are particularly volatile. Foreign governments may intervene in the currency markets, causing a decline in value or liquidity of the Partnership's foreign currency holdings. If the Partnership enters into forward foreign currency exchange contracts for hedging purposes, it may lose the benefits of advantageous changes in exchange rates. On the other hand, if the Partnership enters forward contracts for the purpose of increasing return, it may sustain losses.
- Non-U.S. securities and other markets may be less liquid, more volatile and less closely supervised by the government than in the United States. Foreign countries often lack uniform accounting, auditing and financial reporting standards, and there may be less public information about the operations of issuers in such markets.

Risks Associated with ADRs. The Partnership may purchase ADRs, which are certificates evidencing ownership of shares of a non-U.S. issuer, acting as alternatives to directly purchasing the underlying non-U.S. securities in their national markets and currencies. Such investments are subject to many of the risks associated with investing directly in non-U.S. securities. These risks include the political and economic risks of the underlying issuer's country, as well as, in the case of depositary receipts traded on non-U.S. markets, foreign exchange risk. ADRs may be sponsored or unsponsored. Unsponsored ADRs are established without the participation of the issuer. In addition, unsponsored ADRs may involve higher expenses, may not carry pass-through voting or other shareholder rights, and may be less liquid. The performance of ADRs may be different from the performance of the ordinary shares of the non-U.S. issuers to which they relate.

Emerging Markets. The Partnership may invest a portion of its assets in investments related to emerging market countries. The securities markets of emerging market countries as a whole have been volatile and the loans and securities of issuers in emerging markets tend to be subject to abrupt or erratic price movements. Investing a portion of the Partnership's assets in issuers in emerging markets will make the Partnership susceptible to a greater degree than otherwise would be the case to factors affecting emerging markets in general and issuers in emerging markets included in the Partnership's portfolio in particular, and may increase the volatility of the value of the Partnership's portfolio investments. The economies of these markets may differ significantly from the economies of certain developed countries in such respects as gross domestic product or gross national product, rate of inflation, currency depreciation, capital reinvestment, resource self-sufficiency, structural unemployment and balance of payments position. In particular, these economies frequently experience high levels of inflation. In addition, such countries may have: (1) restrictive national policies that limit the Partnership's investment opportunities; (2) limited information about their issuers; (3) a

general lack of uniform accounting, auditing and financial reporting standards, auditing practices and requirements compared to the standards of developed countries; (4) less governmental supervision and regulation of business and industry practices, securities exchanges, brokers and listed companies; (5) economic developments that may be slowed or reversed by unanticipated political or social events in such countries; and (6) a lack of capital market structure or market-oriented economy.

Systemic and market factors may affect the acquisition, payment for or ownership of investments including: (a) the prevalence of crime and corruption; (b) the inaccuracy or unreliability of business and financial information; (c) the instability or volatility of: (i) banking and financial systems, or the absence or inadequacy of an infrastructure to support such systems, (ii) custody and settlement infrastructure of the market in which such investments are traded and held, and (iii) the acts, omissions and operation of any securities depository; (d) the risk of the bankruptcy or insolvency of banking agents, counterparties to cash and securities transactions, registrars or transfer agents; and (e) the existence of market conditions that prevent the orderly execution or settlement of transactions or that affect the value of assets. Different clearance and settlement procedures may prevent the Partnership from making intended security purchases causing the Partnership to miss attractive investment opportunities, possibly resulting in either losses to or contract claims against the Partnership. The investment markets of many of the countries in which the Partnership may invest may also be smaller, less liquid, and subject to greater price volatility than developed markets. The Partnership's assets may be denominated in a variety of currencies subject to changes in currency exchange rates and in exchange control regulations.

Volatility of Currency Prices. In general, price movements of currencies are difficult to predict accurately because they are influenced by, among other things, changing supply and demand relationships; governmental, trade, fiscal, monetary and exchange control programs and policies; national and international political and economic events; and changes in interest rates. Governments from time to time intervene in certain markets in order to influence prices directly.

Currency Control. It is sometimes the case that governments alter the exchange rate policy of a currency without advance notice, and it may not always be possible to foresee a change in policy.

Exchange Rate Fluctuations. Investments that are denominated in a foreign currency are subject to the risk that the value of a particular currency will change in relation to one or more other currencies. The Partnership intends to value its holdings and to make distributions in U.S. dollars. Thus, changes in currency exchange rates adverse to the U.S. dollar may affect adversely the value of such holdings. Among the factors that may affect currency values are trade balances, the appropriateness of interest rates, the shape of the yield curve, the degree of central bank independence and credibility, differences in relative values of similar assets in different currencies, long-term opportunities for investment and capital appreciation and political developments.

Risks of Trading Futures. The Investment Manager is eligible to trade a limited amount of commodities or financial futures on behalf of the Partnership under a provision in the CEA that provides an exemption from registration as a commodity pool operator. Trading futures is a highly risky strategy. Whenever the Partnership purchases a particular future, there is a possibility that the Partnership may sustain a total loss of its purchase price. The equity values of leveraged positions using futures are, in general, much more volatile than the prices of securities, such as stocks and bonds. As a result, the risk of loss in trading futures is substantially greater than in trading those securities. The prices of futures react strongly to the prices of the underlying commodities. The prices of these underlying products, in turn, rise and fall based on changes in interest rates, international balances of trade, changes in governments, wars, weather events and a host of other factors that are entirely beyond the Investment Manager's control and very difficult (and perhaps impossible) to predict.

Forward Trading. Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardized; rather, banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward

and "cash" trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by the Partnership due to unusual trading volume, political intervention or other factors. The imposition of controls by governmental authorities might also limit such forward trading to less than that which the Investment Manager would otherwise recommend, to the possible detriment of the Partnership. Market illiquidity or disruption could result in major losses to the Partnership.

Over-the-Counter-Trading. Financial instruments that may be purchased or sold by the Partnership may include instruments not traded on an exchange. The risk of nonperformance by the obligor on such an instrument may be greater and the ease with which the Partnership can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between "bid" and "asked" prices for financial instruments that are not traded on an exchange. Financial instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

To the extent that the Partnership engages in these transactions, the Partnership must rely on the creditworthiness of its counterparty. In certain instances, counterparty or credit risk is affected by the lack of a central clearinghouse for foreign exchange trades. To reduce their credit risk exposure, the Partnership may trade in the forward foreign currency market through money center banks and leading brokerage firms.

Position Limits. Position limits imposed by various regulators or regulations may also limit the Partnership's ability to affect desired trades. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a particular financial instrument. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Partnership does not intend to exceed applicable position limits, it is possible that different accounts managed by the Investment Manager or its affiliates may be aggregated. If at any time positions managed by the Investment Manager were to exceed applicable position limits, the Investment Manager would be required to liquidate positions, which might include positions of the Partnership, to the extent necessary to come within those limits. Further, to avoid exceeding the position limits, the Partnership might have to forego or modify certain of its contemplated trades.

Risk of Default or Bankruptcy of Third Parties. The Partnership may engage in transactions in securities and other financial instruments and assets that involve counterparties. Under certain conditions, the Partnership could suffer losses if a counterparty to a transaction were to default or if the market for certain securities or other financial instruments or assets were to become illiquid. In addition, the Partnership could suffer losses if there were a default or bankruptcy by certain other third parties, including brokerage firms and banks with which the Partnership does business, or to which securities or other financial instruments or assets have been entrusted for custodial purposes.

Potential Custody and Brokerage Risk. The Partnership may rely on its relationship(s) with brokers and/or custodians. There are risks involved in dealing with the custodians or brokers who may settle Partnership trades. The Partnership may maintain custody accounts with a broker. Although the Investment Manager intends to monitor the Partnership's broker(s) and/or custodian(s), if any, there is no guarantee that such broker(s) and/or custodian(s) that the Partnership may use from time to time, will not become bankrupt or insolvent. While both the U.S. Bankruptcy Code, as amended, and

the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a bankruptcy, insolvency, failure, or liquidation of a broker-dealer, there is no certainty that, in the event of a failure of a broker-dealer that has custody of Partnership assets, the Partnership would not incur losses due to its assets being unavailable for a period of time, the ultimate receipt of less than full recovery of its assets, or both.

The Partnership and/or its broker or custodian, if any, may appoint sub-custodians in certain non-U.S. jurisdictions to hold the assets of the Partnership. The appointing broker and/or custodian may not be responsible for cash or assets which are held by sub-custodians in certain non-U.S. jurisdictions, nor for any losses suffered by the Partnership as a result of the bankruptcy or insolvency of any such sub-custodian. The Partnership may therefore have a potential exposure on the default of any sub-custodian and, as a result, many of the protections that would normally be provided to a fund by a custodian may not be available to the Partnership. Under certain circumstances, including certain transactions where the Partnership's assets are pledged as collateral for leverage from a non-broker-dealer custodian or a non-broker-dealer affiliate of the broke and/or custodian, or where the Partnership's assets are held at a non-U.S. custodian, the securities and other assets deposited with the custodian or broker may not be clearly identified as being assets of the Partnership and hence the Partnership could be exposed to a credit risk with regard to such parties. Custody services in certain non-U.S. jurisdictions remain undeveloped and, accordingly, there is a transaction and custody risk of dealing in certain non-U.S. jurisdictions. Given the undeveloped state of regulations on custodial activities and bankruptcy, insolvency, or mismanagement in certain non-U.S. jurisdictions, the ability of the Partnership to recover assets held by a sub-custodian in the event of the sub-custodian's bankruptcy or insolvency could be in doubt, as the Partnership may be subject to significantly less favorable laws than many of the protections that would be available under U.S. laws. In addition, there may be practical or time problems associated with enforcing the Partnership's rights to its assets in the case of a bankruptcy or insolvency of any such party.

Temporary Defensive Investments. If warranted under certain economic or market conditions or for other reasons, the Investment Manager may temporarily invest up to 100% of the Partnership's assets outside the scope of its principal investment focus in U.S. government securities, such as Treasury bills, notes and bonds, cash, money-market funds, certificates of deposit, time deposits, bankers' acceptances and other short-term debt instruments bearing a reasonable rate of interest. In such circumstances, the Partnership may not achieve its investment objectives.

Other Instruments. The Partnership may take advantage of opportunities with respect to certain other instruments that are not presently contemplated for use or that are currently not available, but that may be developed, to the extent such opportunities are both consistent with the investment objective of the Partnership and legally permissible. Special risks may apply to instruments that are invested in by the Partnership in the future that cannot be determined at this time or until such instruments are developed or invested in by the Partnership.

Specific Risks Associated with Investing in Illiquid Investments

You should note that certain of the following risk factors specifically applicable with respect to Illiquid Investments have been discussed under "—Market Risks—General" above and are included in this sub-section for ease of reference.

Special Situations. The Partnership will invest in companies involved in (or the target of) acquisition attempts or tender offers or in companies involved in work-outs, liquidations, spin-offs, reorganizations, bankruptcies and similar transactions. In any investment opportunity involving any such type of special situation, there exists the risk that the contemplated transaction either will be unsuccessful, take considerable time or result in a distribution of cash or a new security the value of which will be less than the purchase price to the Partnership of the security or other financial instrument in respect of which such distribution is received. Similarly, if an anticipated transaction does not in fact occur, the Partnership may be required to sell its investment at a loss. In connection with such transaction (or otherwise), the Partnership may purchase securities on a when-issued

basis, which means that delivery and payment take place sometime after the date of the commitment to purchase and are often conditioned upon the occurrence of a subsequent event, such as approval and consummation of a merger, reorganization or debt restructuring. The purchase price and/or interest create receivable with respect to a when-issue security are fixed when the Partnership enters into the commitment. Such securities are subject to changes in market value prior to their delivery. Because there is substantial uncertainty concerning the outcome of transactions involving companies in which the Partnership may invest, there is a potential risk of loss by the Partnership of its entire investment in such companies.

Alternative Investments. In the alternative asset class, the Investment Manager may invest assets of the Partnership in other pooled investment vehicles managed by the Investment Manager. The pooled investment vehicles managed by the Investment Manager may follow a variety of investment strategies including investments in commodities, managed futures, inflation-adjusted bonds, global real estate, "hedge fund strategies", which may be broadly characterized as "hedge funds", and mezzanine debt or Illiquid Investments.

Withdrawal Considerations. The Partnership is permitted to invest in Illiquid Investments. There is no market for the Interests, and no market is expected to develop. Therefore, in certain circumstances, the Partnership may not be able to withdraw invested assets with respect to Illiquid Investments at a time that would be most advantageous to the Partnership or at a time that would allow the Partnership to comply with its withdrawal obligations to its Limited Partners. In this regard, the General Partner has the right to suspend in whole or in part certain withdrawal rights of the Limited Partners to the extent that the Partnership is unable to obtain liquidity from its investments in one or more of the Illiquid Investments. The illiquidity of Illiquid Investments could have a material adverse effect on the Partnership, as well as the ability of the Limited Partners to liquidate their investments in the Partnership during permitted withdrawal periods. Consequently, Limited Partners may be unable to liquidate their Interests except by withdrawing from the Partnership in accordance with the terms of this Memorandum, and, even in such event, payment of withdrawal proceeds may be delayed for a significant period of time. Limited Partners may be unable to liquidate their investment promptly in the event of an emergency or for any other reason. **For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in Side Pocket Accounts; and (ii) any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

High Growth Industry Related Risks. The Partnership may have significant investments in the securities of high growth companies (e.g., technology, communications and healthcare). It is noted that these securities may be very volatile. In addition, these companies may face undeveloped or limited markets, have limited products, have no proven profit-making history, may operate at a loss or with substantial variations in operating results from period to period, have limited access to capital and/or be in the developmental stages of their businesses, have limited ability to protect their rights to certain patents, copyrights, trademarks and other trade secrets, or be otherwise adversely affected by the extremely competitive markets in which many of their competitors operate.

Risk of Illiquid Investments. Illiquid Investments involve a high degree of financial risk. There can be no assurance that Illiquid Investments will be profitable or that substantial losses will not occur. The companies in which the Illiquid Investments will invest are often dependent on the skills of a small number of executives and are vulnerable to changes in technology, fluctuations in demand for their products, changing interest rates and other factors. There can also be no assurance that the Illiquid Investments will be repaid, be able to sell or otherwise liquidate their investments at the optimal time or price. Therefore, there can be no assurance that the rate of return objectives of the Illiquid Investments will be realized or that there will be any return of capital to the Limited Partners.

Illiquid and Long-Term Investments. It is anticipated that there will be a significant period of time before certain Illiquid Investments will have completed their investments. Such investments may take several years from the date of initial investment to reach a state of maturity when realization of the investment can be achieved. Although

investments by Illiquid Investments occasionally may generate some current income, private investment transaction structures typically will not provide for liquidity of the Illiquid Investment's investment prior to that time. The return of capital and the realization of gains, if any, from such investment will generally occur only upon the partial or complete disposition or refinancing of the investment. In light of the foregoing, it is likely that no significant return from the disposition of Illiquid Investment's underlying investments will occur for a substantial period of time from the commencement of the Illiquid Investment's operations. It is unlikely that there will be a public market for the securities held by the Illiquid Investment and/or its portfolio companies at the time of their acquisition. The Illiquid Investment generally will not be able to sell its securities publicly unless the issuer has consummated a public offering of its securities and such offered securities are registered under applicable securities laws, unless an exemption from such registration requirements is available. In addition, in some cases, the Partnership may be prohibited by contract from selling certain securities for a period of time and, as a result, may not be permitted to sell an underlying investment at a time it might otherwise desire to do so. Further, disposition of such investments may require a lengthy time period or may result in distributions in kind to investors.

Investments in Less Established Companies. The Partnership may invest a portion of its assets in the securities of less established companies, or early stage companies. Investments in such early stage companies may involve greater risks than those generally associated with investments in more established companies. For instance, less established companies tend to have smaller capitalizations and fewer resources and, therefore, are often more vulnerable to financial failure. Such companies also may have shorter operating histories on which to judge future performance and in many cases, if operating, will have negative cash flow. In the case of start-up enterprises, such companies may not have significant or any operating revenues. In addition, less mature companies could be more susceptible to irregular accounting or other fraudulent practices. Furthermore, to the extent there is any public market for the securities held by the Illiquid Investment, securities of less established companies may be subject to more abrupt and erratic market price movements than those of larger, more established companies.

Some of the investments expected to be made by an Illiquid Investment would be considered highly speculative and may result in the loss of the Special Situation Investment's entire investment therein. There can be no assurance that any such losses will be offset by gains (if any) realized on the Illiquid Investment's other investments.

Investments in Restructurings or Underperforming Companies. The Partnership may make investments in companies that are experiencing or are expected to experience financial difficulties, which such companies may never overcome. Such investments could, in certain circumstances, subject the Partnership to additional potential liabilities, which may exceed the value of the Partnership's original investment therein. Such investments of the Partnership could also be subject to federal bankruptcy law and state fraudulent transfer laws, which may vary from state to state, if the securities relating to such investments were issued with the intent of hindering, delaying or defrauding creditors or, in certain circumstances, if the issuer receives less than reasonably equivalent value or fair consideration in return for issuing such securities. If such investments constitute debt and such debt is used for a buyout of shareholders, this risk is greater than if the debt proceeds are used for day-to-day operations or organic growth. If a court were to find that the issuance of the securities was a fraudulent transfer or conveyance, the court could void the payment obligations under the securities, further subordinate the securities to other existing and future indebtedness of the issuer or require the Partnership to repay any amounts received by it with respect to the securities. In the event of a finding that a fraudulent transfer or conveyance occurred, the Partnership may not receive any repayment on the securities.

Under the Bankruptcy Code, a lender that has inappropriately exercised control of the management and policies of a company may have its claims against the company subordinated or disallowed, or may be found liable for damages suffered by parties as a result of such actions. In addition, under certain circumstances, payments to the Partnership and distributions by the Partnership ion Investment to its limited partners may be reclaimed if any such payment or distribution is later determined to have been a

fraudulent conveyance or a preferential payment. Such debt may also be disallowed or subordinated to the claims of other creditors if the Partnership is found to have engaged in other inequitable conduct resulting in harm to other parties. The Partnership's underlying investment may be treated as equity if it is deemed to be a contribution to capital, or if the Partnership attempts to control the outcome of the business affairs of a company prior to its filing under the Bankruptcy Code. While the Partnership will attempt to avoid taking the types of action that would lead to such liability, there can be no assurance that such claims will not be asserted or that the Partnership will be able successfully to defend against them.

REGULATORY AND TAX RISKS

General Regulatory Risks. Statutes, regulations and policies are continually under review by the U.S. Congress and state legislatures and federal and state regulatory agencies. The introduction of new legislation or amendments to existing legislation and regulations (including changes in how they are interpreted or implemented) by governments, the decisions of courts and tribunals and the rulings and decisions of regulatory authorities, can adversely impact the Partnership's returns. The regulatory environment for private investment funds is evolving, and changes in the regulation of these funds may adversely affect the value of investments held by the Partnership, the cost of compliance with applicable regulations, and the ability of the Partnership to obtain the leverage it might otherwise obtain or to pursue its trading strategies.

Regulatory Risks Related to the Highland Transaction. In connection with the Highland Transaction (if consummated), there can be no assurance that such transaction (if consummated) will not result in adverse regulatory consequences (including, without limitation, being characterized as a "change of control" under applicable laws), even though the Highland Transaction only contemplates the acquisition of non-voting limited partnership interests in Highland.

Strategy Restrictions. Certain institutions may be restricted from directly utilizing investment strategies of the type in which the Partnership may engage. Such institutions, including entities subject to ERISA, should consult their own advisors, counsel and accountants to determine what restrictions may apply and whether an investment in the Partnership is appropriate.

Trading Limitations. For all securities, instruments and/or assets listed on an exchange, including options listed on a public exchange, the exchange generally has the right to suspend or limit trading under certain circumstances. Such suspensions or limits could render certain strategies difficult to complete or continue and subject the Partnership to loss. Also, such a suspension could render it impossible for the Investment Manager to liquidate positions and thereby expose the Partnership to potential losses relating thereto.

Limited Regulatory Oversight. The Partnership's investments are not supervised or monitored by any regulatory authority. The Partnership is not registered as an "investment company" under the Investment Company Act. Although the Investment Manager is registered as an investment adviser with the SEC, neither the General Partner nor the Investment Manager is registered as a commodity pool operator, pursuant to an exemption provided under Rule 4.13(a)(3) of the CEA. Consequently, Limited Partners will not benefit from some of the protections afforded by these statutes, including oversight by the Commodity Futures Trading Commission.

Prevention of Money Laundering and Terrorism. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended (the "**USA PATRIOT Act**"), signed into law on and effective as of October 26, 2001, requires that financial institutions, a term that includes banks, broker-dealers and investment companies, establish and maintain compliance programs to guard against money laundering activities. The USA PATRIOT Act requires the Secretary of the U.S. Treasury ("**Treasury**") to prescribe regulations in connection with anti- money laundering policies of financial institutions. The U.S. Federal Reserve Board, the Treasury and the SEC are currently studying what types of investment vehicles should be required to adopt anti-money laundering procedures, and it is unclear at this time whether such

procedures will apply to pooled investment vehicles such as the Partnership. Future rules and regulations regarding money laundering or proceeds of crime could regulate the Partnership. In addition, in April 2000, the Treasury Department published proposed regulations that would require certain investment advisors to establish an anti-money laundering program. It is possible that there could be promulgated legislation or regulations that would require the Partnership or its affiliates, in connection with the establishment of anti-money laundering procedures, to share information with governmental authorities with respect to investors in the Interests. Such legislation and/or regulations could require the Partnership to implement additional restrictions on the transfer of the Interests. The Partnership reserves the right to request such information as is necessary to verify the identity of investors in the Interests, and the source of the payment of subscription monies, or as is necessary to comply with any customer identification programs required by Financial Crimes Enforcement Network and/or the SEC or such information as may be required in order for the Partnership to discharge its obligations under the laws of the Cayman Islands (including pursuant to the Proceeds of Criminal Conduct Law (2005 Revision)). In the event of delay or failure by the applicant to produce any information required for verification purposes, an application for or transfer of the Interests and the subscription monies relating thereto may be refused.

Recent Developments in the Financial Services Industry. Recent developments in the U.S. financial markets have heightened the risks associated with the investment activities and operations of hedge funds, including without limitation, those resulting from a substantial reduction in the availability of credit and the increased cost of short-term credit, a decrease in market liquidity and an increased risk of insolvency of brokers, custodians and other counterparties. In addition, in July of 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**") was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. Even with the passage of Dodd-Frank, the implications of its passage for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory, or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Partnership or the Partnership's business, operations and performance.

Enhanced Regulation of Swaps. The Wall Street Transparency and Accountability Act of 2010 (the "**WSTAA**") will, subject to exceptions for certain hedgers, (1) require swaps accepted for clearing by a derivatives clearing organization (a "**DCO**") or for trading through a designated contract market or swaps-execution facility to be so cleared and traded, (2) require margin for almost all swap transactions, (3) subject traders with a "substantial position" in swaps to registration and regulation requirements as a "major swap participant" or "swap dealer", and (4) impose position limits on swaps either individually or in the aggregate with respect to positions in commodity-futures contracts. Due to the new requirements imposed by the WSTAA, the Partnership may experience increased transaction costs to pay for the clearing, execution and segregation obligations. In addition, margin requirements may increase once margin is set by DCOs with input from the CFTC, which may limit the Partnership's ability to engage in leverage and limit the Partnership's return. The application of position limits to swap contracts may also limit the Partnership's ability to concentrate in any particular contract or exposure to an underlying commodity and may negatively impact the Partnership's ability to take advantage of current market trends or conditions. Any tightening in the market for swaps may significantly impact the Partnership and its returns. In addition, if the Partnership were deemed to be a swap dealer or a major swap participant under WSTAA, the Partnership may be required to register with the CFTC and would be subject to a number of regulatory requirements that would significantly impact the Partnership's legal obligations and its returns.

Tax Risk. The tax aspects of an investment in the Partnership are complicated and each investor should have them reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and

private investment vehicles. The Partnership is not intended and should not be expected to provide any tax shelter, but is organized as a limited partnership to avoid corporate taxation and to permit any distributions it might make to be made without being taxed as dividends. No assurance can be given that legislative, administrative or judicial changes will not occur which will alter, either prospectively or retroactively, the tax considerations or risk factors discussed in this Memorandum.

The tax consequences to a Limited Partner of an investment in the Partnership are uncertain. All or substantially all of the assets of the Partnership are expected to be invested in Illiquid Investments. Such investments are often structured as "pass through" entities for tax purposes and therefore may generate significant taxable income to the Limited Partners without any corresponding liquidity from such investments. As a result, an investment in the Partnership may be unsuitable for those investors that do not receive a corresponding deduction for such allocated income.

Neither the General Partner nor the Investment Manager makes any representations or warranties regarding any tax matters. Prospective investors are strongly urged to consult their own tax advisors regarding the U.S. federal, state and local and non-U.S. tax consequences to them arising from an investment in the Partnership, and should rely on the advice of their own tax advisors with respect to the possible impact on its investment in the Partnership of any future legislation or administrative or judicial action. You should review the section entitled "TAXATION" for a more complete discussion of certain of the tax risks inherent in the acquisition of Interests.

Tax-Exempt Entities. Certain prospective Limited Partners may be subject to federal and state laws, rules and regulations that may regulate their participation in the Partnership, or their engaging, directly or indirectly through an investment in the Partnership, in investment strategies of the types that the Partnership utilizes from time to time. Tax-exempt entities should consider the applicability to them of the provisions relating to UBTI (as defined below). Investments in the Partnership by entities subject to ERISA and other tax-exempt entities require special consideration. See "ERISA CONSIDERATIONS" and "TAXATION—Tax-Exempt Investors".

Accounting Rules. The Partnership's assets and liabilities are valued in accordance with the Partnership Agreement. However, for purposes of preparing the Partnership's annual audited financial statements, which are prepared in accordance with GAAP, certain of the Partnership's assets and liabilities may be valued in a manner that, while consistent with GAAP, may be different from the manner in which such assets are valued in accordance with the valuation policies set forth in the Partnership Agreement.

The General Partner may at any time choose to change the Partnership's accounting guidelines from GAAP to the IFRS. In such event, the financial performance of the Partnership, as determined under IFRS, may vary from those determined under GAAP.

CONFLICTS OF INTEREST

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Limited Partners.

No Obligation of Full-Time Service. None of the General Partner, the Investment Manager, the Principal or any of the Investment Manager Affiliates has any obligation to devote its full time to the business of the Partnership. Each is only required to devote such time to the Partnership as the General Partner deems necessary to accomplish the purposes of the Partnership, and each may engage in other business activities, including competing ventures and/or unrelated employment, which may result in various conflicts of interest between such persons and the Partnership.

Services to Affiliated Funds. In addition to managing the Partnership and its investments, each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may provide investment management and other services to other parties and may manage and/or establish Affiliated Funds in the future, including

those that may employ an investment program and strategy similar to that of the Partnership. Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to the IDF Fund that is structured as an insurance-dedicated fund and is expected to invest a portion of its assets in the Partnership; (ii) Atlas IDF GP, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the IDF Fund; (iii) the Principal is the managing member and controlling person of Atlas IDF GP, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series.

The investments made by Affiliated Funds that may be managed by the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates in the future may compete with investments for the Partnership's account, and the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates may decide to invest the funds of these Affiliated Funds rather than the assets of the Partnership in a particular security or strategy. In addition, the Investment Manager and/or such other persons will determine the allocation of funds by and among the Partnership and the Affiliated Funds to investment strategies and techniques on whatever basis they decide is appropriate or desirable in their sole and absolute discretion. The records of these Affiliated Funds will not be made available to Limited Partners. Nonetheless, in the event that certain securities, instruments and other assets are suitable for acquisition by the Partnership and by other accounts managed by the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates, and the Investment Manager or such other persons are not able to acquire the desired aggregate amount of such securities, instruments and other assets on terms and conditions which they deem advisable, the Investment Manager and such persons will endeavor in good faith to allocate the limited amount of such investment opportunities among the various accounts for which they consider to be suitable.

Certain Potential Conflicts Between the Principal and Highland Related to the Series 1 Interests. The Principal was previously a Partner and Co-Head of Private Equity at Highland, an investment manager with significant assets under management located in Dallas, Texas. Although Mr. Honis has retired from that position, he still currently serves on: (x) the Board of Trustees for each of Highland's affiliated registered investment companies, and receives compensation in connection with each of the foregoing, and (y) the Board of Directors for American HomePatient, Inc. and Turtle Bay Resort, LLC, which are portfolio companies of investment funds operated by Highland, and receives compensation in connection with each of the foregoing. Additionally, as part of his retirement, Mr. Honis has received or is in the process of receiving payments in the total amount of approximately $3 million from certain affiliates of Highland.

In addition, pursuant to the Shared Services Agreement, Highland serves as the Shared Services Provider, which provides the Investment Manager and the Partnership with certain administrative, information technology, accounting, tax, back-office and other services. In addition, the Shared Services Provider may be (but, as of the date hereof, is not) engaged by the Partnership to act as the Partnership's Administrator, pursuant to a separate Administration Agreement.

Further, the Investment Manager and Highland have had preliminary discussions concerning the potential Highland Transaction. Although, as of the date hereof, the Partnership and Highland have not actively negotiated documentation for the legal and economic terms of the Highland Transaction (and there can be no assurances that such transaction will be consummated), it is nonetheless the intention of such parties that the transaction should come about.

In light of the foregoing, the Principal, and indirectly the Investment Manager, are in a position of conflict with respect to the ultimate decision by the Partnership regarding whether it pursues the Highland Transaction, and under what terms (if any) it agrees to participate in any such transaction.

Also see "—Potential Directorship Positions; Other Roles" herein.

Highland Transaction; Limited Control. If the Highland Transaction is consummated, it is currently contemplated that the Partnership would acquire only limited partnership interests in Highland. As with investments in non-controlling interests in other partnerships, the Highland Transaction may involve special risks associated with the possibility that the controlling principals of Highland may: (i) have economic or business interests or goals that are inconsistent with those of the Partnership, (ii) take actions contrary to the instructions or requests of the Partnership or contrary to the Partnership's policies or objectives, (iii) be unable or unwilling to fulfill its obligations under the organizational/governing documents, and/or (iv) experience financial difficulties. The occurrence of such problems could have a material adverse effect on the business and prospects of the Partnership's investment in the Highland Transaction and may affect management decisions and exit strategies in a manner adverse to the Partnership's interests.

Conflicts Related to Shared Services Provider. The Investment Manager has certain affiliated entities that may provide services with respect to the IDF Fund, as well as the Partnership and certain investments held by the Partnership. The Shared Services Provider may provide services for the benefit of the Partnership under the Shared Services Agreement and/or may incur reimbursable expenses on behalf of the Partnership and/or the Investment Manager. In addition, the Shared Services Provider may be (but, as of the date hereof, is not) engaged by the Partnership to act as the Partnership's Administrator, pursuant to a separate Administration Agreement. The Principal is a former Partner and former Co-Head of Private Equity of the Shared Services Provider.

Potential Directorship Positions; Other Roles. The Investment Manager Affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories, and receive arm's length fees in connection with such service, for the Partnership or other entities that operate in the same or a related line of business as the Partnership, for other clients managed by the Investment Manager or any of the Investment Manager Affiliates, or for any portfolio company of the Partnership, and the Partnership shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Partnership. Also see "—Certain Potential Conflicts Between the Principal and Highland Related to the Series 1 Interests" herein.

The Investment Manager and/or the Investment Manager Affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of investments purchased by the Partnership. Such transactions are on an arm's-length basis and may be subject to arm's-length fees. There is no expectation for preferential access to transactions involving investments that are underwritten, originated, arranged or placed by the Investment Manager and/or the Investment Manager Affiliates and the Partnership shall not have any right to any such fees.

Potential Cross-Trades. The Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Partnership and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Partnership any time that the Investment Manager believes such transaction to be fair to the Partnership and such other client. By purchasing an Interest in the Partnership, a Limited Partner is deemed to have consented to such client cross-transactions between the Partnership and another client of the Investment Manager or one of its affiliates.

Diverse Limited Partners. The Limited Partners may include taxable and tax-exempt entities and persons or entities resident of or organized in various jurisdictions. As a result, conflicts of interest may arise in connection with decisions made by the General Partner that may be more beneficial for one type of Limited Partner than for another. In making such decisions, the General Partner intends to consider the investment objectives of the Partnership as a whole, not the investment objectives of any Limited Partner individually.

Soft Dollars. The General Partner and the Investment Manager may be offered soft dollars in the form of research and brokerage and other products or services, which may be utilized by the General Partner, the Investment Manager and their respective affiliates in connection with the services they offer to clients other than the Partnership. The use of soft dollars presents the Investment Manager with potential conflicts of interest and may provide the Investment Manager with incentives to: (i) use certain brokers who may provide certain soft dollar benefits that other brokers may not, without regard to its obligations to the Partnership (including, without limitation, its best execution obligations); or (ii) trade more actively in order to generate more soft dollars and thereby reduce its expenses.

Referral of Investors. The General Partner and/or the Investment Manager may sell Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the capital contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. Such broker-dealers may have a conflict of interest in advising prospective investors to purchase Interests, as the broker-dealers are often only compensated upon the investment of the prospective investors.

Lack of Separate Representation; Potential Conflicts of Counsel. Neither the Partnership Agreement nor any of the agreements, contracts and arrangements between the Partnership, on the one hand, and the General Partner or the Investment Manager, on the other hand, were or will be the result of arm's-length negotiations. The attorneys, accountants and others who have performed services for the Partnership in connection with this offering, and who will perform services for the Partnership in the future, have been and will be selected by the General Partner. No independent counsel has been retained to represent the interests of prospective investors or Limited Partners. You are therefore urged to consult your own counsel as to the terms and provisions of the Partnership Agreement and all subscription and other related documents.

In addition, Sadis & Goldberg LLP has represented Highland and affiliates at different times over a period lasting over a decade. It is currently expected that Sadis & Goldberg LLP will represent the General Partner, the Investment Manager, the Principal and certain of their respective affiliates in connection with the establishment of the Partnership and the IDF Fund, the possible consummation of the Highland Transaction, and certain related matters. The Principal and his affiliates are aware of the representation by Sadis & Goldberg LLP of Highland and affiliates.

Valuation of Assets. The Administrator will calculate the net asset value of the Partnership (based upon information provided by the Investment Manager). Such calculations could be incorrect, delayed or subject to significant adjustments, any of which events could adversely affect the valuation of the Partnership's investments. The Investment Manager intends to engage an independent third-party valuation agent (in addition to the Administrator) to appraise the Partnership's interests in Illiquid Investments. Partnership If the Investment Manager determines, in its sole discretion, that the valuation of any security, commodity, option or other financial instrument pursuant to the valuation methodologies described herein does not fairly represent its market value, the Investment Manager will value such security, option or other financial instrument as it reasonably determines. Likewise, any securities, commodities, options and other financial instruments that have no public market, investments in other asset classes (including those in Side Pocket Accounts), and all other assets of the Partnership for which a valuation methodology is not specified, will be valued by the Investment Manager in a manner determined in good faith to reflect their fair market value. The Investment Manager has a conflict of interest in that it will receive a higher Management Fee if the Partnership's assets are given a favorable valuation. See "SUMMARY OF OFFERING AND PARTNERSHIP TERMS—Determination of Net Asset Value".

The foregoing list of risk factors and conflicts of interest does not purport to be a complete enumeration or explanation of the risks and conflicts of interest involved in an investment in the Partnership. Offerees should read this entire Memorandum and the Partnership Agreement and consult with their own advisors before deciding to purchase Interests.

ERISA CONSIDERATIONS

An investment of benefit plan assets in the Partnership may raise issues under ERISA and the U.S. Internal Revenue Code of 1986, as amended ("**Code**"). ERISA and the Code impose certain duties on persons who are fiduciaries of a Plan (as defined below) and prohibit certain transactions involving the assets of a Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of a Plan or the management or disposition of the assets of a Plan, or who renders investment advice for a fee or other compensation to a Plan, is generally considered to be a fiduciary of the Plan.

In considering an investment in the Partnership of a portion of the assets of any employee benefit plan (including a "**Keogh**" plan) subject to the fiduciary and prohibited transaction provisions of ERISA or the Code or similar provisions under applicable state law (collectively, a "**Plan**"), a Plan fiduciary should determine, in light of the risks and limited liquidity inherent in an investment in the Partnership, whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA or similar law relating to a fiduciary's duties to the Plan. Furthermore, absent an exemption, the fiduciaries of a Plan should not purchase Interests with the assets of any Plan if the Investment Manager or any affiliate thereof is a fiduciary or other "party in interest" or "disqualified person" (collectively, a "**party in interest**") with respect to such Plan.

PLAN ASSETS

Regulations promulgated under ERISA by the U.S. Department of Labor ("**Plan Asset Regulations**") generally provide that when a Plan subject to Title I of ERISA or Section 4975 of the Code acquires an equity interest in an entity that is neither a "publicly-offered security" nor a security issued by an investment company registered under the Investment Company Act, the Plan's assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless it is established either that equity participation in the entity by "benefit plan investors" is not "significant" or that the entity is an "operating company", in each case as defined in the Plan Asset Regulations. The Interests will not constitute "publicly offered" securities or securities issued by an investment company registered under the Investment Company Act, and it is not expected that the Partnership will qualify as an "operating company" under the Plan Asset Regulations. For purposes of the Plan Asset Regulations, equity participation in an entity by benefit plan investors will not be "significant" so long as they own, in the aggregate less than 25%, directly or indirectly, of the value of each class of such entity's equity. For purposes of such calculation, equity interests held by persons (other than a benefit plan investor) with discretionary authority or control over the assets of the entity or who provide investment advice for a fee (direct or indirect) with respect to such assets, and any affiliates thereof, are disregarded. For purposes of this 25% test ("**Benefit Plan Investor Test**"), "benefit plan investors" include: employee benefit plans subject to the provisions of Part 4 of Title I of ERISA and plans subject to Section 4975 of the Code, including "Keogh" plans and individual retirement accounts ("**IRAs**"). The following are not included in the definition of benefit plan investor: employee benefit plans maintained outside the U.S. by foreign companies that cover non-U.S. persons, governmental plans, and certain church plans. Thus, absent satisfaction of another exception under the Plan Asset Regulations, if 25% or more of the value of any class of Interests in the Partnership were owned by benefit plan investors, an undivided interest in each of the underlying assets of the Partnership would be deemed to be "plan assets" of any Plan subject to Title I of ERISA or Section 4975 of the Code that invested in the Partnership.

Consequently, the General Partner intends to use reasonable efforts either (i) to prohibit plans subject to Title I of ERISA or Section 4975 of the Code from investing in the Partnership or (ii) to provide that investment by "benefit plan investors" in the Partnership will not be "significant" for purposes of the Plan Asset Regulations by limiting equity participation by benefit plan investors in the Partnership to less than 25% of the value of each class of Interests in the Partnership as described above. However, each Plan fiduciary should be aware that even if the Partnership were to avoid plan asset status

under the Benefit Plan Investor Test at the time a Plan acquires Interests in the Partnership, the exemption could become unavailable at a later date as a result, for example, of subsequent transfers or withdrawals of Interests in the Partnership, and that Interests held by benefit plan investors may be subject to mandatory withdrawal in such event in order for the Partnership to continue to avoid plan asset status under the Benefit Plan Investor Test.

Furthermore, there can be no assurance that notwithstanding the reasonable efforts of the Partnership, the Partnership will satisfy the Benefit Plan Investor Test, that the structure of particular investments of the Partnership will otherwise satisfy the Plan Asset Regulations or that the underlying assets of the Partnership will not otherwise be deemed to include ERISA plan assets.

PLAN ASSET CONSEQUENCES

If the assets of the Partnership were deemed to be "plan assets" under ERISA, (i) the prudence and other fiduciary responsibility standards of ERISA would extend to investments made by the Partnership and (ii) certain transactions in which the Partnership might seek to engage could constitute "prohibited transactions" under ERISA and the Code. If a prohibited transaction occurs for which no exemption is available, the Investment Manager and any other fiduciary that has engaged in the prohibited transaction could be required (x) to restore to the Plan any profit realized on the transaction and (y) to reimburse the Plan for any losses suffered by the Plan as a result of the investment. In addition, each party in interest involved could be subject to an excise tax equal to 15% of the amount involved in the prohibited transaction for each year the transaction continues and, unless the transaction is corrected within statutorily required periods, to an additional tax of 100%. Plan fiduciaries that decide to invest in the Partnership could, under certain circumstances, be liable for prohibited transactions or other violations as a result of their investment in the Partnership or as co-fiduciaries for actions taken by or on behalf of the Partnership or the Investment Manager. With respect to an IRA that invests in the Partnership, the occurrence of a prohibited transaction involving the individual who established the IRA, or his or her beneficiaries, could cause the IRA to lose its tax-exempt status.

Under the Partnership Agreement, the General Partner has the power to take certain actions to avoid having the assets of the Partnership characterized as plan assets, including, without limitation, the right to refuse a subscription, exclude a Limited Partner from an investment or to compulsorily redeem a Limited Partner's Interests in the Partnership. While the General Partner does not expect that it will need to exercise such power, it cannot give any assurance that such power will not be exercised.

Each Plan fiduciary should consult its own legal advisor concerning the considerations discussed above before making an investment in the Partnership.

Prospective investors are advised that: (i) any U.S. federal tax advice contained herein, including any opinion of counsel referred to herein, is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding U.S. federal tax penalties that may be imposed on the taxpayer; (ii) any such advice is written to support the promotion or marketing of the transactions described herein (or in any such opinion of counsel); and (iii) each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

INTRODUCTION

The following is a summary of certain aspects of the taxation of the Partnership and its Partners, which should be considered by a potential purchaser of an Interest in the Partnership. A complete discussion of all tax aspects of an investment in the Partnership is beyond the scope of this Memorandum. The following summary is only intended to identify and discuss certain salient issues.

This summary of certain tax considerations applicable to the Partnership is considered to be a correct interpretation of existing laws and regulations in force on the date of this Memorandum. No assurance can be given that changes in existing laws or regulations or their interpretation will not occur after the date of this Memorandum or that any such future guidance or interpretation will not be applied retroactively.

The following summary is not intended as a substitute for careful tax planning. The tax matters relating to the Partnership are complex and are subject to varying interpretations. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on Partners will vary with the particular circumstances of each Partner. Accordingly, each prospective investor must consult with and rely solely on his or her professional tax advisors with respect to the tax results of his or her investment in the Partnership. In no event will the General Partner, its affiliates, counsel or other professional advisors be liable to any Limited Partner for any federal, state, local or other tax consequences of an investment in the Partnership, whether or not such consequences are as described below.

CLASSIFICATION OF THE PARTNERSHIP

Under the provisions of the Code and the Treasury Regulations promulgated thereunder ("**Regulations**"), as in effect on the date of this Memorandum, so long as the Partnership complies with the Partnership Agreement, the Partnership should be classified for U.S. federal income tax purposes as a partnership and not as an association taxable as a corporation.

The Partnership has been formed under the Delaware Act as a series limited partnership and may offering its Interests in multiple separate Series. Under the provisions of the Code and the Regulations, as in effect on the date of this Memorandum, so long as the Partnership complies with the Partnership Agreement and the Delaware Act, each Series of Interests in the Partnership should be classified for U.S. federal income tax purposes as equity interests in a separate partnership and not as equity interests in an association taxable as a corporation.

The Partnership has not sought and will not seek a ruling from the Internal Revenue Service ("**IRS**") with respect to its status as a partnership. If a Series of Interests in the Partnership should be classified as an association taxable as a corporation (e.g., as a result of a change in law or a material change in facts), the taxable income of the Partnership allocable to such Series would be subject to corporate income taxation; and distributions from the Partnership to the Limited Partners owning Interests in such Series would be treated as dividend income when received by such Limited Partners to the extent of the current or accumulated earnings and profits of the Partnership allocable to

such Series.

Certain partnerships may be taxable as corporations for U.S. federal income tax purposes under the publicly traded partnership rules set forth in the Code and the Regulations, and a Series of the Partnership may not qualify for one of the safe harbors under the Regulations if such Series has more than 100 Partners. The Partnership expects that, under the facts and circumstances test set forth in the Regulations, the Interests will not be readily tradable on a secondary market (or the substantial equivalent thereof) and therefore, the Series partnerships will not be treated as publicly traded partnerships under the Regulations. It is assumed in the following discussion of tax considerations that each Series of the Partnership will be treated as a partnership for U.S. federal income tax purposes.

Unless otherwise indicated, references in the discussion below to the tax consequences of the "Partnership's" investments, activities, income and expenses refer to the investments, activities, income and expenses attributable to each Series that is treated as a separate tax partnership. Prospective investors should note that each Series will issue its annual Schedule K-1 tax reporting form to its Partners. Therefore, investors that own Interests in more than one Series will receive separate Schedule K-1 reporting forms for each Series in which the investor is treated as owning an equity interest.

TAXATION OF PARTNERSHIP OPERATIONS

As a partnership, the Partnership is not itself subject to U.S. federal income tax but will file an annual partnership information return with the IRS. Each Limited Partner, in computing his own federal income tax liability for a taxable year, is required to take into account such Partner's distributive share of the Partnership's net long-term capital gain or loss, net short-term capital gain or loss, net ordinary income or loss and any separately stated income items, deductions and credits for the taxable year of the Partnership that ends with or within such Partner's taxable year. The Partnership may utilize a variety of investment and trading strategies, which produce both short-term and long-term capital gain (or loss), as well as ordinary income (or loss). The Partnership will send annually to each Limited Partner a Schedule K-1 form reporting such Partner's distributive share of the Partnership items of income, gain, loss, deduction and credit. The Partnership intends to use the calendar year as its taxable year unless a different fiscal year is required under the Code.

Each Limited Partner will be subject to tax, and liable for such tax, on such Partner's distributive share of the Partnership's taxable income regardless of whether the Limited Partner has received or will receive any distribution of cash from the Partnership. Thus, in any particular year, a Limited Partner's distributive share of taxable income from the Partnership (and, generally, the taxes imposed on that income) could exceed the amount of cash, if any, such Limited Partner received or is entitled to withdraw from the Partnership.

Under Section 704 of the Code, a Limited Partner's distributive share of any Partnership item of income, gain, loss, deduction or credit is governed by the Partnership Agreement unless the allocation provided by the Partnership Agreement does not have "substantial economic effect". The Regulations promulgated under Section 704(b) of the Code provide certain "safe harbors" with respect to allocations, which, under the Regulations, will be deemed to have substantial economic effect. The validity of an allocation which does not satisfy any of the "safe harbors" of these Regulations is determined by taking into account all facts and circumstances relating to the economic arrangements among the Partners. While no assurance can be given, the allocations provided by the Partnership Agreement should have substantial economic effect and should be sustained under the facts and circumstances test. However, if it were determined by the IRS or otherwise that the allocations provided in the Partnership Agreement with respect to a particular item do not have substantial economic effect, each Limited Partner's distributive share of that item would be determined for tax purposes in accordance with that Limited Partner's interest in the Partnership, taking into account all facts and circumstances.

Cash distributions and withdrawals, to the extent they do not exceed a Limited Partner's tax basis in such Partner's interest in the Partnership, should not result in taxable gain to

that Limited Partner, but reduce the tax basis in the Interest by the amount distributed or withdrawn. Cash distributed to a Limited Partner in excess of the tax basis of his or its Interest is generally taxable either as capital gain or ordinary income, depending on the circumstances. A distribution of property other than cash generally will not result in taxable income or loss to the Limited Partner to whom it is distributed until such time that the property is sold.

In the event a Limited Partner withdraws all of the capital in such Partner's capital account, the General Partner will have the discretion to specially allocate an amount of the Partnership's taxable gains or losses to the withdrawing Partner to the extent that the Partner's capital account exceeds, or is less than, its federal income tax basis in its Partnership Interest. However, there can be no assurances that the IRS will accept such a special allocation. If the special allocation were to be successfully challenged by the IRS, the Partnership's taxable gains or losses allocable to the remaining Partners would be increased.

For financial statement presentation and capital account maintenance purposes, all securities held by the Partnership will be marked-to-market at the end of each relevant accounting period and the net gain or loss from marking to market will be reported as income or loss. This treatment differs from the general tax rule applicable to many securities transactions that a transaction does not result in gain or loss until it is closed by an actual sale or other disposition. The divergence between such accounting and tax treatments frequently may result in substantial variation between financial statement income (or loss) and taxable income (or loss) reported by the Partnership.

The Partnership may be required to determine (on an annual basis) whether it will take the position for U.S. federal income tax purposes that it is (i) carrying on a trade or business as a trader in securities, or (ii) an investor in securities. This determination will be made each year based primarily on the frequency, extent and regularity of the Partnership's trading activity during the particular year. The Partnership expects to be treated as engaged in a trade or business by reason of its anticipated investment in the Highland Transaction. The Partnership may also engage in other trade or business activities, either directly or through investments in portfolio partnerships. Prospective investors that are U.S. tax-exempt entities should consider the impact of UBTI on an investment in the Partnership. See "—Tax-Exempt Investors" below. The Partnership's status as a trader or investor may vary from year to year.

If the Partnership is a trader, each Limited Partner who is an individual may deduct his share of the Partnership's expenses (other than interest expense) under Code section 162 as a business expense. Alternatively, if the Partnership is characterized as an investor, an individual Limited Partner's share of the Partnership's expenses (other than interest expense) would pass through to the Partner as separately stated investment expenses deductible under Code section 212 as "miscellaneous itemized deductions". An individual taxpayer's itemized deductions of this type are subject to deduction limitations and phase-out rules that are discussed below in "Limitations on Losses and Deductions—Itemized Deduction Limitations". The limitations on deductions for "investment interest" are discussed below in "Limitations on Losses and Deductions—Investment Interest Limitations".

A Limited Partner may, with the consent of the General Partner, contribute securities to the capital of the Partnership. However, a Limited Partner's contribution of appreciated securities may be a taxable exchange under Section 721(b) of the Code.

The Partnership will also engage in investing and trading securities for its own account. Accordingly, a portion of the Partnership's direct and indirect expenses are expected to be deductible as trade or business expenses under Section 162 of the Code. Certain other expenses may be classified as Section 212 investment expenses, which, for certain types of Limited Partners, including trusts, would be classified as miscellaneous itemized deductions. Prospective investors that are classified as trusts for U.S. federal income tax purposes should consult their tax advisors concerning the limitations in the Code on deductions for miscellaneous itemized deductions.

LIMITATIONS ON LOSSES AND DEDUCTIONS

In General. A Limited Partner is not permitted to deduct Partnership losses that exceed the Partner's adjusted basis in its Interest at the end of the year in which such loss is incurred. A Limited Partner's basis for its Interest is generally equal the amount of such Partner's cash contributions made to the Partnership, increased by (i) the Partner's allocable share of Partnership taxable income, (ii) the Partner's allocable share of Partnership tax-exempt income, and (iii) the Partner's allocable share of nonrecourse liabilities of the Partnership (if any); and decreased by (w) the Limited Partner's allocable share of Partnership taxable losses and non-deductible expenses, (x) any distributions of cash received by the Limited Partner from the Partnership, (y) the basis of any property distributed by the Partnership to such Partner and (z) any decrease in the Partner's share of Partnership nonrecourse liabilities (if any). There are several other Code provisions that may limit the ability of a Limited Partner to claim deductions attributable to an investment in the Partnership. The most significant of these limitations are discussed below.

At Risk Limitations. Section 465 of the Code limits certain taxpayers' losses from certain activities to the amount they are "at risk" in the activities. Taxpayers subject to the "at risk" rules are non-corporate taxpayers, including trusts, and certain closely-held corporations. The activities subject to the "at risk" limitations include all activities in which the Partnership expects to engage. A Partner subject to the "at risk" rules will not be permitted to deduct in any year losses arising from its interest in the Partnership to the extent that the losses exceed the amount it is considered to have "at risk" in the Partnership at the close of that year.

A taxpayer is considered to be "at risk" in any activity to the extent of his cash contribution to the activity, his basis in other property contributed to the activity and his personal liability for repayments of amounts borrowed for use in the activity. With respect to amounts borrowed for use in the activity, the taxpayer is not considered to be "at risk" even if he is personally liable for repayment if the borrowing was from a person who has an "interest" in the activity other than an interest as a creditor. Even if a taxpayer is personally liable for repayment of amounts borrowed for use in the activity, and even if the amount borrowed is borrowed from a person whose only interest in the activity is an interest as a creditor, a taxpayer will not be considered "at risk" in the activity to the extent his investment in the activity is protected against loss through guarantees, stop loss agreements, or other similar arrangements.

Each Limited Partner will be at risk initially for the amount of his capital contribution. A Partner's amount "at risk" will be increased by his distributive share of income from the Partnership and will be decreased by his distributive share of losses from the Partnership and distributions to him. If a Partner's amount "at risk" decreases to zero, he can take no further losses until he has an "at risk" amount to cover the losses. A Partner is subject to a recapture of losses previously allowed to the extent that his amount "at risk" is reduced below zero (limited to loss amounts previously allowed to the Partner over any amounts previously recaptured).

Investment Interest Limitations. To the extent that the Partnership incurs interest expense or short sale expenses, a non-corporate Limited Partner, including a trust, will likely be subject to the "investment interest expense" limitations of Section 163(d) of the Code. Investment interest expense includes (i) interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment and (ii) any amounts deductible in connection with a short sale. The deduction for investment interest expense is limited to the taxpayer's net investment income for the taxable year; i.e., the excess of investment income over investment expenses. Excess investment interest expense that is disallowed is not lost permanently but may be carried forward to succeeding years subject to the Section 163(d) limitation. Net capital gain (i.e., net long-term capital gain over net short-term capital loss) on property held for investment and qualified dividends are only included in investment income to the extent that the taxpayer elects to subject some or all of such gain or dividend income to taxation at ordinary income tax rates. The Section 163(d) limitations will apply at the Partner level with regard to the Partner's distributive share of the Partnership's interest expense.

To the extent that the Partnership is treated as engaged in a trade or business by reason of being deemed a trader, a non-corporate Limited Partner's share of the Partnership's interest expense from such trading activity would retain its character as investment interest subject to the Section 163(d) investment income limitation, but the allowable investment interest deduction would be deducted "above the line" in determining adjusted gross income and therefore fully deductible, rather than being treated as an itemized deduction.

Section 265(a)(2) of the Code disallows any deduction for interest paid by a taxpayer on indebtedness incurred or continued for the purpose of purchasing or carrying tax-exempt obligations. The IRS has announced that such purpose will be deemed to exist with respect to indebtedness incurred to finance a "portfolio investment", and that a limited partnership interest will be regarded as a "portfolio investment". Therefore, if the Partnership holds tax-exempt obligations, the IRS might take the position that all or part of the interest expense incurred by a Limited Partner in connection with the purchase of such Partner's Interest should be viewed as incurred to enable such Limited Partner to continue carrying tax-exempt obligations, and that such Limited Partner should not be allowed to deduct all or a portion of such interest.

Itemized Deduction Limitations. Under Section 67 of the Code, for non-corporate taxpayers, including trusts, certain miscellaneous itemized deductions are allowable only to the extent they exceed a "floor" amount equal to 2% of the taxpayer's adjusted gross income ("**2% Floor**"). To the extent that the Partnership's operations do not constitute a trade or business within the meaning of Section 162 and other provisions of the Code, a non-corporate Limited Partner's distributive share of the Partnership's investment expenses, other than investment interest expense, would be deductible only as miscellaneous itemized deductions, subject to the 2% Floor. In addition, Section 68 of the Code further restricts the ability of high income individuals with adjusted gross incomes in excess of specified threshold amounts to deduct certain itemized deductions. Under this limitation (the "3% Phase-Out Rule"), miscellaneous itemized deductions in excess of the 2% Floor described above, along with certain other itemized deductions (not including investment interest expense), are reduced by 3% of the amount by which the taxpayer's adjusted gross income exceeds the applicable threshold, which, for 2015, is $309,900 for joint return filers and $258,250 for single taxpayers. However, the amount of otherwise deductible itemized deductions is not reduced by more than 80% under the 3% Phase-Out Rule. Moreover, a non-corporate taxpayer's investment expenses that are miscellaneous itemized deductions are also not deductible in calculating the taxpayer's alternative minimum tax liability.

Capital losses generally may be deducted only to the extent of capital gains, except for non-corporate taxpayers who are allowed to deduct $3,000 of excess capital losses per year against ordinary income. Corporate taxpayers may carry back unused capital losses for three years and may carry forward such losses for five years; non-corporate taxpayers may not carry back unused capital losses but may carry forward unused capital losses indefinitely.

ADDITIONAL TAX ISSUES

Gain or loss from a short sale of property is generally considered as capital gain or loss to the extent that the property used to close the short sale constitutes a capital asset in the Partnership's hands.

The "wash sale" rules of Section 1091 of the Code disallow any deduction for losses arising from the sale or other disposition of "stock or securities", where, within a period beginning 30 days before such sale or disposition and ending 30 days afterwards, the taxpayer acquires "substantially identical" stocks of securities by purchase or by an exchange on which the entire amount of gain or loss is recognized. This disallowance rule also applies where, within such 61-day period, the taxpayer enters into a contract or option to acquire substantially identical stock or securities. Thus, if the Partnership were to engage in such a "wash sale" transaction, the Partners would not be able to recognize their distributive share of any loss realized in connection with such sale in the current year.

Currency Fluctuations - "Section 988" Gains and Losses. To the extent that the Partnership's investments are made in securities denominated in a foreign currency, gain or loss realized by the Partnership frequently will be affected by the fluctuation in the value of such foreign currencies relative to the value of the U.S. dollar. Generally, gains or losses with respect to the Partnership's investments in common stock of foreign issuers will be taxed as capital gains or losses at the time of the Partnership's sale of such stock. However, under Section 988 of the Code, gains or losses of the Partnership on the acquisition or disposition of foreign currency (i.e., the purchase of foreign currency and subsequent use of such currency to acquire stock) will be treated as ordinary income or loss. Moreover, under Section 988, gains and losses from disposition of debt securities denominated in a foreign currency that are attributable to the fluctuations in such currency between the date of acquisition of the debt security and the date of its disposition will be treated as ordinary income or loss. Since the Code provides limitations on the ability of taxpayers to deduct capital losses against ordinary income, a Partner's share of capital losses realized by the Partnership on sale of foreign securities would not be available to offset the Partner's share of ordinary income realized by the Partnership on its currency hedging transactions.

The Partnership may acquire foreign currency forward contracts, enter into foreign currency futures contracts and acquire put and call options on foreign currencies. Generally, foreign currency regulated futures contracts and option contracts that qualify as "Section 1256 contracts" will not be subject to ordinary income and loss treatment under Section 988. However, if the Partnership acquires currency futures contracts or options contracts that are not Section 1256 contracts, or any currency forward contracts, any gain or loss realized by the Partnership with respect to such instruments will be ordinary income or loss, unless (i) the contract is a capital asset in the hands of the Partnership and is not part of a straddle transaction and (ii) the Partnership makes an election (by the close of the day the transaction is entered into) to treat the gain or loss attributable to such contract as capital gain or loss.

The taxation of debt obligations under the Code is complex; the following discussion is intended to provide only a general description of these rules. Generally, interest income and income items similar to stated interest, such as original issue discount (in general, the annual portion of the discount on original issuance of debt obligations issued for less than their stated principal amount) and market discount (the amount by which debt obligations are acquired in the secondary market for less than their principal) are treated as items of ordinary income. Generally, debt obligations that are disposed of in a taxable transaction for an amount greater than their adjusted cost basis give rise to capital gain, which will be long-term if the debt obligation is held for longer than one year, and short-term, if held for a period of one year or less. Generally, debt obligations that are disposed of in a taxable transaction for an amount less than their adjusted cost basis give rise to capital loss, which will be long-term if the debt obligation is held for longer than one year, and short-term if held for a period of one year or less. In the event that any such debt obligations are not held as capital assets, such dispositions will generally give rise to ordinary gain or loss, as the case may be.

Section 1259 of the Code requires that the Partnership recognize gain on the constructive sale of any appreciated financial position in stock, a partnership interest, or certain debt instruments. A constructive sale of an appreciated financial position occurs if, among other things, the Partnership enters into (1) a short sale of the same or substantially identical property (a transaction commonly known as a "short sale against the box"), (2) an offsetting notional principal contract with respect to the same or substantially identical property, or (3) a futures or forward contract to deliver the same or substantially identical property. Exceptions to the foregoing apply to certain transactions closed within 30 days after the close of the taxable year if the underlying appreciated financial position remains "unhedged" for at least 60 days thereafter, and to transactions involving certain contracts to sell stock, debt instruments, or partnership interests if the contract settles within one year.

The IRS may treat certain positions in securities held (directly or indirectly) by a Partner and its indirect interest in similar securities held by the Partnership as "straddles" for federal income tax purposes. The application of the "straddle" rules in such a case could

affect a Partner's holding period for the securities involved and may defer the recognition of losses with respect to such securities. In addition, if either of the Partner's positions in such a transaction is an "appreciated financial position", application of the "straddle" rules may trigger a constructive sale of that position under the rules described above.

Section 1258 of the Code recharacterizes capital gain from a "conversion transaction" as ordinary income, with certain limitations. Conversion transactions are defined as transactions in which substantially all the expected return is attributable to the time value of money and either: (a) the transaction consists of the acquisition of property by the taxpayer and a substantially contemporaneous agreement to sell the same or substantially identical property in the future; (b) the transaction qualifies as a "straddle" (within the meaning of Section 1092(c) of the Code); (c) the transaction is one that was marketed or sold to the taxpayer on the basis that it would have the economic characteristics of a loan but the interest-like return would be taxed as capital gain; or (d) the transaction is described as a conversion transaction in the Regulations. The amount of gain so recharacterized will not exceed the amount of interest that would have accrued on the taxpayers' net investment for the relevant period at a yield equal to 120% of the "applicable rate".

INVESTMENTS IN NON-U.S. CORPORATIONS

The Partnership may invest in certain foreign corporations that will be classified as "passive foreign investment companies" ("**PFICs**") for U.S. tax purposes. Under the PFIC rules, unless the Partnership makes one of the elections described below, any gain realized by the Partnership on the sale or disposition of stock in a PFIC that is allocable to Partners that are U.S. Persons (as defined in the Code) will be treated as ordinary income and will be subject to U.S. federal income tax as if (i) the gain had been realized ratably over the Partnership's holding period and (ii) the amount deemed realized had been subject to tax in each year of that holding period at the highest applicable federal income tax rate; in addition, an interest charge at the rate generally applicable to underpayments of federal income tax will be imposed on the amount. Further, any "excess distributions" from a PFIC (as defined in the Regulations) are treated as ordinary income (regardless of their original character) and subject to this deferred tax and interest charge.

Provided the PFIC complies with certain reporting requirements, the Partnership may elect to have the PFIC treated as a "qualified electing fund", in which case the Partnership would include annually in its gross income its *pro rata* share of the PFIC's net ordinary income and net realized capital gains, whether or not such amounts are actually distributed to the Partnership. Generally, any net operating losses or net capital losses of the PFIC will not pass through to the Partnership and will not offset any ordinary income or capital gains of the PFIC reportable to the Partnership in subsequent years. Alternatively, the Partnership could elect to "mark-to-market" stock in certain PFICs if such stock is considered "marketable stock" under the Code, and thereby avoid being subject to the deferred tax and interest charge discussed above. However, there can be no assurance that the Partnership will be able to make either of these elections with respect to any PFICs in which it invests. Further, Limited Partners may be subject to IRS reporting requirements with respect to the Partnership's investments in PFICs.

The Partnership may also invest in certain foreign corporations that will be considered "controlled foreign corporations" ("**CFCs**") for U.S. tax purposes. A CFC is a non-U.S. corporation in which certain U.S. shareholders own, directly or indirectly, more than 50% of either the total voting power of all classes of stock entitled to vote or the total value of all classes of stock. Under the CFC rules, certain U.S. shareholders are subject to U.S. federal income tax on certain types of income (generally passive income) realized by the CFC regardless of whether any amounts are distributed from the CFC to such U.S. shareholder. Further, such U.S. shareholders may be subject to IRS reporting requirements with respect to investments in CFCs.

In addition, if the Partnership invests in stock of foreign corporations that become PFICs or CFCs after the Partnership has made such investment, this may also result in adverse tax consequences for the Limited Partners that are U.S. Persons and may subject them to IRS reporting requirements with respect to such investments.

3.8 % MEDICARE SURTAX ON NET INVESTMENT INCOME

High income U.S. individuals are subject to an annual 3.8% Medicare contribution tax on their "net investment income" (the "**NII Tax**"). The NII Tax is an "add on" federal surtax which must be paid in addition to the regular federal income tax on such income. The NII Tax applies to single taxpayers with "modified" adjusted gross income ("**MAGI**") in excess of $200,000 and married persons filing jointly with MAGI in excess of $250,000. THE NII Tax also applies, in modified form, to the undistributed net investment income of certain trusts and estates.

For purposes of the NII Tax, "investment income" is defined to include (1) interest, dividends, annuities, royalties and rents (subject to certain exceptions); (2) income from a trade or business that consists of trading financial instruments or commodities (i.e., income from trader funds); (3) income from a trade or business that is a passive activity for the individual (i.e., income from an equity interest in a partnership engaged in a trade or business in which the partner does not actively participate); and (4) net gain attributable to disposition of capital assets and certain other property.

It is anticipated that a U.S. individual Limited Partner's distributive share of taxable income from the Partnership will be classified as investment income of the type subject to the NII Tax. To the extent the Partnership generates income from activities that constitute a trade or business (e.g., originating loans), such trade or business income would still be classified as investment income under the NII Tax because the Limited Partner will not be considered an active participant in the Partnership's business.

Net investment income for purposes of calculating the NII Tax is (i) investment income (as defined above) reduced by (ii) any deductions allowed under the regular rules applicable for federal income tax purposes that are properly allocable to such gross income or net gain. If the Partnership is not engaged in a trade or business, an individual Limited Partner's distributive share of investment-related expenses (other than investment interest) would pass through to such Partners as Code Section 212 expenses which are deductible for regular income tax purposes and the NII Tax only as itemized deductions and are subject to the Section 67 (2% Floor) and Section 68 (3% Phase-Out Rule) limitations previously discussed.

TAX-EXEMPT INVESTORS

If the Partnership derives income which would be considered "unrelated business taxable income" (as defined in Section 512 of the Code) ("**UBTI**"), if derived directly by a Limited Partner that is a qualified retirement plan or other organization exempt from tax under Sections 401 or 501(a) of the Code or an individual retirement account ("**IRA**") exempt under Section 408(e) of the Code (each, a "**Tax-Exempt Entity**"), such Limited Partner's allocable share of such Partnership income would be subject to tax. A Tax-Exempt Entity which is subject to tax on its allocable share of the Partnership's UBTI, including an IRA, may also be subject to the alternative minimum tax with respect to items of tax preference which enter into the computation of UBTI.

UBTI is generally the excess of gross income from any unrelated trade or business conducted by a Tax-Exempt Entity (or by a partnership of which the Tax-Exempt Entity is a member) over the deductions attributable to such trade or business. UBTI generally does not include certain passive income, including dividends, interest, annuities, royalties and gain or loss from the disposition of property held for investment, unless such income items are debt-financed income (as discussed below).

While UBTI itself is taxable, the receipt of UBTI by a Tax-Exempt Entity generally has no effect upon that entity's tax-exempt status or upon the exemption from tax of its other income. However, for certain types of Tax-Exempt Entities, the receipt of any UBTI may have extremely adverse consequences. In particular, for charitable remainder trusts (as defined under Section 664 of the Code), the receipt of any taxable income from UBTI during a taxable year will result in the imposition of an excise tax equal to the amount of such UBTI.

A Tax-Exempt Entity also includes in its UBTI its "unrelated debt-financed income" (and its allocable share of the "unrelated debt-financed income" of any partnership in which it invests) pursuant to Section 514 of the Code. In general, unrelated debt-financed income consists of: (i) income derived by a Tax-Exempt Entity (directly or through a partnership) from income producing property with respect to which there is "acquisition indebtedness" at any time during the taxable year; and (ii) gains derived by a Tax-Exempt Entity (directly or through a partnership) from the disposition of property with respect to which there is "acquisition indebtedness". Acquisition indebtedness is generally defined as debt incurred to purchase or carry an investment. Such income and gains derived by a Tax-Exempt Entity from the ownership and sale of debt-financed property are taxable in the proportion to which such property is financed by acquisition indebtedness during the relevant period of time.

Income From the Partnership's Private Equity Investments. The Investment Manager expects to invest a substantial portion of the Partnership's Series 1 assets in the Highland Transaction. The Partnership expects to incur acquisition indebtedness with respect to the Highland Transaction (if it occurs) and may use borrowed funds to acquire other property. Accordingly, Limited Partners that are Tax-Exempt Entities should anticipate that a substantial portion, and possibly all, of their distributive share of the Partnership's net income realized from ownership of equity interests in Highland and other portfolio companies that are business partnerships, including gain realized upon sales of such equity investments, will be subject to federal income tax as UBTI.

Income From the Partnership's Other Activities. The Investment Manager expects that the Partnership will incur indebtedness in connection with its operations from time to time. The law is not entirely clear regarding the appropriate method to be used to determine what portion of a tax-exempt Limited Partner's share of the Partnership's income is attributable to debt financing and therefore constitutes "debt-financed income". Accordingly while the Partnership will compute each tax-exempt Limited Partner's share of "debt-financed income" from the Partnership in a manner which the Partnership considers to be reasonable, there can be no assurance that the IRS will accept the method of computation used by the Partnership.

Tax-exempt Limited Partners will also realize UBTI if the Partnership acquires equity interests of publicly traded partnerships or private partnerships that are engaged in trade or business activities or the Partnership directly carries on other trade or business activities (other than as a securities trader).

OTHER TAXES

Partners may be subject to other taxes, such as the alternative minimum tax, state and local income taxes, and estate, inheritance or intangible property taxes that may be imposed by various jurisdictions. Each prospective investor should consider the potential consequences of such taxes due to an investment in the Partnership. It is the responsibility of each prospective investor to become satisfied as to the legal and tax consequences of an investment in the Partnership under state law, including the laws of the state(s) of its, his or her domicile and residence, by obtaining advice from such investor's own tax advisors, and to file all appropriate tax returns that may be required.

Income received by the Partnership from sources within non-U.S. countries may be subject to withholding and other taxes imposed by such countries. Each Partner may be entitled either to deduct (as an itemized deduction) such Partner's proportionate share of the non-U.S. taxes of the Partnership in computing such Partner's taxable income or to use the amount as a foreign tax credit against his or its U.S. federal income tax liability, subject to limitations. Generally, a credit for non-U.S. taxes is subject to the limitation that it may not exceed the taxpayer's U.S. tax attributable to his or its non-U.S. source taxable income. With respect to Partners that are U.S. Persons: (i) certain currency fluctuation gains, including fluctuation gains from non-U.S.-Dollar-denominated debt securities, receivables and payables, will be treated as ordinary income derived from U.S. sources; and (ii) Partnership gains from the sale of securities also will be treated as derived from U.S. sources. The limitation on the foreign tax credit is applied separately to non-U.S.

source passive income (as defined for purposes of the foreign tax credit), including the non-U.S. source passive income realized by the Partnership. The foreign tax credit limitation rules do not apply to certain electing individual taxpayers who have limited creditable non-U.S. taxes and no non-U.S. source income other than passive investment-type income. The foreign tax credit generally is eliminated with respect to non-U.S. taxes withheld on income and gain if the Partnership fails to satisfy minimum holding period requirements with respect to the property giving rise to the income and gain.

TAX ELECTIONS; RETURNS; TAX AUDITS

If the General Partner determines that the Partnership is treated as a securities trader for federal income tax purposes, the General Partner may cause the Partnership to elect to "mark-to-market" its securities at the end of each taxable year, in which case such securities would be treated for federal income tax purposes as though sold for fair market value on the last business day of such taxable year. Such an election under Code Section 475(f) would apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the IRS. If the Partnership were to make such an election, all or a portion of the Partnership's gains and losses would be considered ordinary income or loss, rather than capital gain or loss. Since for federal income tax purposes capital losses generally may be deducted only against capital gains, a Limited Partner may be unable to deduct capital losses realized from other investments and transactions in a taxable year against his share of the Partnership's income.

The Code provides for optional adjustments to the basis of partnership property upon distributions of partnership property to a partner and transfers of partnership interests (including by reason of death); provided that a partnership election has been made pursuant to Section 754 of the Code. Under the Partnership Agreement, the General Partner, in its sole discretion, may cause the Partnership to make such an election. Any such election, once made, cannot be revoked without the IRS's consent. The General Partner also has the authority and sole discretion to make or refrain from making other tax elections that are available to the Partnership.

Additionally, even if a partnership has not made a Section 754 election, Section 743 of the Code provides for a mandatory basis adjustment to partnership property on certain transfers of partnership interests (including transfers by reason of death), if the partnership has a "substantial built-in loss" immediately after such transfer. A partnership is treated as having a "substantial built-in loss" if the partnership's adjusted basis in partnership property exceeds the property's fair market value by more than $250,000. Section 734 of the Code also provides for mandatory basis adjustments in the case of certain property distributions to partners. Such Code provisions could cause the Partnership to decrease the basis of its remaining assets in such circumstances.

The General Partner will decide how to report partnership items on the Partnership's tax returns and all Limited Partners are required to treat such tax items consistently on their own returns, unless they file a statement with the IRS disclosing the inconsistency. Since the Partnership may engage in transactions whose treatment for tax purposes is not clear, there is a risk that a claim of tax liability could be asserted against the Partnership or its Partners. In the event that the income tax returns of the Partnership are audited by the IRS, the tax treatment of Partnership income and deductions generally is determined at the partnership level in a single proceeding rather than by individual audits of the Partners. As the "Tax Matters Partner", the General Partner has considerable authority to make decisions affecting the tax treatment and procedural rights of all Partners. In addition, the Tax Matters Partner has the authority to bind certain Partners to settlement agreements and the right on behalf of all Partners to extend the statute of limitations relating to the Partners' tax liabilities with respect to Partnership items. The General Partner may, in its sole discretion, consult with, and rely upon, the Partnership's auditors and their determinations or advice as to tax and/or accounting matters.

It is possible that the Partnership and or certain transactions executed by the Partnership would be subject to tax shelter disclosure registration and listing requirements under applicable U.S. tax laws and regulations.

PFIC Reporting. The Code provides that each U.S. Person (as defined herein) that is a direct or indirect shareholder of a PFIC (generally, an investment corporation organized under the laws of a foreign jurisdiction) is required to file an annual information return containing such information as the IRS may require. Limited Partners would be indirect shareholders of stock in any PFICs owned by the Partnership, and would satisfy such filing requirement (if applicable to such Partner) by completing a copy of IRS Form 8621 for the reportable PFIC investment and submitting such forms to the IRS with the Partner's federal income tax return.

FATCA Withholding and Compliance. The provisions of the Code known as the Foreign Account Tax Compliance Act ("**FATCA**") provide that a 30% withholding tax will be imposed on payments of U.S.-source dividends and interest (and certain other items of U.S.-source income) to certain foreign financial entities, and beginning on January 1, 2017 with regard to other withholdable payments (including gross proceeds from the sale of property that give rise to U.S.-source, interest or dividends), unless the foreign financial entity has registered with the IRS and agreed to provide specified U.S. tax information concerning "specified U.S. persons" that own interests in the foreign entity. The Partnership is a withholding agent with respect to such withholding taxes that may be imposed on any of its Partners. U.S. and non-U.S. Partners will be required to furnish appropriate documentation certifying as to their U.S. or non-U.S. tax status, together with such other additional tax information as the Partnership may from time to time request. Limited Partners that are "non-financial foreign entities" (as defined in Code Section 1472) are required to certify whether they have any "substantial United States owners" and, if so, to disclose the identity and tax identification numbers of such persons to the Partnership. Failure to provide such information may subject a Limited Partner to withholding taxes or mandatory withdrawal of its entire interest in the Partnership. Limited Partners are encouraged to consult with their own tax advisors regarding the possible impact of the FATCA legislation on their investment in the Partnership.

OTHER MATTERS

The Partnership may incur certain expenses in connection with its organization and the marketing of the Interests. Amounts paid or incurred to organize the Partnership are being amortized, for tax purposes, over a period of 180 months from the date the Partnership commenced operations. Amounts paid or incurred to market interests in a partnership (marketing and syndication expenses) are not deductible or amortizable.

SPECIAL CONSIDERATIONS FOR PARTNERS WHO ARE NOT U.S. PERSONS

A "**U.S. Person**" is (a) a citizen or resident of the United States, (b) a corporation, partnership, or other entity organized under the laws of the United States, any state, or the District of Columbia, other than a partnership that is not treated as a U.S. Person under the Regulations, (c) an estate whose income is subject to United States income tax, regardless of its source, or (d) a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have the authority to control all substantial decisions of the trust. In addition, to the extent provided in the Regulations, "U.S. Person" includes certain trusts in existence on August 20, 1996, and treated as U.S. Persons prior to such date, that have elected to be treated as U.S. Persons. Partners that are not U.S. Persons are referred to below as "non-U.S. Partners".

Taxation of Effectively Connected Income. The Partnership expects to be treated for U.S. tax purposes as being engaged in the conduct of a U.S. trade or business. As a result, non-U.S. Limited Partners that acquire interests in the Partnership will generally be treated as being engaged in the conduct of a U.S. trade or business. Thus, each non-U.S. Limited Partner will be subject to U.S. federal income taxation, at graduated rates, on its distributive share of the Partnership's income, gain or loss (whether ordinary or capital) that is effectively connected with the conduct of the Partnership's U.S. trade or business ("**ECI**"). Such Limited Partners will be required to file annual U.S. federal income tax returns with respect to such ECI, and the Partnership will be required to withhold and remit to the U.S. Treasury a portion of the non-U.S. Limited Partner's distributive share of such ECI. The Limited Partner would be entitled to claim a credit on his U.S. federal income tax return for the amount withheld by the Partnership with respect to such ECI. Non-U.S. Limited Partners may also be required to file applicable state and local tax returns in jurisdictions in which the Partnership is engaged in business or in which its real property interests are located.

U.S. Branch Profits Tax. In the case of a Limited Partner that is a non-U.S. corporation, in addition to the regular corporate income tax that must be paid on its ECI, the Code provides for an additional 30% "branch profits" tax. The branch profits tax is 30% (or lower rate permitted by tax treaty) of the foreign corporation's "dividend equivalent amount". This is the amount of the foreign corporation's effectively connected after-tax earnings that are not reinvested in a U.S. trade or business by the end of the tax year or disinvested in a later tax year. Certain income tax treaties may reduce or eliminate the branch profits tax; however, under certain circumstances, the branch profits tax may override income tax treaty benefits.

FIRPTA. The Foreign Investment in Real Property Tax Act of 1980, as amended ("**FIRPTA**"), imposes a tax on gain realized on disposition by a foreign person of a "U.S. real property interest" ("**USRPI**") by treating such gain as ECI, generally giving rise to the tax consequences described above. A USRPI includes a direct investment in U.S. real estate and buildings and also investments in stock and certain types of debt interests of a U.S. corporation that is classified as a "U.S. real property holding corporation" (as defined in the Code). A USRPI held by a partnership is deemed to be held proportionately by its partners.

Taxation of Non-ECI. The Partnership also expects to realize certain types of periodic income from U.S. sources (e.g., dividends and certain types of interest) which are not classified as ECI. Each non-U.S. Limited Partner will be subject to a flat 30% withholding tax on its allocable share of the gross amount of such income. Such withholding tax is sometimes reduced or eliminated by an applicable income tax treaty, provided that the proper certification is provided by the non-U.S. Limited Partner when necessary. The applicable IRS form or forms (W-8 series) should be submitted to the Partnership by each non-U.S. Limited Partner at the time such Limited Partner acquires an Interest in the Partnership, and should be resubmitted every three years thereafter (or earlier, if the information on such form changes before such date).

Disposition of Partnership Interests. A non-U.S. Limited Partner that disposes of its Interest in the Partnership, by sale or otherwise, may be subject to U.S. federal income

taxation on such disposition. A transferee of an Interest in the Partnership may be required to deduct and withhold a tax equal to 10% of the gross amount realized on such disposition. Any amount so withheld can be applied as a credit against the U.S. federal income tax liability of the non-U.S. Limited Partner and can be recovered as a refund in the event of overpayment.

U.S. Estate and Gift Taxation of Interests. Non-U.S. Limited Partners that are individuals should also be aware that Interests in the Partnership will be treated as U.S. situs property by reason of the Partnership's ownership of U.S. real property interests, and thus subject to U.S. estate taxation upon the death on a non-U.S. individual owner, or U.S. gift taxation upon a donative transfer of such Interest.

STATE TAXATION

In addition to the federal income tax consequences described above, prospective investors should consider potential state tax consequences of an investment in the Partnership. No attempt is made herein to provide a discussion of such state tax consequences. State laws often differ from federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Partner's distributive share of the taxable income or loss of the Partnership generally will be required to be included in determining the Partner's reportable income for state tax purposes in the jurisdiction in which he or she is a resident. Each prospective investor must consult such investor's own tax advisors regarding such state tax consequences.

FUTURE TAX LEGISLATION

Future amendments to the Code, other legislation, new or amended Regulations, administrative rulings or guidance by the IRS, or judicial decisions may adversely affect the federal income tax aspects of an investment in the Partnership, with or without advance notice, and retroactively or prospectively.

EXHIBIT 19

The Securities and Exchange Commission has not necessarily reviewed the information in this filing and has not determined if it is accurate and complete.
The reader should not assume that the information is accurate and complete.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM D

Notice of Exempt Offering of Securities

OMB APPROVAL	
OMB Number:	3235-0076
Estimated average burden hours per response:	4.00

1. Issuer's Identity

CIK (Filer ID Number)
0001660401

Previous Names: [X] None

Name of Issuer
Rand PE Fund I, L.P.

Jurisdiction of Incorporation/Organization
DELAWARE

Year of Incorporation/Organization
[X] Over Five Years Ago
[ ] Within Last Five Years (Specify Year)
[ ] Yet to Be Formed

Entity Type
[ ] Corporation
[X] Limited Partnership
[ ] Limited Liability Company
[ ] General Partnership
[ ] Business Trust
[ ] Other (Specify)

2. Principal Place of Business and Contact Information

Name of Issuer
Rand PE Fund I, L.P.

Street Address 1	Street Address 2		
C/O RAND PE FUND MANAGEMENT, LLC	2101 CEDAR SPRINGS ROAD, SUITE 1200		
City	State/Province/Country	ZIP/PostalCode	Phone Number of Issuer
DALLAS	TEXAS	75201	(214) 288-9555

3. Related Persons

Last Name	First Name	Middle Name
Rand PE Fund Management, LLC	N/A	
Street Address 1	Street Address 2	
2101 Cedar Springs Road	Suite 1200	
City	State/Province/Country	ZIP/PostalCode
Dallas	TEXAS	75201

Relationship: [ ] Executive Officer [ ] Director [X] Promoter

Clarification of Response (if Necessary):

The Issuer's General Partner

Last Name	First Name	Middle Name

First Name	Middle Name
Patrick	Mark

Street Address 1	Street Address 2
c/o Rand PE Fund Management, LLC	2101 Cedar Springs Road, Suite 1200

City	State/Province/Country	ZIP/PostalCode
Dallas	TEXAS	75201

Relationship: [X] Executive Officer [ ] Director [ ] Promoter

Clarification of Response (if Necessary):

Controlling Person

4. Industry Group

- [ ] Agriculture
- Banking & Financial Services
  - [ ] Commercial Banking
  - [ ] Insurance
  - [ ] Investing
  - [ ] Investment Banking
  - [X] Pooled Investment Fund
    - [X] Hedge Fund
    - [ ] Private Equity Fund
    - [ ] Venture Capital Fund
    - [ ] Other Investment Fund

    Is the issuer registered as an investment company under the Investment Company Act of 1940?

    [ ] Yes [X] No
  - [ ] Other Banking & Financial Services
- [ ] Business Services
- Energy
  - [ ] Coal Mining
  - [ ] Electric Utilities
  - [ ] Energy Conservation
  - [ ] Environmental Services
  - [ ] Oil & Gas
  - [ ] Other Energy
- Health Care
  - [ ] Biotechnology
  - [ ] Health Insurance
  - [ ] Hospitals & Physicians
  - [ ] Pharmaceuticals
  - [ ] Other Health Care
- [ ] Manufacturing
- Real Estate
  - [ ] Commercial
  - [ ] Construction
  - [ ] REITS & Finance
  - [ ] Residential
  - [ ] Other Real Estate
- [ ] Retailing
- [ ] Restaurants
- Technology
  - [ ] Computers
  - [ ] Telecommunications
  - [ ] Other Technology
- Travel
  - [ ] Airlines & Airports
  - [ ] Lodging & Conventions
  - [ ] Tourism & Travel Services
  - [ ] Other Travel
- [ ] Other

5. Issuer Size

Revenue Range	OR	Aggregate Net Asset Value Range
[ ] No Revenues		[ ] No Aggregate Net Asset Value
[ ] $1 - $1,000,000		[ ] $1 - $5,000,000

☐ $1,000,001 - $5,000,000	☐ $5,000,001 - $25,000,000
☐ $5,000,001 - $25,000,000	☐ $25,000,001 - $50,000,000
☐ $25,000,001 - $100,000,000	☐ $50,000,001 - $100,000,000
☐ Over $100,000,000	☐ Over $100,000,000
☐ Decline to Disclose	☒ Decline to Disclose
☐ Not Applicable	☐ Not Applicable

6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

	☒ Investment Company Act Section 3(c)	
☐ Rule 504(b)(1) (not (i), (ii) or (iii))	☐ Section 3(c)(1)	☐ Section 3(c)(9)
☐ Rule 504 (b)(1)(i)	☐ Section 3(c)(2)	☐ Section 3(c)(10)
☐ Rule 504 (b)(1)(ii)	☐ Section 3(c)(3)	☐ Section 3(c)(11)
☐ Rule 504 (b)(1)(iii)	☐ Section 3(c)(4)	☐ Section 3(c)(12)
☒ Rule 506(b)	☐ Section 3(c)(5)	☐ Section 3(c)(13)
☐ Rule 506(c)	☐ Section 3(c)(6)	☐ Section 3(c)(14)
☐ Securities Act Section 4(a)(5)	☒ Section 3(c)(7)	

7. Type of Filing

☐ New Notice Date of First Sale 2015-12-17 ☐ First Sale Yet to Occur

☒ Amendment

8. Duration of Offering

Does the Issuer intend this offering to last more than one year? ☒ Yes ☐ No

9. Type(s) of Securities Offered (select all that apply)

☐ Equity	☒ Pooled Investment Fund Interests
☐ Debt	☐ Tenant-in-Common Securities
☐ Option, Warrant or Other Right to Acquire Another Security	☐ Mineral Property Securities
☐ Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security	☐ Other (describe)

10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? ☐ Yes ☒ No

Clarification of Response (if Necessary):

11. Minimum Investment

Minimum investment accepted from any outside investor $500,000 USD

12. Sales Compensation

Recipient

Recipient CRD Number [X] None

(Associated) Broker or Dealer [X] None

(Associated) Broker or Dealer CRD Number [X] None

Street Address 1

Street Address 2

City

State/Province/Country

ZIP/Postal Code

State(s) of Solicitation (select all that apply)
Check "All States" or check individual States

[ ] All States

[ ] Foreign/non-US

13. Offering and Sales Amounts

Total Offering Amount	USD	or [X] Indefinite
Total Amount Sold	$16,417,187 USD	
Total Remaining to be Sold	USD	or [X] Indefinite

Clarification of Response (if Necessary):

14. Investors

[ ] Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, and enter the number of such non-accredited investors who already have invested in the offering.

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering: 3

15. Sales Commissions & Finder's Fees Expenses

Provide separately the amounts of sales commissions and finders fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions $0 USD [X] Estimate

Finders' Fees $0 USD [X] Estimate

Clarification of Response (if Necessary):

16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

$0 USD [X] Estimate

Clarification of Response (if Necessary):

Rand PE Fund Management, LLC and/or its affiliates receive customary management fees, as described in the Issuer's Confidential Private Placement Memorandum.

Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Terms of Submission

In submitting this notice, each issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, in the accordance with applicable law, the information furnished to offerees.*
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against the issuer in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that, if the issuer is claiming a Regulation D exemption for the offering, the issuer is not disqualified from relying on Rule 504 or Rule 506 for one of the reasons stated in Rule 504(b)(3) or Rule 506(d).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Rand PE Fund I, L.P.	/s/ Mark Patrick	Mark Patrick	Controlling Person	2025-02-24

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 ("NSMIA") [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are "covered securities" for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA's preservation of their anti-fraud authority.

EXHIBIT 20

SadisGoldberg LLP

Amended and Restated Limited Partnership Agreement of Atlas IDF, LP

A DELAWARE "SERIES" LIMITED PARTNERSHIP

As of November 30, 2015

Exhibit A

Neither Atlas IDF, LP nor the limited partner interests therein ("**Interests**") have been or will be registered under the Securities Act of 1933, as amended ("**Securities Act**"), the Investment Company Act of 1940, as amended, or the securities laws of any of the States of the United States. The offering of the Interests is being made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering, and analogous exemptions under state securities laws.

These securities are subject to restrictions on transferability and resale, may not be transferred or resold, except: (i) as permitted under the Securities Act and applicable state securities laws pursuant to registration or exemption therefrom, and (ii) in accordance with the requirements and conditions set forth in this Amended and Restated Limited Partnership Agreement.

This Amended and Restated Limited Partnership Agreement of Atlas IDF, LP, a Delaware "series" limited partnership ("**Partnership**"), is entered into as of November 30, 2015 ("**Agreement**") by and among: (i) Atlas IDF GP, LLC, a Delaware limited liability company ("**General Partner**"), with an address at 87 Railroad Place, Suite 403, Saratoga Springs, New York, 12866; (ii) such persons and entities who are or may become limited partners in accordance with the terms hereof ("**Limited Partners**"; and, together with the General Partner, shall collectively be referred to as the "**Partners**"); (iii) John Honis, as the initial Limited Partner ("**Initial Limited Partner**"); and (iv) such other persons who may become parties to this Agreement from time to time.

WITNESSETH:

WHEREAS, the General Partner and the Initial Limited Partner entered into a Limited Partnership Agreement, dated and effective as of October 29, 2015 ("**Current Agreement**"); and

WHEREAS, the General Partner desires to amend and restate the Current Agreement in its entirety pursuant to, and in accordance with the terms of, **Section 28** thereof, including to reflect the conversion of the Partnership into a "series" limited partnership.

NOW THEREFORE, in consideration of the mutual promises of the parties hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties agree to amend and restate the Current Agreement in its entirety with the following terms and conditions:

ARTICLE I
GENERAL PROVISIONS

Section 1.01 **Formation of Partnership**. The Partnership was formed as a limited partnership under the Delaware Revised Uniform Limited Partnership Act (as in effect on the date hereof and as amended from time to time, the "**Act**") by the filing of its Certificate of Limited Partnership (the "**Certificate**") with the Secretary of State of the State of Delaware (the "**Delaware Secretary**") on October 29, 2015. On November 19, 2015, an amended Certificate was filed with the Delaware Secretary to convert the Partnership into a "series" limited partnership under Section 17-218 of the Act. The General Partner, for itself and as agent for the Limited Partners, shall accomplish all filing, recording, publishing and other acts necessary or appropriate for compliance with all the requirements for the formation and operation of the Partnership as a limited partnership under this Agreement and the Act and under all other laws of the State of Delaware and such other jurisdictions in which the General Partner determines that the Partnership may conduct business. Each Limited Partner admitted to the Partnership by the General Partner shall promptly execute all relevant certificates and other documents, as the General Partner shall request.

Section 1.02 **Partnership Name**. The name of the Partnership is Atlas IDF, LP.

Section 1.03 **Purpose**. The Partnership was organized for the purpose of investing and trading in a wide variety of securities and financial instruments, domestic and foreign, of all kinds and descriptions, whether publicly traded or privately placed, including but not limited to, common and preferred stocks, bonds and other debt securities, convertible securities, limited partner interests, mutual fund shares, options, warrants, commodities, futures, derivatives (including swaps, forward contracts and structured instruments), currencies, monetary instruments, and cash and cash equivalents. In furtherance of the foregoing, the Partnership may engage in any lawful act or activity for which limited partnerships may be formed under the Act, and any and all activities necessary or incidental thereto, including any other business activities described in the Partnership's confidential private placement memorandum (as amended and supplemented from time to time, the "**Memorandum**"). In addition to investing in individual traded assets, the Partnership may invest a significant portion of its assets in other investment vehicles, including, without limitation, hedge funds, managed accounts and other private investment funds (collectively, the "**Portfolio Funds**"), including those managed by, or otherwise affiliated or related to, the Investment Manager (as defined in **Section 3.01**). Portfolio Funds may allocate their assets to Illiquid Investments (as defined in **Section 9.07(a)**).

Section 1.04 **Place of Business**. The Partnership shall have offices located at 87 Railroad Place, Suite

403, Saratoga Springs, New York, 12866, or elsewhere as the General Partner may from time to time determine. The Partnership may have more than one (1) office as may from time to time be determined by the General Partner.

Section 1.05 **Fiscal Year**. The fiscal year of the Partnership (the "**Fiscal Year**") shall end on December 31 of each year, except that it may be changed at any time by the General Partner in its sole discretion. In the event that the General Partner changes the Partnership's Fiscal Year, the dates and time periods referred to in this Agreement shall be appropriately adjusted.

Section 1.06 **Term of Partnership**. The term of the Partnership commenced upon filing of the Partnership's Certificate with the Delaware Secretary and shall continue indefinitely; *provided, however*, that the Partnership shall be dissolved forthwith upon the occurrence of any one of the events set forth in **Section 13.01**.

ARTICLE II
COMPOSITION; ADMISSIONS

Section 2.01 **Names of the Partners**. Atlas IDF GP, LLC, a Delaware limited liability company, is the sole general partner of the Partnership as of the date hereof. The names and addresses of the General Partner and of each of the Limited Partners shall be set forth in the records of the Partnership to be kept on file at all times at the principal place of business of the Partnership.

Section 2.02 **Admission of Partners**. Additional Limited Partners (as defined in **Section 8.01**) may be admitted to the Partnership at such times as provided in **Article VIII**. In connection with the admission of a Limited Partner to the Partnership, such Limited Partner shall, in advance of such admission and as a condition thereto, sign a copy of this Agreement or an agreement to become bound by the provisions of this Agreement and such other subscription materials as shall be determined by the General Partner. Upon the admission of a Limited Partner, the Initial Limited Partner listed on the signature page hereof shall automatically be deemed to have withdrawn from the Partnership. For the avoidance of doubt, the General Partner shall be permitted to make an investment in the Partnership and be issued Partnership Interests hereunder, and such Interests of the General Partner shall be treated as a Limited Partner's Partnership Interests hereunder. A substitute general partner and additional general partners may be admitted to the Partnership as provided in **Article IV**.

Section 2.03 **Partnership Interests**.

(a) For purposes of this Agreement, the term "**Partnership Interest**" shall mean the quotient resulting from dividing (i) the amount in a Partner's Capital Account (as defined in **Section 9.01**), including the fair value of such Partner's interests in any Side Pocket Accounts (as defined in **Section 9.07**) or New Issues Accounts (as defined in **Section 9.08(a)**) and other memorandum accounts, by (ii) the aggregate amount in the Capital Accounts of all Partners, including the fair value of any Side Pocket Accounts, New Issues Accounts and other memorandum accounts. "**Partnership Interests**" shall mean the sum of all amounts in the Capital Accounts of all Partners (including all Side Pocket Accounts, New Issues Accounts and other memorandum accounts).

(b) The Partnership is an "insurance-dedicated" fund. The Partnership Interests are being offered only to Limited Partners that are: (x) insurance company investors, on behalf of certain of their segregated separate accounts ("**Separate Accounts**"), that fund certain variable life insurance and variable annuity contracts (collectively, the "**Policies**") to be issued to policy owners (each, a "**Policy Owner**") by the Limited Partners, or (y) state or local government pension plans, qualified tuition plans ("**§529 plans**"), and private sector qualified pension or retirement plans, as generally described in Treasury Regulation 1.817-5(f)(3). In addition, if an investor is an insurance company, such investor must require its Policy Owners to meet certain suitability standards, as further set forth in the Memorandum. While an insurance company, not a Policy Owner, will become a Limited Partner in the Partnership, it is expected that Policy Owners will be able to allocate a portion of their investment held in the Separate Account to the Partnership as one of the investment options of the Policies.

Each life insurance company Limited Partner will be deemed to hold a Partnership Interest in respect of the account of each Policy Owner and will be treated as a separate Limited Partner with respect to each such Partnership Interest.

Section 2.04 Issuance of Interests in Series.

(a) Pursuant to Section 17-218 of the Act, the Partnership Interests will be offered in separate series ("**Series**"). The Partnership is currently offering one Series of Partnership Interests: "**Series 1 Partnership Interests**". Each Series of Partnership Interests will have separate rights and obligations.

(b) In addition, each Series of Partnership Interests may correspond to a separate portfolio of assets, which may have different investment objectives and strategies. The Partnership may issue additional Series of Partnership Interests in the future, which may have rights and obligations that differ from those of the Series 1 Partnership Interests with respect to any matters, including without limitation, fees, withdrawal rights, participation in Side Pocket Accounts (as defined) and other rights and terms. The terms of such additional Series shall be determined by the General Partner, in its sole discretion.

(c) Each Series shall have separate rights, powers and duties with respect to its investment portfolio and other property and obligations and the profits and losses associated with such portfolio, property and obligations. The Partnership shall maintain separate and distinct records for each Series and shall hold and account for the assets and liabilities of such Series separately from other Series. The Partnership shall not accept additional Limited Partners into any existing Series if such Series has existing Side Pocket Accounts at the time of such admission.

(d) Pursuant to Section 17-218 of the Act, (i) the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular Series shall be enforceable against the assets of such Series only, and not against the assets of any other Series, and (ii) none of the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to the Partnership generally or any other Series shall be enforceable against the assets of such Series.

(e) As of the date hereof, the Investment Manager intends to allocate approximately 45% of the Series 1 investment portfolio to traded investments and approximately (but not more than) 55% of the Series 1 investment portfolio to the first series of limited partnership interests to be issued by the PE Portfolio Fund (as defined in **Section 2.04(f)**). However, the Investment Manager reserves the right to change such allocation in the future, subject to compliance with all applicable laws, including the diversification requirements applicable to insurance-dedicated investment funds, as further set forth in the Memorandum.

(f) As of the date hereof, (i) the Investment Manager acts as the investment manager to Rand PE Fund I, L.P., a Delaware "series" limited partnership ("**PE Portfolio Fund**") that: (x) is expected to initially invest in the Highland Transaction (as defined in the Memorandum), if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction; (ii) Rand PE Fund Management, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the PE Portfolio Fund; (iii) the Principal (as defined in the Memorandum) is the managing member and controlling person of Rand PE Fund Management, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series, as further set forth in the Memorandum.

(g) Unless the context otherwise requires, Series 1 Partnership Interests and any other Series of Partnership Interests shall be collectively referred to throughout this Agreement as the "**Partnership Interests**." As the context may require, the holders of Series 1 Partnership Interests may be referred to herein as "**Series 1 Limited Partners**". Series 1 Limited Partners and, to the extent applicable, all the Limited Partners of other Series shall be collectively referred to throughout this Agreement the "**Limited Partners**".

(h) References herein to the Partnership shall include, where appropriate, each Series of the Partnership. The terms of the other Series may be set forth in an amended version of this Agreement and/or in a separate supplement thereto.

ARTICLE III
MANAGEMENT

Section 3.01 **Management of Partnership**

(a) The business and affairs of the Partnership shall be managed exclusively by the General Partner. The Limited Partners shall take no part in the management or control of the Partnership's business and shall have no authority to act for or bind the Partnership. The General Partner shall have sole discretion and authority to select investments, shall invest the funds of the Partnership from time to time as the General Partner deems appropriate in accordance with the purposes set forth in **Section 1.03**, and shall have (without limitation) the powers set forth in **Section 3.02**. The General Partner may select an investment manager ("**Investment Manager**") to provide all or any portion of the portfolio management services required by the Partnership, including the valuation of assets of the Partnership. The Investment Manager may be changed from time to time by the General Partner in its sole and absolute discretion. The initial Investment Manager shall be Rand Advisors, LLC, a Delaware limited liability company and an affiliate of the General Partner. If at any time there is no Investment Manager, then the General Partner shall provide such portfolio management services, and be subject to the provisions of this Agreement applicable to the Investment Manager.

(b) Each of the General Partner and the Investment Manager shall not be required to devote its full time to the business of the Partnership, but shall devote so much of its time and efforts to the affairs of the Partnership as may in its judgment be necessary to accomplish the purposes of the Partnership. Nothing herein contained shall prevent the General Partner or the Investment Manager from conducting any other business, including any business with respect to securities (and/or other investments), whether or not such business ventures are in direct or indirect competition with the Partnership. Each of the General Partner and the Investment Manager is not prohibited from buying or selling securities for its own account, including the same securities (and/or other investments) as are purchased, sold or held by the Partnership, but none of the General Partner, the Investment Manager or any of their respective affiliates (which shall not include, for purposes of this paragraph, advisory clients or managed funds) shall buy securities (and/or other investments) from or sell securities (and/or other investments) to the Partnership without the written consent of either all Limited Partners or a committee of independent Limited Partners.

Section 3.02 **Powers of the General Partner**. Without in any way intending to limit the powers of the General Partner, the General Partner shall have the right, power and authority on behalf of the Partnership (or to delegate any portion of such rights, power and authority):

(a) As provided in **Section 3.01**, to allocate all of the assets of the Partnership among securities (and/or other investments) to be selected by the General Partner in its sole and absolute discretion, including, but not limited to the right to:

(i) purchase, hold and sell securities (and/or other investments) and rights therein of any kind or nature;

(ii) allocate any and all of the assets of the Partnership among a number of Portfolio Funds;

(iii) purchase, hold, sell and otherwise deal in put and call options, monetary instruments and any combinations thereof and any other financial instruments or contracts of any nature or kind;

(iv) maintain margin accounts with brokers, pledge securities for loans and, in connection with any such pledge, effect borrowings from brokers or banks in such amounts as may be determined from time to time; and

(v) transact business through brokers and dealers and other persons selected by the General Partner in its sole discretion, and in selecting such brokers, dealers and other persons, and determining the compensation payable to such persons, it shall seek to obtain the best execution for the Partnership taking into account the value of any research and brokerage services or products provided by such persons to the General Partner or the Partnership even though other persons may be able to provide transactional services (without any accompanying research or brokerage services or products) at lower rates of compensation;

(b) To acquire and enter into any contract of insurance that the General Partner deems necessary or appropriate for the protection of the Partnership and the General Partner or for any purpose convenient or beneficial to the Partnership;

(c) To engage in any transaction with affiliates of the General Partner, including entering into and amending and restating an investment management agreement with the Investment Manager (any such agreement, in effect from time to time, "**Investment Management Agreement**"), subject to the restrictions in **Section 3.01(b)**;

(d) To employ persons, whether full-time or part-time, in the operation and management of the business of the Partnership, on such terms and for such compensation as the General Partner shall determine, regardless of whether or not such persons also may be employed by the General Partner or its affiliates;

(e) To file, conduct and defend legal proceedings of any form, including proceedings against Partners, and to compromise and settle any such proceedings or any claims, including claims against Partners, on whatever terms deemed appropriate by the General Partner;

(f) To open brokerage, bank and other accounts and, to the extent that funds are not invested, to deposit and maintain such funds in the name of the Partnership in such accounts and to temporarily invest such funds in short term United States and/or foreign government securities, money market accounts and/or other short term interest-bearing instruments; *provided, however*, that the Partnership's funds shall not be commingled with the funds of any other person or entity;

(g) To cause the Partnership to make or revoke any of the elections referred to in Section 754 of the Internal Revenue Code of 1986, as amended ("**Code**"), or any similar provision enacted in lieu thereof;

(h) To act as the "tax matters partner" of the Partnership within the meaning of Section 6231(a)(7) of the Code;

(i) To select as its accounting year the annual period ending December 31 or any other Fiscal Year as is permitted by the Internal Revenue Service ("**IRS**");

(j) To engage independent accountants, attorneys, investment managers, sub-advisers, broker-dealers, administrators, custodians, consultants and such other persons as the General Partner may deem necessary or advisable;

(k) To establish and maintain for the conduct of Partnership affairs one or more offices and in connection therewith rent or acquire office space, engage personnel, whether part time or full time, and do such other acts and incur such expenses as the General Partner may deem necessary or advisable in connection with the maintenance or administration of such office;

(l) To require a provision in any Partnership contract that the General Partner shall not have any personal liability therefor, but that the person or entity contracting with the

Partnership is to look solely to the Partnership and its assets for satisfaction;

(m) To purchase and sell Partnership assets at such price or amount for cash, securities or other property and upon such terms as are deemed in the General Partner's absolute discretion to be in the best interests of the Partnership;

(n) To prepare (or cause to be prepared), execute, acknowledge and/or deliver any and all instruments to effectuate the business of the Partnership, including, but not limited to, annual and/or interim reports, a copy of which shall be delivered to each Partner, as provided in **Sections 3.06(b) and 13.05**;

(o) To effect on behalf of the Partnership any "agency cross transaction" (as contemplated in Rule 206(3)-2 under the U.S. Investment Advisers Act of 1940, as amended ("**Advisers Act**")) through the General Partner or any of its affiliates that is registered as a broker or dealer; *provided* that the authority granted in this subsection may be revoked at any time by the General Partner or by vote or consent of Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners;

(p) To "cross" any transaction for the purchase or sale of securities between two or more advisory clients or managed funds, including the Partnership (as contemplated in Rule 206(3) under the Advisers Act and interpretations thereunder) ("**Cross Trading**"); *provided* that the General Partner receives no additional compensation in connection with such Cross Trading activities, and subject to the restrictions in **Section 3.01(b)**;

(q) To waive or reduce, in whole or in part, any notice period, minimum amount requirement, or other limitation or restriction imposed on Capital Contributions (as defined in **Section 8.01**), withdrawals of capital, any fee, any payment to the General Partner and/or any requirement imposed on a Limited Partner by this Agreement, regardless of whether such notice period, minimum amount, limitation, restriction, withdrawal provision, fee, payment or other requirement of this Agreement, or the waiver or reduction thereof, operates for the benefit of the Partnership, the General Partner or fewer than all the Limited Partners;

(r) To establish such reserves for the Partnership as the General Partner shall, in its sole but reasonable discretion, deem appropriate to pay current and future, definite, contingent and possible obligations of the Partnership or a Series (even if such reserves are not in accordance with U.S. generally accepted accounting principles ("**GAAP**"));

(s) To value the assets and liabilities of the Partnership;

(t) To create special purpose vehicles to make or pursue investments either alone or as a joint-venture with other persons or entities;

(u) To establish and offer multiple Series of Partnership Interests with such rights and privileges as the General Partner shall determine, and to amend this Agreement in connection therewith to reflect such multi-Series structure;

(v) To convert the Partnership from a stand-alone fund into a "feeder fund" as part of a master-feeder structure, and to amend this Agreement pursuant thereto to reflect such master-feeder structure;

(w) To create a liquidating fund entity (e.g., a liquidating trust or similar vehicle), and to transfer all or a portion of the Partnership's assets to such entity for any reason, including an orderly liquidation of any illiquid Partnership assets; and

(x) To do any act, engage in any activity or execute any agreement of any nature, necessary or incidental to the accomplishment of the purposes of the Partnership in accordance with the provisions of this Agreement, the Memorandum and all applicable federal, state and local laws and regulations.

Section 3.03 **Actions of General Partner**. The General Partner is authorized, directed and empowered to act individually on behalf of the Partnership, and in accordance therewith, to execute all documents and instruments on behalf of the Partnership. Third parties may rely on the execution of any documents on behalf of the Partnership by the General Partner.

Section 3.04 **Liability and Indemnification**

(a) None of the General Partner, the Investment Manager or any of the Investment Manager Affiliates (as defined in **Section 6.02(a)**) shall be liable to the Partnership or the Limited Partners for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. It shall be conclusively presumed and established that the General Partner, the Investment Manager and such persons acted in good faith if any action is taken, or not taken, by any of them on the advice of legal counsel or other independent outside consultants; *provided* that the General Partner, the Investment Manager and such persons did not act with gross negligence or willful misconduct in the selection of such counsel or consultants. Any exculpation under this **Section 3.04(a)** shall apply only to the extent that such exculpation does not violate applicable federal and state laws.

(b) The Partnership shall indemnify and hold harmless the General Partner, the Investment Manager and the Investment Manager Affiliates (which, for purposes of this **Section 3.04(b)**, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any of them in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided, however*, that the party against whom the claim is made or legal proceeding is directed is not guilty of gross negligence or willful misconduct, as determined by a final, non-appealable decision of a court of competent jurisdiction. Any indemnity under this **Section 3.04(b)** shall be paid from and to the extent of Partnership assets only, and shall apply only to the extent that such indemnity does not violate applicable federal and state laws. The Partnership shall, in the sole discretion of the General Partner, advance amounts and/or pay expenses as incurred in connection with the indemnification obligation herein. In the event this indemnification obligation shall be deemed unenforceable, whether in whole or in part, such unenforceable portion shall be stricken or modified so as to give effect to this paragraph to the fullest extent permitted by law. For the avoidance of doubt, the foregoing indemnification provisions shall apply on a Series-by-Series basis.

(c) If, to the extent, and at such times as, any assets of the Partnership are deemed to be "plan assets" within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), of any Limited Partner that is an employee benefit plan governed by ERISA, the General Partner shall be, and hereby acknowledges that it shall be considered to be, a fiduciary within the meaning of Section 3(21) of ERISA as to that Limited Partner. In such an event, or if any manager, member, officer, employee, agent or affiliate of the General Partner, is ever held to be a fiduciary of any Limited Partner, then, in accordance with Sections 405(b)(1), 405(c)(2) and 405(d) of ERISA, the fiduciary responsibilities of that person shall be limited to the person's duties in administering the business of the Partnership, and the person shall not be responsible for any other duties to such Limited Partner, specifically including evaluating the initial or continued appropriateness of this investment in the Partnership under Section 404(a)(1) of ERISA.

Section 3.05 **No Prohibition Against Other Business Ventures**. Each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may engage and hold interests in other business ventures of every kind and description for its own account, including, without limitation, other investment entities similar to the Partnership, whether or not such

business ventures are in direct or indirect competition with the Partnership, and whether or not the Partnership or any of the Partners also has an interest therein, without having to account to the Partnership or any Partner for any profits or other benefits derived therefrom and without incurring any obligation to offer any interest in any such activity to the Partnership or any Partner.

Section 3.06 **Duty to Keep Books, Financial and Tax Reports**

(a) At all times during the existence of the Partnership, the General Partner shall keep true and complete records and books of account, in which each transaction of the Partnership shall be entered fully and accurately. The General Partner has the power, in its sole and absolute discretion, to delegate some or all of the administrative bookkeeping functions relating to the Partnership to an administrator or other agent, which may be the Partnership's accountants.

(b) The General Partner shall cause to be prepared and distributed to each Partner as soon as practicable following each Fiscal Year the Partnership's annual financial statements prepared in accordance with GAAP (except to the extent that the Memorandum or this Agreement states or contemplates that such statements may be inconsistent with GAAP) and audited by an independent certified public accounting firm. The General Partner shall also have prepared and filed all federal, state and local income, franchise, gross receipts, payroll and other tax returns that the Partnership is obligated to file. Subject to the limitations set forth in **Section 5.04**, copies of all Partnership tax returns, information returns or reports shall be available to all Partners as soon as possible after the close of the Partnership's Fiscal Year at the principal office of the Partnership. Copies of each Partner's Schedule K-1 of the Partnership's Tax Return (Form 1065) shall be distributed to such Partner as soon as practicable after the close of the Partnership's Fiscal Year. The General Partner may agree to provide certain Limited Partners with additional information on the underlying investments of the Partnership, as well as heightened access to the General Partner, the Investment Manager and their respective employees for relevant information. For the avoidance of doubt, the foregoing reporting provisions shall apply on a Series-by-Series basis.

(c) The General Partner may at any time choose to change the Partnership's accounting guidelines from GAAP to the International Financial Reporting Standard ("**IFRS**"). In such event, the financial performance of the Partnership, as determined under IFRS, may vary from those determined under GAAP.

ARTICLE IV
GENERAL PARTNER RESIGNATION; TRANSFER OF GENERAL PARTNER INTEREST; CONTINUATION OF PARTNERSHIP; SUBSTITUTION OF GENERAL PARTNER

Section 4.01 **General Partner Resignation and Involuntary Withdrawal; Admission of Additional General Partners and Transfer by General Partner**

(a) The General Partner shall not be permitted to voluntarily withdraw or resign as the general partner of the Partnership, except upon no less than thirty (30) days' prior written notice to all Limited Partners. In the event of dissolution of the General Partner, or if a voluntary or involuntary petition for bankruptcy shall be filed by or against the General Partner, or the General Partner shall make any assignment for the benefit of its creditors (any of the foregoing, an "**Involuntary Withdrawal**"), the General Partner or the General Partner's trustee, receiver or assignee shall have none of the rights and powers of a general partner hereunder, and shall have no authority to act on behalf of the Partnership or have any voice in the management and operation of the Partnership, except as provided in **Section 13.02**.

(b) The General Partner may admit additional general partners to the Partnership at such times as the General Partner shall determine, without the consent of the Limited Partners. Notwithstanding anything herein to the contrary, the General Partner shall have the right to transfer its interest, as the general partner of the Partnership, to any affiliate of the General Partner, including any person or entity controlled by the

General Partner, controlling the General Partner or under common control with the General Partner, without the consent of the Limited Partners. In the event of such transfer by the General Partner to an affiliate, the General Partner shall not be deemed to have resigned or withdrawn from the Partnership for purposes of **Section 13.01(a)**. Any affiliate transferee of the General Partner under this **Section 4.01(b)** shall assume the status of and shall have all of the rights, powers and obligations that the General Partner possessed prior to such transfer. The General Partner shall not assign, transfer, sell, mortgage or otherwise encumber or transfer its interest as the general partner of the Partnership, except as set forth herein. Any additional general partner or transferee of the General Partner shall execute and acknowledge any and all instruments that are necessary or appropriate to effect the admission of any such person or entity as a general partner, including, without limitation, the written acceptance and adoption by such person of the provisions of this Agreement and, if required by the Act, an amendment of the Certificate. For the avoidance of doubt, should the General Partner transfer its interest, as the general partner of the Partnership, to any non-affiliate of the General Partner, the Limited Partners shall have the right to revoke such appointment within ninety (90) days after such event, by affirmative vote of Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners.

Section 4.02 **Continuation of Partnership; Appointment of Substitute General Partner by Limited Partners**. If an event as set forth in **Section 13.01(a)** occurs, the Limited Partners shall have the right, within ninety (90) days after such event, by affirmative vote of Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners, to appoint a substitute general partner, in which event the Partnership shall not dissolve and shall continue its existence.

Section 4.03 **Substitute General Partner Requirements**. Any substitute general partner shall execute and acknowledge any and all instruments that are necessary or appropriate to effect the admission of any such person or entity as a substitute general partner, including, without limitation, the written acceptance and adoption by such person of the provisions of this Agreement and, if required by the Act, an amendment of the Certificate. Any successor to such office of general partner shall assume the status of and shall have all of the rights, powers and obligations that the General Partner possessed prior to its withdrawal, resignation or Involuntary Withdrawal from the Partnership.

ARTICLE V
STATUS, RIGHTS, POWERS AND VOTING RIGHTS OF LIMITED PARTNERS

Section 5.01 **Limited Liability**. No Limited Partner, Substitute Limited Partner (as defined in **Section 10.02**) or Additional Limited Partner shall be personally liable or bound for the expenses, liabilities or obligations of the Partnership or the relevant Series beyond the amount in such Partner's Capital Account in the relevant Series, from time to time, including any amounts thereof attributable to Capital Contributions, except that such Partner may be obligated to return all or a portion of any distributions (including withdrawal proceeds) received from the Partnership (x) in an amount up to its aggregate Capital Contributions in the relevant Series (including any income or gains thereon) to the Partnership in order to pay such Partner's *pro rata* share of any Partnership liabilities that arose while such Partner held Partnership Interests, and (y) as required under **Section 5.02(b)**.

Section 5.02 **Capital Contributions**

(a) No Limited Partner shall be entitled to a return of such Limited Partner's Capital Contribution or any portion thereof, except as set forth in **Section 7.01**, and no time has been agreed upon for the return of any Partner's Capital Contribution, except as herein provided.

(b) Each Limited Partner, if such Limited Partner receives a return of all or any part of such Limited Partner's Capital Contribution, may, to the extent provided for in the Act, be liable to the Partnership or the relevant Series for an amount equal to such distribution, if at the time of such distribution, the Limited Partner knew the

Partnership or the relevant Series was prohibited from making such distribution under the Act.

Section 5.03 **Liability of Limited Partner for Additional Contributions and Loans**. No Limited Partner shall be obligated to provide any contributions to the Partnership, other than the Original Capital Contribution (as defined in **Section 9.02**) of such Limited Partner. No Limited Partner shall be obligated to make any loan to the Partnership.

Section 5.04 **Rights of Limited Partners to Inspect Books, Records, and Partnership Documents**. Upon reasonable advance written notice and during reasonable business hours, a Limited Partner may inspect and copy, at the Limited Partner's expense and solely for a purpose reasonably related to the Limited Partner's interest as a Partner, the records of the Partnership required to be maintained pursuant to Section 17-305 of the Act and any financial statements maintained by the Partnership. Any such inspection must be in good faith without any intent to damage the Partnership or any of its Partners in any manner. Notwithstanding the foregoing, the General Partner in its discretion may limit the information that a Limited Partner may obtain pursuant to this **Section 5.04** to the extent that such information shall allow a Limited Partner to identify any other Limited Partner. As a result, each Limited Partner agrees and acknowledges that any books and records of the Partnership made available to a Limited Partner for inspection may be redacted to exclude any information concerning the identity of the other Limited Partners, and, to the extent such books and records cannot be so redacted, such books and records may be withheld for inspection to such requesting Limited Partner. Copies of this Agreement and all amendments hereto shall be furnished to each Limited Partner upon request. For the avoidance of doubt, the foregoing reporting provisions shall apply on a Series-by-Series basis.

Section 5.05 **No Restriction on Other Activities**. Limited Partners may engage and hold interests in business ventures of every kind and description for their own accounts, including, without limitation, business ventures which are, directly or indirectly, in competition with the Partnership and whether or not the Partnership or any of the Partners also has an interest therein. Neither the Partnership nor any of the Partners shall have any rights in such independent business ventures by virtue of this Agreement.

Section 5.06 **Voting Rights**. In addition to the rights to vote conferred upon the Limited Partners in **Sections 3.01(b), 3.02, 4.02 and 13.02** or otherwise specifically set forth herein, Limited Partners shall have the right to vote on amendments to this Agreement to the extent provided in **Section 14.08**.

Section 5.07 **Constructive Consent by Limited Partners**. In the event that the General Partner requires the consent of the Limited Partners in order to take action (including approving amendments to this Agreement), and written notice of such action is sent to any such Limited Partners by (i) certified mail, return receipt requested, (ii) electronic mail, or (iii) overnight delivery by a reputable private carrier or by the postal service, those Limited Partners not affirmatively objecting in writing within thirty (30) days after such notice is deemed to have been mailed or sent (under **Section 14.01**) be deemed to have consented to the proposed action set forth in the General Partner's notice.

Section 5.08 **Rights as to Dissolution**. The Limited Partners shall have no right or power to cause the dissolution and winding up of the Partnership by court decree or otherwise or to withdraw or reduce their Capital Contributions, except as set forth in the Certificate and this Agreement. No Limited Partner shall have the right to bring an action for partition against the Partnership, and each Partner hereby waives any right to partition of the Partnership's property.

Section 5.09 **Consent by Partners in Lieu of Meeting**. Any action required by this Agreement or the Act to be taken at any regular or special meeting of the Partners, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Partners (or shall be deemed signed by the Partners pursuant to **Section 5.07**) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Partners entitled to vote thereon were present and voted.

Section 5.10 **Non-Voting Interests of BHC Limited Partners; Other Non-Voting Interests**

(a) The portion of any Partnership Interest held for its own account by a BHC Limited Partner (as defined in this **Section 5.10(a)**) whose interests in the Partnership are determined, at any time, to be in excess of 4.99% (or such greater or lesser percentage as may be permitted or required from time to time under Section 4(c)(6) of the Bank Holding Company Act of 1956, as amended ("**BHCA**")) of the aggregate outstanding Partnership Interests of all Limited Partners, excluding any other Partnership Interests that are non-voting Partnership Interests pursuant to this **Section 5.10**, shall be deemed to be non-voting Partnership Interests to the extent of such excess above 4.99% (whether or not subsequently transferred, in whole or in part, to any other person or entity) (collectively, "**Non-Voting Interests**"); *provided* that such Non-Voting Interests shall be permitted to participate in any vote by the Limited Partners on (i) any proposal to dissolve or continue the business of the Partnership under this Agreement, (ii) any vote pursuant to **Section 4.02**, and (iii) matters with respect to which voting rights are not considered to be "voting securities" under 12 C.F.R. § 225.2(q)(2), including such matters which may "significantly and adversely" affect a BHC Limited Partner (such as amendments to this Agreement or modifications of the terms of its Partnership Interest). Except as provided in **Section 13.01(a)**, a BHC Limited Partner shall not be permitted to vote on the selection of any successor general partner of the Partnership, and each BHC Limited Partner irrevocably waives its right to vote its Non-Voting Interest on the selection of a successor general partner of the Partnership under Section 17-801 of the Act, which waiver shall be binding upon such BHC Limited Partner or any person or entity that succeeds to its Partnership Interest. A "**BHC Limited Partner**" shall mean any Limited Partner that is, or is an affiliate of, a bank holding company (as defined in Section 2(a) of the BHCA) that is subject to the provisions of Regulation Y issued by the Board of Governors of the Federal Reserve System.

(b) To the extent permitted by the BHCA, and except as otherwise provided in this **Section 5.10**, Non-Voting Interests shall not be counted as Partnership Interests held by any Limited Partner for purposes of determining whether any vote or consent required by this Agreement has been approved or given by the requisite percentage of the Limited Partners.

(c) Notwithstanding the foregoing, any BHC Limited Partner may elect to no longer be treated as a BHC Limited Partner for the purposes of this Agreement by delivering written notice of such election to the General Partner. Any such election made by a BHC Limited Partner may be rescinded at any time by providing written notice thereof to the General Partner.

(d) The General Partner may, for legal, regulatory or other reasons, designate any other Partnership Interests as non-voting, in whole or in part. Except as provided in this **Section 5.10**, a Partnership Interest held by a Limited Partner as a non-voting Partnership Interest shall be identical in all regards to all other Partnership Interests held by Limited Partners.

(e) For the avoidance of doubt, the provisions of this **Section 5.10** shall apply on a Series-by-Series basis.

ARTICLE VI
FEES AND EXPENSES; BROKERAGE PRACTICES

Section 6.01 **Management Fee**.

(a) In consideration for services provided pursuant to the Investment Management Agreement, the Investment Manager shall receive a quarterly management fee ("**Management Fee**") equal to a percentage of each Limited Partner's share of the Partnership's Net Asset Value (as defined in **Section 9.04**), and based on the Partnership's total Net Asset Value, as follows:

Partnership's Total Net Asset Value	Management Fee (per annum)

$0 - $99,999,999	0.5500%
$100,000,000 - $199,999,999	0.5000%
$200,000,000 - $249,999,999	0.4500%
$250,000,000 - $499,999,999	0.3500%
> $500,000,000	0.3400%

For the avoidance of doubt, the Management Fee calculated based on the foregoing schedule will be calculated on a "progressive" basis. For example, if the Partnership's Net Asset Value reaches $150,000,000, the initial $99,999,999 will always be charged a Management Fee of 0.55000% annually. The benefit of the declining Management Fee schedule above is intended to benefit all Limited Partners as each Capital Account will be charged a blended Management Fee based on the above schedule.

The Management Fee shall be calculated and payable to the Investment Manager quarterly, in advance, as of the first day of each calendar quarter. A *pro rata* Management Fee shall be charged to Limited Partners on any amounts accepted by the General Partner during a calendar quarter. No part of the Management Fee shall be refunded in the event that a Limited Partner withdraws, whether voluntarily or involuntarily, all or any of the value in such Limited Partner's Capital Account during any calendar quarter. Management Fees shall be payable with respect to the Partnership Interests of a Limited Partner in any Side Pocket Account.

(b) For purposes of calculating the Management Fee with respect to Side Pocket Accounts, Illiquid Investments (each as defined in **Section 9.07**) shall be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

(c) With respect to any Limited Partner who has requested to withdraw all of its Partnership Interests from the Partnership, with the exception of any Partnership Interests maintained in a Side Pocket Account, the Partnership may reserve an amount from the withdrawing Limited Partner's withdrawal proceeds in order to cover the estimated accrued Management Fees and expenses attributable to the Limited Partner's Partnership Interests in the Side Pocket Account based on the Investment Manager's estimate of the time period that the Illiquid Investments held in the Side Pocket Account shall remain in such Side Pocket Account (collectively, the "**Management Fee Reserve**"). The Management Fee Reserve shall be treated as a liability of the Partnership, and the balance of the Management Fee Reserve, if any, shall be paid to the withdrawing Limited Partner, without interest, upon such Limited Partner's complete withdrawal from the Side Pocket Account.

(d) The Partnership will also bear its *pro rata* share of the management fees charged by the managers of the Portfolio Funds. Notwithstanding the foregoing, the Investment Manager intends to waive any management fees due to the Investment Manager with respect to any investment of the Partnership in any Affiliated Funds (as defined in the Memorandum), including the PE Portfolio Fund (as defined in the Memorandum). Accordingly, to the extent that the Partnership invests in any Affiliated Funds, including the PE Portfolio Fund, the Partnership will not be subject to a layering of fees.

Section 6.02 Expenses

(a) **Organizational and Initial Offering Expenses**. The Partnership shall pay or reimburse the General Partner, the Investment Manager and/or their respective managers, members, shareholders, directors, officers, partners, employees, agents and/or affiliates (collectively, "**Investment Manager Affiliates**") for all organizational

and initial offering expenses of the Partnership, including, but not limited to, legal and accounting fees, printing and mailing expenses and government filing fees (including blue sky filing fees). The Partnership's organizational and initial offering expenses may be, for accounting purposes, capitalized and amortized by the Partnership for up to sixty (60) months from the date the Partnership commences operations. Amortization of such expenses is a divergence from GAAP. In certain circumstances, this divergence may result in a qualification of the Partnership's annual audited financial statements. In such instances, the Partnership may elect to: (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP-conforming changes for financial reporting purposes, but capitalize and amortize expenses for purposes of calculating the Partnership's Net Asset Value (resulting in a divergence in Fiscal Year-end Net Asset Values reported in the Partnership's financial statements, and as otherwise applicable under the provisions of this Agreement). If the Partnership capitalizes and amortizes such expenses and is then terminated within sixty (60) months of its commencement, any unamortized expenses shall be recognized. If a Limited Partner makes a withdrawal prior to the end of the period during which the Partnership is capitalizing and amortizing expenses, the Partnership may, but is not required to, accelerate a proportionate share of the unamortized expenses based upon the amount being withdrawn and reduce withdrawal proceeds accordingly.

(b) **Operating Expenses**. The Partnership shall pay or reimburse the General Partner, the Investment Manager and/or the Investment Manager Affiliates for: (i) all expenses incurred in connection with the ongoing offer and sale of Partnership Interests, including, but not limited to, printing of the Memorandum and exhibits, marketing expenses and documentation of performance and the admission of Limited Partners, (ii) all operating expenses of the Partnership, such as tax preparation fees, governmental fees and taxes, fees to the Partnership's administrator ("**Administrator**"), costs of communications with Limited Partners, and ongoing legal, accounting, auditing, bookkeeping, consulting and other professional fees and expenses, (iii) all Partnership research, trading and investment-related costs and expenses (e.g., brokerage commissions, research fees, margin interest, expenses related to short sales, custodial fees, bank service fees, and clearing and settlement charges), (iv) technology-related costs and expenses, including, but not limited to, software licenses, data feeds and colocation expenses, (v) all expenses related to attending any conference or seminar related to alternative investments (e.g., registration, transportation, accommodation or meal expenses), (vi) regulatory and other filing fees and expenses, (vii) travel expenses related to meeting with management teams, or related to any of the other categories of expenses set forth herein, (viii) any costs and expenses incurred by the Partnership in connection with converting from a stand-alone fund into a "feeder fund" as part of a master-feeder structure, (ix) director and officer liability insurance or other insurance premiums for any principal or employee of the Partnership, the General Partner, the Investment Manager or any of the Investment Manager Affiliates, (x) all fees and other expenses incurred in connection with the investigation, prosecution or defense of any claims, assertion of rights or pursuit of remedies, by or against the Partnership, including, without limitation, professional and other advisory and consulting expenses, and (xi) any and all costs and expenses incurred in connection with the dissolution, winding up, or termination of the Partnership. Each of the General Partner, the Investment Manager or any of the Investment Manager Affiliates, in its sole discretion, may from time to time pay for any of the foregoing Partnership expenses. Any such person may elect to be reimbursed for such expenses, or to waive its right to reimbursement for any such expenses, as well as terminate any such voluntary payment or waiver of reimbursement.

The Partnership will also bear its *pro rata* share of the expenses of each Portfolio Fund.

(c) **Allocation of Expenses Among Series**. The General Partner and/or the Investment Manager will allocate all expenses attributable to the Partnership among the Series on a *pro rata* basis or otherwise in their reasonable discretion.

(d) **General Partner and Investment Manager Expenses**. The General Partner and the Investment Manager shall pay for their own general operating and overhead expenses associated with providing the management and investment management services required under this Agreement and the Investment Management Agreement, respectively. These expenses include all expenses incurred by the General Partner and the Investment Manager in providing for their normal operating overhead, including, but not limited to, the cost of providing relevant support and administrative services (e.g., employee compensation and benefits, rent, office equipment, computer systems, insurance (other than as expressly set forth above), utilities, telephone, secretarial and bookkeeping services, etc.), but not including any Partnership operating expenses described above. The General Partner and the Investment Manager may use "soft dollar" commissions or rebates by brokerage firms of commissions generated by the Partnership's brokerage transactions executed through those firms to pay for certain brokerage and research products and services that fall within the safe harbor under Section 28(e) of the Securities Exchange Act of 1934, as amended, as set forth in the Memorandum.

Section 6.03 **Marketing Fees and Sales Charges**. The General Partner and/or the Investment Manager may sell Partnership Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the Capital Contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. If a Limited Partner is introduced to the Partnership through a broker-dealer that is not affiliated with the General Partner and/or the Investment Manager, the arrangement, if any, with such broker-dealer shall be disclosed to, and acknowledged by, such Limited Partner.

Section 6.04 **Directed Brokerage**. The Investment Manager is authorized to direct Partnership brokerage transactions to brokers or other persons who refer prospective Limited Partners to the Partnership. The Investment Manager is authorized to pay finders' fees or other compensation at its own expense to such persons.

Section 6.05 **Allocation of Investment Opportunities**. The Investment Manager may at times determine that certain investments shall be suitable for acquisition by the Partnership and by other accounts managed by the Investment Manager, the Investment Manager's own accounts or accounts of an affiliate. If that occurs, and the Investment Manager is not able to acquire the desired aggregate amount of such investments on terms and conditions which the Investment Manager deems advisable, the Investment Manager shall endeavor to allocate in good faith the limited amount of such investments acquired among the various accounts for which the Investment Manager considers them to be suitable. The Investment Manager may make such allocations among the accounts in any manner which it considers to be fair under the circumstances, including, but not limited to, allocations based on relative account sizes, the degree of risk involved in the investments acquired, and the extent to which such investments are consistent with the investment policies and strategies of the various accounts involved.

Section 6.06 **Aggregation of Orders**. The Investment Manager may aggregate purchase and sale orders of investments held by the Partnership with similar orders being made simultaneously for other accounts or entities if, in the Investment Manager's reasonable judgment, such aggregation is reasonably likely to result in an overall economic benefit to the Partnership based on an evaluation that the Partnership shall be benefited by relatively better purchase or sale prices, lower commission expenses or beneficial timing of transactions, or a combination of these and other factors. In some instances, the purchase or sale of investments for the Partnership may be effected simultaneously with the purchase or sale of like investments for other accounts or entities. Such transactions may be made at slightly different prices, due to the volume of investments purchased or sold. In such event, the average price of all investments purchased or sold in such transactions may be determined, at the Investment Manager's sole discretion, and the Partnership may be charged or credited, as the case may be, with the average transaction price.

ARTICLE VII
WITHDRAWALS FROM CAPITAL ACCOUNT; DISTRIBUTIONS

Section 7.01 **Permissible Withdrawals**. A Limited Partner may withdraw all or any of the value in such Limited Partner's Capital Account in any Series in the manner and to the extent provided in **Section 7.02**. Each of the General Partner and its principals and affiliates may withdraw all or any of the value in its respective Capital Account at any time, from time to time, without the consent of the Limited Partners and without notice to any of the Limited Partners.

Section 7.02 **Withdrawal Procedures**

(a) Subject to the Lock-Up Period (as defined in **Section 7.02(b)**) and certain other restrictions described herein, each Limited Partner may withdraw a minimum of $100,000 as of the last day of each calendar quarter and at such other times as the General Partner may determine in its sole discretion (each such date shall be referred to herein as a "**Withdrawal Date**"), upon at least ninety-one (91) days' prior written notice to the Administrator, with a copy to the General Partner. Unless the General Partner consents, partial withdrawals may not be made if they would reduce a Limited Partner's Capital Account balance below $500,000. All withdrawals shall be deemed made prior to the commencement of the following calendar quarter (or other relevant period).

(b) Each Capital Contribution by a Limited Partner to the Partnership will be subject to a twelve (12)-month lock-up period ("**Lock-Up Period**") during which such capital may not be withdrawn from the Partnership, unless the Lock-Up Period is waived or reduced by the General Partner. If a Limited Partner purchases Partnership Interests on multiple dates, each tranche of Partnership Interests will be tracked separately for purposes of the Lock-Up Period, and withdrawals will be deemed made from Partnership Interests purchased on the earliest date (as adjusted for changes in the Net Asset Value). For the avoidance of doubt, the foregoing Lock-Up provisions shall apply on a Series-by-Series basis.

(c) The General Partner believes (but cannot guarantee) that the assets of the Partnership will be invested in a manner which would allow the General Partner to satisfy withdrawal requests. The General Partner may, in its sole discretion: (i) defer withdrawal requests until the Partnership's assets mature or are liquidated in due course, (ii) elect to purchase with its own funds the Partnership Interests of the withdrawing Partner, or (iii) borrow from a third party or draw from a line of credit, subject to availability and other factors, in order to fund any withdrawal. In addition, notwithstanding anything to the contrary herein, the General Partner may limit and/or suspend withdrawals in order to ensure that the Partnership, at all times, meets the diversification requirements applicable to insurance-dedicated investment funds, as further set forth in the Memorandum.

(d) A Limited Partner may not withdraw any of the amounts in its Capital Account that are attributable to the value of an Illiquid Investment held in a Side Pocket Account until such time that such Illiquid Investment (or the sales proceeds thereof) is reallocated to such Limited Partner's Capital Account. At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event (as defined in **Section 9.07**). **For the avoidance of doubt, any investment made by Series 1 into the series of the PE Portfolio Fund that corresponds to the latter fund's investment made in the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

(e) The following provision shall apply to withdrawals, on a Series-by-Series basis:

(i) A Limited Partner who requests any withdrawal of capital that constitutes, together with prior withdrawals within any Fiscal Year, less than ninety percent (90%) of the value of such Limited Partner's Capital Account (excluding any amounts held in any Side Pocket Accounts) shall be paid

within ninety (90) days after the applicable Withdrawal Date.

(ii) In the event that a Limited Partner requests a withdrawal of capital that constitutes, together with prior withdrawals within any Fiscal Year, ninety percent (90%) or more of the value of such Limited Partner's Capital Account (excluding any amounts held in any Side Pocket Accounts), the General Partner may reduce the amounts paid after any Withdrawal Date so that they constitute, in the aggregate during such Fiscal Year ninety percent (90%) of an amount estimated by the General Partner to be the amount to which the withdrawing Limited Partner is entitled in the aggregate (calculated on the basis of unaudited data); such amount will be paid within ninety (90) days after the applicable Withdrawal Date. The balance of the amount payable upon such withdrawal shall be paid, without interest, within ninety (90) days after completion of the audited financial statements for the Fiscal Year in which the withdrawal occurs. Notwithstanding the foregoing, the General Partner may, in its sole discretion, agree to pay up to the full Capital Account balance (calculated on the basis of unaudited data) to a withdrawing Limited Partner within ninety (90) days after the applicable Withdrawal Date, subject to adjustment based on audited financial statements. To the extent that the sum previously paid to a withdrawing Limited Partner is calculated to have exceeded the amount to which it is entitled, that Limited Partner shall be required to repay to the Partnership the balance.

(f) The General Partner may, in its sole discretion, require a Limited Partner to withdraw any or all of the value of such Limited Partner's Capital Accounts on at least five (5) days' notice for any reason or no reason; *provided, however*, that the General Partner may require such a withdrawal on less (or no) notice in order to comply with any laws and regulations applicable to the Partnership and/or its affiliates.

(g) The Partnership or the relevant Series has the right to pay cash or in-kind, or a combination of both, to a Limited Partner that makes a withdrawal from such Limited Partner's Capital Account under this **Article VII**.

(h) All withdrawals shall be subject to the General Partner's power to establish such reserves for the Partnership or a Series as the General Partner shall, in its sole but reasonable discretion, deem appropriate to pay current and future, definite, contingent and possible obligations of the Partnership or a Series (even if such reserves are not in accordance with GAAP), including estimated expenses in connection therewith, which could reduce the amount of a distribution upon withdrawal.

(i) All notices of withdrawal must specify the dollar amount or percentage of value of a Limited Partner's Capital Account to be withdrawn. The General Partner, in its sole discretion, may waive or modify any of the terms relating to withdrawals, including, without limitation, minimum amounts, notice periods and the Lock-UP Period, for all or any of the Limited Partners in its discretion without notice to the other Limited Partners.

(j) If the General Partner, in its sole discretion, permits a Limited Partner to withdraw capital other than on a regularly scheduled Withdrawal Date, the General Partner may impose an administrative fee to cover the actual legal, accounting, administrative, brokerage, and any other costs and expenses associated with such withdrawal. Such fee shall be payable to the relevant Series of the Partnership and shall be deducted from the withdrawal proceeds of the withdrawing Limited Partner as of such Withdrawal Date.

(k) Upon withdrawal of all of the capital in its Capital Account (excluding for purposes hereof, any remaining investments held in a Side Pocket Account), a Limited Partner shall be deemed to have withdrawn from the Partnership or the relevant Series and, upon notice of such withdrawal, a Limited Partner shall not be entitled to exercise any voting rights afforded to Limited Partners under this Agreement.

(l) In addition to the above limitations on withdrawals, all withdrawals by Limited Partners will be subject to any limitations on withdrawals imposed by the Portfolio Funds, as applicable. For example, the ability of the Partnership to provide withdrawal proceeds to a Limited Partner may be subject to, among other things, various notice period requirements of the Portfolio Funds.

Section 7.03 Limitations on Withdrawals

(a) The Partnership or a Series may suspend (or postpone) withdrawals, subscriptions, calculations of Net Asset Value and/or payments upon any withdrawals (in whole or in part) from Capital Accounts:

(i) during the existence of any state of affairs which, in the opinion of the General Partner, makes the disposition of the Partnership's investments impractical or prejudicial to the Partners, or where such state of affairs, in the opinion of the General Partner, makes the determination of the price or value of the Partnership's investments impractical or prejudicial to the Partners;

(ii) where any such withdrawals, subscriptions, calculations and/or payments, in the opinion of the General Partner, would result in the violation of any applicable law or regulation, including any diversification requirements applicable to insurance-dedicated investment funds;

(iii) if the General Partner determines, in its sole discretion, that such suspension or postponement is prudent in order to prevent the Partnership from being subject to adverse tax or regulatory implications;

(iv) a Portfolio Fund suspends the right to, or the payment of proceeds due upon, withdrawal and/or a Portfolio Fund allocates assets to its side pocket account;

(v) a Portfolio Fund satisfies a withdrawal request by making an in-kind distribution; or

(vi) for such other reasons or for such other periods as the General Partner may in good faith determine.

(b) All Limited Partners shall be notified in writing of any such suspension or postponement and the termination thereof. Following any suspension or postponement of withdrawals, a withdrawal request made by a Limited Partner prior to such suspension or postponement shall be effected as of the first Withdrawal Date following the recommencement of withdrawals.

(c) For the avoidance of doubt, the following "gate" provisions shall apply on a Series-by-Series basis. In the event that Limited Partners, in the aggregate, request, as of any Withdrawal Date, withdrawals of more than twenty-five percent (25%) of the aggregate balances of the Partnership's Capital Accounts (excluding any Side Pocket Accounts), the requested amounts may, in the General Partner's sole discretion, be reduced to an amount equal to twenty-five percent (25%) of the aggregate Capital Account balances of the Partnership (excluding any Side Pocket Accounts) as of such date, and satisfied on a *pro rata* basis, based on the respective amounts of requested withdrawals of capital by each withdrawing Limited Partner. Capital withdrawal requests that are deferred due to such limitation may be revoked by the withdrawing Limited Partner, and if not revoked, will be aggregated with other withdrawal requests received for subsequent Withdrawal Dates. In the interim, all of the remaining capital in such Limited Partner's Capital Account (including the capital subject to such deferred withdrawal request) shall remain subject to the performance of the Partnership.

Section 7.04 Distributions

(a) The Partnership (or any Series) is not required, and generally does not intend, to make any distributions of cash or other property. However, the Partnership (or any Series) may make such distributions at such times and in such amounts as the General Partner shall determine in its sole discretion.

(b) All distributions hereunder (other than those made related to withdrawals from Capital Accounts) shall be made *pro rata* to all Partners in accordance with their relative Capital Accounts (or Side Pocket Accounts, New Issues Accounts or other memorandum accounts, as applicable) at the time of any such distribution. The General Partner may set up such reserves as it shall determine shall be appropriate or necessary to accomplish the purposes of the Partnership (even if such reserves are not in accordance with GAAP). If the Partnership (or a Series) shall distribute property other than cash pursuant to this **Section 7.04**, the Capital Accounts of the Partners shall be adjusted as if such property were sold at the value of such property as determined under **Section 9.04**, and the cash proceeds of such sale were distributed.

(c) Notwithstanding anything to the contrary herein, to the extent that the Partnership makes any distributions, the General Partner may limit such distributions, in its sole discretion, in order to ensure that the Partnership, at all times, meets the diversification requirements applicable to insurance-dedicated investment funds.

ARTICLE VIII
ADDITIONAL LIMITED PARTNERS

Section 8.01 **Future Issuance of Partnership Interests**. The General Partner may admit as of the first day of each month (each such date, a "**Contribution Date**"), or at any other time that the General Partner determines in its sole and absolute discretion, as additional Limited Partners ("**Additional Limited Partners**"), persons who contribute cash or, in the General Partner's sole discretion, persons who contribute securities (and/or other investments), for Partnership Interests ("**Capital Contributions**"). If the General Partner consents to a Limited Partner's contribution of securities (and/or other investments) to the Partnership, the Partnership may, in the General Partner's discretion, assess a special charge against such Limited Partner equal to the actual costs incurred by the Partnership in connection with accepting such contributed securities (and/or other investments), including, but not limited to, the costs of liquidating, or otherwise adjusting the Partnership's portfolio to accommodate, such securities (and/or other investments), and legal, accounting and administration costs. Such special charge shall be assessed as of such dates deemed appropriate by the General Partner. Any securities (and/or other investments) accepted as a Capital Contribution shall be valued by the General Partner, in its sole discretion, using the valuation criteria set forth in **Section 9.04**.

ARTICLE IX
CAPITAL ACCOUNTS; CAPITAL CONTRIBUTIONS; NET ASSET VALUE ADJUSTMENTS; TAXABLE INCOME AND LOSS AND DISTRIBUTIONS

Section 9.01 **Capital Accounts**. A Partner's "**Capital Account**" as of a particular date shall consist of the following:

(a) an amount equal to the Partner's Original Capital Contribution;

(b) the increases, if any, to such account by reason of Additional Capital Contributions (as defined in **Section 9.03(a)**);

(c) the decreases, if any, to such account by reason of withdrawals (and distributions) from such Capital Account; and

(d) the increases or decreases, if any, to such Capital Account in accordance with the provisions of this **Article IX**.

Capital Accounts shall be maintained in accordance with the provisions of Treasury

Regulations Section 1.704-1(b)(2), or any successor provisions thereto.

Section 9.02 **Original Capital Contributions**. A Partner's "**Original Capital Contribution**" shall be the amount of the cash, or in the sole discretion of the General Partner, securities (and/or other investments), contributed by such party upon such Partner's admission as a Partner. The General Partner may establish such minimum Original Capital Contribution as the General Partner deems appropriate and that minimum may thereafter be waived or changed by the General Partner. In the event an Original Capital Contribution is accepted as of any day other than a Contribution Date, the General Partner shall cause appropriate adjustments to be made for purposes of applying the accounting and allocation provisions of this Agreement. At any time that a Partner is admitted, the General Partner shall end the prior accounting period on the day prior to the date of the acceptance of the Original Capital Contribution, and commence a new accounting period on the date of such admission, and upon such admission, the Partnership Interests shall be adjusted and reallocated based upon the Capital Accounts of the respective Partners.

Section 9.03 **Additional Capital Contributions**

(a) A Partner shall be permitted, with the consent of the General Partner, to make additional Capital Contributions in an amount deemed appropriate by the General Partner in cash or, in the sole discretion of the General Partner, securities (and/or other investments) ("**Additional Capital Contributions**") to the capital of the Partnership as of any Contribution Date, or at any other time that the General Partner determines in its sole and absolute discretion. In the event an Additional Capital Contribution is accepted as of any day other than a Contribution Date, the General Partner shall cause appropriate adjustments to be made for purposes of applying the accounting and allocation provisions of this Agreement. At any time that Additional Capital Contributions are accepted pursuant to this **Section 9.03**, the General Partner shall end the prior accounting period on the day prior to the date of the acceptance of the Additional Capital Contributions, and commence a new accounting period on the date of such acceptance, and upon such acceptance, the Partnership Interests shall be adjusted and reallocated based upon the Capital Accounts of the respective Partners. Any securities accepted as an Additional Capital Contribution shall be valued by the General Partner, in its sole discretion, using the valuation criteria set forth in **Section 9.04**.

(b) In connection with an Additional Capital Contribution by an existing Limited Partner, the General Partner shall (i) treat such Additional Capital Contribution as a Capital Contribution with respect to one of such Limited Partner's existing Capital Accounts or (ii) establish a new Capital Account to which such Capital Contribution shall be credited and which shall be maintained for the benefit of such Limited Partner separately from any existing Capital Account of such Limited Partner. Such separate Capital Account may be maintained for any purpose, in the discretion of the General Partner, including the calculation of the Incentive Fee, the Loss Carryforward (each as defined in **Section 9.05**) and/or the Lock-Up Period. If a Limited Partner has more than one Capital Account, any withdrawals by or distributions to such Limited Partner shall be applied to such Capital Accounts in such manner and proportion as the General Partner shall determine in its sole discretion.

Section 9.04 **Determination of Net Asset Value**

(a) The net asset value ("**Net Asset Value**") of the Partnership, on a Series-by-Series basis, shall be determined on an accrual basis of accounting, as of the end of each calendar month (or other period, as the case may be), in accordance with GAAP, consistently applied (except that: (x) organizational and initial offering expenses of the Partnership may be capitalized and amortized over a period of up to sixty (60) months from the date the Partnership commences operations and (y) reserves may be taken that are inconsistent with GAAP), the Memorandum and the following:

(1) No value shall be assigned to goodwill;

(2) All accrued debts and liabilities shall be treated as liabilities, including, but

not limited to, all compensation payable to the Investment Manager that has been earned but not yet paid (e.g., Management Fees and Incentive Fees), any allowance for the Partnership's estimated annual audit and legal fees and other operating expenses and any contingencies for which reserves are required;

(3) Securities, commodities and other financial instruments (other than options) that are listed on a national securities, commodities or other exchange, or over-the-counter instruments listed on NASDAQ, shall be valued at their last sales prices on such date or, if no sales occurred on such date, at the midpoint between the last "bid" and "ask" prices for such securities, commodities or financial instruments on such date;

(4) Options that are listed on a securities or commodities exchange shall be valued at their last sales prices on the date of determination on the largest securities or commodities exchange (by trading volume) on which such options shall have traded on such date; provided that, if the last sales prices of such options do not fall between the last "bid" and "ask" prices for such options on such date, then such options shall be valued at the midpoint between the last "bid" and "ask" prices for such options on such date;

(5) Securities, commodities, options and other financial instruments that are not listed on an exchange or quoted on an over-the-counter market, but for which there are available quotations, shall be valued based upon quotations obtained from market makers, dealers or pricing services;

(6) Securities (and/or other investments) contributed to the Partnership as subscription proceeds shall be treated as if purchased by the Partnership at market value on the date of contribution, and securities (and/or other investments) distributed from the Partnership as withdrawal proceeds shall be treated as if sold by the Partnership at market value on the date of distribution;

(7) Net profits and net losses from New Issues (as defined in **Section 9.08(a)**) shall only be credited or debited to the Net Asset Value of the New Issues Accounts, except to the extent permitted by the applicable rules of the FINRA (as defined in **Section 9.08(a)**), in which case a portion of the net profits and net losses from New Issues may be credited or debited to the Net Asset Value of the Capital Accounts of Limited Partners who are Restricted Persons (as defined in **Section 9.08(a)**) up to an amount permitted by applicable FINRA rules;

(8) Any securities, commodities, options and other financial instruments that have no public market, investments in other asset classes (including those in Side Pocket Accounts), and all other assets of the Partnership for which a valuation methodology is not specified, shall be valued by the Investment Manager in a manner determined in good faith to reflect their fair market value; and

(9) In the case of investments in Portfolio Funds, which investments are expected to constitute most of the Partnership's assets, the net asset value calculation provided by the relevant managers (or any affiliates or service providers thereof) of those Portfolio Funds will generally be used in determining the Partnership's Net Asset Value. The Investment Manager intends to engage an independent third-party valuation agent (in addition to the Administrator) to appraise the Partnership's interests in Illiquid Investments, including, without limitation, the PE Portfolio Fund; *provided* that, if the PE Portfolio Fund engages its own independent third-party valuation agent, the Partnership may rely on such valuation of any investment in the PE Portfolio Fund. None of the General Partner, the Investment Manager or any of their respective affiliates will be responsible for calculating the net asset value of the Portfolio Funds or for verifying the

accuracy and completeness of any such values received.

(b) If the Investment Manager determines, in its sole discretion, that the valuation of any security, commodity, option or other financial instrument does not fairly represent its market value, the Investment Manager shall value such security, commodity, option or other financial instrument as it reasonably determines.

(c) In connection with the determination of the Net Asset Value of the Partnership, the Investment Manager may consult with and is entitled to rely upon the advice of the Partnership's brokers and any other third parties deemed appropriate by the Investment Manager. In no event and under no circumstances shall the Investment Manager, the Partnership's brokers or such other third parties incur any individual liability or responsibility for any determination made or other action taken or omitted by them in good faith.

(d) Absent bad faith or manifest error, all Net Asset Value determinations pursuant to this Agreement are conclusive and binding as to all Partners.

(e) After the foregoing determinations have been made, a further calculation shall be made to determine the increase or decrease in Net Asset Value of the Partnership during the month (or other time period, as the case may be) just ended. The term "**increase in Net Asset Value**" shall be the excess of Net Asset Value at the end of any month (or other time period, as the case may be) over that of the Net Asset Value of the Partnership as of the end of the preceding period, after adjusting for Capital Contributions, distributions and withdrawals. The term "**decrease in Net Asset Value**" shall be the amount by which the Net Asset Value at the end of the month (or other time period, as the case may be) is less than the Net Asset Value of the Partnership as of the end of the preceding period, after making the adjustments specified above.

Section 9.05 Allocation of Increases and Decreases in Net Asset Value; Incentive Fee

(a) Any net increase or decrease in Net Asset Value during any month (or such other period, as the case may be) shall be allocated as of the end of such month (or such other period, as the case may be) to the Capital Account of each Partner in the proportion which such Partner's Capital Account bore to the sum of the Capital Accounts of all the Partners as of the beginning of such month (or such other period, as the case may be); *provided* that net increases or decreases in Side Pocket Accounts, New Issues Accounts and other memorandum accounts shall be allocated as provided in **Sections 9.07 and 9.08**, respectively.

(b) In consideration for the management services provided pursuant to this Agreement, the General Partner shall receive an incentive fee ("**Incentive Fee**") at the close of each Fiscal Year (or such other applicable period that this payment is made in accordance with this Agreement, as the case may be) equal to five percent (5%) of the net increase in Net Asset Value (including realized and unrealized gains and losses and net of the Management Fee) attributable to each Limited Partner's Capital Account for such Fiscal Year (or other applicable period), as determined on the accrual basis of accounting; *provided*, *however*, that the Incentive Fee shall be subject to a Loss Carryforward (as described below in **Section 9.05(g)**).

(c) The Incentive Fee shall not include any change in the value of an Illiquid Investment held in a Side Pocket Account until such Illiquid Investment (or the sales proceeds thereof) has been reallocated from such Side Pocket Account to the Capital Accounts of participating Partners. Notwithstanding the foregoing, any income generated from an Illiquid Investment shall be transferred to and included in the Capital Accounts of participating Partners for purposes of calculating the Incentive Fee.

(d) The Partnership will also bear its *pro rata* share of the incentive-based fees/allocations charged by the managers of the Portfolio Funds. Notwithstanding the foregoing, (x) the General Partner intends to waive any incentive-based fees/allocations due to the General Partner and/or any affiliate thereof with respect to

any investment of the Partnership in any Affiliated Funds, including the PE Portfolio Fund, such that, to the extent that the Partnership invests in any Affiliated Funds, including the PE Portfolio Fund, the Partnership will not be subject to a layering of fees; and (y) to the extent that the Partnership is subject to a waiver or reduction of incentive-based fees/allocations, or any other special arrangement, with respect to its investment in the PE Portfolio Fund, the General Partner shall nevertheless not charge any such fees or allocations (or otherwise change such arrangement) at the level of the Partnership.

(e) The General Partner shall also receive the Incentive Fee with respect to any amounts withdrawn by a Limited Partner, whether voluntary or involuntary, and upon dissolution of the Partnership under **Article XIII**. The Incentive Fee shall be paid to the General Partner in addition to, and separately from, the allocations of net increases or decreases in Net Asset Value to its Capital Account pursuant to **Section 9.05(a)**.

(f) In the event of a net decrease in the Net Asset Value of the Capital Account of any Limited Partner in any Fiscal Year (or other relevant Incentive Fee period), the amount of such net decrease shall be recorded and carried forward as a "**Loss Carryforward**". Any net increase in the Net Asset Value of the Capital Account of such Limited Partner in a subsequent Fiscal Year (or other period) shall be applied to reduce (but not below zero) such Loss Carryforward balance (and, conversely, any net decrease in Net Asset Value shall be applied to increase such Loss Carryforward balance). No Incentive Fee shall be paid in any subsequent Fiscal Year (or other period) in respect of such Capital Account until the Loss Carryforward has been fully recovered as described above, and in such Fiscal Year (or other period) of such recovery, the Incentive Fee shall be calculated based on the excess net increase in Net Asset Value of such Capital Account (i.e., after being applied to reduce the Loss Carryforward to zero). However, in the event that a Limited Partner withdraws funds at a time in which such Limited Partner's Capital Account has a Loss Carryforward, the amount of such Loss Carryforward at such Withdrawal Date applicable to such Limited Partner's Capital Account shall be reduced by a percentage equal to one hundred percent (100%) multiplied by a fraction, the numerator of which is the amount to be withdrawn from the Limited Partner's Capital Account, and the denominator of which is the amount in such Capital Account immediately prior to the withdrawal.

(g) Notwithstanding the provisions set forth above, if the Partnership has a material item of income or loss in any fiscal period which relates to a matter or transaction occurring during a prior fiscal period (e.g., if the Partnership wins a cash settlement in a case it began in a prior period) the item of income or loss may, at the sole discretion of the General Partner, be shared among the Partners (including persons who ceased to be Partners) in accordance with each such Partner's Partnership Interest in the Partnership during the prior period.

Section 9.06 Allocations for Tax Purposes; General Partner Discretion on Allocations; Withholding

(a) Ordinary income, gains, losses and deductions of the Partnership for each Fiscal Year shall accrue to, and be borne by, the Partners in proportion to their sharing of net increases or decreases in Net Asset Value, the allocations of various types of taxable income and losses likewise being as nearly as possible proportionate.

(b) All allocations under this **Section 9.06** shall be made pursuant to the principles of Section 704 of the Code and in conformity with Treasury regulations promulgated thereunder ("**Regulations**"), or the successor provisions to such Code Section and Regulations.

(c) All matters concerning the allocation of profits, gains and losses among the parties (including the taxes thereon) and accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the General Partner in its sole discretion, and the General Partner is expressly permitted to use the aggregate method of apportioning taxable gain and loss under Treasury Regulation Section

704(b). The General Partner is expressly authorized to make special allocations to the Partners of such gains or income as shall be necessary to satisfy the "qualified income offset" requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(d). The General Partner's determination of the foregoing matters shall be final and conclusive as to all parties.

(d) Notwithstanding anything to the contrary contained in this Agreement, in the event a Partner withdraws all of the capital in its Capital Account from the Partnership (excluding any amounts held in Side Pocket Accounts), the General Partner shall have the discretion to specially allocate an amount of the Partnership's taxable gains or losses to the withdrawing Partner to the extent that the Partner's Capital Account exceeds, or is less than, its federal income tax basis in its Partnership Interest.

(e) Any taxes, fees or other charges that the Partnership is required to withhold under applicable law with respect to any Partner shall be withheld by the Partnership (and paid to the appropriate government authority) and shall be deducted from the Capital Account of such Partner as of the last day of the Fiscal Year (or earlier if the Partner withdraws) with respect to which amounts are required to be withheld.

(f) For the avoidance of doubt, the provisions of this **Section 9.06** shall apply on a Series-by-Series basis.

Section 9.07 Side Pocket Accounts

(a) The Investment Manager may designate that certain investments held by a Series of the Partnership and/or by the Portfolio Fund(s) be carried in one or more separate memorandum accounts (each, a "**Side Pocket Account**") for such period of time as the Investment Manager determines. Such investments may include: (i) privately placed, unregistered securities, commodities, options and other financial instruments, or those investments that, in the opinion of the Investment Manager, do not have a readily ascertainable market value; (ii) other illiquid securities that may be valued but are not freely transferable; (iii) an investment into a Portfolio Fund with an extended lock-up period and/or that invests in illiquid assets; (iv) that portion of an investment in a Portfolio Fund that is attributable to side pocket accounts designated by the manager of such Portfolio Fund (which may be designated with respect to assets that are subject to legal or contractual restrictions on transferability, or that the Investment Manager believes either lack a readily assessable market value (without impairing the value of such investments) or should be held until the resolution of a special event or circumstance; and (v) investments in other asset classes (such as real estate) and other property that are not traded on public exchanges (each, as designated by the Investment Manager, along with follow-on investments, if any, an "**Illiquid Investment**"). **For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in a Side Pocket Account, and (ii) any investment made by Series 1 into the series of the PE Portfolio Fund that corresponds to the latter fund's investment made in the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely**. Illiquid Investments held in a Side Pocket Account shall be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager. For the avoidance of doubt, each Policy Owner investing through the relevant Limited Partner will indirectly participate in the economics from a *pro rata* portion of a Side Pocket Account and the corresponding Illiquid Investment.

(b) At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event. Upon a Realization Event, such Illiquid Investment (or the sales proceeds thereof) shall be reallocated, *pro rata*, from the Side Pocket Account to the Capital Accounts of participating Partners in accordance with their respective interests in such Side Pocket Account. Until such reallocation, a Limited Partner may not withdraw any of the amounts in its Capital Account that are attributable to the value of Illiquid Investments held in a Side Pocket Account. Upon such reallocation, a Limited Partner that has withdrawn all of its capital from the Partnership other than the capital attributable to such Side Pocket Account shall receive an amount equal to its interest

in such Side Pocket Account (net of: (i) any accrued Management Fees and accrued expenses (to the extent not covered by the Partnership's reserves, including the Management Fee Reserve), and (ii) any accrued Incentive Fee, with respect thereto) within ninety (90) days after such reallocation. A "**Realization Event**" occurs: (1) when an Illiquid Investment becomes liquid, as determined in the reasonable discretion of the Investment Manager; (2) when an Illiquid Investment is sold or otherwise disposed of by the Partnership; (3) when circumstances otherwise exist that, in the reasonable judgment of the Investment Manager, conclusively establish a value for an Illiquid Investment, as determined in the reasonable discretion of the Investment Manager (including, without limitation, when additional securities substantially similar to the Illiquid Investment have been issued by the issuer of the Illiquid Investment); or (4) as otherwise determined in the sole discretion of the Investment Manager.

(c) Newly-admitted Limited Partners may not participate in Illiquid Investments that were placed in a Side Pocket Account prior to their admission. **For the avoidance of doubt, the Partnership shall not accept additional Limited Partners into any existing Series if such Series has existing Side Pocket Accounts at the time of such admission.** Notwithstanding any provisions of this Agreement to the contrary, any expenses relating specifically to a Side Pocket Account shall be charged to the Partners participating in such account in proportion to their respective interests therein, as of the commencement of such Side Pocket Account.

(d) If the Investment Manager in its discretion designates any investment as a follow-on investment to an existing Illiquid Investment (each, a "**Follow-On Investment**"), only the Partners participating in such original investment shall participate in such Follow-On Investment in proportion to their interest in the related Side Pocket Account; *provided, however*, that if a Partner shall have withdrawn from the Partnership, the General Partner shall equitably adjust the interests of the remaining participating Partners to reflect such withdrawn Partner's non-participation in the Follow-On Investment. In its discretion, the Investment Manager need not designate as a "Follow-On Investment" an additional investment in the same or similar opportunity as the investment for which a Side Pocket Account has been established, but instead may designate such investment as a new investment with a separate Side Pocket Account. Additionally, the Investment Manager, in its sole and absolute discretion, may determine that, for various reasons, an asset that initially was not an Illiquid Investment should be categorized as an Illiquid Investment.

Section 9.08 **New Issues; Other Memorandum Accounts for Restricted Transactions**.

(a) From time to time, the Partnership may invest in initial public offerings of equity securities ("**New Issues**"). Under rules adopted by the Financial Industry Regulatory Authority ("**FINRA**"), (i) certain persons engaged in the securities, banking or financial services industries (and members of their immediate families) and (ii) certain persons who are affiliated with companies that are current, former or prospective investment banking clients of the Partnership's broker(s) (collectively, "**Restricted Persons**") are restricted from participating in New Issues, each subject to a de minimis exemption ("**De Minimis Limit**"). To the extent necessary to comply with FINRA rules, in addition to the Partnership's regular Capital Accounts and any Side Pocket Accounts, the General Partner may establish one or more memorandum accounts that are authorized to participate in New Issues (each, a "**New Issues Account**"). Participation in New Issues Accounts shall be limited to (i) those Limited Partners who are not Restricted Persons, and (ii) those Limited Partners who are Restricted Persons, but only to the extent that such participation by Restricted Persons does not exceed the De Minimis Limit. To the extent not prohibited by applicable FINRA rules, the General Partner shall be entitled to receive the Incentive Fee with respect to any profits arising from New Issues trades.

(b) In the event a New Issues Account is established, to effect a transaction in New Issues, the requisite funds shall be transferred from the Partnership to the New Issues Account. Securities held in the New Issues Account shall be held there until they are eventually sold or transferred. Upon the sale or other disposition of New

Issues (including any transfer of the underlying securities in the New Issues Account to the Capital Accounts of all of the Partners after such securities no longer constitute New Issues), any profits or losses resulting from securities transactions in the New Issues Account in any fiscal period shall be credited or debited to the Capital Accounts of Limited Partners participating in the New Issues Account in accordance with their interests therein. In the event that the Partnership establishes one or more New Issues Accounts, the General Partner shall be authorized to make an equitable adjustment to account for the fact that Limited Partners that are not Restricted Persons were receiving profits based in part on the capital of Limited Partners that are Restricted Persons. Such adjustment may, in the sole and absolute discretion of the General Partner, and to the extent not prohibited by rules of FINRA, consist of: (i) assessing an interest charge to the Capital Accounts of Limited Partners that are not Restricted Persons, in favor of the Partnership, in an amount deemed appropriate to compensate the Partnership for the use of capital by Limited Partners that are not Restricted Persons in connection with New Issue trades; or (ii) such other adjustment as the General Partner considers equitable and is not inconsistent with the rules of FINRA.

(c) In addition to the foregoing provisions with respect to New Issues Accounts and Side Pocket Accounts, to the extent that certain Limited Partners are restricted from participating in any transactions of the Partnership by applicable laws or regulations, or for any other reason determined by the General Partner in good faith, the General Partner may, in its discretion, establish one or more separate memorandum accounts to hold such investments and isolate ownership away from such non-participating Limited Partners. Only those Limited Partners who the General Partner determines are eligible shall participate in such accounts. In the event that the Partnership establishes one or more memorandum accounts, the General Partner shall be authorized to make an equitable adjustment to account for the fact that participating Limited Partners were receiving profits based in part on the capital of non-participating Limited Partners. Such adjustment may, in the sole and absolute discretion of the General Partner, consist of: (i) assessing an interest charge to the Capital Accounts of participating Limited Partners, in favor of the Partnership, in an amount deemed appropriate to compensate the Partnership for the use of capital by participating Limited Partners in connection with such trades; or (ii) such other adjustment as the General Partner considers equitable.

ARTICLE X
RESTRICTIONS ON TRANSFERS OF PARTNERSHIP INTERESTS OF LIMITED PARTNERS; ADMISSION OF SUBSTITUTE LIMITED PARTNERS; OTHER MATTERS AFFECTING PARTNERSHIP INTERESTS

Section 10.01 Restrictions on Transfer of Partnership Interests of Limited Partners

(a) Except for transfers by will or intestate succession or by operation of law, no Limited Partner may offer, sell, transfer, assign, exchange, hypothecate or pledge, or otherwise dispose of or encumber (hereinafter collectively, "**Transfer**" or "**Transferred**"), in whole or in part, such Limited Partner's Partnership Interest without the consent of the General Partner, which may be given or withheld in the sole and absolute discretion of the General Partner.

(b) No Limited Partner may Transfer, in whole or in part, such Limited Partner's Partnership Interest if, in the General Partner's discretion, such Transfer could result in the termination of the Partnership for federal income tax purposes, and any purported Transfer that could result in the termination of the Partnership for federal income tax purposes shall be void *ab initio*. In its sole and absolute discretion, the General Partner may request a written opinion of counsel acceptable to the General Partner (the expenses of which may be allocated to the relevant Limited Partner) as to whether any contemplated Transfer could result in the termination of the Partnership for federal income tax purposes, and the General Partner shall be entitled to rely conclusively upon such opinion in determining whether such Transfer could result in the termination of the Partnership and whether consent to such disposition should be given.

(c) The Partnership Interests may not be transferred without documentation acceptable to the General Partner, which may include a written opinion of counsel acceptable to the General Partner (the expenses of which may be allocated to the relevant Limited Partner) that such proposed Transfer may be effected without:

(i) registration of the Partnership Interest being made under the Securities Act of 1933, as amended;

(ii) violating any applicable state securities or "blue sky" law (including investment suitability standards) or the laws of any other jurisdiction;

(iii) the Partnership becoming subject to the Investment Company Act of 1940, as amended ("**1940 Act**"); or

(iv) violating the Act.

(d) In no event shall the Partnership Interest of a Limited Partner or any portion thereof be Transferred to a minor or incompetent, unless by will or intestate succession.

Section 10.02 Admission of Substitute Limited Partner

(a) Subject to the provisions of this **Article X**, an assignee of the Partnership Interest of a Limited Partner (which shall include any purchaser, transferee, donee or other recipient of any disposition of such Partnership Interest) shall be deemed admitted to the Partnership as a Limited Partner (a "**Substitute Limited Partner**") only upon the satisfactory completion of the following:

(i) consent of the General Partner shall have been given, which may be given or withheld in the sole and absolute discretion of the General Partner and which shall be evidenced by a written document executed by the General Partner;

(ii) the assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement (as it may be amended from time to time) by executing a counterpart hereof and such assignee shall have expressly assumed all of the rights and obligations of the assignor Limited Partner hereunder, and shall have executed such other documents or instruments as the General Partner may require in its sole and absolute discretion in order to effect the admission of such person as a Limited Partner;

(iii) an amendment to the Certificate, if required by the Act (in the opinion of the General Partner), evidencing the admission of such person as a Limited Partner shall have been filed;

(iv) the assignee shall have delivered a letter containing a representation that the assignee's acquisition of the Partnership Interest is made as a principal, for the assignee's own account, for investment purposes only and not with a view to the resale or distribution of such Partnership Interest, and that the assignee will not Transfer such Partnership Interest or any fraction thereof to anyone in violation of this Agreement;

(v) if the assignee is a corporation, partnership, limited liability company, trust or other entity, the assignee shall have provided to the General Partner evidence satisfactory to the General Partner of its authority to become a Limited Partner under the terms and provisions of this Agreement;

(vi) the assignee shall have complied with all applicable governmental rules and regulations, if any;

(vii) the assignee meets the suitability requirements for investing in the Partnership and the assignee completes the subscription documents

("**Subscription Documents**") provided by the General Partner; and

(viii) all costs and expenses incurred by the Partnership and the General Partner in connection with this **Section 10.02** shall be paid by the person or entity seeking to become a Substitute Limited Partner (or the transferor Limited Partner).

Section 10.03 **Rights of Assignee of Partnership Interest**

(a) Subject to **Section 10.01(b)**, if a Limited Partner Transfers all or a portion of such Limited Partner's Partnership Interest, involuntarily, by operation of law or voluntarily, without the consent required by this **Article X**, the transferee or assignee shall: (i) be entitled only to receive that proportion of profit and loss, and any distribution of Partnership assets, attributable to the Partnership Interest acquired by reason of such disposition from and after the effective date of such disposition, and only upon written notification of same to the General Partner consistent with **Section 10.03(b)**; and (ii) have no other rights as a Limited Partner unless admitted as a Substitute Limited Partner in accordance with the terms of this Agreement.

(b) Subject to the provisions of **Section 10.01**, and except as required by operation of law, the Partnership shall not be obligated for any purposes whatsoever to recognize the assignment by any Limited Partner of such Limited Partner's Partnership Interest until the General Partner has received notice thereof.

(c) Any person or entity who is the assignee of all or any portion of the Partnership Interest of a Limited Partner, but who has not become a Substitute Limited Partner, and desires to make a further disposition of such Partnership Interest, shall be subject to all the provisions of this **Article X** to the same extent and in the same manner as any Limited Partner desiring to make a disposition of such Limited Partner's Partnership Interest.

Section 10.04 **Effect of Bankruptcy, Death or Incompetence of a Limited Partner**. The bankruptcy, dissolution or winding up of a Limited Partner, the death of a Limited Partner or an adjudication that a Limited Partner is incompetent (which term shall include, but not be limited to, insanity), shall not cause the termination, wind-down or dissolution of the Partnership and the business of the Partnership shall continue. If a Limited Partner becomes bankrupt, dissolved or wound up, the trustee or receiver of such Limited Partner's estate or, if a Limited Partner dies, such Limited Partner's executor, administrator or trustee, or, if such Limited Partner is adjudicated incompetent, such Limited Partner's committee, guardian or conservator, shall have the rights of such Limited Partner for the purposes of settling or managing such Limited Partner's estate or property and such power as the bankrupt, deceased or incompetent Limited Partner possessed to dispose of all or any part of such Limited Partner's Interest and to join with any assignee in satisfying conditions precedent to the admission of the assignee as a Substitute Limited Partner.

Section 10.05 **Attachment by Creditors**. If a Partnership Interest is subjected to attachment by a creditor, or is assigned for the benefit of any creditor, the Partnership Interest obtained by such creditor shall be only that of an assignee, and in no event shall such creditor have the rights of a Substitute Limited Partner or an Additional Limited Partner.

ARTICLE XI
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.01 **Limited Partners**. Each Limited Partner represents, warrants and covenants to the Partnership and to every other Partner as follows:

(a) Such Limited Partner shall provide promptly, upon request by the General Partner, all financial data, documents, reports, certifications or other information necessary or appropriate to enable the Partnership to apply for and obtain an exemption from the registration provisions of applicable law and any other information required by governmental agencies having jurisdiction over the Partnership.

(b) There is no misrepresentation contained in the Subscription Documents and the forms attached thereto completed by such Limited Partner.

(c) If such Limited Partner is a corporation, partnership, limited liability company, trust or other entity, that the officer (or other signatory) signing on its behalf has been duly authorized to execute and deliver this Agreement and, to the extent requested by the General Partner, the Certificate.

(d) Such Limited Partner that is an entity that would be an "investment company" under the 1940 Act, but for an exclusion under either Section 3(c)(1) or Section 3(c)(7) thereof, has advised the General Partner of the number of persons that constitute "beneficial owners of such Limited Partner's outstanding securities (other than short-term paper)" within the meaning of Section 3(c)(1)(A) of the 1940 Act, and shall advise the General Partner promptly upon any change in that number.

ARTICLE XII
SPECIAL POWER OF ATTORNEY

Section 12.01 **Execution and Consent**. Each Limited Partner hereby irrevocably constitutes and appoints the General Partner and its respective successors (hereinafter referred to as "**Special Attorney**") as the attorney-in-fact for such Limited Partner with power and authority to act in the Limited Partner's name and on the Limited Partner's behalf to execute, acknowledge, swear to and file documents and instruments necessary or appropriate to the conduct of the Partnership's business, which shall include, but not be limited to, the following:

(a) the Certificate and this Agreement, as well as amendments thereto as required by the laws of any state, or any other jurisdiction, or as otherwise permitted under the terms of this Agreement;

(b) any other certificates, instruments and documents, including fictitious name certificates, as may be required by, or may be appropriate under, the laws of any state;

(c) the amendment and/or restatement of this Agreement in accordance with **Section 14.08**; and

(d) any documents that may be required to effect the continuation of the Partnership, the admission of an Additional Limited Partner or a Substitute Limited Partner, the withdrawal of a Limited Partner, or the dissolution and termination of the Partnership, *provided* that such continuation, admission, withdrawal or dissolution and termination are in accordance with the terms of the Certificate and this Agreement.

Section 12.02 **Procedural Aspects**. The power of attorney granted by each Limited Partner to the Special Attorney:

(a) is a special power of attorney, coupled with an interest, and is accordingly irrevocable;

(b) may be exercised by the Special Attorney for each Limited Partner either by signing separately as attorney-in-fact for each Limited Partner or, by executing any instrument with the single signature of such Special Attorney acting as attorney-in-fact for all of the Limited Partners; and

(c) shall survive the assignment by a Limited Partner of the whole or any portion of such Limited Partner's Partnership Interest; *provided* that where the assignee has been approved in accordance with the provisions of this Agreement for admission to the Partnership as a Substitute Limited Partner, the Power of Attorney shall survive such assignment for the sole purpose of enabling the Special Attorney to execute, acknowledge and file any instrument necessary to effect such substitution.

ARTICLE XIII
DISSOLUTION AND LIQUIDATION

Section 13.01 **Dissolution**. The Partnership shall be dissolved upon the earliest to occur of:

(a) the withdrawal, resignation or Involuntary Withdrawal of the General Partner, or any other event that results in such entity ceasing to be a general partner, unless the remaining Limited Partners agree, within ninety (90) days after such event, to continue the Partnership with a new and qualified substitute general partner pursuant to and in accordance with the terms and conditions set forth in **Article IV**;

(b) an election to dissolve the Partnership made by the General Partner, in its discretion, upon thirty (30) days' prior written notice to the Limited Partners; or

(c) the happening of any other event, including the entry of a decree of judicial dissolution under Section 17-802 of the Act, that under the law of the State of Delaware, mandatorily requires the dissolution of the Partnership.

For the avoidance of doubt, the termination of the Partnership shall constitute the termination of all Series. For the avoidance of doubt, the termination of an individual Series, however, shall not constitute the termination of the Partnership.

Section 13.02 **Liquidation**. Upon the dissolution of the Partnership, the "**Liquidators**", namely: (i) the General Partner or, if there is no general partner at the time, or if the principal(s) of the General Partner are unable to act on its behalf, (ii) (A) the person or persons previously designated in writing by the General Partner and notified to the Partnership's auditors, or (B) if the General Partner has not made such a designation, the person or persons designated by Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners, shall cause the cancellation of the Certificate, liquidate (or distribute) the assets of the Partnership, and apply and distribute the balance of the proceeds of such liquidation in accordance with the following order of priority: (1) pay off known liabilities; (2) establish reserves for contingent liabilities and expenses of liquidation (even if such reserves are not in accordance with GAAP); and (3) distribute the remainder to the Partners in proportion to the Capital Account balances maintained in accordance with the provisions of **Section 9.01** and the Act. The Liquidators shall take all other steps necessary to wind up the affairs of the Partnership as promptly as practicable. To the extent reasonable, the business of the Partnership may continue to be conducted until liquidation is complete. For purposes hereof, the term "Liquidators" shall also include the trustees, receivers or other persons required by law to wind up the affairs of the Partnership.

Section 13.03 **Notice of Dissolution**

(a) Upon the dissolution of the Partnership or the relevant Series, the Liquidators shall promptly notify the Partners of such dissolution as well as known creditors and claimants whose addresses appear on the Partnership's or the relevant Series' records.

(b) The General Partner shall give at least fifteen (15) days' prior written notice to each Limited Partner that is a BHC Limited Partner (as defined in **Section 5.10**) of any proposal to distribute property in-kind to such Limited Partner and the proposed date of such distribution, and shall not make any such distribution in-kind to the extent that such Limited Partner advises the General Partner at least five (5) days prior to the date set forth in such notice for such distribution that such distribution in-kind could reasonably be expected to cause it to violate the BHCA. In the event that a BHC Limited Partner notifies the General Partner to such effect, the General Partner shall be authorized to make such arrangements for the property that it would have otherwise distributed in-kind as the General Partner shall determine in its reasonable discretion.

Section 13.04 **Deferred Liquidation; Distribution In-Kind of Joint Interests in Property**. For the avoidance of doubt, the following provisions of this **Section 13.04** shall apply on a Series-by-

Series basis. Notwithstanding the provisions of **Section 13.02**, if on dissolution of the Partnership the Liquidators shall determine that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidators may, in their absolute discretion, either defer for a reasonable time the liquidation of any assets, except those necessary to satisfy liabilities of the Partnership (other than those to Partners), or distribute to the Partners, in lieu of cash, as tenants in common and in proportion to their respective interests in the Partnership, undivided interests in such Partnership assets as the Liquidators deem not suitable for liquidation. To the extent that the General Partner exercises its right, power and authority under **Section 3.02(w)**, this Section shall be construed by the Liquidators in their reasonable discretion to give effect thereto.

Section 13.05 **Final Statement**. As soon as practicable after the dissolution of the Partnership or the relevant Series, a final statement of its assets and liabilities shall be prepared by the General Partner and/or the internal accountants for the Partnership or the relevant Series and furnished to the Partners.

ARTICLE XIV
GENERAL PROVISIONS

Section 14.01 **Address and Notices**. The address of each Partner (other than the General Partner) for all purposes shall be the address set forth on the signature page to this Agreement or such other address of which the General Partner has received written notice in accordance with this **Section 14.01**. The address of the General Partner for all purposes shall be the address set forth in **Section 1.04** or such other address of which the General Partner has provided written notice to the Partners in accordance with this **Section 14.01**. Any notice, demand or request required or permitted to be given or made hereunder shall be in writing and shall be deemed given or made (i) when delivered in person, (ii) when sent to such Partner at such address by registered or certified mail, return receipt requested, or by electronic mail, or (iii) when delivered by overnight delivery by a reputable private carrier or by the postal service.

Section 14.02 **Titles and Captions**. All Article and Section titles and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

Section 14.03 **Pronouns and Plurals**. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 14.04 **Further Action**. The Limited Partners shall execute and deliver all documents, provide all information and take or forbear from taking all such action as may be necessary or appropriate, in the discretion of the General Partner, to achieve the purposes set forth in this Agreement.

Section 14.05 **Governing Law, Personal Jurisdiction and Venue**. **EACH LIMITED PARTNER ACKNOWLEDGES AND AGREES THAT ANY CLAIM, CONTROVERSY, DISPUTE OR ACTION RELATING IN ANY WAY TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT OR SUCH LIMITED PARTNER'S INVESTMENT IN THE PARTNERSHIP SHALL BE GOVERNED SOLELY AND EXCLUSIVELY BY THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICT OF LAWS DOCTRINES. EACH LIMITED PARTNER UNDERSTANDS AND AGREES THAT IT IS WAIVING THE PROTECTION OF STATUTES IN ITS STATE OF RESIDENCE THAT PROVIDE IT WITH CERTAIN RIGHTS, REMEDIES AND PROTECTIONS IN THE CASE OF FRAUD OR MISREPRESENTATION AND AGREES TO RELY SOLELY UPON THE LAWS OF THE STATE OF DELAWARE AND ANY APPLICABLE FEDERAL LAWS. EACH LIMITED PARTNER MAKES THIS WAIVER KNOWINGLY AND REPRESENTS THAT IT HAS CONSULTED INDEPENDENT COUNSEL, OR THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH SUCH INDEPENDENT COUNSEL BUT HAS ELECTED NOT TO DO SO, AND AGREES THAT THE ONLY STATE LAWS THAT WILL APPLY TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT AND ITS INVESTMENT IN THE PARTNERSHIP ARE THE LAWS OF THE STATE OF DELAWARE.**

EACH OF THE LIMITED PARTNERS, FUND COUNSEL AND ANY OTHER PARTY TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT OR ANY OTHER AGREEMENT REGARDING SUCH LIMITED PARTNER'S INVESTMENT IN THE PARTNERSHIP (COLLECTIVELY, FOR PURPOSES OF THIS CLAUSE, THE "PARTIES") IRREVOCABLY CONSENTS TO BEING SERVED WITH LEGAL PROCESS ISSUED FROM THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK AND IRREVOCABLY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS SITUATED IN THE STATE OF NEW YORK. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTIONS TO THE PERSONAL JURISDICTION OF THESE COURTS. SAID COURTS SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OVER ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES AND ACTIONS, OF ANY KIND OR MANNER, WHICH IN ANY WAY RELATE TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT, OR SUCH LIMITED PARTNER'S INVESTMENT IN THE PARTNERSHIP. THE PARTIES ALSO IRREVOCABLY WAIVE ANY OBJECTIONS THAT THESE COURTS CONSTITUTE AN OPPRESSIVE, UNFAIR, OR INCONVENIENT FORUM AND AGREE NOT TO SEEK TO CHANGE VENUE ON THESE GROUNDS OR ANY OTHER GROUNDS. THE PARTIES FURTHER AGREE THAT THEY WILL NOT FILE SUIT IN A JURISDICTION OTHER THAN NEW YORK AND THAT, SHOULD THEY DO SO, THEY SHALL BE LIABLE FOR ALL DAMAGES AS A RESULT OF MAKING SUCH A FILING AND SHALL PAY ALL ATTORNEYS' FEES INCURRED BY ANY PARTY IN CONNECTION WITH MOVING TO DISMISS THE SUIT FOR FAILURE TO COMPLY WITH THIS PROVISION.

In the event that (i) any current or prior Limited Partner ("**Claiming Party**") initiates or asserts any litigation, arbitration or similar claim or counterclaim, or joins, offers substantial assistance to or has a direct financial interest in any claim ("**Claim**") against the Partnership, the General Partner, the Investment Manager or any Investment Manager Affiliates, including any Claim purportedly filed on behalf of the Partnership or any Limited Partner, and (ii) the Claiming Party (or the third party that received substantial assistance from the Claiming Party or in whose Claim the Claiming Party had a direct financial interest) does not obtain a judgment on the merits that substantially achieves, in substance and amount, the full remedy sought, then each Claiming Party shall be obligated jointly and severally to reimburse the Partnership and/or the General Partner, the Investment Manager or any such Investment Manager Affiliate for all fees, costs and expenses of every kind and description (including, but not limited to, all reasonable attorneys' fees and other litigation expenses) that the parties may incur in connection with such Claim.

Section 14.06 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns; *provided*, however, that fund counsel shall be a party to this Agreement solely with respect to **Sections 3.04(b) and 14.05** hereof in order to benefit from and enforce such Sections, and a conformed signature page for fund counsel is included as a counterpart to this Agreement.

Section 14.07 **Entire Agreement**. This Agreement, together with the related Subscription Documents and any other written agreement between the General Partner, on behalf of the Partnership (acting severally in the name of and for the account of any individual Series), and any Limited Partner of that Series, shall constitute the entire agreement and understanding among all the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter, including, without limitation, the Current Agreement. The parties hereto acknowledge that, notwithstanding any other provision of this Agreement or the Subscription Documents, the General Partner, on its own behalf or on behalf of the Partnership, without any act, consent or approval of any other Partner, may enter into side letters or other writings to or with one or more Limited Partners that have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or the Subscription Documents ("**Side Letters**"). The parties agree that any rights established, or any terms of this Agreement or the Subscription Documents altered or supplemented, in a Side Letter to or with one or more Limited Partners shall govern with respect to such Limited Partner(s) notwithstanding any other provision of this Agreement or the Subscription Documents. No covenant, representation or condition not expressed in this Agreement or such Subscription Documents (and, if applicable, any Side Letter) shall affect or be deemed to interpret, change or restrict the express provisions hereof and thereof.

Section 14.08 **Amendment**. This Agreement may be modified or amended only by the affirmative vote of the General Partner and Limited Partners owning more than fifty percent (50%) of all of the outstanding Partnership Interests of each Series; *provided* that the General Partner may amend this Agreement from time to time (x) only with the affirmative vote of the General Partner and Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners of a specific Series of Partnership Interests, if such amendment, in the opinion of the General Partner, only has a material effect on such Series of Partnership Interests, and (y) without the consent, approval or other authorization of, or notice to, any of the Limited Partners (including pursuant to **Sections 3.02(u)** and **(v)**) if, in the opinion of the General Partner, the amendment does not have a material adverse effect on any Limited Partner. Notwithstanding the foregoing, no amendment may: (i) convert a Limited Partner's interest to that of a general partner or, modify the limited liability of any Limited Partner, without the consent of each affected Partner or (ii) amend any provision hereof which requires the consent or approval of a specified percentage in interest of the Limited Partners without the consent of such specified percentage in interest of the Limited Partners.

Section 14.09 **Creditors**. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership or the relevant Series.

Section 14.10 **Waiver by Partner**

(a) Any Partner by notice to the General Partner may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Partner to such first mentioned Partner.

(b) No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other existing or subsequent breach.

Section 14.11 **Rights and Remedies**

(a) The rights and remedies of any of the Partners hereunder shall not be mutually exclusive, and the implementation of one or more of the provisions of this Agreement shall not preclude the implementation of any other provision.

(b) Each of the Partners confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Partner aggrieved as against the other Partners for a breach or threatened breach of any provision hereof, it being the intention of this paragraph to make clear that the respective rights and obligations of the Partners hereunder shall be enforceable in equity as well as at law or otherwise, except as provided in **Section 5.08**.

Section 14.12 **Counterparts**. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement binding on all parties, notwithstanding that all the parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing his, her or its signature hereto, independently of the signature of any other party.

Section 14.13 **Certain Tax Matters**

(a) *Tax Matters Partner*

(i) The Tax Matters Partner (as such term is defined in Section 6231(a)(7) of the Code) of the Partnership shall be the General Partner. The General Partner shall have all powers necessary to perform fully in its capacity as Tax Matters Partner and, in such capacity, the General Partner shall use its reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including the Regulations) and

shall have any powers necessary to perform fully in such capacity.

(ii) In furtherance of the foregoing, the General Partner is authorized to represent the Partnership before taxing authorities and courts in tax matters affecting the Partnership and the Partners in their capacity as such and shall keep the Partners informed of any such administrative and judicial proceedings. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any action brought against it in connection with any judgment in or settlement of any such proceeding, except in the case of the General Partner's own fraud, gross negligence, willful misconduct or conduct that is the subject of a criminal proceeding (where the General Partner has a reasonable cause to believe that such conduct was unlawful).

(iii) Any Partner that is in dispute with any tax authority in relation to any Partnership matter shall notify the General Partner within thirty (30) calendar days, and if the General Partner reasonably determines that the matter is of material relevance to the tax position of the Partnership, such Partner shall consult with the General Partner (or any advisor appointed by the General Partner for the purpose) as to how that dispute shall be handled. Any Partner who enters into a settlement agreement with respect to any Partnership item shall notify the Tax Matters Partner of such settlement agreement and its terms within thirty (30) calendar days after the date of settlement.

(iv) The provisions of this **Section 14.13(a)** shall survive any termination of this Agreement.

(b) *Tax Elections*. Each Partner agrees to provide the Partnership with such information which may be necessary or desirable in order for the General Partner to carry out its powers under this **Section 14.13** and **Section 3.02(g)**, including, without limitation, to facilitate compliance with Section 743 of the Code and elections permitted thereunder.

(c) *Classification as a Partnership*. The parties hereto intend that the Partnership be classified as a partnership for federal income tax purposes. The General Partner shall not elect to have the Partnership classified as an association taxable as a corporation for federal income tax purposes pursuant to Regulation Section 301.7701–3. The General Partner shall, for and on behalf of the Partnership, take all steps as it may deem reasonably necessary to maintain the Partnership's classification as a partnership for federal income tax purposes.

(d) *Tax Audits*. Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership or any existing or former investment.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, this Amended and Restated Limited Partnership Agreement has been duly executed as of the day and year first above written.

Atlas IDF GP, LLC, as General Partner
(acting severally in the name of and for the account of each individual Series)

By: _____
Name: John Honis
Title: Managing Member

INITIAL LIMITED PARTNER:

/s/ John Honis
John Honis

[SIGNATURES OF ADDITIONAL LIMITED PARTNERS AND OTHER PARTIES ARE SET FORTH ON SEPARATE SIGNATURE PAGES]

EXHIBIT 21

SadisGoldberg LLP

FOR THE EXCLUSIVE USE OF:	

COPY NO.	

Atlas IDF, LP

A DELAWARE "SERIES" LIMITED PARTNERSHIP

GENERAL PARTNER:
ATLAS IDF GP, LLC

INVESTMENT MANAGER:
RAND ADVISORS, LLC

OFFERING OF SERIES 1 LIMITED PARTNERSHIP INTERESTS

November 30, 2015

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

THIS IS NOT AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY THE INTERESTS DESCRIBED HEREIN IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SALE.

DIRECTORY

INVESTMENT MANAGER
RAND ADVISORS, LLC
87 RAILROAD PLACE, SUITE 403
SARATOGA SPRINGS, NY 12866
ATTENTION: JOHN HONIS
TELEPHONE: (214) 335-7969
EMAIL: JHONIS@RANDADVISORS.COM

GENERAL PARTNER
ATLAS IDF GP, LLC
87 RAILROAD PLACE, SUITE 403
SARATOGA SPRINGS, NY 12866
ATTENTION: JOHN HONIS
TELEPHONE: (214) 335-7969
EMAIL: JHONIS@RANDADVISORS.COM

LEGAL COUNSEL
SADIS & GOLDBERG LLP
551 FIFTH AVENUE, 21ST FLOOR
NEW YORK, NEW YORK 10176
ATTENTION: STEVEN HUTTLER, ESQ.
TELEPHONE: (212) 573-8424
FACSIMILE: (212) 573-8151
EMAIL: SHUTTLER@SGLAWYERS.COM

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EXHIBITS

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT	EXHIBIT A
SUBSCRIPTION DOCUMENTS	EXHIBIT B
PART 2 OF RAND ADVISORS, LLC'S FORM ADV	EXHIBIT C

DESCRIPTION OF INTERESTS AND STRUCTURE

Atlas IDF, LP ("**Partnership**"), a "series" limited partnership organized under the Delaware Revised Uniform Limited Partnership Act, is offering limited partner interests in the Partnership ("**Interests**") in a private placement pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended ("**Securities Act**"), and Regulation D promulgated thereunder. The Partnership may offer Interests in separate Series (as defined and described herein). Only Series 1 Interests (as defined herein) are offered at this time pursuant to this Memorandum.

Only persons that are Accredited Investors (as defined in Rule 501 of Regulation D promulgated under the Securities Act), Qualified Clients (as defined in Rule 205-3 promulgated under the Investment Advisers Act of 1940, as amended ("**Advisers Act**")), and Qualified Purchasers (as defined under Section 2(a)(51) of the Investment Company Act of 1940, as amended ("**Investment Company Act**")) may purchase Interests. The Subscription Documents (as defined below) set forth in detail the definitions of Accredited Investor, Qualified Client and Qualified Purchaser. If an investor is an insurance company, such investor must require its Policy Owners (as defined herein) to meet the same suitability standards.

The Partnership was formed to pool investment funds of its investors (each, a "**Limited Partner**" and, collectively, "**Limited Partners**"; and, together with the General Partner (as defined below), "**Partners**") for the purpose of investing and trading in a wide variety of securities, financial instruments and other assets and investments, including other investment vehicles, as more fully described herein.

In addition to noting the investor qualifications listed above, Limited Partners should note that the Partnership is an insurance-dedicated investment fund. As such, the Interests are being offered only to Limited Partners that are: (x) insurance company investors, on behalf of certain of their segregated separate accounts ("**Separate Accounts**"), that fund certain variable life insurance and variable annuity contracts (collectively, the "**Policies**") to be issued to policy owners (each, a "**Policy Owner**") by the Limited Partners, or (y) state and local governmental pension plans, qualified tuition plans ("**§529 plans**"), and private sector qualified pension or retirement plans, as generally described in Treasury Regulation 1.817-5(f)(3). In addition, if an investor is an insurance company, such investor must require its Policy Owners to meet the same suitability standards described herein. While an insurance company, not a Policy Owner, will become a Limited Partner in the Partnership, it is expected that Policy Owners will be able to allocate a portion of their investment held in the Separate Account to the Partnership as one of the investment options of the Policies. See "SUMMARY OF OFFERING AND PARTNERSHIP TERMS—Investor Control" herein.

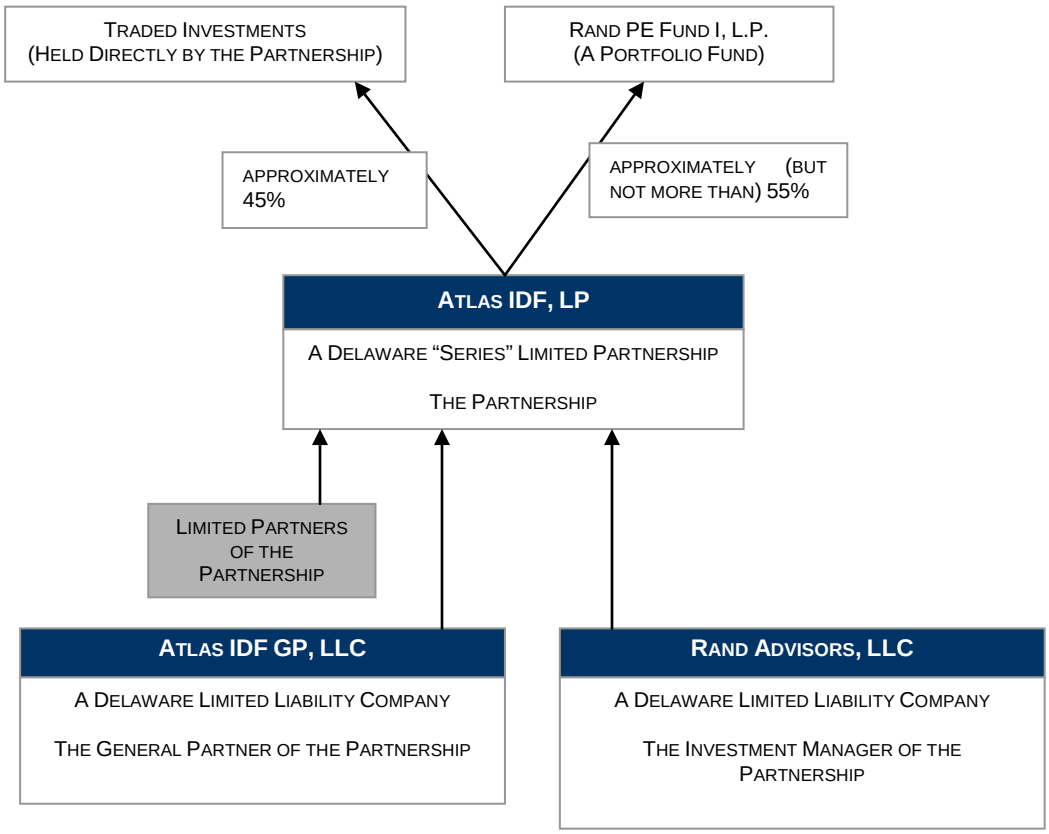
Atlas IDF GP, LLC, a Delaware limited liability company ("**General Partner**"), is the general partner of the Partnership and is responsible for the management of the Partnership's affairs.

Rand Advisors, LLC, a Delaware limited liability company ("**Investment Manager**"), is the investment manager of the Partnership and has discretionary investment authority over the Partnership's assets. The Investment Manager is registered as an investment adviser with the U.S. Securities and Exchange Commission ("**SEC**"). A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

As the managing member and controlling person of the General Partner and the Investment Manager, John Honis controls all of the Partnership's operations and activities.

The minimum initial capital contribution that will be accepted from a new Limited Partner is $500,000. The minimum additional capital contribution that will be accepted from an existing Limited Partner is $500,000. In each case, the General Partner has discretion to accept lesser amounts. Generally, new Limited Partners will be admitted on the first day

of each month, and withdrawals may be made on the last day of each calendar quarter upon 91 days' prior written notice, subject to certain restrictions as described herein (unless, in each case, the General Partner, in its sole discretion, permits subscriptions or withdrawals at another time).



INVESTMENT OBJECTIVE AND STRATEGY

The Partnership's primary objective is to seek consistent above-average returns primarily through capital appreciation. The Investment Manager intends to use a disciplined investment philosophy by combining thorough fundamental research and in-depth analysis of investment opportunities. **No assurance can be given, however, that the Investment Manager will achieve the Partnership's investment objective, and investment results may vary substantially over time and from period to period.** See "INVESTMENT PROGRAM" herein for further details.

As of the date hereof, the Investment Manager intends to allocate approximately 45% of the Series 1 investment portfolio to traded investments and approximately (but not more than) 55% of the Series 1 investment portfolio to the first series of limited partnership interests to be issued by the PE Portfolio Fund (as defined herein) that: (x) is expected to initially invest in the Highland Transaction (as defined herein), if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction. However, the Investment Manager reserves the right to change such allocation in the future, subject to compliance with all applicable laws, including the diversification requirements applicable to insurance-dedicated investment funds, as further set forth herein. **Further, the Partnership shall not accept additional Limited Partners into any existing Series if such Series has existing Side Pocket Accounts (as defined herein) at the time of such admission.**

RISK FACTORS, CONFLICTS OF INTERESTS AND OTHER CONSIDERATIONS

Before purchasing an Interest in the Partnership, you should carefully consider various risk factors and conflicts of interest, as well as suitability requirements, restrictions on transfers and withdrawals of Interests and various legal, tax and other considerations, all of which are discussed elsewhere in this Confidential Private Placement Memorandum (this "**Memorandum**").

IMPORTANT GENERAL CONSIDERATIONS

You should not construe the contents of this Memorandum as legal, tax or investment advice and, if you acquire an Interest, you will be required to make a representation to that effect. You should review the proposed investment and the legal, tax and other consequences thereof with your own professional advisors. The purchase of an Interest involves certain risks and conflicts of interest among the General Partner, the Investment Manager and the Partnership. See "RISK FACTORS AND CONFLICTS OF INTEREST". The General Partner reserves the right to refuse any subscription for any reason.

In making an investment decision, you must rely on your own examination of the Partnership and the terms of the offering of Interests, including the merits and risks involved. You and your representative(s), if any, are invited to ask questions and obtain additional information from the General Partner concerning the terms and conditions of the offering, the Partnership, and any other relevant matters to the extent that the General Partner possesses such information or can acquire it without unreasonable effort or expense.

Neither the SEC nor any state securities commission has passed upon the merits of participating in the Partnership, nor has the SEC or any state securities commission passed upon the adequacy or accuracy of this Memorandum. Any representation to the contrary is a criminal offense. The General Partner anticipates that: (i) the offer and sale of the Interests will be exempt from registration under the Securities Act and the various state securities laws; (ii) the Partnership will not be registered as an investment company under the Investment Company Act, pursuant to an exemption provided by Section 3(c)(7) thereunder; and (iii) neither the General Partner nor the Investment Manager will be registered as a commodity pool operator under the Commodity Exchange Act, as amended ("CEA"), based upon an exemption available under Rule 4.13(a)(3) thereunder. Consequently, you will not be entitled to certain protections afforded by those statutes.

The Investment Manager is registered as an investment adviser with the SEC. A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

Pursuant to Rule 4.13(a)(3) of the CEA, each of the General Partner and the Investment Manager is exempt from registration with the Commodity Futures Trading Commission ("CFTC") as a commodity pool operator and therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document (as such term is defined under CFTC rules) and a certified annual report to participants in the pool. The foregoing registration exemption is based on the Partnership's limited commodity trading activity and its undertaking that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions, determined at the time the most recent position was established, will not exceed 5% of the liquidation value of the Partnership's portfolio, after taking into account unrealized profits and losses on any such positions; or (b) the aggregate net notional value of the Partnership's commodity interest positions, determined at the time the most recent position was established, will not exceed 100% of the liquidation value of the Partnership's portfolio, after taking into account unrealized profits and losses on any such positions. Similar limitations will apply with respect to investments in Portfolio Funds. Certain types of swaps are included in the definition of "commodity interests". These swaps include interest rate swaps, currency swaps, energy and metal swaps, agricultural swaps, swaps on broad-based indices, swaps on government securities and certain mixed swaps.

As a Limited Partner, you may withdraw from the Partnership and receive payment for your Interests, subject to certain restrictions, as specified in the Amended and Restated Limited Partnership Agreement of the Partnership (as the same may be

amended and/or restated from time to time, the "Partnership Agreement"), a copy of which is attached hereto as Exhibit A.

The offering of Interests is made only by delivery of a copy of this Memorandum to the person whose name appears hereon. The offering is made only to potential investors who are Accredited Investors, Qualified Clients and Qualified Purchasers. If an investor is an insurance company, such investor must require its Policy Owners to meet the same suitability standards. By accepting delivery of this Memorandum, you agree not to reproduce or divulge its contents, in whole or in part, and, if you do not purchase any Interests, to return this Memorandum and the exhibits attached hereto to the General Partner or the Partnership's administrator, a provider of administrative services ("Administrator"), as further set forth herein under "SERVICE PROVIDERS—Administrator".

Notwithstanding any provision in this Memorandum to the contrary, prospective Limited Partners (and their employees, representatives, and other agents) may disclose to any and all persons the U.S. federal income tax treatment and tax structure of the Interests offered hereby. For this purpose, "tax structure" is limited to facts relevant to the U.S. federal income tax treatment of the Interests, and does not include information relating to the identity of the issuer, its affiliates, agents or advisors.

There is no public market for the Interests nor is any expected to develop. Even if such a market develops, no distribution, resale or transfer of an Interest will be permitted, except in accordance with the provisions of the Securities Act, the rules and regulations promulgated thereunder, any applicable state securities laws and the terms and conditions of the Partnership Agreement. Any transfer of an Interest by a Limited Partner, public or private, will require the consent of the General Partner. Accordingly, if you purchase an Interest, you will be required to represent and warrant that you have read this Memorandum and are aware of and can afford the risks of an investment in the Partnership for an indefinite period of time. You will also be required to represent that you are acquiring the Interest for your own account, for investment purposes only, and not with any intention to resell or transfer all or any part of the Interest. This investment is suitable for you only if you have adequate means of providing for your current and future needs, have no need for liquidity in this investment and can afford to lose the entire amount of your investment.

Although this Memorandum contains summaries of certain terms of certain documents pertaining to the Partnership, you should refer to the actual documents (copies of which are attached hereto or are available from the General Partner or the Administrator) for complete information concerning the rights and obligations of the parties thereto. All such summaries are qualified in their entirety by the terms of the actual documents. No person has been authorized to make any representations or furnish any information with respect to the Partnership or the Interests, other than the representations and information set forth in this Memorandum or other documents or information furnished by the General Partner upon request, as described above.

Certain information contained in this Memorandum constitutes "forward-looking statements", which can be identified by the use of forward-looking terminology, such as "may", "will", "seek", "should", "expect", "anticipate", "project", "estimate", "intend", "continue" or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those set forth under "RISK FACTORS AND CONFLICTS OF INTEREST", actual events or results or the actual performance of the Partnership may differ materially from those reflected or contemplated in such forward-looking statements.

No rulings have been sought from the Internal Revenue Service ("IRS") with respect to any tax matters discussed in this Memorandum. You are cautioned that the views contained herein are subject to material qualifications and subject to

possible changes in regulations by the IRS or by the U.S. Congress in existing tax statutes or in the interpretation of existing statutes and regulations.

NOTICE TO BERMUDA RESIDENTS

THE INTERESTS MAY BE OFFERED OR SOLD IN OR FROM BERMUDA ONLY IN COMPLIANCE WITH THE PROVISIONS OF THE INVESTMENT BUSINESS ACT 2003 OF BERMUDA (THE "BERMUDA ACT") AND THE REQUIREMENTS OF THE RELATED REGULATIONS OF BERMUDA WHICH REGULATE THE SALE OF SECURITIES IN OR FROM BERMUDA. TO THE EXTENT THAT THE INTERESTS ARE OFFERED OR SOLD IN OR FROM BERMUDA, SUCH OFFER OR SALE WILL BE MADE IN ACCORDANCE WITH THE BERMUDA ACT.

THE BERMUDA MONETARY AUTHORITY, THE BERMUDA REGISTRAR OF COMPANIES AND THE BERMUDA MINISTER OF ECONOMIC DEVELOPMENT ACCEPT NO RESPONSIBILITY FOR THE FINANCIAL SOUNDNESS OF ANY PROPOSAL OR FOR THE CORRECTNESS OF ANY OF THE STATEMENTS MADE OR OPINIONS EXPRESSED HEREIN.

NO INVITATION, WHETHER DIRECTLY OR INDIRECTLY, MAY BE MADE TO THE PUBLIC IN OR FROM BERMUDA TO SUBSCRIBE FOR THE INTERESTS.

The information contained herein is current only as of the date hereof and you should not, under any circumstances, assume that there has not been any change in the matters discussed herein since the date hereof.

The following summary is qualified in its entirety by other information contained elsewhere in this Confidential Private Placement Memorandum (this "**Memorandum**") and by Amended and Restated the Limited Partnership Agreement of the Partnership (as defined below) (as the same may be amended and/or restated from time to time, the "**Partnership Agreement**"), a copy of which is attached to this Memorandum as Exhibit A. You should read this entire Memorandum and the Partnership Agreement, carefully before making any investment decision regarding the Partnership and should pay particular attention to the information under the heading "RISK FACTORS AND CONFLICTS OF INTEREST". To the extent relevant, you should also read the offering and governing documents of the PE Portfolio Fund (as defined herein) in which the Partnership intends to initially invest on behalf of the initial Limited Partners (as defined herein), which are available from the Partnership upon request. In addition, you should consult your own advisors in order to understand fully the consequences of an investment in the Partnership.

The Partnership

Atlas IDF, LP, a Delaware "series" limited partnership ("**Partnership**"), was formed to pool investment funds of its investors (each, a "**Limited Partner**" and, collectively, "**Limited Partners**"; and, together with the General Partner (as defined below), "**Partners**") for the purpose of investing and trading in a wide variety of securities, financial instruments and other assets and investments, including other investment vehicles, as more fully described herein. See "INVESTMENT PROGRAM" and "—Portfolio Funds" below.

The Partnership may offer Interests in separate Series (as defined and described herein). Only Series 1 Interests (as defined herein) are offered at this time pursuant to this Memorandum.

Management

Atlas IDF GP, LLC, a Delaware limited liability company ("**General Partner**"), is the general partner of the Partnership and is responsible for the management of the Partnership's affairs.

Rand Advisors, LLC, a Delaware limited liability company ("**Investment Manager**"), is the investment manager of the Partnership and has discretionary investment authority over the Partnership's assets. The Investment Manager is registered as an investment adviser with the U.S. Securities and Exchange Commission ("**SEC**"). A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

As the managing member and controlling person of the General Partner and the Investment Manager, John Honis ("**Principal**") controls all of the Partnership's operations and activities. See "MANAGEMENT" for additional information.

Issuance of Interests in Multiple Series

The Interests will be offered in separate series ("**Series**"). The Partnership is currently offering one Series of Interests: "**Series 1 Interests**". Each Series of Interests will have separate rights and obligations. In addition, each Series of Interests may correspond to a separate portfolio of assets, which may have different investment objectives and strategies. The Partnership may issue additional Series of Interests in the future, which may have rights and obligations that differ from those of the Series 1 Interests with respect to any matters, including without limitation, fees, withdrawal rights, participation in Side Pocket Accounts (as defined herein) and other rights and terms. The terms of such additional Series will be determined by the General Partner, in its sole discretion.

Each Series shall have separate rights, powers and duties with respect to its investment portfolio and other property and obligations and the profits and losses associated with such portfolio, property and obligations. The Partnership will maintain separate and distinct records for each Series and shall hold and account for the assets and liabilities of such Series separately from other Series. **The Partnership shall not accept additional Limited Partners into any existing Series if such Series has existing Side Pocket Accounts at the time of such admission.**

Under Delaware law, (i) the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular Series shall be enforceable against the

assets of such Series only, and not against the assets of any other Series, and (ii) none of the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to the Partnership generally or any other Series shall be enforceable against the assets of such Series.

Unless the context otherwise requires, Series 1 Interests and any other Series of Interests shall be collectively referred to throughout this Memorandum as the "**Interests**." As the context may require, the holders of Series 1 Interests may be referred to herein as "**Series 1 Limited Partners**". Series 1 Limited Partners and, to the extent applicable, all the Limited Partners of other Series shall be collectively referred to throughout this Memorandum as the "**Limited Partners**".

References herein to the Partnership shall include, where appropriate, each Series of the Partnership. The terms of the other Series may be set forth in an amended version of this Memorandum and/or in a separate supplement hereto.

Portfolio Funds

In addition to investing in individual traded assets, the Partnership may invest a significant portion of its assets in other investment vehicles, including, without limitation, hedge funds, managed accounts and other private investment funds (collectively, the "**Portfolio Funds**"), including those managed by, or otherwise affiliated or related to, the Investment Manager. Portfolio Funds may allocate their assets to Illiquid Investments (as defined herein). As of the date hereof, the Investment Manager intends to allocate approximately 45% of the Series 1 investment portfolio to traded investments and approximately (but not more than) 55% of the Series 1 investment portfolio to the first series of limited partnership interests to be issued by the PE Portfolio Fund (as defined herein). However, the Investment Manager reserves the right to change such allocation in the future, subject to compliance with all applicable laws, including the diversification requirements applicable to insurance-dedicated investment funds, as further set forth herein.

As of the date hereof, (i) the Investment Manager acts as the investment manager to Rand PE Fund I, L.P., a Delaware "series" limited partnership ("**PE Portfolio Fund**") that: (x) is expected to initially invest in the Highland Transaction (as defined herein), if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction; (ii) Rand PE Fund Management, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the PE Portfolio Fund; and (iii) the Principal is the managing member and controlling person of Rand PE Fund Management, LLC, as further set forth herein.

The Portfolio Funds will bear their own operating and investment related expenses, which will be shared by the partners in such Portfolio Funds, including the Partnership. These fees and expenses may result in greater expenses than if Limited Partners invested directly in the Portfolio Funds or the relevant underlying investments. Limited Partners should take into account that the return on their investment will be reduced to the extent of both levels of fees and expenses.

The Offering

The Partnership is offering limited partner interests in the Partnership ("**Interests**") to persons who are Accredited Investors (as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended ("**Securities Act**")), Qualified Clients (as defined in Rule 205-3 promulgated under the Investment Advisers Act of 1940, as amended ("**Advisers Act**")), and Qualified Purchasers (as defined under Section 2(a)(51) of the Investment Company Act of 1940, as amended ("**Investment Company Act**")). Interests represent a percentage interest in the Partnership proportionate to the capital accounts of all Partners.

In addition to noting the investor qualifications listed above, Limited Partners should note that the Partnership is an insurance-dedicated investment fund. As such, the Interests are being offered only to Limited Partners that are: (x) insurance company investors, on behalf of certain of their segregated separate accounts ("**Separate Accounts**"), that fund certain variable life insurance and variable annuity contracts (collectively, the "**Policies**") to be issued to policy owners (each, a "**Policy Owner**") by the Limited Partners, or (y) state and local governmental pension plans, qualified tuition plans ("**§529 plans**"), and

private sector qualified pension or retirement plans, as generally described in Treasury Regulation 1.817-5(f)(3). In addition, if an investor is an insurance company, such investor must require its Policy Owners to meet the same suitability standards described in the previous paragraph. While an insurance company, not a Policy Owner, will become a Limited Partner in the Partnership, it is expected that Policy Owners will be able to allocate a portion of their investment held in the Separate Account to the Partnership as one of the investment options of the Policies. See "SUMMARY OF OFFERING AND PARTNERSHIP TERMS—Investor Control" herein.

Each life insurance company Limited Partner ("**Insurance Company Limited Partner**") will be deemed to hold an Interest in respect of the account of each Policy Owner and will be treated as a separate Limited Partner with respect to each such Interest.

Marketing Fees and Sales Charges. The General Partner and/or the Investment Manager may sell Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the capital contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. If a Limited Partner is introduced to the Partnership through a broker-dealer that is not affiliated with the General Partner and/or the Investment Manager, the arrangement, if any, with such broker-dealer will be disclosed to, and acknowledged by, such Limited Partner. See "BROKERAGE PRACTICES—Referral of Investors and Sales Charges".

How to Subscribe

Attached as Exhibit B to this Memorandum are the subscription documents and instructions for subscribing ("**Subscription Documents**"). In order to subscribe for Interests, you must complete the Subscription Documents and return them to the Partnership's administrator, a provider of administrative services ("**Administrator**"), as further set forth herein under "SERVICE PROVIDERS—Administrator". You must pay 100% of your investment at the time you subscribe. Payment must be made by wire transfer of immediately available funds to the Partnership. To ensure compliance with applicable laws, regulations and other requirements relating to money laundering, the General Partner and/or the Administrator may require additional information to verify the identity of any person who subscribes for an Interest in the Partnership.

If the General Partner consents to a Limited Partner's contribution of securities (and/or other investments) to the Partnership, the Partnership may, in the General Partner's discretion, assess a special charge against such Limited Partner equal to the actual costs incurred by the Partnership in connection with accepting such contributed securities (and/or other investments), including the costs of liquidating, or otherwise adjusting the Partnership's portfolio to accommodate, such securities (and/or other investments). Such special charge will be assessed as of such dates deemed appropriate by the General Partner. Any investor who contributes securities (and/or other investments) in lieu of cash to the Partnership should consult with such person's counsel or advisors as to the tax effect of such contribution.

Eligible Investors and Suitability

In order to invest in the Partnership, you must meet certain minimum suitability requirements, including qualifying as an Accredited Investor under the Securities Act, a Qualified Client under the Advisers Act and a Qualified Purchaser under the Investment Company Act. The Subscription Documents set forth in detail the definitions of Accredited Investor, Qualified Client and Qualified Purchaser. You must check the appropriate places in the Subscription Documents to represent to the Partnership that you are an Accredited Investor, a Qualified Client and a Qualified Purchaser in order to be able to purchase Interests. In addition, you must check the appropriate places in the Subscription Documents and/or make the appropriate representations that you are an insurance company investor. If an investor is an insurance company, such investor must require its Policy Owners to meet the same suitability standards. The General Partner, in its sole discretion, can accept or reject any initial subscriptions from prospective Limited Partners

and any additional capital contributions from existing Limited Partners for any reason or for no reason.

Qualified pension or retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and other tax-exempt entities described in Treasury Regulation 1.817-5(f)(3) may purchase Interests. However, investment in the Partnership by such entities requires special consideration. Trustees or administrators of such entities should consult their own legal and tax advisors. The General Partner intends to use reasonable efforts to limit the aggregate equity participation by "benefit plan investors" in the Partnership to less than 25% of the value of any class of Interests in the Partnership. See "ERISA CONSIDERATIONS" and "TAXATION—Tax-Exempt Investors".

Minimum Investment

The minimum initial capital contribution that will be accepted from a new Limited Partner is $500,000. The minimum additional capital contribution that will be accepted from an existing Limited Partner is $500,000. In each case, the General Partner has discretion to accept lesser amounts. Limited Partners are not required to make any additional capital contributions to the Partnership. There is no minimum or maximum aggregate amount of funds that must or may be contributed by all Partners to the Partnership.

Admission of Limited Partners

Capital contributions generally will be accepted as of the first day of each month, although the General Partner, in its sole discretion, has the right to admit new Limited Partners and to accept additional funds from existing Limited Partners at any time. Upon such admission or receipt of additional capital contributions, the Interests of the Partners will be readjusted in accordance with their capital accounts.

In connection with an additional capital contribution by an existing Limited Partner, the General Partner will: (i) treat such additional capital contribution as a capital contribution with respect to one of such Limited Partner's existing capital accounts, or (ii) establish a new capital account to which such capital contribution will be credited and which will be maintained for the benefit of such Limited Partner separately from any existing capital account of such Limited Partner. Such separate capital accounts may be maintained for any purpose, in the discretion of the General Partner.

Management Fee

The Partnership has entered into an investment management agreement (as the same may be amended and/or restated from time to time, the "**Investment Management Agreement**") by and among the Partnership and the Investment Manager. In consideration for services provided pursuant to the Investment Management Agreement, the Investment Manager will receive a quarterly management fee ("**Management Fee**"), equal to a percentage of each Limited Partner's share of the Partnership's Net Asset Value (as defined herein), and based on the Partnership's total Net Asset Value, as follows:

Partnership's Total Net Asset Value	Management Fee (per annum)
$0 - $99,999,999	0.5500%
$100,000,000 - $199,999,999	0.5000%
$200,000,000 - $249,999,999	0.4500%
$250,000,000 - $499,999,999	0.3500%
> $500,000,000	0.3400%

For the avoidance of doubt, the Management Fee calculated based on the foregoing schedule will be calculated on a "progressive" basis. For example, if the Partnership's Net Asset Value reaches $150,000,000, the initial $99,999,999 will always be charged a Management Fee of 0.55000% annually. The benefit of the declining Management Fee schedule above is intended to benefit all Limited Partners as each capital account will be charged a blended Management Fee based on the above schedule.

The Management Fee will be calculated and payable to the Investment Manager quarterly, in advance, as of the first day of each calendar quarter. A *pro rata* Management Fee will be charged to Limited Partners on any amounts accepted by the General Partner during a calendar quarter. No part of the Management Fee will be refunded in the event that a Limited Partner withdraws, whether voluntarily or involuntarily, all or any of the value in such Limited Partner's capital account during any calendar quarter. Management Fees will be payable with respect to the Interests of a Limited Partner in any Side Pocket Account (as defined below). For purposes of calculating the Management Fee with respect to Side Pocket Accounts, Illiquid Investments will be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

With respect to any Limited Partner who has requested to withdraw all of its Interests from the Partnership, with the exception of any Interests maintained in a Side Pocket Account, the Partnership may reserve an amount from the withdrawing Limited Partner's withdrawal proceeds in order to cover the estimated accrued Management Fees and expenses attributable to the Limited Partner's Interests in the Side Pocket Account based on the Investment Manager's estimate of the time period that the Illiquid Investments held in the Side Pocket Account will remain in such Side Pocket Account (collectively, the "**Management Fee Reserve**"). The Management Fee Reserve will be treated as a liability of the Partnership, and the balance of the Management Fee Reserve, if any, will be paid to the withdrawing Limited Partner, without interest, upon such Limited Partner's complete withdrawal from the Side Pocket Account.

The Partnership will also bear its *pro rata* share of the management fees charged by the managers of the Portfolio Funds. Notwithstanding the foregoing, the Investment Manager intends to waive any management fees due to the Investment Manager with respect to any investment of the Partnership in any Affiliated Funds (as defined herein), including the PE Portfolio Fund. Accordingly, to the extent that the Partnership invests in any Affiliated Funds, including the PE Portfolio Fund, the Partnership will not be subject to a layering of fees.

Expenses

Organizational and Initial Offering Expenses. The Partnership will pay or reimburse the General Partner, the Investment Manager and/or the Investment Manager Affiliates (as defined herein) for all organizational and initial offering expenses of the Partnership, including, but not limited to, legal and accounting fees, printing and mailing expenses and government filing fees (including "blue sky" filing fees). The Partnership's organizational and initial offering expenses may be, for accounting purposes, capitalized and amortized by the Partnership for up to 60 months from the date the Partnership commences operations. Amortization of such expenses is a divergence from U.S. generally accepted accounting principles ("**GAAP**"). In certain circumstances, this divergence may result in a qualification of the Partnership's annual audited financial statements. In such instances, the Partnership may elect to: (i) avoid the qualification by recognizing the unamortized expenses, or (ii) make GAAP-conforming changes for financial reporting purposes, but capitalize and amortize expenses for purposes of calculating the Partnership's Net Asset Value (resulting in a divergence in fiscal year-end Net Asset Values reported in the Partnership's financial statements, and as otherwise applicable under the provisions of the Partnership Agreement). If the Partnership capitalizes and amortizes such expenses and is then terminated within 60 months of its commencement, any unamortized expenses will be recognized. If a Limited Partner makes a withdrawal prior to the end of the period during which the Partnership is capitalizing and amortizing expenses, the Partnership may, but is not required to, accelerate a proportionate share of the unamortized expenses based upon the amount being withdrawn and reduce withdrawal proceeds accordingly.

Operating Expenses. The Partnership will pay or reimburse the General Partner, the Investment Manager and/or the Investment Manager Affiliates for: (i) all expenses incurred in connection with the ongoing offer and sale of Interests, including, but not limited to, printing of this Memorandum and exhibits, marketing expenses and documentation of performance and the admission of Limited Partners, (ii) all operating expenses of the Partnership, such as tax preparation fees, governmental fees and taxes, fees to the Administrator, costs of communications with Limited Partners, and ongoing

legal, accounting, auditing, bookkeeping, consulting and other professional fees and expenses, (iii) all Partnership research, trading and investment-related costs and expenses (e.g., brokerage commissions, research fees, margin interest, expenses related to short sales, custodial fees, bank service fees, and clearing and settlement charges), (iv) technology-related costs and expenses, including, but not limited to, software licenses, data feeds and colocation expenses, (v) all expenses related to attending any conference or seminar related to alternative investments (e.g., registration, transportation, accommodation or meal expenses), (vi) regulatory and other filing fees and expenses, (vii) travel expenses related to meeting with management teams, or related to any of the other categories of expenses set forth herein, (viii) any costs and expenses incurred by the Partnership in connection with converting from a stand-alone fund into a "feeder fund" as part of a master-feeder structure, (ix) director and officer liability insurance or other insurance premiums for any principal or employee of the Partnership, the General Partner, the Investment Manager or any of the Investment Manager Affiliates, (x) all fees and other expenses incurred in connection with the investigation, prosecution or defense of any claims, assertion of rights or pursuit of remedies, by or against the Partnership, including, without limitation, professional and other advisory and consulting expenses, and (xi) any and all costs and expenses incurred in connection with the dissolution, winding up, or termination of the Partnership.

Each of the General Partner, the Investment Manager or any of the Investment Manager Affiliates, in its sole discretion, may from time to time pay for any of the foregoing Partnership expenses. Any such person may elect to be reimbursed for such expenses, or to waive its right to reimbursement for any such expenses, as well as terminate any such voluntary payment or waiver of reimbursement.

The Partnership will also bear its *pro rata* share of the expenses of each Portfolio Fund.

Allocation of Expenses Among Series. The General Partner and/or the Investment Manager will allocate all expenses attributable to the Partnership among the Series on a *pro rata* basis or otherwise in their reasonable discretion.

General Partner's and Investment Manager's Expenses. The General Partner and the Investment Manager will pay their own general operating and overhead expenses associated with providing the management and investment management services required under the Partnership Agreement and the Investment Management Agreement, respectively. These expenses include all expenses incurred by the General Partner and the Investment Manager in providing for their normal operating overhead, including, but not limited to, the cost of providing relevant support and administrative services (e.g., employee compensation and benefits, rent, office equipment, computer systems, insurance (other than as expressly set forth above), utilities, telephone, secretarial and bookkeeping services, etc.), but not including any Partnership operating expenses described above.

The General Partner and the Investment Manager may use "soft dollar" commissions or rebates by brokerage firms of commissions generated by the Partnership's brokerage transactions executed through those firms to pay for certain brokerage and research products and services that fall within the safe harbor under Section 28(e) of the Securities Exchange Act of 1934, as amended ("**Exchange Act**"), as further described herein. See "BROKERAGE PRACTICES—Soft Dollar Arrangements".

Withdrawals

Limited Partner Withdrawals Generally. Subject to certain restrictions described herein, each Limited Partner may withdraw a minimum of $100,000 as of the last day of each calendar quarter and at such other times as the General Partner may determine in its sole discretion (each such date, a "**Withdrawal Date**"), upon at least 91 days' prior written notice to the Administrator, with a copy to the General Partner. Unless the General Partner consents, partial withdrawals may not be made if they would reduce a Limited Partner's capital account balance below $500,000. All withdrawals will be deemed made prior to the commencement of the following calendar quarter (or other relevant period).

If the General Partner, in its sole discretion, permits a Limited Partner to withdraw capital

other than on a regularly scheduled Withdrawal Date, the General Partner may impose an administrative fee to cover the actual legal, accounting, administrative, brokerage, and any other costs and expenses associated with such withdrawal. Such fee will be payable to the relevant Series of the Partnership and will be deducted from the withdrawal proceeds of the withdrawing Limited Partner as of such Withdrawal Date.

Ability to Withdraw Is Not Guaranteed. The General Partner believes (but cannot guarantee) that the assets of the Partnership will be invested in a manner which would allow the General Partner to satisfy withdrawal requests. The General Partner may, in its sole discretion: (i) defer withdrawal requests until the Partnership's assets mature or are liquidated in due course, (ii) elect to purchase with its own funds the Interests of the withdrawing Partner, or (iii) borrow from a third party or draw from a line of credit, subject to availability and other factors, in order to fund any withdrawal.

In addition, notwithstanding anything to the contrary herein, the General Partner may limit and/or suspend withdrawals in order to ensure that the Partnership, at all times, meets the diversification requirements applicable to insurance-dedicated investment funds, as further set forth herein.

Payments with Respect to Withdrawals; Applicable on a Series-by-Series Basis. A Limited Partner who requests any withdrawal of capital that constitutes, together with prior withdrawals within any fiscal year, less than 90% of the value of such Limited Partner's capital account (excluding any amounts held in any Side Pocket Accounts) will be paid within 90 days after the applicable Withdrawal Date. In the event that a Limited Partner requests a withdrawal of capital that constitutes, together with prior withdrawals within any fiscal year, 90% or more of the value of such Limited Partner's capital account (excluding any amounts held in any Side Pocket Accounts), the General Partner may reduce the amounts paid after any Withdrawal Date so that they constitute, in the aggregate during such fiscal year, 90% of an amount estimated by the General Partner to be the amount to which the withdrawing Limited Partner is entitled in the aggregate (calculated on the basis of unaudited data); such amount will be paid within 90 days after the applicable Withdrawal Date. The balance of the amount payable upon such withdrawal will be paid, without interest, within 90 days after completion of the audited financial statements for the fiscal year in which the withdrawal occurs. Notwithstanding the foregoing, the General Partner may, in its sole discretion, agree to pay up to the full capital account balance (calculated on the basis of unaudited data) to a withdrawing Limited Partner within 90 days after the applicable Withdrawal Date, subject to adjustment based on audited financial statements. To the extent that the sum previously paid to a withdrawing Limited Partner is calculated to have exceeded the amount to which it is entitled, that Limited Partner shall be required to repay to the Partnership the balance.

Upon withdrawal of all of the capital in its capital account (excluding for purposes hereof, any remaining investments held in a Side Pocket Account), a Limited Partner will be deemed to have withdrawn from the Partnership or the relevant Series, and upon notice of such withdrawal, a Limited Partner will not be entitled to exercise any voting rights afforded to Limited Partners under the Partnership Agreement.

The Partnership or the relevant Series has the right to pay cash or in-kind, or a combination of both, to a Limited Partner that makes a withdrawal from such Limited Partner's capital account.

Limitations on Withdrawals. The Partnership or a Series may suspend (or postpone) withdrawals, subscriptions, calculations of Net Asset Value and/or payments upon any withdrawals (in whole or in part) from capital accounts: (i) during the existence of any state of affairs which, in the opinion of the General Partner, makes the disposition of the Partnership's investments impractical or prejudicial to the Partners, or where such state of affairs, in the opinion of the General Partner, makes the determination of the price or value of the Partnership's investments impractical or prejudicial to the Partners; (ii) where any such withdrawals, subscriptions, calculations and/or payments, in the opinion of the General Partner, would result in the violation of any applicable law or regulation, including any diversification requirements applicable to insurance-dedicated investment funds; (iii) if the General Partner determines, in its sole discretion, that such suspension or

postponement is prudent in order to prevent the Partnership from being subject to adverse tax or regulatory implications; (iv) a Portfolio Fund suspends the right to, or the payment of proceeds due upon, withdrawal and/or a Portfolio Fund allocates assets to its side pocket account; (v) a Portfolio Fund satisfies a withdrawal request by making an in-kind distribution; or (vi) for such other reasons or for such other periods as the General Partner may prudently and in good faith determine.

All Limited Partners will be notified in writing of any such suspension or postponement and the termination thereof. Following any suspension or postponement of withdrawals, a withdrawal request made by a Limited Partner prior to such suspension or postponement will be effected as of the first Withdrawal Date following the recommencement of withdrawals.

Required Withdrawals. The General Partner may, in its sole discretion, require a Limited Partner to withdraw any or all of the value of such Limited Partner's capital accounts on at least five days' notice for any reason or no reason; *provided, however*, that the General Partner may require such a withdrawal on less (or no) notice in order to comply with any laws and regulations applicable to the Partnership and/or its affiliates.

Side Pocket Accounts. A Limited Partner may not withdraw any of the amounts in its capital account that are attributable to the value of an Illiquid Investment held in a Side Pocket Account until such time that such Illiquid Investment (or the sales proceeds thereof) is reallocated to such Limited Partner's capital account. At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event (as defined below). **For the avoidance of doubt, any investment made by Series 1 into the series of the PE Portfolio Fund that corresponds to the latter fund's investment made in the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

Reserves. All withdrawals shall be subject to the General Partner's power to establish such reserves for the Partnership or a Series as the General Partner shall, in its sole but reasonable discretion, deem appropriate to pay current and future, definite, contingent and possible obligations of the Partnership or a Series (even if such reserves are not in accordance with GAAP), including estimated expenses in connection therewith, which could reduce the amount of a distribution upon withdrawal. See "—Management Fee" for more information on the Management Fee Reserve.

Other Limitations on Withdrawals. In addition to the above limitations on withdrawals, all withdrawals by Limited Partners will be subject to any limitations on withdrawals imposed by the Portfolio Funds, as applicable. For example, the ability of the Partnership to provide withdrawal proceeds to a Limited Partner may be subject to, among other things, various notice period requirements of the Portfolio Funds.

Waiver. The General Partner, in its sole discretion, may waive or modify any of the terms relating to withdrawals, including, without limitation, minimum amounts and notice periods, for all or any of the Limited Partners in its discretion without notice to the other Limited Partners.

Withdrawals, Resignation and Transfers by General Partner and its Affiliates

Each of the General Partner, the Investment Manager and/or any Investment Manager Affiliate may withdraw all or any of the value in its respective capital account at any time, from time to time, without the consent of the Limited Partners and without notice to any of the Limited Partners. The General Partner may resign as the general partner of the Partnership upon 30 days' prior written notice to the Limited Partners. Upon such resignation of the General Partner, or upon its bankruptcy or dissolution, the remaining Limited Partners have the right to appoint a substitute general partner; otherwise, the Partnership will be dissolved pursuant to the procedures set forth in the Partnership Agreement. The Partnership Agreement permits the General Partner to appoint additional general partners and to transfer its general partner interest to an affiliate of the General Partner without the consent of Limited Partners.

Leverage

The Investment Manager may cause the Partnership to undertake leverage. Leverage may take a variety of forms, including, but not limited to, the following: long-term loans,

convertible notes and repurchase arrangements. Leverage arrangements used by the Partnership when financing is contingent on the market value of the financed assets may include those which may be subject to mark-to-market collateral or margin calls. See "INVESTMENT PROGRAM" and "RISK FACTORS AND CONFLICTS OF INTEREST" herein.

Determination of Net Asset Value

The net asset value ("**Net Asset Value**") of the Partnership, on a Series-by-Series basis, is determined in accordance with the Partnership Agreement and is generally equal to the amount by which the value of the Partnership's assets exceeds the amount of its liabilities. Net Asset Value calculations will be made by the Administrator (based on the information provided by the Investment Manager) on an accrual basis of accounting, as of the end of each calendar month (or other period, as the case may be), in accordance with GAAP, consistently applied (except that: (x) organizational and initial offering expenses of the Partnership may be capitalized and amortized over a period of up to 60 months from the date the Partnership commences operations, and (y) reserves may be taken that are inconsistent with GAAP), this Memorandum and the Partnership Agreement.

In making such determinations, securities, commodities and other financial instruments (other than options) that are listed on a national securities, commodities or other exchange, or over-the-counter instruments listed on NASDAQ, will be valued at their last sales prices on such date or, if no sales occurred on such date, at the midpoint between the last "bid" and "ask" prices for such securities, commodities or financial instruments on such date. Options that are listed on a securities or commodities exchange will be valued at their last sales prices on the date of determination on the largest securities or commodities exchange (by trading volume) on which such options shall have traded on such date; *provided* that, if the last sales prices of such options do not fall between the last "bid" and "ask" prices for such options on such date, then such options will be valued at the midpoint between the last "bid" and "ask" prices for such options on such date. Securities, commodities, options and other financial instruments that are not listed on an exchange or quoted on an over-the-counter market, but for which there are available quotations, will be valued based upon quotations obtained from market makers, dealers or pricing services.

In the case of investments in Portfolio Funds, which investments are expected to constitute most of the Partnership's assets, the net asset value calculation provided by the relevant managers (or any affiliates or service providers thereof) of those Portfolio Funds will generally be used in determining the Partnership's Net Asset Value. The Investment Manager intends to engage an independent third-party valuation agent (in addition to the Administrator) to appraise the Partnership's interests in Illiquid Investments, including, without limitation, the PE Portfolio Fund; *provided* that, if the PE Portfolio Fund engages its own independent third-party valuation agent, the Partnership may rely on such valuation of any investment in the PE Portfolio Fund. None of the General Partner, the Investment Manager or any of their respective affiliates will be responsible for calculating the net asset value of the Portfolio Funds or for verifying the accuracy and completeness of any such values received.

If the Investment Manager, in its sole discretion, determines that the valuation of any security, commodity, option or other financial instrument pursuant to the foregoing does not fairly represent its market value, the Investment Manager will value such security, commodity, option or other financial instrument as it reasonably determines. Any securities, commodities, options and other financial instruments that have no public market, investments in other asset classes (including those in Side Pocket Accounts), and all other assets of the Partnership for which a valuation methodology is not specified, will be valued by the Investment Manager in a manner determined in good faith to reflect their fair market value. Absent bad faith or manifest error, all Net Asset Value determinations pursuant to the Partnership Agreement are conclusive and binding as to all Partners.

Allocation of Profit and Loss

To determine how the economic gains and losses of the Partnership will be shared, the Partnership Agreement allocates net income or loss (increases and decreases in Net Asset Value) to each Partner's capital account. Net income or loss includes all portfolio gains and losses, whether realized or unrealized, plus all other Partnership items of income (such as interest) and less all Partnership expenses. Generally, net income and

net loss for each month (or other period, as the case may be) will be allocated to the Partners in proportion to their capital account balances as of the start of such month (or such other period). Net income and net losses in any Side Pocket Accounts or other memorandum accounts will be allocated to those Partners participating in such accounts in proportion to their capital account balances in such accounts. All matters concerning the allocation of profits, gains and losses among the parties (including the taxes thereon) and accounting procedures not expressly provided for by the terms of the Partnership Agreement will be determined by the General Partner in its sole discretion. Capital account balances will reflect capital contributions, previous allocations of increases and decreases in Net Asset Value, withdrawals, distributions (if any), and expenses. For the avoidance of doubt, the foregoing provisions will apply on a Series-by-Series basis.

Allocation of Taxable Income and Loss

For income tax purposes, all items of taxable income, gain, loss, deduction and credit will be allocated among the Partners at the end of each fiscal year in a manner consistent with their economic interests in the Partnership. In light of the fact that the Partnership does not intend to make distributions, to the extent that the Partnership's investment activities are successful, Limited Partners should expect to receive allocations of income and loss, and may incur tax liabilities from an investment in the Partnership without receiving cash distributions from the Partnership with which to pay those liabilities. To obtain cash from the Partnership to pay taxes, if any, Limited Partners may be required to make withdrawals, subject to the limitations in the Partnership Agreement. For the avoidance of doubt, the foregoing provisions will apply on a Series-by-Series basis.

Side Pocket Accounts

The Investment Manager may designate that certain investments held by a Series of the Partnership and/or by the Portfolio Fund(s) be carried in one or more separate memorandum accounts (each, a "**Side Pocket Account**") for such period of time as the Investment Manager determines. Such investments may include: (i) privately placed, unregistered securities, commodities, options and other financial instruments, or those investments that, in the opinion of the Investment Manager, do not have a readily ascertainable market value; (ii) other illiquid securities that may be valued but are not freely transferable; (iii) an investment into a Portfolio Fund that invests in illiquid assets; (iv) that portion of an investment in a Portfolio Fund that is attributable to side pocket accounts designated by the manager of such Portfolio Fund (which may be designated with respect to assets that are subject to legal or contractual restrictions on transferability, or that the Investment Manager believes either lack a readily assessable market value (without impairing the value of such investments) or should be held until the resolution of a special event or circumstance; and (v) investments in other asset classes (such as real estate) and other property that are not traded on public exchanges (each, as designated by the Investment Manager, along with follow-on investments, if any, an "**Illiquid Investment**"). Additionally, the Investment Manager, in its sole and absolute discretion, may determine that, for various reasons, an asset that initially was not an Illiquid Investment should be categorized as an Illiquid Investment, or that a follow-on investment should be categorized as a new Illiquid Investment. **For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in Side Pocket Accounts; and (ii) any investment made by Series 1 into the series of the PE Portfolio Fund that corresponds to the latter fund's investment made in the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.** Illiquid Investments held in a Side Pocket Account will be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager. For the avoidance of doubt, each Policy Owner investing through the relevant Limited Partner will indirectly participate in the economics from a *pro rata* portion of a Side Pocket Account and the corresponding Illiquid Investment.

At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event. Upon a Realization Event, such Illiquid Investment (or the sales proceeds thereof) will be reallocated, *pro rata*, from the Side Pocket Account to the capital accounts of participating Partners in accordance with their respective interests in such Side Pocket Account. Until such reallocation, a Limited Partner may not withdraw any of the amounts in its capital account that are attributable to the value of Illiquid Investments held in a Side Pocket Account. Upon such reallocation, a Limited Partner that has withdrawn all of its capital from the Partnership other than the capital attributable to such Side Pocket Account will receive an

amount equal to its interest in such Side Pocket Account (net of any accrued Management Fee and accrued expenses (to the extent not covered by the Partnership's reserves, including the Management Fee Reserve) with respect thereto), within 90 days after such reallocation. **For the avoidance of doubt, any investment made by Series 1 into the series of the PE Portfolio Fund that corresponds to the latter fund's investment made in the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

A "**Realization Event**" occurs: (1) when an Illiquid Investment becomes liquid, as determined in the reasonable discretion of the Investment Manager; (2) when an Illiquid Investment is sold or otherwise disposed of by the Partnership; (3) when circumstances otherwise exist that, in the reasonable judgment of the Investment Manager, conclusively establish a value for an Illiquid Investment, as determined in the reasonable discretion of the Investment Manager (including, without limitation, when additional securities substantially similar to the Illiquid Investment have been issued by the issuer of the Illiquid Investment); or (4) as otherwise determined in the sole discretion of the Investment Manager.

Newly-admitted Limited Partners may not participate in Illiquid Investments that were placed in a Side Pocket Account prior to their admission. **For the avoidance of doubt, the Partnership shall not accept additional Limited Partners into any existing Series if such Series has existing Side Pocket Accounts at the time of such admission.** Any expenses relating specifically to a Side Pocket Account will be charged to the Partners participating in such account. If the Investment Manager in its discretion designates any investment as a follow-on investment to an existing Illiquid Investment, only the Partners participating in such original investment will participate in such follow-on investment in proportion to their interest in the related Side Pocket Account; *provided, however*, that, if a Partner shall have withdrawn from the Partnership, the General Partner will equitably adjust the interests of the remaining participating Partners to reflect such withdrawn Partner's non-participation in the follow-on investment.

Also see "RISK FACTORS AND CONFLICTS OF INTEREST—Conflicts of Interest" herein.

New Issues Accounts; Other Memorandum Accounts

From time to time, the Partnership may purchase securities that are part of a public distribution. Under rules adopted by the Financial Industry Regulatory Authority ("**FINRA**"), (i) certain persons engaged in the securities, banking or financial services industries (and members of their immediate families) and (ii) certain persons who are affiliated with companies that are current, former or prospective investment banking clients of the Partnership's broker(s) (collectively, "**Restricted Persons**") are restricted from participating in initial public offerings of equity securities ("**New Issues**"), each subject to a *de minimis* exemption. To the extent necessary to comply with FINRA rules, in addition to the Partnership's regular accounts and any Side Pocket Accounts, the General Partner may establish one or more memorandum accounts that are authorized to participate in New Issues (each, a "**New Issues Account**"). Participation in New Issues Accounts will be limited to (i) those Limited Partners who are not Restricted Persons, and (ii) those Limited Partners who are Restricted Persons, but only to the extent that such participation by Restricted Persons does not exceed levels permitted under applicable FINRA rules.

In addition, as a matter of fairness to Partners that do not participate in New Issues, a use-of-funds charge may be debited to the capital accounts of those Partners that do participate in New Issues and credited to the capital accounts of all the Partners. The General Partner may calculate such charge, in its discretion, in any manner consistent with applicable FINRA rules, including, debiting amounts equal to interest, (i) on the funds used to purchase the New Issues at the annual rate being paid by the Partnership, or (ii) that would be paid by the Partnership on borrowed funds during the applicable period.

Upon the sale or other disposition of New Issues (including any transfer of the underlying securities in the New Issues Account to the capital accounts of all of the Partners, after such securities no longer constitute New Issues), any profits or losses resulting from securities transactions in the New Issues Account in any fiscal period will be credited or

debited to the capital accounts of Limited Partners participating in the New Issues Account in accordance with their interests therein. Accordingly, the returns to Limited Partners on their investments in the Partnership may differ depending upon whether or not they are a Restricted Person.

In addition to the foregoing with respect to Side Pocket Accounts and New Issues Accounts, to the extent that certain Limited Partners are restricted from participating in any other transactions of the Partnership by applicable laws or regulations, or for any other reason determined by the General Partner in good faith, the General Partner may, in its discretion, establish one or more separate memorandum accounts to hold such investments and isolate ownership away from such restricted Limited Partners. Only those Limited Partners who the General Partner determines are eligible will participate in such accounts.

Side Letters

The Partnership, the General Partner and/or the Investment Manager may from time to time enter into side letters or other similar agreements (collectively, "**Side Letters**") with one or more Limited Partners that provide such Limited Partner(s) with additional and/or different rights (including, without limitation, with respect to access to information, minimum investment amounts and liquidity terms) than such Limited Partner(s) have pursuant to this Memorandum and the Partnership Agreement. Neither the General Partner nor the Investment Manager will be required to notify any or all of the other Limited Partners of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the General Partner or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other Limited Partners. Specifically, certain Insurance Company Limited Partners may have additional withdrawal rights not offered to other Limited Partners. See "RISK FACTORS AND CONFLICTS OF INTEREST—Partnership Risks—Impact of Side Letters" herein.

Reports to Limited Partners

Each Limited Partner will receive the following, with respect to the relevant Series: (i) annual financial statements of the Partnership audited by an independent certified public accounting firm; (ii) quarterly unaudited performance information; (iii) copies of such Limited Partner's Schedule K-1 to the Partnership's tax returns; and (iv) other periodic reports or letters as determined by the General Partner in its sole discretion. The financial statements of the Partnership will be prepared in accordance with GAAP (except to the extent that this Memorandum or the Partnership Agreement states or contemplates that such statements may be inconsistent with GAAP).

The General Partner may at any time choose to change the Partnership's accounting guidelines from GAAP to the International Financial Reporting Standard ("**IFRS**"). In such event, the financial performance of the Partnership, as determined under IFRS, may vary from those determined under GAAP.

The Partnership will bear all fees incurred in providing such tax returns and reports.

The General Partner may agree to provide certain Limited Partners with additional information on the underlying investments of the Partnership, which may affect investment and withdrawal decisions, as well as heightened access to the General Partner, the Investment Manager and their respective employees for relevant information.

Transferability of Interests

As a Limited Partner, you may not assign or transfer your Interest (except by operation of law) without the consent of the General Partner, which consent may be given or withheld in its sole discretion. No transfer of an Interest by a Limited Partner will be permitted if it would result in the termination of the Partnership for federal income tax purposes. Transfers of Interests are subject to other restrictions set forth in the Partnership Agreement, including compliance with ERISA and federal and state securities laws.

Due to these limitations on transferability, Limited Partners may be required to hold their Interests indefinitely, unless they withdraw from the Partnership in accordance with the provisions set forth in the Partnership Agreement.

Distributions; Distributions

The Partnership does not expect to make any distributions to Limited Partners from profits or capital, except pursuant to requests for withdrawals and upon termination of the

Upon Termination of the Partnership

Partnership or the relevant Series. Upon the termination of the Partnership (as further described in the Partnership Agreement), the assets of the Partnership or the relevant Series will be liquidated (or distributed) and the proceeds of liquidation will be used to pay off known liabilities, establish reserves for contingent liabilities and expenses of liquidation (even if such reserves are not in accordance with GAAP), and any remaining balance will be applied and distributed in proportion to the respective capital accounts of the Partners. The Partnership or the relevant Series may satisfy any distributions to Limited Partners in cash, in-kind or any combination thereof. Additionally, the General Partner may create a liquidating fund entity (e.g., a liquidating trust or similar vehicle) and may transfer all or a portion of the Partnership's assets to such entity for any reason, including an orderly liquidation of any illiquid Partnership or Series assets, including, but not limited to Side Pocket Accounts, and may distribute ownership interests in such entity to Limited Partners.

Notwithstanding anything to the contrary herein, to the extent that the Partnership makes any distributions, the General Partner may limit such distributions, in its sole discretion, in order to ensure that the Partnership, at all times, meets the diversification requirements applicable to insurance-dedicated investment funds.

The termination of the Partnership shall constitute the termination of all Series. For the avoidance of doubt, the termination of an individual Series, however, shall not constitute the termination of the Partnership.

Bank Holding Companies

Limited Partners that are Bank Holding Companies ("**BHC Limited Partners**") (as defined by Section 2(a) of the Bank Holding Company Act of 1956, as amended ("**BHCA**")) are limited to 4.99% of the voting Interest in the Partnership under Section 4(c)(6) of the BHCA. The portion of the Interest in the Partnership held by a BHC Limited Partner in excess of 4.99% of the aggregate outstanding voting Interests of all Limited Partners will be deemed non-voting Interests in the Partnership. BHC Limited Partners holding non-voting Interests in the Partnership are permitted to vote such Interests (i) on any proposal to dissolve or continue the business of the Partnership under the Partnership Agreement and (ii) on matters with respect to which voting rights are not considered to be "voting securities" under 12 C.F.R. § 225.2(q)(2), including such matters which may "significantly and adversely" affect a BHC Limited Partner (such as amendments to the Partnership Agreement or modifications of the terms of its Interest). For the avoidance of doubt, the foregoing provisions shall apply on a Series-by-Series basis. Except with regard to restrictions on voting, non-voting Interests are identical to all other Interests held by Limited Partners.

Voting Rights and Amendments

The voting rights of Limited Partners are very limited. Other than as explicitly set forth in the Partnership Agreement, Limited Partners have no voting rights as to the Partnership or its management. Generally, the Partnership Agreement may be amended only with the consent of the General Partner and Limited Partners owning more than 50% of all of the outstanding Interests of each Series; *provided* that: (x) for matters only relating to one Series, only the Limited Partners of that Series will vote on such matters, and (y) that the General Partner may amend the Partnership Agreement without the consent of or notice to any of the Limited Partners if, in the opinion of the General Partner, the amendment does not materially adversely affect any Limited Partner.

Liability of Limited Partners

No Limited Partner shall be personally liable or bound for the expenses, liabilities or obligations of the Partnership or the relevant Series beyond the amount in such Limited Partner's capital account in the relevant Series, from time to time, including any amounts thereof attributable to capital contributions, except that such Limited Partner may be obligated to return all or a portion of any distributions (including withdrawal proceeds) received from the Partnership or the relevant Series in an amount up to its aggregate capital contributions (including any income or gains thereon) to the Partnership or the relevant Series in order to pay such Limited Partner's *pro rata* share of any Partnership or Series liabilities that arose while such Limited Partner held Interests. Subject to the foregoing, no Limited Partner shall be obligated to provide any contributions to the Partnership or the relevant Series, other than its initial capital contribution. No Limited Partner shall be obligated to make any loan to the Partnership or a Series.

Under the Delaware Revised Uniform Limited Partnership Act ("**Delaware Act**"), when a Limited Partner receives a return of all or any part of such Limited Partner's capital contribution, the Limited Partner may be liable to the Partnership or a Series for any sum, not in excess of such return of capital (together with interest), if at the time of such distribution the Limited Partner knew that the Partnership or the relevant Series was prohibited from making such distribution pursuant to the Delaware Act.

Brokerage Practices

Portfolio transactions for the Partnership will be allocated by the Investment Manager to brokers on the basis of best execution and in consideration of, among other factors, such brokers' ability to effect transactions, operational efficiency, reputation and financial strength. See "BROKERAGE PRACTICES".

Other Activities of the General Partner, the Investment Manager, the Principal and Affiliates

None of the General Partner, the Investment Manager, the Principal or any of their respective partners, managers, members, directors, officers, employees, agents and affiliates (collectively, "**Investment Manager Affiliates**") is required to manage the Partnership as its sole and exclusive function. In addition to managing the Partnership and its investments, each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may provide investment management and other services to other parties and may manage other accounts and/or establish other private investment funds in the future (both domestic and offshore) (such accounts and funds, collectively, "**Affiliated Funds**"), including those that may employ an investment program and strategy similar to that of the Partnership.

Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to Rand PE Fund I, L.P., a Delaware "series" limited partnership ("**PE Portfolio Fund**") that: (x) is expected to initially invest in the Highland Transaction, if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction; (ii) Rand PE Fund Management, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the PE Portfolio Fund; (iii) the Principal is the managing member and controlling person of Rand PE Fund Management, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series.

See "MANAGEMENT" and "RISK FACTORS AND CONFLICTS OF INTEREST" herein.

Exculpation and Indemnification

The Partnership Agreement provides that none of the General Partner, the Investment Manager or any of the Investment Manager Affiliates will be liable to the Partnership or the Limited Partners for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. The Partnership (but not the Limited Partners individually) is obligated to indemnify the General Partner, the Investment Manager and the Investment Manager Affiliates (which, for purposes of this indemnity, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any of them in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided* that such indemnity will not extend to conduct determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. For the avoidance of doubt, the foregoing indemnification provisions shall apply on a Series-by-Series basis. The Investment Management Agreement also provides similar protections to the Investment Manager.

Investor Control

The Partnership is an insurance-dedicated investment fund. In certain circumstances, the owner of a variable life insurance or annuity contract invested in a Separate Account may, for federal income tax purposes, be considered the owner of the assets of the Separate Account that funds the variable contract under an "investor control" theory. Each Policy Owner should consult his or her own tax advisors regarding the "investor control" theory

and the particular tax risks, if any, posed by the Policy Owner's selection of the Partnership as its investment option under a related Policy.

Policy Owners have no right to communicate with or direct the investment policies or decisions of the Partnership and/or the Investment Manager Affiliates relating in any way to the Partnership. For purposes of this Memorandum, the term Policy Owner includes: (i) any trustees of a Policy Owner; (ii) any Policy beneficiaries; (iii) any affiliated person (as this term is defined in Section 2(a)(3) of the Investment Company Act) of the foregoing persons; or (iv) any person that represents the Policy Owner.

There is not, nor shall there be, a pre-arranged binding agreement between the General Partner, the Administrator and the Investment Manager, on the one hand, and any Policy Owner, on the other hand, relating to the investments of the Partnership. Furthermore, Limited Partners have no right or power to take part in the management of the Partnership.

None of the Partnership, the General Partner, the Investment Manager or any of the Investment Manager Affiliates will be held responsible to any Limited Partner or Policy Owner for any loss, damage, liability or expense resulting from a violation of the "investor control" theory to the extent such violation is attributable to conduct of a Policy Owner.

Notwithstanding the foregoing, the Partnership's investment program permits investments in Portfolio Funds, Illiquid Investments and other investments that are managed by, or otherwise affiliated with or related to the Investment Manager. None of such investments, if made, will be deemed to be directed by the Policy Owner or be part of a pre-arranged binding agreement as a result of such affiliation or relation.

A substantial portion of the Partnership is expected to be invested in illiquid Portfolio Funds and/or Illiquid Investments. Such investments are often structured as "pass-through" entities for tax purposes and therefore may generate significant taxable income to the Limited Partners without any corresponding liquidity from such investments. As a result, an investment in the Partnership may be unsuitable for those investors that do not receive a corresponding deduction for such allocated income.

Tax Considerations

The Partnership intends to invest its assets in compliance with the diversification requirements imposed by Section 817(h) of the U.S. Internal Revenue Code of 1986, as amended ("**Code**"), and regulations promulgated thereunder and expects to be treated as a partnership and not as an association or a publicly traded partnership taxable as a corporation for federal tax purposes. Accordingly, the Partnership should not be subject to federal income tax, and each Limited Partner will be required to report on its own annual tax return such Limited Partner's distributive share of the Partnership's taxable income or loss. Prospective purchasers are responsible for determining the tax considerations of an investment in the Partnership and should consult their own tax advisors with specific reference to their own situations as they relate to an investment in the Partnership.

The Investment Manager will be required to endeavor to invest the assets of the Partnership in compliance with the diversification requirements imposed by Section 817(h) of the Code, and regulations promulgated thereunder. The Investment Manager will be required to notify the Limited Partners within a commercially reasonable time upon having a reasonable basis for believing that the Partnership has ceased to meet the standards set forth in Section 817(h) of the Code and to take all commercially reasonable steps to comply with the diversification requirements within the grace period afforded under Treasury Regulation Section 1.817-5. None of the Partnership, the General Partner, the Investment Manager or any of their respective affiliates has any obligation to: (i) determine if any state's diversification requirements or other regulatory requirements applicable to insurance companies or variable contract separate accounts are applicable to the Partnership or to any Limited Partner, or (ii) take any steps to facilitate compliance with any such requirements.

The Investment Manager will not accept investment recommendations, or make any investment decisions regarding the direct or indirect investment of the Partnership's assets based, in whole or in part, on information regarding any investment or group of

investments received from any Limited Partner or Policy Owner. No Limited Partner or Policy Owners will have the right or be permitted to select or recommend any particular investment or group of investments to be made directly or indirectly with the assets of the Partnership, and there is not, nor will there be, any direct or indirect pre-arrangements or agreement between any Limited Partner or its Policy Owners and the Investment Manager regarding the investments to be made directly or indirectly by the Partnership. See "TAXATION" herein.

Term The term of the Partnership will continue indefinitely until terminated in accordance with the Partnership Agreement. Under the Partnership Agreement, the Partnership may be terminated at the election of the General Partner.

Fiscal Year The fiscal year of the Partnership will end on December 31 of each year. However, the fiscal year may be changed at any time by the General Partner, in its sole and absolute discretion.

Auditor The Partnership intends to engage a nationally recognized public accounting firm to act as the Partnership's auditor. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

Administrator The Partnership intends to engage a provider of administrative services to acts as the Partnership's Administrator, as further set forth herein. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details. See "SERVICE PROVIDERS—Administrator" herein.

Shared Services Arrangement In addition, the Investment Manager has entered into a shared services agreement ("**Shared Services Agreement**") with Highland Capital Management, L.P., a Delaware limited partnership (in its capacity with respect to the Shared Services Agreement, the "**Shared Services Provider**"), pursuant to which the Shared Services Provider will provide certain administrative, information technology, accounting, tax, back-office and other services to the Investment Manager. The Partnership will not incur any additional fees as a result of the arrangements with the Shared Services Provider. See "RISK FACTORS AND CONFLICTS OF INTEREST" herein. Also see "SERVICE PROVIDERS—Administrator" herein.

Introducing Broker The Partnership intends to engage a nationally recognized introducing broker to act as the introducing broker for the Partnership ("**Introducing Broker**"). Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

Clearing Broker and Custodian The Partnership intends to engage a nationally recognized clearing broker and custodian to act as the clearing broker and custodian for the Partnership ("**Custodian**"). Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

Regulatory Compliance Provider The Investment Manager intends to engage a reputable regulatory compliance provider for the Investment Manager, the General Partner and certain of their respective affiliates. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

Legal Counsel Sadis & Goldberg LLP acts as legal counsel to the General Partner, the Investment Manager, the Partnership and certain of their respective affiliates in connection with the offering of Interests and other ongoing matters. Sadis & Goldberg LLP has been retained to prepare offering documentation in connection with the offering but not to conduct any due diligence on the Principal, the General Partner, the Investment Manager or any of the information in this Memorandum. Sadis & Goldberg LLP does not represent the Limited Partners, and each Limited Partner is urged to consult with its own counsel.

There may exist other matters that could have a bearing on the Partnership as to which Sadis & Goldberg LLP has not been consulted. In addition, Sadis & Goldberg LLP does not undertake to monitor compliance by the Investment Manager, the General Partner, the

Principal and their respective affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Sadis & Goldberg LLP monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Sadis & Goldberg's responsibility is limited to matters of U.S. securities and federal tax law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Partnership, there are times when the interests of Limited Partners may differ from those of the Partnership. Sadis & Goldberg LLP does not represent the Limited Partners' interests in resolving these issues. Sadis & Goldberg LLP is a party to certain offering related documents to the limited extent that it can benefit from and enforce certain provisions thereof. In preparing this Memorandum, Sadis & Goldberg LLP has relied upon information furnished to it by the General Partner, the Investment Manager and their respective affiliates and is not obligated to investigate or verify the accuracy and completeness of information set forth herein concerning the Partnership.

Furthermore, if a conflict of interest or dispute arises between the General Partner and/or the Investment Manager, on the one hand, and the Partnership or any Limited Partner, on the other hand, by investing in the Partnership, the Limited Partners acknowledge that Sadis & Goldberg LLP may act as counsel to the General Partner and/or the Investment Manager and not counsel to the Partnership or the Limited Partners, notwithstanding the fact that, in certain cases, the fees paid to Sadis & Goldberg LLP are paid through or by the Partnership.

In addition, Sadis & Goldberg LLP has represented Highland and affiliates at different times over a period lasting over a decade. It is currently expected that Sadis & Goldberg LLP will represent the General Partner, the Investment Manager, the Principal and certain of their respective affiliates in connection with the establishment of the Partnership and the PE Portfolio Fund, the possible consummation of the Highland Transaction, and certain related matters. The Principal and his affiliates are aware of the representation by Sadis & Goldberg LLP of Highland and affiliates.

Also see "RISK FACTORS AND CONFLICTS OF INTEREST—Conflicts of Interest—Lack of Separate Representation; Potential Conflicts of Counsel" herein.

Address for Inquiries

You are invited to, and it is highly recommended that you do, meet with the General Partner and/or the Administrator (to the extent applicable) for a further explanation of the terms and conditions of this offering of Interests and to obtain any additional information necessary to verify the information contained in this Memorandum, to the extent that the General Partner and/or the Administrator (to the extent applicable) possesses such information or can acquire it without unreasonable effort or expense. Requests for such information should be directed to:

Atlas IDF GP, LLC
87 Railroad Place, Suite 403
Saratoga Springs, NY 12866
Attention: John Honis
Telephone: (214) 335-7969
Email: Jhonis@RandAdvisors.com

BACKGROUND OF THE GENERAL PARTNER AND THE INVESTMENT MANAGER

The General Partner of the Partnership is Atlas IDF GP, LLC, a Delaware limited liability company. The General Partner is responsible for the management of the Partnership's affairs.

The Investment Manager of the Partnership is Rand Advisors, LLC, a Delaware limited liability company. The Investment Manager has discretionary investment authority over the Partnership's assets. The Investment Manager is registered as an investment adviser with the SEC. A copy of Part 2 of the Investment Manager's Form ADV is attached hereto as Exhibit C.

As the managing member and controlling person of the General Partner and the Investment Manager, John Honis controls all of the Partnership's operations and activities.

Limited Partners do not have any right to participate in the management of the Partnership and have very limited voting rights.

BACKGROUND OF THE PRINCIPAL

John Honis, Principal

Mr. Honis has more than 25 years of investment management and business experience. He has a background in the credit markets and private equity. Throughout his career in the investment management industry, Mr. Honis has guided many portfolio companies across several continents. Mr. Honis' business experience includes roles as CEO, CRO and board-level advisory positions to both high-growth and distressed companies, in a wide range of manufacturing and service industries.

Mr. Honis founded Barrier Advisors, a recognized provider of strategic, operational and financial advice to private equity, venture capital and money management institutions. He led many turnarounds and strategic growth initiatives and has attracted many of the nation's reputable turnaround practitioners to the Barrier team.

Previously, Mr. Honis was a high-tech executive, having served as President, CEO or Chief Restructuring Officer of five telecommunications firms. His experiences in all aspects of growth management, strategic/operational turnarounds, financial restructuring, mergers and acquisitions and capital markets were the foundational elements of Barrier Advisors' charter. Mr. Honis was previously a Partner and Co-Head of Private Equity at Highland Capital Management, L.P. ("**Highland**") (which now serves as the Shared Services Provider to the Investment Manager).

Mr. Honis' early career started at J.P. Morgan in New York where he was worked in the firm's global consulting practice. At J.P. Morgan, he specialized in the design and implementation of worldwide corporate finance processes and systems. Mr. Honis received a BA Degree in Economics from Syracuse University.

Mr. Honis currently serves on the Board of Trustees for each of Highland's affiliated registered investment companies and on the Board of Directors for American HomePatient, Inc. and Turtle Bay Resort, LLC, which are portfolio companies of investment funds operated by Highland.

See "RISK FACTORS AND CONFLICTS OF INTEREST" herein.

Additional Personnel

The General Partner and the Investment Manager may employ additional personnel in the future.

OTHER ACTIVITIES OF THE GENERAL PARTNER, THE INVESTMENT MANAGER, THE PRINCIPAL AND AFFILIATES

None of the General Partner, the Investment Manager, the Principal or any of the Investment Manager Affiliates is required to manage the Partnership as its sole and exclusive function. Each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may engage in other business activities, including competing ventures and/or other unrelated employment, and is only required to devote such time to the Partnership as the General Partner deems necessary to accomplish the purposes of the Partnership.

In addition to managing the Partnership and its investments, each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may provide investment management and other services to other parties and may manage and/or establish Affiliated Funds in the future, including those that may employ an investment program and strategy similar to that of the Partnership.

Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to the PE Portfolio Fund that: (x) is expected to initially invest in the Highland Transaction, if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction; (ii) Rand PE Fund Management, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the PE Portfolio Fund; (iii) the Principal is the managing member and controlling person of Rand PE Fund Management, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series. See "RISK FACTORS AND CONFLICTS OF INTEREST" herein.

INVESTMENTS BY THE GENERAL PARTNER, THE INVESTMENT MANAGER, THE PRINCIPAL AND AFFILIATES

Capital contributions by the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates will generally be on the same basis as capital contributions made by other investors, except that, in the discretion of the Investment Manager, no Management Fee may be assessed to such persons. Neither the Partnership Agreement nor the Investment Management Agreement requires the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates to maintain any minimum capital account balance.

SERVICE PROVIDERS

ADMINISTRATOR

The Partnership intends to engage an Administrator and enter into an Administration Agreement with the Administrator ("**Administration Agreement**"). The Administrator may be: (x) a nationally recognized provider of administrative services or (y) Highland (i.e., the Shared Services Provider); *provided* that, for the avoidance of doubt, any Administration Agreement with Highland, to the extent applicable, will be in addition to the Shared Services Agreement. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

The Administration Agreement will include industry-standard provisions relating to scope of services, fees, termination and indemnification.

The Administrator will be a service provider to the Partnership and will not be responsible for the preparation of this Memorandum or the activities of the Partnership, and therefore accepts no responsibility for any information contained in this Memorandum. The Administrator will not participate in the Partnership's investment decision-making process.

AUDITOR

The Partnership intends to engage a nationally recognized public accounting firm to act as the auditor for the Partnership. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

INTRODUCING BROKER

The Partnership intends to engage a nationally recognized Introducing Broker to act as the Partnership's introducing broker. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

The Introducing Broker will act as the executing broker to the Partnership, and will clear the Partnership's transactions through the Custodian. Accordingly, the Introducing Broker may receive a substantial amount of brokerage commissions related to the securities transactions of the Partnership. The Partnership will not be committed to continuing its introducing brokerage relationship with the Introducing Broker for any minimum period, and may enter into introducing brokerage relationships with other introducing brokers.

The Introducing Broker will not participate in the investment decision-making process of the Partnership and will have no obligation to review, monitor or otherwise ensure compliance by the Partnership with the investment policies, restrictions or guidelines applicable to it or any other term or condition of this Memorandum. The Introducing Broker will be a service provider to the Partnership and will not be responsible for the preparation of this Memorandum or the activities of the Partnership and therefore will accept no responsibility for any information contained in this Memorandum.

CLEARING BROKER AND CUSTODIAN

The Partnership intends to engage a nationally recognized Custodian to act as the Partnership's clearing broker and custodian. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

The Custodian will act as the clearing broker and custodian for the Partnership, and will generally clear (on the basis of payment against delivery) the securities transactions of the Partnership which are effected through other brokerage firms, specifically including the

Introducing Broker. The Partnership may also utilize the Custodian, its affiliates and other brokers and dealers for the purpose of executing transactions for the Partnership. Accordingly, the Custodian may receive a substantial amount of brokerage commissions and/or margin interest related to the securities transactions of the Partnership. The Partnership will not be committed to continuing its clearing brokerage and custodial relationship with the Custodian for any minimum period, and may enter into clearing brokerage and custodial relationships with other clearing brokers and custodians.

The Custodian will not participate in the investment decision-making process of the Partnership and will have no obligation to review, monitor or otherwise ensure compliance by the Partnership with the investment policies, restrictions or guidelines applicable to it or any other term or condition of this Memorandum. The Custodian will be a service provider to the Partnership and will not be responsible for the preparation of this Memorandum or the activities of the Partnership and therefore will accept no responsibility for any information contained in this Memorandum.

REGULATORY COMPLIANCE PROVIDER

The Investment Manager intends to engage a reputable regulatory compliance provider for the Investment Manager, the General Partner and certain of their respective affiliates. Shortly after such engagement, the Partnership intends to distribute a supplement to this Memorandum to all then-current investors with the relevant details.

LEGAL COUNSEL

Sadis & Goldberg LLP acts as legal counsel to the General Partner, the Investment Manager, the Partnership and certain of their respective affiliates in connection with the offering of Interests and other ongoing matters. Sadis & Goldberg LLP has been retained to prepare offering documentation in connection with the offering but not to conduct any due diligence on the Principal, the General Partner, the Investment Manager or any of the information in this Memorandum. Sadis & Goldberg LLP does not represent the Limited Partners, and each Limited Partner is urged to consult with its own counsel.

There may exist other matters that could have a bearing on the Partnership as to which Sadis & Goldberg LLP has not been consulted. In addition, Sadis & Goldberg LLP does not undertake to monitor compliance by the Investment Manager, the General Partner, the Principal and their respective affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Sadis & Goldberg LLP monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Sadis & Goldberg's responsibility is limited to matters of U.S. securities and federal tax law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Partnership, there are times when the interests of Limited Partners may differ from those of the Partnership. Sadis & Goldberg LLP does not represent the Limited Partners' interests in resolving these issues. Sadis & Goldberg LLP is a party to certain offering related documents to the limited extent that it can benefit from and enforce certain provisions thereof. In preparing this Memorandum, Sadis & Goldberg LLP has relied upon information furnished to it by the General Partner, the Investment Manager and their respective affiliates and is not obligated to investigate or verify the accuracy and completeness of information set forth herein concerning the Partnership.

Furthermore, if a conflict of interest or dispute arises between the General Partner and/or the Investment Manager, on the one hand, and the Partnership or any Limited Partner, on the other hand, by investing in the Partnership, the Limited Partners acknowledge that Sadis & Goldberg LLP may act as counsel to the General Partner and/or the Investment Manager and not counsel to the Partnership or the Limited Partners, notwithstanding the fact that, in certain cases, the fees paid to Sadis & Goldberg LLP are paid through or by the Partnership.

In addition, Sadis & Goldberg LLP has represented Highland and affiliates at different times over a period lasting over a decade. It is currently expected that Sadis & Goldberg LLP will represent the General Partner, the Investment Manager, the Principal and certain

of their respective affiliates in connection with the establishment of the Partnership and the PE Portfolio Fund, the possible consummation of the Highland Transaction, and certain related matters. The Principal and his affiliates are aware of the representation by Sadis & Goldberg LLP of Highland and affiliates.

INVESTMENT PROGRAM

INTRODUCTION

The Partnership was organized for the purpose of investing and trading in a wide variety of investments, domestic and foreign, of all kinds and descriptions, whether publicly traded or privately placed, including, but not limited to, the following: common and preferred stocks, bonds and other debt securities, convertible securities, limited partnership interests, other investment funds (including the Portfolio Funds), CLO securities, mutual fund shares, options, warrants, futures, derivatives (including swaps, forward contracts and structured instruments), monetary instruments, other financial instruments, cash and cash equivalents. The Investment Manager is eligible to trade a limited amount of commodities or financial futures on behalf of the Partnership under a provision in the Commodity Exchange Act, as amended ("**CEA**"), that provides an exemption from registration as a commodity pool operator.

References herein to the Partnership shall include, where appropriate: (i) each Series of the Partnership; (ii) the instances whereby the Investment Manager directly invests the Partnership's assets, and (iii) the Partnership's investments through Portfolio Funds.

The following is a general description of the principal types of investments which the Investment Manager currently contemplates making for the Partnership, certain trading techniques that it may employ, the investment criteria that it plans to apply, and the guidelines that it has established with respect to the composition of its investment portfolio. The following description is merely a summary, and a Limited Partner should not assume that any descriptions of the specific activities in which the Partnership may engage are intended in any way to limit the types of investment activities which the Partnership may undertake or the allocation of Partnership capital among such investments.

INVESTMENT OBJECTIVE

The Partnership's primary objective is to seek consistent above-average returns primarily through capital appreciation. **No assurance can be given, however, that the Investment Manager will achieve the Partnership's investment objective, and investment results may vary substantially over time and from period to period.**

As of the date hereof, the Investment Manager intends to allocate approximately 45% of the Series 1 investment portfolio to traded investments and approximately (but not more than) 55% of the Series 1 investment portfolio to the first series of limited partnership interests to be issued by the PE Portfolio Fund that: (x) is expected to initially invest in the Highland Transaction, if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction. However, the Investment Manager reserves the right to change such allocation in the future, subject to compliance with all applicable laws, including the diversification requirements applicable to insurance-dedicated investment funds, as further set forth herein. **Further, the Partnership shall not accept additional Limited Partners into any existing Series if such Series has existing Side Pocket Accounts at the time of such admission.**

INVESTMENT STRATEGY

Philosophy

The Investment Manager intends to use a disciplined investment philosophy by combining thorough fundamental research and in-depth analysis of investment opportunities. The following principles generally guide the Investment Manager's portfolio management strategy and allocation of capital:

- invest with a long-term perspective, minimize turnover and avoid market-timing;
- hold a concentrated investment portfolio; and

- view each investment relative to other investment opportunities.

Long-Term Perspective. The Investment Manager intends to invest with a long-term perspective, typically holding an ownership position in a company until it reaches its intrinsic value. In general, when the Investment Manager will be looking to invest in a company, it intends to avoid trying to time the market, but rather intends to focus on the intrinsic value of the company and then find the right entry or purchase point.

Concentration. The Investment Manager intends to have a concentrated portfolio of investments. The Investment Manager believes that this may provide the Partnership with a competitive advantage over most other private investment vehicles in that: (i) the Investment Manager's best ideas would be rarely and/or marginally diluted by its lesser ideas; (ii) the extra time saved by not trading may allow the Investment Manager to concentrate on finding other investment ideas; and (iii) careful analysis may allow the Investment Manager to make intelligent and deliberated decisions.

Relative Analysis. The Investment Manager intends to evaluate potential investments in companies of varying market capitalization in an attempt to isolate those securities with the greatest potential for capital appreciation. As part of its strategy, the Investment Manager intends to invest in those industries, sectors and securities which may provide value on a relative basis. The Investment Manager intends to seek to understand a company and its industry before investing.

Strategies

The following is a general description of the principal types of securities in which the Partnership may invest, certain trading techniques that it may employ, the investment criteria that it plans to apply, and the guidelines that it has established with respect to the composition of its investment portfolio. The following description is merely a summary, and the Investment Manager has discretion to cause the Partnership to invest in other types of securities and to follow other investment criteria and guidelines.

Long Equity. The Investment Manager expects that a portion of the Partnership's investments will generally be in equities. In connection with the foregoing, the Partnership's focus will be on companies of varying size that have a reasonable expectation of producing above-average returns. The Investment Manager intends to favor private companies that are not actively traded in the U.S. but may be willing to invest in companies without respect to market capitalization, geographic location or market sector.

Before investing in a company, the Investment Manager intends to analyze certain financial measures, such as the company's historical and expected cash flows, its projected earnings growth, its valuation relative to its growth and to that of its industry, the historical trading patterns of the company's securities, and forecasts and projections for the relevant industry group. The Investment Manager will at times gather information about a company from consultants, analysts, competitors, suppliers and customers that may help the effectiveness of the analysis performed.

Short Selling. The Investment Manager may sell short individual stocks as a means of attempting to reduce risk and increase performance. Stocks are generally sold short for a variety of reasons, including, without limitation, the following: (i) temporary overvaluation due to short-term market euphoria for a sector; (ii) faulty business model; (iii) poor earnings; (iv) questionable accounting practices; (v) deteriorating fundamentals; (vi) negative tangible book value; and (vii) weak management unable to adapt to changes in technology, regulation or the competitive environment. The Investment Manager believes that, by focusing on specific companies that are experiencing any one or more of these elements, the Investment Manager may be able to identify profitable short sale candidates in most stock market environments. In addition, technical analysis may also be used to help in the decision-making process.

Event-Driven Investments. When the opportunity arises, in the opinion of the Investment Manager, the Partnership may invest in companies based upon certain situations or

events, such as launching of a new product, changes in management, a corporate restructuring, a merger or an acquisition. These situations or events may also include investments that are based on market-timing and impact analysis.

Occasionally, the Partnership may engage in arbitrage transactions that the Investment Manager believes may represent an exceptional risk/reward opportunity. Risk arbitrage opportunities generally arise during corporate mergers, leveraged buyouts or takeovers. Frequently, the stock of the company being acquired will trade at a significant discount to the announced deal price. This discount compensates investors for the time value of money and the risk that the transaction may be canceled. If the discount is significantly greater than the Investment Manager's assessment of the underlying risk, the strategy will be implemented. The Investment Manager intends to use event-driven investments as a tactical, opportunistic strategy and not as part of the Partnership's normal operations.

Bank Loans

In general, a portion of the Partnership's net assets will be invested and traded in senior secured floating rate bank loans ("**Bank Loans**") denominated in U.S. dollars. Bank Loans represent amounts borrowed by corporate entities from banks and other lenders. In many cases, they are issued in connection with re-capitalizations, acquisitions, leveraged buyouts and re-financings. Most, if not all, of the Bank Loans in which the Partnership intends to invest will have a below investment-grade credit rating or will not be rated by a major credit rating agency. The Bank Loans in which the Partnership intends to invest are often referred to as "leveraged loans" because the borrowing companies have significantly more debt than equity.

Bank Loans have the highest seniority within a borrower's capital structure. Therefore, in the event of a bankruptcy, holders of Bank Loans are typically paid (to the extent assets are available) before certain other creditors, such as bondholders. Bank Loan maturities typically range from 5 to 8 years, although loan prepayments and re-financings generally result in effective average lives of approximately 3 years depending on market conditions.

Bank Loans generally pay interest at rates that are determined periodically by reference to a base lending rate plus a premium. These rates often are re-determined daily, monthly, quarterly or semi-annually. As a result, the Investment Manager believes that the Partnership may experience less sensitivity to changes in market interest rates and lower volatility than if the Partnership invested exclusively in fixed rate obligations.

The Bank Loan market has grown significantly in recent years, as investors have been drawn into the market by the advantageous characteristics of Bank Loans, which include floating interest rates, senior secured status, lower volatility, growing liquidity, greater control over an issuer in times of stress, and lower correlation with other asset classes.

Other Securities

When, in the opinion of the Investment Manager, appropriate investments cannot be found or when market conditions dictate a more conservative stance, the Partnership may maintain significant cash positions or invest in money market instruments (e.g., money market funds or U.S. Treasury securities).

Fixed Income Securities

The Investment Manager may invest in fixed income securities (bonds) as part of the strategic operations of the Partnership. The Investment Manager may take advantage of special investment opportunities in the high yield and convertible segments of the fixed income market. The Investment Manager considers these investments to be equity substitutes, with the expectation of providing both current income and capital appreciation. The Investment Manager may also seek opportunities in government-issued fixed income securities, as deemed appropriate.

High Yield Bonds

The price and yield of lower-quality (i.e., high yield, high risk) bonds, commonly referred to as "junk bonds," can be expected to fluctuate more than the price and yield of higher-quality bonds. Because these bonds are rated below BBB or are in default, they are regarded as predominantly speculative with respect to the issuer's continuing ability to meet principal and interest payments. Successful investment in lower-medium- and low-quality bonds involves greater investment risk and is highly dependent on credit analysis. A real or perceived economic downturn or higher interest rates could cause a decline in high yield bond prices by lessening the ability of issuers to make principal and interest payments. These bonds can be more difficult to sell and value accurately than high-quality bonds. Because objective pricing data may be less available, judgment may play a greater role in the valuation process. In addition, the entire high yield bond market can experience sudden and sharp price swings due to a variety of factors, including changes in economic forecasts, stock market activity, large or sustained sales by major investors, a high-profile default, or just a change in the market's psychology. This type of volatility is usually associated more with stocks than bonds, but junk bond investors should be prepared for it.

Derivative Transactions

The Partnership may enter into derivative transactions, including credit default swaps to hedge the market risk of its Bank Loan portfolio. The Investment Manager may purchase and write put and call options that are traded on national securities exchanges or over-the-counter markets, as well as on electronic communications networks. Options can be used in many ways, such as to increase market exposure (i.e., leverage), to reduce overall market exposure (i.e., hedge), to increase the portfolio's current income, or to reduce the cost basis of a new position. The Partnership may also utilize certain options, such as various types of index or "market-basket" options, in an effort to hedge against certain market-related risks, as the Investment Manager deems appropriate. The Investment Manager believes that the use of options and other derivatives may help reduce risk and enhance investment performance of the Partnership's portfolio.

Foreign Investments

Although the Investment Manager intends to focus primarily on the U.S. marketplace, it may invest in U.S. dollar-denominated securities of foreign issuers or loans of foreign borrowers traded in the U.S.

Special Situations

The Partnership may invest in companies involved in (or the target of) acquisition attempts or tender offers or in companies involved in work-outs, liquidations, spin-offs, reorganizations, bankruptcies and similar transactions.

Money Market Instruments

From time to time, the Investment Manager may also invest some of the Partnership's assets in short-term U.S. government obligations, certificates of deposit, commercial paper and other money market instruments. A greater percentage of Partnership assets may be invested in such obligations if the Investment Manager believes that a defensive position is appropriate because of expected economic or business conditions or the outlook for security prices. From time to time, in the sole discretion of the Investment Manager, cash balances in the Partnership's brokerage account may be placed in a money-market fund or other cash equivalents.

CLO Securities Generally

A portion of the Partnership's assets will also be invested in: (i) rated and unrated, debt relating to collateralized loan obligations ("**CLOs**" or "**CLO Securities**") in the primary and secondary markets, and (ii) collateralized debt obligations that also have leveraged loans as part of their underlying investments.

Currency Hedging Transactions

The Investment Manager may, but is not required, to engage in currency hedging transactions to protect against adverse changes in currency and interest rates. Currency hedging instruments may include, without limitation, forward contracts, futures contracts, options contracts, cross-currency swaps, exchange-traded funds ("**ETFs**"), treasury locks, shorting non-U.S. debt and any other instrument deemed reasonable in the Investment Manager's discretion to hedge the non-U.S. currency exposure of the Partnership.

Description of CLO Investments

An investment in CLO tranches represents varying levels of exposure primarily to credit performance of the underlying assets and is characterized by a combination of expected significant current cash flow, as well as the opportunity for positive returns through long-term gains on the underlying portfolios. CLO investments often have a relatively short expected duration (usually less than 10 years), as a typical CLO distributes excess cash flows quarterly or semi-annually concurrent with the payment of interest on its liabilities, subject to compliance with overall collateral quality tests and other performance criteria. The Investment Manager believes that CLO debt securities may offer significant relative value in the current market. The Investment Manager believes the attractive spreads currently offered by investments in CLOs have been created by technical factors, mainly rating agency driven, rather than fundamentals of the underlying collateral.

A cash flow CLO is generally analogous to a special purpose finance company. The CLO owns a portfolio consisting of corporate loans and other investments from which it typically receives interest income, together with capital gains and losses. The CLO is often financed with equity, which may be in the form of preference shares or income notes and several levels of long-term debt. CLO debt is typically rated by the rating agencies based on the deal structure as well as outstanding principal amount of portfolio securities and, in most cases, is not contingent on the market value of the underlying portfolio. CLO equity is almost always unrated.

In addition to the opportunities in the secondary market, the Investment Manager believes that it may be able to source attractive opportunities from the growing issuance of CLOs in the primary market as well. The CLO market generally is characterized by a lack of liquidity, transparency and the absence of uniform standards. The Investment Manager believes that market participants often tend to lack the expertise and analytic tools to systematically and comprehensively analyze either primary or secondary market CLO tranches. The market for CLO tranches is also highly fragmented and, to date, many investors have had limited leverage in negotiating CLO terms, such as structure and fees. The Investment Manager believes that the Partnership may benefit from the Investment Manager's ability to use its CLO management expertise, proprietary analytics and direct market access to assess value opportunities and effectively execute transactions. In the primary market, the Investment Manager will seek situations where it can influence structures, fees and timing of CLO transactions to achieve favorable terms not directly available to other investors.

The Investment Manager generally intends to invest the Partnership's gross assets in CLO debt that is diversified across maturities, underlying assets and managers. In addition to implementing its rigorous investment process and utilizing proprietary analytical tools to evaluate and select investments for the Partnership, the Investment Manager intends to use its market knowledge and industry position to seek to add value by addressing what it believes may be material inefficiencies of the existing CLO execution process. For example, within the primary new issuance market, the Investment Manager will look to invest in CLOs where it can leverage its expertise and market relationships to achieve the timing, structural and financial terms especially advantageous to the Partnership's investments. In addition, the Investment Manager will look to assess value dislocations of CLOs and other structured investments within the secondary market, as the Investment Manager believes structured products markets may have inherent inefficiencies that often cause significant differentials between intrinsic value and market value.

The Investment Manager will seek to achieve the following specific objectives:

- seek consistent above-average returns while minimizing volatility;
- access and initiate deal flow directly and through arrangements with underwriters and broker-dealers;
- take advantage of value dislocations in the secondary market;
- reduce risk through efficient, cost-effective transaction execution;
- add value through optimization of terms and structures;
- and leverage expertise in CLO investments and management to create a well-balanced, broadly diversified portfolio.

Structural Optimization and Transaction Terms with Respect to CLOs

Typically, CLO securities are offered to investors after the structure has been developed and agreed to by the collateral manager, underwriter and rating agencies. Investors have limited ability to effect significant changes to the structure and/or the key terms. Also, very few investors have the expertise or the tools to model and analyze proposed CLO investments; most are believed to rely on the underwriters to provide analytical support. Proactive, early involvement with select managers and underwriters, and significant investment participation, are expected to enable the Investment Manager to use its structuring capability and proprietary analytics to identify and achieve desirable structural features and transaction terms.

CLO Investment Process

General. The investment process used by the Investment Manager to evaluate potential CLO tranches will generally employ a combination of rigorous qualitative (manager, portfolio and legal considerations) and quantitative (structural, cash-flow, collateral valuation and pricing/relative value) analysis. Among other resources, the Investment Manager intends to use its proprietary quantitative analytical tool, Rand CLO Insight, as well as INTEX data service, Wall Street Analytics, Moody's Investor Services and Wall Street Office in connection with gathering information with respect to CLO investments by the Partnership.

Asset/Portfolio Assessment. The Investment Manager believes the most critical component of investing in CLO securities is the ability to quickly and effectively understand the characteristics of the CLO's underlying collateral, primarily consisting of corporate Bank Loans. The Investment Manager believes that its capability to develop accurate, up-to-date portfolio quality indicators may be critical to the foregoing task because these indicators are key inputs for the subsequent quantitative component of the investment analysis.

Further assessment by the Investment Manager will generally include additional portfolio-level analysis. The Investment Manager intends to consider, among other factors, the following key parameters of a CLO:

- historical par loss due to defaults and distressed sales as a key indicator of prior portfolio performance;
- defaulted securities currently held in the portfolio and prospective recovery levels for such securities;
- aggregate ratings of the performing securities (statistically, lower ratings generally indicate higher probability of default);
- liquidity as measured by the average facility size and percent of the portfolio with private credit ratings, among other metrics;
- projected future portfolio par loss, based on the security-level analysis and the resulting ratings adjustments;
- portfolio market value and portfolio segment trading at distressed prices as another indicator of future portfolio performance; and
- degree of industry and issuer diversification/concentration.

Manager Evaluation. The underlying CLO manager is responsible for selecting the assets and for managing them within the ratings-constrained environment according to the specified procedures and limitations that exist in each CLO's indenture. The review of the

CLO manager will generally encompass historical performance, investment management and structured finance expertise, quality and size of the investment team, co-investment history, investment philosophy and credit process, platform scalability, systems and back office operations. The review process will generally focus on evaluating the manager's performance and capabilities in the following areas:

- Past CLO performance, including par erosion through defaults, recoveries and trading history (gains/losses) of current and prior CLO managed;
- proficiency in the underlying asset classes, integrity of the investment process, investment criteria, decision-making and monitoring processes;
- consistency of historic performance, with an emphasis on performance during a credit down cycle;
- knowledge of CLO structures and the ability to manage the assets within the limitations imposed by indenture constraints;
- upgrade and downgrade history of its prior transactions;
- key personnel, retention arrangements and succession plan, and experience and depth of the entire investment team; and
- technical self-reliance, such as degree of independence from trustee/underwriter to assess impact of potential trades, indenture interpretation, etc.; and
- sophistication of systems, compliance procedures and reporting capabilities.

Structural Considerations. A review of the CLO structure will generally focus on the indenture (the governing document of the transaction) provisions that determine which assets may be purchased by the vehicle, as well as the mechanics behind the cash-flow "waterfall" (i.e., priority of payments). The cash-flow "waterfall" determines the order in which cash disbursements are made on each payment date according to the performance of the transaction. In the event of performance deterioration, cash flow may be diverted from lower tranches of the capital structure to prepay the senior or mezzanine tranches, reduce the leverage, and, if possible, restore compliance with the appropriate tests.

Further structural analysis by the Investment Manager includes a thorough review of indenture provisions which generally include:

- asset eligibility – the types and required features of the assets permitted to be purchased for the CLO (e.g., loans, rating requirements, maturity restrictions, interest payment frequency, etc.);

- "basket" limitations – percentage limits on securities bearing certain ratings, maximum permitted percentages for certain asset types (e.g., synthetic instruments, structured notes, zero-coupon bonds, etc.);

- trading restrictions – the level of discretionary trading allowed, rules for trading and how they may change in the event that the liabilities are downgraded;

- reinvestment criteria – the rules that govern reinvestment of principal proceeds generated from sales, maturities, calls and tenders during and after the reinvestment period;

- priority of payments – structure of the CLO's cash-flow waterfall and cash-flow diversion mechanisms (the over-collateralization and interest coverage tests); if earlier cash-flow diversion results in deferral of interest payments to certain tranches, these rules determine how deferred interest gets paid when the funds are available and what the protections or risks are for each investor in the CLO;

- management fee structure – senior, subordinate, incentive, contingent fees; generally, proper fee structure is key in aligning the manager's interest with various note holders; and an equity investor would favor a structure that compensates the manager for managing the transaction while providing an incentive to maintain equity distributions without sacrificing the future health of the transaction;

- collateral quality tests haircuts – if a certain "basket" is larger than its limitation, overcollateralization tests may be reduced by the amount above the limitation;

- analysis of the hedging strategy and of the hedge structure is important in evaluating implications of any mismatch between fixed rate assets and floating rate liabilities; the hedge instrument is valued and the effectiveness of the strategy is evaluated based on various criteria, such as where the termination payments are positioned in the waterfall, whether payments are made upfront or over time and how the notional amount changes over time; improper hedging can prove very costly to investors at all levels of the capital structure;

- governance provisions and voting rights – the rights of investors in different tranches of the capital structure to effect changes (e.g., manager removal, collateral disposition, note redemption, etc.);

- events of default – definitions and implications for each tranche holder; and

- reporting – the frequency and detail provided to the investors updating the portfolio and liability performance and composition.

Legal/Other Issue Analysis. Legal review will generally be an integral part of the Investment Manager's overall investment process with the goal of understanding and interpreting the numerous documents that govern a typical CLO. Reviewed documents and legal issues may include the following:

- the indenture – the CLO's governing document that acts as a "roadmap" for the entire transaction;

- legal opinions – these provide guidance as to tax treatment and other legal areas that may impact the management of the transaction;

- the management/advisory agreements – these dictate the role, rights and responsibilities of the manager;

- legal structure of equity securities – the structure of the preference shares or income notes may have an impact on the tax treatment;

- financial guaranty agreements – a financial guarantor is typically a monoline insurance company which in the past may have given its rating, usually Aaa/AAA to the senior class of notes to guarantee payments of principal and interest in exchange for a fee and additional rights within the CLO; such rights are important to evaluate as they may have an impact on the rights of the equity investors;

- ratings – agency, analyst, location, timing and basic assumptions used to arrive at the ratings; and

- offering memoranda, deal pitch books and other marketing materials.

Detailed Quantitative Analysis Using Proprietary Analytics. A detailed cash flow analysis is crucial in determining the return characteristics and profile of the tranche under consideration. The cash flows will generally be stress-tested using multiple economic scenarios and assumptions to assess the risk and return profile of the proposed CLO investment. Among other items, the quantitative analysis will also include the following:

- a review of the portfolio market value, the resulting market value coverage of the proposed CLO investment, and its change over time;

- the likelihood of future cash flows being diverted or interrupted, as well as the potential severity in the event that it happens;

- analysis of par value and interest coverage cushions. Cushions in the overcollateralization and the interest coverage tests may indicate the level of losses that can be sustained before a potential cash flow diversion; and

- analysis of sector and issuer concentrations, largest exposures and level of diversification.

Final Screen/ Pricing. The Investment Manager's investment decision will generally be based on the qualitative and quantitative analysis of each investment and on the correlation between the proposed investment and the existing holdings in an effort to ensure an appropriate level of diversification. The Investment Manager will generally compare the risk and return characteristics of the proposed CLO investment against similar CLO bond trade prices in its proprietary pricing database. The combined assessment of the underlying portfolio characteristics, structural considerations, legal and cash flow scenario analyses will generally be compared with the relative value analysis to determine the value of the proposed CLO investment.

Leverage

The Investment Manager may cause the Partnership to undertake leverage. Leverage may take a variety of forms, including, but not limited to, the following: long-term loans, convertible notes and repurchase arrangements. Entering into short sales and certain types of derivative instruments may also increase the Partnership's use of leverage. Leverage arrangements used by the Partnership when financing is contingent on the market value of the financed assets may include those which may be subject to mark-to-market collateral or margin calls.

Important Notice

The foregoing description of the Partnership's investment program does not purport to be a complete explanation of all the asset classes or securities in which the Partnership may invest. In general, the Investment Manager intends to follow a flexible approach in order to place the Partnership in the best position to capitalize on opportunities in the financial markets. Accordingly, the Investment Manager may employ other strategies and may take advantage of opportunities in diverse asset classes if they meet the Investment Manager's standards of investment merit.

DEVELOPMENT AND RISKS OF INVESTMENT MANAGER'S INVESTMENT STRATEGY

The development of an investment strategy is a continuous process, and the Partnership's investment strategy and methods may therefore be modified from time to time. The Partnership's investment methods are confidential, and the descriptions of them in this Memorandum are not exhaustive. The Partnership's investment strategies may differ from those used by the Investment Manager and its affiliates with respect to other accounts they manage. Investment decisions require the exercise of judgment by the Investment Manager. The Investment Manager may, at times, decide not to make certain investments, thereby foregoing participation in price movements, which would have yielded profits or avoided losses. Limited Partners cannot be assured that the strategies or methods utilized by the Investment Manager will result in profitable investing for the Partnership.

The Partnership's investment program entails substantial risks, and there can be no assurance that its investment objectives will be achieved. The practices of options trading, short selling, the use of leverage and other investment techniques employed by the Partnership can, in certain circumstances, maximize the adverse impact to which the Partnership's investment portfolio may be subject. See "RISK FACTORS AND CONFLICTS OF INTEREST—Market Risks".

References herein to the Partnership shall be deemed to apply with respect to the Partnership's traded investments.

BROKERAGE ARRANGEMENTS

The Investment Manager is responsible for the placement of the portfolio transactions of the Partnership and the negotiation of any commissions paid on such transactions. Portfolio securities normally are purchased through brokers on securities exchanges or directly from the issuer or from an underwriter or market maker for the securities. Purchases of portfolio instruments through brokers involve a commission to the broker. Purchases of portfolio securities from dealers serving as market makers include the spread between the "bid" and the "ask" price. The Investment Manager will not commit to provide any level of brokerage business to any broker. The Investment Manager may utilize the services of one or more introducing brokers who will execute the Partnership's brokerage transactions through a broker or custodian who will clear the Partnership's transactions.

Securities transactions for the Partnership are executed through brokers selected by the Investment Manager in its sole discretion and without the consent of the Partnership. In placing portfolio transactions, the Investment Manager will seek to obtain the best execution for the Partnership, taking into account the following factors: the ability to effect prompt and reliable executions at favorable prices (including the applicable dealer spread or commission, if any); the operational efficiency with which transactions are effected and the efficiency of error resolution, taking into account the size of order and difficulty of execution; the financial strength, integrity and stability of the broker; special execution capabilities; reputation; clearance, settlement, on-line pricing, block trading and block positioning capabilities; willingness to execute related or unrelated difficult transactions in the future; order of call; online access to computerized data regarding clients' accounts; performance measurement data; the quality, comprehensiveness and frequency of available brokerage and research products and services considered to be of value; the availability of stocks to borrow for short trades; and the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria.

SOFT DOLLAR ARRANGEMENTS

The term "soft dollars" refers to commissions accumulated by brokers based on an investment manager's transactions, on behalf of its clients, which may be used by the investment manager to acquire various products or services. The use of client commissions, known as soft dollars, to pay for these products and services, including research and brokerage products and services, presents investment managers with potential conflicts of interest and may give incentives for investment managers to use certain brokers without regard to their obligations to their clients.

The Investment Manager may use soft dollars generated by the Partnership's brokerage transactions to pay for brokerage and research products and services that fall within the safe harbor afforded by Section 28(e) of the Exchange Act ("**Section 28(e)**"). Section 28(e) provides a "safe harbor" to investment managers who use soft dollars to obtain investment research and brokerage products and services. In order to qualify for the safe harbor, the products or services must provide assistance to the investment manager in the performance of its investment decision-making responsibilities, or must relate to the execution, clearance or settlement of a trade.

REFERRAL OF INVESTORS AND SALES CHARGES

The Investment Manager may direct some Partnership brokerage business to brokers who refer prospective investors to the Partnership. Because such referrals, if any, are likely to benefit the Investment Manager and its affiliates but will provide an insignificant (if any)

benefit to Limited Partners, the Investment Manager will have a conflict of interest with the Partnership when allocating Partnership brokerage business to a broker who has referred investors to the Partnership. To prevent Partnership brokerage commissions from being used to pay investor referral fees, the Investment Manager will not allocate Partnership brokerage business to a referring broker unless the Investment Manager determines in good faith that the commissions payable to such broker are reasonable in relation to those available from non-referring brokers offering services of substantially equal value to the Partnership.

The General Partner and/or the Investment Manager may sell Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the capital contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. If a Limited Partner is introduced to the Partnership through a broker-dealer that is not affiliated with the Investment Manager and/or the General Partner, the arrangement, if any, with such broker-dealer will be disclosed to, and acknowledged by, such Limited Partner.

ALLOCATION OF INVESTMENT OPPORTUNITIES

The Investment Manager may at times determine that certain investments will be suitable for acquisition by the Partnership and by other accounts managed by the Investment Manager, including Affiliated Funds, the Investment Manager's own accounts or accounts of an affiliate. If that occurs, and the Investment Manager is not able to acquire the desired aggregate amount of such investments on terms and conditions which the Investment Manager deems advisable, the Investment Manager will endeavor to allocate in good faith the limited amount of such investments acquired among the various accounts for which the Investment Manager considers them to be suitable. The Investment Manager may make such allocations among the accounts in any manner which it considers to be fair under the circumstances, including, but not limited to, allocations based on relative account sizes, the degree of risk involved in the investments acquired, and the extent to which such investments are consistent with the investment policies and strategies of the various accounts involved.

AGGREGATION OF ORDERS

The Investment Manager may aggregate purchase and sale orders of investments held by the Partnership with similar orders being made simultaneously for other accounts or entities if, in the Investment Manager's reasonable judgment, such aggregation is reasonably likely to result in an overall economic benefit to the Partnership based on an evaluation that the Partnership will be benefited by relatively better purchase or sale prices, lower commission expenses or beneficial timing of transactions, or a combination of these and other factors.

In some instances, the purchase or sale of investments for the Partnership may be effected simultaneously with the purchase or sale of like investments for other accounts or entities. Such transactions may be made at slightly different prices, due to the volume of investments purchased or sold. In such event, the average price of all investments purchased or sold in such transactions may be determined, at the Investment Manager's sole discretion, and the Partnership may be charged or credited, as the case may be, with the average transaction price.

TRADE ERROR POLICY

The Investment Manager has internal controls in place to prevent trade errors from occurring. On those occasions when such an error nonetheless occurs, the Investment

Manager will use reasonable efforts to correct the error. If the error cannot be corrected, the Investment Manager does not intend to make any adjustment, regardless of whether the error works to the benefit or detriment of the Partnership. The Investment Manager will endeavor to maintain a record of each trade error, including information about the trade and how such error was corrected or attempted to be corrected. The Partnership (and not the General Partner, the Investment Manager or any of the Investment Manager Affiliates) will be responsible for any losses resulting from trading errors and similar human errors, unless such errors are due to gross negligence or willful misconduct, as determined by a final, non-appealable decision of a court of competent jurisdiction.

An investment in the Partnership (and any Series thereof) involves significant risks not associated with other investment vehicles and is suitable only for persons of adequate financial means who have no need for liquidity in this investment. There can be no assurances or guarantees that: (i) the Partnership's (or any Series') investment strategy will prove successful, or (ii) investors will not lose all or a portion of their investment in the Partnership (or any particular Series).

References herein to the Partnership shall include, where appropriate: (i) each Series of the Partnership; (ii) the instances whereby the Investment Manager directly invests the Partnership's assets, and (iii) the Partnership's investments through Portfolio Funds.

In addition, to the extent relevant, you should also read the offering and governing documents of the PE Portfolio Fund in which the Partnership intends to initially invest on behalf of the initial Limited Partners, which are available from the Partnership upon request.

You should consider the Partnership as a supplement to an overall investment program and should only invest if you are willing to undertake the risks involved. In addition, investors who are subject to income tax should be aware that an investment in the Partnership (or any Series thereof) is likely (if the Partnership (or such Series) is successful) to create taxable income or tax liabilities in excess of cash distributions to pay such liabilities. You should therefore bear in mind the following risk factors and conflicts of interest before purchasing an Interest:

PARTNERSHIP RISKS

Dependence Upon the General Partner, the Investment Manager and the Principal; No Participation in Management. The Partnership's success will depend on the management of the General Partner and the Investment Manager and on the skill and acumen of the Principal. If the Principal should cease to participate in the Partnership's business, the Partnership's ability to select attractive investments and manage its portfolio could be severely impaired.

As a Limited Partner, you should be aware that you will have no right to participate in the management of the Partnership, and you will have no opportunity to select or evaluate any of the Partnership's investments or strategies. Accordingly, you should not invest in the Partnership unless you are willing to entrust all aspects of the management of the Partnership and its investments to the discretion of the General Partner and the Investment Manager.

Limited or Lack of Operating History. Each of the Partnership, the Investment Manager and the General Partner are recently-formed entities that have no operating history upon which prospective investors may evaluate the Partnership's future performance. Although the Principal has experience with investments of the type the Partnership intends to make, any prior performance of the Principal (or the Investment Manager Affiliates) is not necessarily indicative of results that he may achieve with respect to the Partnership. As such, there can be no assurances that the Partnership will be able to implement its investment strategy or achieve its investment objective. In addition, any prior performance of the Principal or the Investment Manager Affiliates is not indicative of the results each may achieve for the Partnership in the future.

Reliance on the Shared Services Provider. The Investment Manager relies on the Shared Services Provider to provide certain administrative and other services. In the event that the Shared Services Agreement is terminated for any reason, the Investment Manager may not be able to engage another third party to provide such services and may not have the resources to continue advising the Partnership without the provision of such services by the Shared Services Provider. In addition, the Shared Services Provider may be (but, as of the date hereof, is not) engaged by the Partnership to act as the Partnership's Administrator, pursuant to a separate Administration Agreement.

Limited Liquidity of Interests. An investment in the Partnership involves substantial restrictions on liquidity, and its Interests are not freely transferable. There is no market for the Interests in the Partnership, and no market is expected to develop. Additionally, transfers are subject to the consent of the General Partner, which consent may be granted or withheld in the General Partner's sole discretion. Consequently, Limited Partners will be unable to liquidate their Interests except by withdrawing from the Partnership in accordance with the Partnership Agreement. Limited Partners may be unable to liquidate their investment promptly in the event of an emergency or for any other reason. Although a Limited Partner may attempt to increase its liquidity by borrowing from a bank or other institution, Interests may not readily be accepted as collateral for a loan. In addition, the transfer of an Interest as collateral or otherwise to achieve liquidity may result in adverse tax consequences to the transferor.

A portion of the Partnership's assets may be invested in securities and other financial instruments or obligations for which no market exists and/or which are restricted as to their transferability under federal or state securities laws. Such investments may be segregated from other Partnership assets and carried in Side Pocket Accounts, which are subject to restrictions on withdrawals. Because of the absence of any trading market for these investments, the Partnership may take longer to liquidate these positions than would be the case for publicly traded securities. Although these securities may be resold in privately negotiated transactions, the prices realized on these sales could be less than those originally paid by the Partnership. Further, companies whose securities are not publicly traded may not be subject to public disclosure and other investor protection requirements applicable to publicly traded securities.

Lack of Registration. The Interests have neither been registered under the Securities Act nor under the securities laws of any state and, therefore, are subject to transfer restrictions. In connection with your purchase of an Interest, you must represent that you are purchasing the Interest for investment purposes only and not with a view toward resale or distribution. Neither the Partnership nor the General Partner has any plans or assumed any obligation to register the Interests. Accordingly, the Interests may not be transferred without documentation acceptable to the General Partner, which may include an opinion of counsel to the Partnership that the transfer will not involve a violation of the registration requirements of the Securities Act or require registration by the Partnership under the Investment Company Act. These restrictions on transfer are in addition to those found in the Partnership Agreement. Ordinarily, this means that transfers will be restricted to instances of death, gift or passage by operation of law.

Withdrawal of Capital. A Limited Partner's ability to withdraw funds from the Partnership is restricted in accordance with the withdrawal provisions contained in this Memorandum under "SUMMARY OF OFFERING AND PARTNERSHIP TERMS—Withdrawals" and the withdrawal provisions contained in the Partnership Agreement. In addition, substantial withdrawals by investors within a short period of time could require the Partnership to liquidate securities positions and other investments more rapidly than would otherwise be desirable, possibly reducing the value of the Partnership's assets and/or disrupting the Partnership's investment strategy. Reduction in the size of the Partnership could make it more difficult to generate a positive return or to recoup losses due to, among other things, reductions in the Partnership's ability to take advantage of particular investment opportunities or decreases in the ratio of its income to its expenses.

In addition to the above limitations on withdrawals, all withdrawals by Limited Partners will be subject to any limitations on withdrawals imposed by the Portfolio Funds.

For the avoidance of doubt, (i) there will be no limitation on the percentage of the Partnership's portfolio that may be carried in Side Pocket Accounts; and (ii) any investment made by Series 1 into the series of the PE Portfolio Fund that corresponds to the latter fund's investment made in the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely. In addition, because of the absence of any trading market Illiquid Investments, the Partnership may take longer to liquidate these positions than would be the case for publicly traded securities. Each of the foregoing may impact a Limited Partner's ability to withdraw.

Concentration of Investments. The Investment Manager implements its investment program in a manner which, in light of investment considerations, market risks and other factors, it believes will provide the best opportunity for attractive risk-adjusted returns in the value of the Partnership's assets. The Partnership Agreement does not formally limit the amount of the Partnership's assets that may be invested in a single company, security, country, industry, sector or asset class. In addition, the Partnership Agreement does not limit the amount of the Partnership's assets that may be invested in a single Portfolio Fund. The concentration of the Partnership's portfolio in any manner described above would subject the Partnership to a greater degree of risk with respect to the failure of one or a few investments, or with respect to economic downturns in relation to an individual industry or sector, or single company, security, country, industry, sector or asset class. See "—Regulatory and Tax Risks—Diversification" herein.

Operating Deficits. The expenses of operating the Partnership (including the Management Fee) may exceed its income, thereby requiring that the difference be paid out of the Partnership's capital, reducing the Partnership's investments and potential for profitability. In addition to the Partnership's own operating expenses, the Partnership will also bear its *pro rata* share of the operating expenses of the relevant Portfolio Fund. As such, the Partnership is subject to layering of operating expenses due to the expenses charged by the managers and the Portfolio Funds.

No Distributions. The General Partner does not intend to make distributions to the Limited Partners, but intends instead to reinvest substantially all Partnership income and gain, if any. Cash that might otherwise be available for distribution will also be reduced by payment of Partnership obligations, payment of Partnership expenses (including fees payable and expense reimbursements to the General Partner) and establishment of appropriate reserves. As a result, if the Partnership is profitable, Limited Partners in all likelihood will be credited with Partnership net income, and will incur the consequent income tax liability (to the extent that they are subject to income tax), even though Limited Partners receive little or no Partnership distributions. In addition, notwithstanding anything to the contrary herein, the General Partner may limit withdrawals in order to ensure that the Partnership meets the diversification requirements applicable to insurance-dedicated investment funds.

Investment Expenses. The investment expenses (e.g., expenses related to the investment and custody of the Partnership's assets, such as brokerage commissions, custodial fees and other trading and investment charges and fees) as well as other Partnership fees may, in the aggregate, constitute a high percentage relative to other investment entities. The Partnership will bear these costs regardless of its profitability.

Cross-Series Liability. Section 17-218 of the Delaware Act provides that limited partnerships can be established in separate series in a manner that the liabilities and obligations incurred with respect to any series are only enforceable against the assets of such series, and not against the assets of the limited partnership generally or any other series. The relevant provisions of the Delaware Act provide the legal requirements for how limited partnerships can be established and operated to maintain this segregation. The statute includes such requirements as the maintenance of separate books and records for each series, and separation of the assets of each series from other series. Despite these statutory provisions, there may be instances where the assets of a particular Series may be exposed to the liabilities of one or more other Series. For example, there may be certain counterparties which resist entering into a contract with a particular Series and insist that one or more other Series, or the Partnership itself acting on behalf of the Series together, enter into such contract.

Supervision of Trading Operations. The Investment Manager, with assistance from its brokerage and clearing firms, intends to supervise and monitor trading activity in the Partnership's account to ensure compliance with the Partnership's objectives. Despite the Investment Manager's efforts, however, there is a risk that unauthorized or otherwise inappropriate trading activity may occur in the Partnership account.

Impact of Side Letters. The Partnership, the General Partner and/or the Investment

Manager may from time to time enter into Side Letters with one or more Limited Partners that provide such Limited Partner(s) with additional and/or different rights (including, without limitation, with respect to access to information, minimum investment amounts and liquidity terms) than such Limited Partner(s) have pursuant to this Memorandum and the Partnership Agreement. Neither the General Partner nor the Investment Manager will be required to notify any or all of the other Limited Partners of any such written agreements or any of the rights and/or terms or provisions thereof, nor will the General Partner or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other Limited Partners. Specifically, certain Insurance Company Limited Partners may have additional withdrawal rights not offered to other Limited Partners. The other Limited Partners will have no recourse against the Partnership, the General Partner, the Investment Manager and/or any of their respective affiliates in the event that certain Limited Partners receive additional and/or different rights and/or terms as a result of such Side Letters.

Broad Discretionary Power to Choose Investments and Strategies. The Investment Management Agreement gives the Investment Manager broad discretionary power to decide what investments the Partnership will make and what strategies it will use. While the Investment Manager currently intends to use the strategies described in "INVESTMENT PROGRAM", it is not obligated to do so, and it may choose any other investments and strategies that it believes are advisable.

Limitation of Liability and Indemnification of the General Partner, the Investment Manager and Affiliates. The Partnership Agreement provides that none of the General Partner, the Investment Manager, the Principal or any of the Investment Manager Affiliates will be liable to the Partnership or the Limited Partners for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. The Partnership (but not the Limited Partners individually) is obligated to indemnify the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates (which, for purposes of this indemnity, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any of them in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided* that such indemnity will not extend to conduct determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. The Investment Management Agreement also provides similar protections to the Investment Manager. Therefore, a Limited Partner may have a more limited right of action against the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates than a Limited Partner would have had absent these provisions in the Partnership Agreement and the Investment Management Agreement. **It is the policy of the SEC that indemnification for violations of securities laws is against public policy and therefore unenforceable.**

No Minimum Size of Partnership. The Partnership may begin or continue operations without attaining or maintaining any particular level of capitalization. At low asset levels, the Partnership may be unable to make its investments as fully as would otherwise be desirable or to take advantage of potential economies of scale, including the ability to obtain the most timely and valuable research and trading information from securities brokers. It is possible that even if the Partnership operates for a period with substantial capital, investors' withdrawals could diminish the Partnership assets to a level that does not permit the most efficient and effective implementation of the Partnership's investment program. As a result of losses or withdrawals, the Partnership may not have sufficient capital to diversify its investments to the extent desired or currently contemplated by the Investment Manager.

Portfolio Valuation. Valuation of the Partnership's portfolio, which will affect the amount of the Management Fee, involves uncertainties and determinations based on judgments.

Third-party pricing information may, at times, not be available regarding certain of the Partnership's investments. A disruption in the secondary markets for the Partnership's investments may limit the ability of the Partnership to obtain accurate market quotations for purposes of valuing its investments. In addition, material events occurring after the close of a principal market upon which a portion of the investments of the Partnership are traded may require it to make a determination of the effect of a material event on the value of the investments traded on the market for purposes of determining the value of the Partnership's investments on a valuation date. Further, because of the overall size and concentrations in particular markets and maturities of positions that may be held by the Partnership from time to time, the liquidation values of the Partnership's securities and other investments may differ significantly from the interim valuations of these investments derived from the valuation methods described herein. Moreover, because of the inherent uncertainty of valuing an illiquid security, the quoted valuation may be higher than the actual final liquidation value, and these differences could be material. If the Partnership's valuation should prove to be incorrect, the value of the Partnership's investments could be adversely affected.

Liability of a Limited Partner for the Return of Capital Contributions. If the Partnership should become insolvent, Limited Partner may be obligated to return all or a portion of any distributions (including withdrawal proceeds) received from the Partnership in an amount up to its aggregate capital contributions (including any income or gains thereon) to the Partnership in order to pay such Limited Partner's *pro rata* share of any Partnership liabilities that arose while such Limited Partner held Interests.

Under the Delaware Act, when a Limited Partner receives a return of all or any part of such Limited Partner's capital contribution, the Limited Partner may be liable to the Partnership for any sum, not in excess of such return of capital (together with interest), if at the time of such distribution the Limited Partner knew that the Partnership was prohibited from making such distribution pursuant to the Delaware Act.

Delayed Schedule K-1s. The General Partner will endeavor to provide a Schedule K-1 to each Limited Partner for any given calendar year prior to April 15 of the following year. In addition, the Partnership will first have to receive a Schedule K-1 from each Portfolio Fund. In the event that the Schedule K-1 is not available by such date, a Limited Partner may have to request an extension of time to file or may have to pay taxes based on an estimated amount.

Lack of Insurance. The assets of the Partnership are not insured by any government or private insurer, except to the extent portions may be deposited in bank accounts insured by the United States Federal Deposit Insurance Corporation or with brokers insured by the Securities Investor Protection Corporation and such deposits and securities are subject to such insurance coverage (which, in any event, is limited in amount). Therefore, in the event of the insolvency of a depository or custodian, the Partnership may be unable to recover all of its funds or the value of its securities so deposited.

Forward-Looking Statements; Opinions. Statements contained in this Memorandum that are not historical facts are based on current expectations, estimates, projections, opinions and/or beliefs of the Partnership. Such statements involve known and unknown risks, uncertainties and other factors, and undue reliance should not be placed thereon. Moreover, certain information contained in this Memorandum constitutes "forward-looking" statements, which can be identified by the use of forward-looking terminology, such as "may", "will", "seek", "should", "expect", "anticipate", "project", "estimate", "intend", "continue" or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those set forth herein, actual events or results or the actual performance of the Partnership may differ materially from those reflected or contemplated in such forward-looking statements.

MARKET RISKS

General

Competition Generally. The securities industry and the varied strategies and techniques

to be engaged in by the Investment Manager are extremely competitive and each involves a degree of risk. The Partnership will compete with firms, including many of the larger securities and investment banking firms, which have substantially greater financial resources and research staffs. Further, lower fees for comparable services may be available from these or other firms.

Market Volatility. The profitability of the Partnership substantially depends upon the Investment Manager correctly assessing the future price movements of bonds, stocks, options on stocks, and other financial instruments, and the movements of interest rates. The Partnership cannot guarantee that the Investment Manager will be successful in accurately predicting those prices and interest rate movements.

Partnership's Investment Activities. The Partnership's investment activities involve a significant degree of risk. The performance of any investment is subject to numerous factors which are neither within the control of nor predictable by the Investment Manager. Such factors include a wide range of economic, political, competitive, technological and other conditions (including natural disasters, acts of terrorism and war) that may affect investments in general or specific industries or companies. The securities markets may be volatile, which may adversely affect the ability of the Partnership to realize profits. As a result of the nature of the Partnership's investing activities, it is possible that the Partnership's financial performance may fluctuate substantially over time and from period to period.

Terrorist Actions. There is a risk of terrorist attacks on the United States and elsewhere causing significant loss of life and property damage and disruptions in the global market. Economic and diplomatic sanctions may be in place or imposed on certain states and military action may be commenced. The impact of such events is unclear, but could have a material effect on general economic conditions and market liquidity.

Unforeseen Events. The Partnership may be adversely affected by unforeseen events involving such matters as changes in interest rates or the credit status of an issuer, forced withdrawals of securities or acquisition proposals, break-up of planned mergers, unexpected changes in relative value, short squeezes, inability to short stock or changes in tax treatment.

Potential Cybersecurity Breaches and Identity Theft. The Investment Manager relies, to a certain extent, on the use of information technology. The Investment Manager's information and technology systems may be vulnerable to damage and/or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by its professionals, power outages, and/or catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. Although the Investment Manager has implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time and/or cease to function properly, the Investment Manager and/or the Partnership may have to make a significant investment to fix or replace them. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Investment Manager's and/or the Partnership's operations and may result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors (and the beneficial owners of investors). Such a failure could harm the Investment Manager's and/or the Partnership's reputation, subject any such entity and their respective affiliates to legal claims and/or otherwise affect their business and financial performance.

Long-Biased Investment Program. The Investment Manager expects that its strategy with respect to the Partnership will have a long bias. Therefore, any decline in the overall market may result in a decline in the value of the Partnership's assets.

Market Liquidity and Leverage. The Partnership may be adversely affected by a decrease in market liquidity for the instruments in which it invests which may impair the Partnership's ability to adjust its positions. The size of the Partnership's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in

overall market leverage, deleveraging as a consequence of a decision by the brokers and/or custodians, or other counterparties with which the Partnership enters into repurchase/reverse repurchase agreements or derivative transactions, to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Partnership's portfolio.

Material Non-Public Information. By reason of their responsibilities in connection with other activities of the Investment Manager and/or its affiliates, the Principal or employees of the Investment Manager and/or its affiliates may acquire confidential or material non-public information or be restricted from initiating transactions in certain securities. The Partnership will not be free to act upon any such information. Due to these restrictions, the Partnership may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it otherwise might have sold.

Accuracy of Public Information. The Investment Manager may select investments for the Partnership, in part, on the basis of information and data filed by issuers with various government regulators or made directly available to the Investment Manager by the issuers or through sources other than the issuers. Although the Investment Manager evaluates certain such information and data and sometimes seeks independent corroboration when the Investment Manager considers it is appropriate and when it is reasonably available, the Investment Manager is not in a position to confirm the completeness, genuineness or accuracy of such information and data, and in some cases, complete and accurate information is not available. Investments may not perform as expected if information is inaccurate.

Directorships on Boards of Portfolio Companies. The principals and other members and employees of the Investment Manager or its designees may serve as directors of companies the securities of which are purchased or sold on behalf of the Partnership and may be compensated for such service. In the event that material non-public information obtained with respect to such companies becomes subject to trading restrictions pursuant to the internal trading policies of such companies or as a result of applicable law or regulations, the Partnership may be prohibited for a period of time from purchasing or selling the securities of such companies, which prohibition may have an adverse effect on the Partnership.

Short-Swing Liability and Other Limitations. From time to time, the Partnership, acting alone or as part of a group, may acquire beneficial ownership of more than 10% of a certain class of securities of a public company, or may place a director on the board of directors of such a company. As a result, under Section 16 of the Exchange Act, the Partnership may be subject to certain additional reporting requirements and may be required to disgorge certain short-swing profits arising from purchases and sales of such securities. In addition, in such circumstances the Partnership will be prohibited from entering into a short position in such issuer's securities, and therefore limited in its ability to hedge such investments.

Disruptions or Inability to Trade Due to a Failure to Receive Timely and Accurate Market Data from Third-Party Vendors. The Investment Manager's strategy may depend on the receipt of timely and accurate market data from third-party vendors. Any failure to receive such data in a timely manner or the receipt of inaccurate data for any reason could disrupt and adversely affect the Partnership's trading until such failure or inaccuracy is corrected.

Use of Automated Order Routing and Execution Systems Generally. The Investment Manager may use automated order routing and execution systems in its trading. Such systems are typically provided on an "as is" basis. Such systems may experience technical difficulties which may render them temporarily unavailable. In addition, such systems may fail to properly perform. Such failures may result in losses to the Partnership, for which losses the providers of such services have disclaimed all liability. In an effort to mitigate such risks, the Investment Manager intends to closely monitor trades executed through automated order routing and execution systems and the operation of the systems themselves.

Electronic Trading Facilities. The Partnership may make use of electronic trading facilities (including ECNs), which are generally supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Trading on an electronic trading system (including an ECN) may differ not only from trading in an open-outcry market or telephonic market but also from trading on other electronic trading systems. The Partnership, in undertaking transactions on an electronic trading system, will be exposed to risk associated with the system including the failure of hardware and software. The result of any system failure may be that the Partnership's order is either not executed according to its instructions or is not executed at all. The Partnership's ability to limit or recover certain losses may be subject to limits on liability imposed by, without limitation, foreign or domestic law or regulation, the Partnership's own or its broker's internet service provider, other systems providers, market factors, foreign or domestic banking or other market regulations and/or telephonic or other communications providers, foreign or domestic.

Technology Risk. The Investment Manager's investment strategy may rely on the use of proprietary and non-proprietary software, data and intellectual property. Any such reliance on this technology and data is subject to a number of important risks. First, the Partnership may be severely and adversely affected by the malfunction of the technology and/or data feed. For example, an unforeseeable software or hardware malfunction could occur, as a result of a virus or other outside force, or as result of a design flaw in the Partnership's system or in its continued implementation. In the past, occurrences of this nature to other funds have sometimes resulted in dramatically negative consequences for the portfolio of the related fund. In addition, changes in the market for publicly available data or in regulatory reporting requirements could cause a severe diminution in the data available for the technology to operate as designed. Such events can also have dramatically negative consequences for the Partnership. Furthermore, if any of the Partnership's software, hardware, data and/or other intellectual property is found to infringe on the rights of any third party, the Partnership could be severely and adversely affected.

Trading Errors. The Investment Manager's computerized trading systems rely on the ability of the Investment Manager's personnel to accurately process such systems' outputs and to use the proper trading orders, including stop-loss or limit orders, to execute the transactions called for by the systems. In addition, the Investment Manager relies on its staff to properly operate and maintain the computer and communication systems upon which the trading systems rely. The Investment Manager's systems are accordingly subject to human errors, including the failure to implement, or the inaccurate implementation of any of the Investment Manager's systems, in addition to errors in properly executing transactions. This could cause substantial losses on transactions, and any such losses could substantially and adversely affect the performance of the Partnership. See "BROKERAGE PRACTICES–Trade Error Policy" herein.

Co-Investments with Third Parties. The Partnership may co-invest with third parties through joint ventures or other entities. Such investments may involve risks in connection with such third- party involvement, including the possibility that a third-party co-venturer may have financial difficulties resulting in a negative impact on such investment, economic or business interests or goals that are inconsistent with those of the Partnership or be in a position to take (or block) action in a manner contrary to the Partnership's investment objectives. In those circumstances where such third parties involve a management group, such third parties may enter into compensation arrangements relating to such investments, including incentive compensation arrangements. Such compensation arrangements will reduce the returns to participants in the investments.

Other Investment Vehicles; Limited Recourse. The Investment Manager may allocate a portion of the Partnership's assets to pooled investment vehicles that may be managed by the Investment Manager or its affiliates or unaffiliated managers. Such investment vehicles may trade wholly-independently of one another and may at times hold economically offsetting positions. To the extent that such investment vehicles do, in fact, hold such positions, the Partnership, considered as a whole, may not achieve any gain or loss despite incurring expenses. Additionally, a creditor having a claim that relates to a

particular investment held by any such investment vehicle may be able to satisfy such claim against all assets of such investment vehicle, without regard to the participation rights of the Partnership and other investors of such investment vehicle in the assets of such investment vehicle.

Since the Partnership may not have full transparency with respect to the trading activities of such investment vehicles, it may be limited in its ability to hedge its exposure or to prevent concentration of its assets within the same issuer, asset or asset class, industry, section, strategy, currency, country or geographic region. Further, the Investment Manager may be limited with respect to its ability to monitor unaffiliated managers, including their adherence to their respective trading and risk guidelines (if such guidelines exist). Even in the event that such information may be available to the Partnership, the Partnership's investment in such investment vehicles may be "locked up" and subject to limitations on withdrawals, and in light of the broad exculpation and indemnification provisions typically contained in the governing documents of such investment vehicles, may have limited recourse against the managers of such investment vehicles.

Risks Associated with ETFs. The Partnership may invest in ETFs. ETFs represent an interest in a passively managed portfolio of securities and financial instruments selected to replicate a securities or financial instruments index. Unlike open-end mutual funds, the shares of ETFs are not purchased and redeemed by investors directly with the ETF, but instead are purchased and sold through broker-dealers in transactions on an exchange. Because ETF shares are traded on an exchange, they may trade at a discount from or a premium to the net asset value per share of the underlying portfolio of securities or financial instruments. In addition to bearing the risks related to investments in securities or financial instruments, investors in ETFs intended to replicate an index bear the risk that the ETFs performance may not correctly replicate the performance of the index. Investors in ETFs, closed-end funds and other investment companies bear a proportionate share of the expenses of those funds, including management fees, custodial and accounting costs, and other expenses. As such, the Partnership is subject to layering of such fees. Trading in ETF and closed-end fund shares also entails payment of brokerage commissions and other transaction costs.

Illiquid Securities. From time to time, the Partnership may invest in financial instruments that are not publicly traded. The Partnership may also invest in securities and other financial instruments that trade regularly but may be only thinly traded, either periodically or on an on-going basis. The Partnership may not be able to readily dispose of such financial instruments and, in some cases, may be contractually prohibited from disposing of such financial instruments for a specified period of time. Accordingly, the Partnership may be forced to sell its more liquid positions at a disadvantageous time, resulting in a greater percentage of the portfolio consisting of illiquid securities. In addition, the market prices, if any, for such financial instruments tend to be volatile, and the Partnership may not be able to sell them when it desires to do so or to realize what it perceives to be their fair value in the event of a sale. The sale of illiquid securities also often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Furthermore, there may be limited information available about the assets of such issuers of the financial instruments which may make valuation of such financial instruments difficult or uncertain. It also should be noted that, even those markets which the Investment Manager expects to be liquid can experience periods, possibly extended periods, of illiquidity.

Investments in Securities and Other Assets Believed to Be Undervalued. The Investment Manager's investment program contemplates that a portion of the Partnership's portfolio may be invested in securities and other assets that the Investment Manager believes to be undervalued. The identification of such investment opportunities is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. While such investments offer the opportunities for above-average capital appreciation, they also involve a high degree of financial risk and can result in substantial losses. Returns generated from the Partnership's investments may not adequately compensate for the business and financial risks assumed. The current economic conditions and any future major economic recession can severely disrupt the

markets for such investments and significantly impact their value. In addition, any such economic downturn can adversely affect the ability of the issuers of such obligations to repay principal and pay interest thereon and increase the incidence of default for such securities. Additionally, there can be no assurance that other investors will ever come to realize the value of some of these investments, and that they will ever increase in price. Furthermore, the Partnership may be forced to hold such investments for a substantial period of time before realizing their anticipated value. During this period, a portion of the Partnership's funds would be committed to the investments made, thus possibly preventing the Partnership from investing in other opportunities.

Short Sales. The Investment Manager's investment program contemplates that a portion of the Partnership's portfolio may be invested in selling securities short. Although the Investment Manager may sell short a variety of assets, it expects most short trades to be in equity securities. Short selling involves the sale of a security that the Partnership does not own and must borrow in order to make delivery in the hope of purchasing the same security at a later date at a lower price. In order to make delivery to the purchaser, the Partnership must borrow securities from a third-party lender. The Partnership subsequently returns the borrowed securities to the lender by delivering to the lender the securities it receives in the transaction or by purchasing securities in the open market. The Partnership must generally pledge cash with the lender equal to the market price of the borrowed securities. This deposit may be increased or decreased in accordance with changes in the market price of the borrowed securities. During the period in which the securities are borrowed, the lender typically retains its right to receive interest and dividends accruing to the securities. In exchange, in addition to lending the securities, the lender generally pays the Partnership a fee for the use of the Partnership's cash. This fee is based on prevailing interest rates, the availability of the particular security for borrowing and other market factors.

Theoretically, securities sold short are subject to unlimited risk of loss because there is no limit on the price that a security may appreciate before the short position is closed. In addition, the supply of securities that can be borrowed fluctuates from time to time. The Partnership may be subject to substantial losses if a security lender demands return of the lent securities and an alternative lending source cannot be found.

Small Companies. The Investment Manager may invest a portion of the Partnership's assets in small and/or unseasoned companies with small market capitalizations. While smaller companies generally have potential for rapid growth, they often involve higher risks because they may lack the management experience, financial resources, product diversification and competitive strength of larger companies. In addition, in many instances, the frequency and volume of their trading may be substantially less than is typical of larger companies. As a result, the securities of smaller companies may be subject to wider price fluctuations. When making large sales, the Partnership may have to sell portfolio holdings at discounts from quoted prices or may have to make a series of small sales over an extended period of time due to the lower trading volume of smaller company securities.

Leverage. When deemed appropriate by the Investment Manager and subject to applicable regulations, the Partnership will incur leverage in its investment program, whether directly through the use of borrowed funds, or indirectly through investment in certain types of financial instruments with inherent leverage, such as puts, calls and warrants, which may be purchased for a fraction of the price of the underlying securities while giving the purchaser the full benefit of movement in the market price of those underlying securities. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. To the extent that the Partnership purchases securities with borrowed funds, its net assets will tend to increase or decrease at a greater rate than if borrowed funds are not used. The level of interest rates generally, and the rates at which such funds may be borrowed in particular, could affect the operating results of the Partnership. If the interest expense on this leverage were to exceed the net return on the investments made with borrowed funds, the Partnership's use of leverage would result in a lower rate of return than if the Partnership were not leveraged.

If the amount of leverage which the Partnership may have outstanding at any one time is large in relation to its capital, fluctuations in the market value of the Partnership's portfolio will have disproportionately large effects in relation to the Partnership's capital and the possibilities for profit and the risk of loss will therefore be increased. Any investment gains made with the additional leverage will generally cause the Net Asset Value of the Partnership to rise more rapidly than would otherwise be the case. Conversely, if the investment performance of the leveraged capital fails to cover its cost to the Partnership, the Net Asset Value of the Partnership will generally decline faster than would otherwise be the case.

Certain of the Partnership's trading and investment activities in securities and other financial instruments may be subject to Federal Reserve Board margin requirements, which are computed each day. When the market value of a particular open position changes to a point where the margin on deposit does not satisfy maintenance margin requirements, a "margin call" on the customer is made. If the customer does not deposit additional funds with the broker to meet the margin call within a reasonable time, the customer's position may be closed out. In the event of a precipitous drop in the value of the assets managed by the Partnership, the Partnership might not be able to liquidate assets quickly enough to pay off the margin debt and might suffer mandatory liquidation of positions in a declining market at relatively low prices, incurring substantial losses. With respect to the Partnership's trading activities, the Partnership, and not the Limited Partners personally, will be subject to margin calls.

Overall, the use of leverage, while providing the opportunity for a higher return on investments, also increases the volatility of such investments and the risk of loss.

Options and Other Derivative Instruments. The Investment Manager may invest, from time to time, a portion of the Partnership's assets in options and derivative instruments, including buying and writing puts and calls on some of the securities held by the Partnership. The prices of many derivative instruments, including many options and swaps, are highly volatile. The value of options and swap agreements depend primarily upon the price of the securities, indexes, currencies or other instruments underlying them. Price movements of options contracts and payments pursuant to swap agreements are also influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. The Partnership is also subject to the risk of the failure of any of the exchanges on which its positions trade or of their clearinghouses or of counterparties. The cost of options is related, in part, to the degree of volatility of the underlying securities, currencies or other assets. Accordingly, options on highly volatile securities, currencies or other assets may be more expensive than options on other investments.

Put options and call options typically have similar structural characteristics and operational mechanics regardless of the underlying instrument or asset on which they are purchased or sold. A put option gives the purchaser of the option, upon payment of a premium, the right to sell, and the writer the obligation to buy, the underlying security, index, currency or other instrument or asset at the exercise price. A call option, upon payment of a premium, gives the purchaser of the option the right to buy, and the seller the obligation to sell, the underlying instrument or asset at the exercise price.

If a put or call option purchased by the Partnership were permitted to expire without being sold or exercised, the Partnership would lose the entire premium it paid for the option. The risk involved in writing a put option is that there could be a decrease in the market value of the underlying instrument or asset caused by rising interest rates or other factors. If this occurred, the option could be exercised and the underlying instrument or asset would then be sold to the Partnership at a higher price than its current market value. The risk involved in writing a call option is that there could be an increase in the market value of the underlying instrument or asset caused by declining interest rates or other factors. If this occurred, the option could be exercised and the underlying instrument or asset would then be sold by the Partnership at a lower price than its current market value.

Purchasing and writing put and call options and, in particular, writing "uncovered" options

are highly specialized activities and entail greater than ordinary investment risks. In particular, the writer of an uncovered call option assumes the risk of a theoretically unlimited increase in the market price of the underlying instrument or asset above the exercise price of the option. This risk is enhanced if the instrument or asset being sold short is highly volatile and there is a significant outstanding short interest. These conditions exist in the stocks of many companies. The instrument or asset necessary to satisfy the exercise of the call option may be unavailable for purchase except at much higher prices. Purchasing instruments or assets to satisfy the exercise of the call option can itself cause the price of the instruments or assets to rise further, sometimes by a significant amount, thereby exacerbating the loss. Accordingly, the sale of an uncovered call option could result in a loss by the Partnership of all or a substantial portion of its assets.

Swaps and certain options and other custom instruments are subject to the risk of non-performance by the counterparty, including risks relating to the financial soundness and creditworthiness of the counterparty.

Hedging Transactions. Investments in financial instruments such as options and interest rate swaps, caps and floors, and other derivatives are commonly utilized by investment funds to hedge against fluctuations in the relative values of its portfolio positions as a result of changes in currency exchange rates, interest rates and/or the equity markets or sectors thereof. Any hedging against a decline in the value of portfolio positions does not eliminate fluctuations in the values of portfolio positions or prevent losses if the values of such positions decline, but establishes other positions designed to gain from those same developments, thus moderating the decline in the portfolio positions' value. Such hedging transactions also limit the opportunity for gain if the value of the portfolio positions should increase. Moreover, it may not be possible for the Partnership to hedge against a fluctuation at a price sufficient to protect the Partnership's assets from the decline in value of the portfolio positions anticipated as a result of such fluctuations. For example, the cost of options is related, in part, to the degree of volatility of the underlying instruments or assets. Accordingly, options on highly volatile instruments or assets may be more expensive than options on other instruments or assets and of limited utility in hedging against fluctuations in their prices.

The Investment Manager is not obligated to establish hedges for portfolio positions and may not do so. To the extent that hedges are implemented, their success is dependent on the Investment Manager's ability to correctly predict movements in the direction of currency and interest rates and the equity markets or sectors thereof.

Market or Interest Rate Risk. The Partnership may, from time to time, invest in fixed income securities and instruments. The price of most fixed income securities move in the opposite direction of the change in interest rates. For example, as interest rates rise, the prices of fixed income securities fall. If the Partnership holds a fixed income security to maturity, the change in its price before maturity may have little impact on the Partnership's performance. However, if the Partnership has to sell the fixed income security before the maturity date, an increase in interest rates could result in a loss to the Partnership.

Callable Securities. Many bonds, including agency, corporate and municipal bonds, and mortgage-backed securities, sometimes contain a provision that allows the issuer to "call" (i.e., redeem) all or part of the issue before the bond's maturity date. The issuer usually retains this right to refinance the bond in the future if market interest rates decline below the coupon rate on the outstanding debt security. From the investor's perspective, there are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Partnership is exposed to reinvestment rate risk – the Partnership will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

Maturity Risk. In certain situations, the Partnership may purchase a bond of a given maturity as an alternative to another bond of a different maturity. Ordinarily, under these

circumstances, the Partnership will make an adjustment to account for the interest rate risk differential in the two bonds. This adjustment, however, makes an assumption about how the interest rates at different maturities will move. To the extent that the yield movements deviate from this assumption, there is a yield-curve or maturity risk. Another situation where yield-curve risk should be considered is in the analysis of bond swap transactions where the potential incremental returns are dependent entirely on the parallel shift assumption for the yield curve.

Inflation Risk. Inflation risk results from the variation in the value of cash flows from a fixed income security or instrument due to inflation, as measured in terms of purchasing power. For example, if the Partnership purchases a 5-year bond with a coupon rate of 5%, but the rate of inflation is 6%, then the purchasing power of the cash flow has declined. For all but inflation-linked bonds, adjustable bonds or floating rate bonds, the Partnership is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk.

Downgrades in Fixed Income Debt Securities. Unless required by applicable law, the Partnership is not required to sell or dispose of any debt security that either loses its rating or has its rating reduced after the Partnership purchases such security.

Investments in Non-U.S. Investments. From time to time, the Investment Manager may invest and trade a portion of the Partnership's assets in non-U.S. securities and other assets (through ADRs and otherwise), which will give rise to risks relating to political, social and economic developments abroad, as well as risks resulting from the differences between the regulations to which U.S. and non-U.S. issuers and markets are subject. Such risks may include:

- Political or social instability, the seizure by foreign governments of company assets, acts of war or terrorism, withholding taxes on dividends and interest, high or confiscatory tax levels, and limitations on the use or transfer of portfolio assets.
- Enforcing legal rights in some foreign countries is difficult, costly and slow, and there are sometimes special problems enforcing claims against foreign governments.
- Non-U.S. securities and other assets often trade in currencies other than the U.S. dollar, and the Partnership may directly hold foreign currencies and purchase and sell foreign currencies through forward exchange contracts. Changes in currency exchange rates will affect the Partnership's Net Asset Value, the value of dividends and interest earned, and gains and losses realized on the sale of investments. An increase in the strength of the U.S. dollar relative to these other currencies may cause the value of the Partnership's investments to decline. Some foreign currencies are particularly volatile. Foreign governments may intervene in the currency markets, causing a decline in value or liquidity of the Partnership's foreign currency holdings. If the Partnership enters into forward foreign currency exchange contracts for hedging purposes, it may lose the benefits of advantageous changes in exchange rates. On the other hand, if the Partnership enters forward contracts for the purpose of increasing return, it may sustain losses.
- Non-U.S. securities and other markets may be less liquid, more volatile and less closely supervised by the government than in the United States. Foreign countries often lack uniform accounting, auditing and financial reporting standards, and there may be less public information about the operations of issuers in such markets.

Risks Associated with ADRs. The Partnership may purchase ADRs, which are certificates evidencing ownership of shares of a non-U.S. issuer, acting as alternatives to directly purchasing the underlying non-U.S. securities in their national markets and currencies. Such investments are subject to many of the risks associated with investing directly in non-U.S. securities. These risks include the political and economic risks of the underlying issuer's country, as well as, in the case of depositary receipts traded on non-U.S. markets, foreign exchange risk. ADRs may be sponsored or unsponsored. Unsponsored ADRs are established without the participation of the issuer. In addition, unsponsored ADRs may involve higher expenses, may not carry pass-through voting or

other shareholder rights, and may be less liquid. The performance of ADRs may be different from the performance of the ordinary shares of the non-U.S. issuers to which they relate.

Emerging Markets. The Partnership may invest a portion of its assets in investments related to emerging market countries. The securities markets of emerging market countries as a whole have been volatile and the loans and securities of issuers in emerging markets tend to be subject to abrupt or erratic price movements. Investing a significant portion of the Partnership's assets in issuers in emerging markets will make the Partnership susceptible to a greater degree than otherwise would be the case to factors affecting emerging markets in general and issuers in emerging markets included in the Partnership's portfolio in particular, and may increase the volatility of the value of the Partnership's portfolio investments. The economies of these markets may differ significantly from the economies of certain developed countries in such respects as gross domestic product or gross national product, rate of inflation, currency depreciation, capital reinvestment, resource self-sufficiency, structural unemployment and balance of payments position. In particular, these economies frequently experience high levels of inflation. In addition, such countries may have: (1) restrictive national policies that limit the Partnership's investment opportunities; (2) limited information about their issuers; (3) a general lack of uniform accounting, auditing and financial reporting standards, auditing practices and requirements compared to the standards of developed countries; (4) less governmental supervision and regulation of business and industry practices, securities exchanges, brokers and listed companies; (5) economic developments that may be slowed or reversed by unanticipated political or social events in such countries; and (6) a lack of capital market structure or market-oriented economy.

Systemic and market factors may affect the acquisition, payment for or ownership of investments including: (a) the prevalence of crime and corruption; (b) the inaccuracy or unreliability of business and financial information; (c) the instability or volatility of: (i) banking and financial systems, or the absence or inadequacy of an infrastructure to support such systems, (ii) custody and settlement infrastructure of the market in which such investments are traded and held, and (iii) the acts, omissions and operation of any securities depository; (d) the risk of the bankruptcy or insolvency of banking agents, counterparties to cash and securities transactions, registrars or transfer agents; and (e) the existence of market conditions that prevent the orderly execution or settlement of transactions or that affect the value of assets. Different clearance and settlement procedures may prevent the Partnership from making intended security purchases causing the Partnership to miss attractive investment opportunities, possibly resulting in either losses to or contract claims against the Partnership. The investment markets of many of the countries in which the Partnership may invest may also be smaller, less liquid, and subject to greater price volatility than developed markets. The Partnership's assets may be denominated in a variety of currencies subject to changes in currency exchange rates and in exchange control regulations.

Volatility of Currency Prices. In general, price movements of currencies are difficult to predict accurately because they are influenced by, among other things, changing supply and demand relationships; governmental, trade, fiscal, monetary and exchange control programs and policies; national and international political and economic events; and changes in interest rates. Governments from time to time intervene in certain markets in order to influence prices directly.

Currency Control. It is sometimes the case that governments alter the exchange rate policy of a currency without advance notice, and it may not always be possible to foresee a change in policy.

Exchange Rate Fluctuations. Investments that are denominated in a foreign currency are subject to the risk that the value of a particular currency will change in relation to one or more other currencies. The Partnership intends to value its holdings and to make distributions in U.S. dollars. Thus, changes in currency exchange rates adverse to the U.S. dollar may affect adversely the value of such holdings. Among the factors that may affect currency values are trade balances, the appropriateness of interest rates, the shape of the yield curve, the degree of central bank independence and credibility, differences in relative values of similar assets in different currencies, long-term opportunities for

investment and capital appreciation and political developments.

Risks of Trading Futures. The Investment Manager is eligible to trade a limited amount of commodities or financial futures on behalf of the Partnership under a provision in the CEA that provides an exemption from registration as a commodity pool operator. Trading futures is a highly risky strategy. Whenever the Partnership purchases a particular future, there is a possibility that the Partnership may sustain a total loss of its purchase price. The equity values of leveraged positions using futures are, in general, much more volatile than the prices of securities, such as stocks and bonds. As a result, the risk of loss in trading futures is substantially greater than in trading those securities. The prices of futures react strongly to the prices of the underlying commodities. The prices of these underlying products, in turn, rise and fall based on changes in interest rates, international balances of trade, changes in governments, wars, weather events and a host of other factors that are entirely beyond the Investment Manager's control and very difficult (and perhaps impossible) to predict.

Forward Trading. Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardized; rather, banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and "cash" trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by the Partnership due to unusual trading volume, political intervention or other factors. The imposition of controls by governmental authorities might also limit such forward trading to less than that which the Investment Manager would otherwise recommend, to the possible detriment of the Partnership. Market illiquidity or disruption could result in major losses to the Partnership.

Over-the-Counter-Trading. Financial instruments that may be purchased or sold by the Partnership may include instruments not traded on an exchange. The risk of nonperformance by the obligor on such an instrument may be greater and the ease with which the Partnership can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between "bid" and "asked" prices for financial instruments that are not traded on an exchange. Financial instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

To the extent that the Partnership engages in these transactions, the Partnership must rely on the creditworthiness of its counterparty. In certain instances, counterparty or credit risk is affected by the lack of a central clearinghouse for foreign exchange trades. To reduce their credit risk exposure, the Partnership may trade in the forward foreign currency market through money center banks and leading brokerage firms.

Position Limits. Position limits imposed by various regulators or regulations may also limit the Partnership's ability to affect desired trades. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a particular financial instrument. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Partnership does not intend to exceed applicable position limits, it is possible that different accounts managed by the Investment Manager or its affiliates may be aggregated. If at any time positions managed by the Investment Manager were to exceed applicable position limits, the Investment Manager would be required to liquidate positions, which might include positions of the Partnership, to the extent necessary to come within those limits. Further, to avoid exceeding the position limits, the Partnership might have to forego

or modify certain of its contemplated trades.

Risk of Default or Bankruptcy of Third Parties. The Partnership may engage in transactions in securities and other financial instruments and assets that involve counterparties. Under certain conditions, the Partnership could suffer losses if a counterparty to a transaction were to default or if the market for certain securities or other financial instruments or assets were to become illiquid. In addition, the Partnership could suffer losses if there were a default or bankruptcy by certain other third parties, including brokerage firms and banks with which the Partnership does business, or to which securities or other financial instruments or assets have been entrusted for custodial purposes.

Custody and Brokerage Risk. There are risks involved in dealing with the custodians or other brokers who settle Partnership trades. The Partnership maintains custody accounts with the Custodian. Although the Investment Manager generally monitors both the Introducing Broker and the Custodian and believes they are appropriate service providers, there is no guarantee that such service providers, or any other introducing broker and/or clearing broker and custodian that the Partnership may use from time to time, will not become bankrupt or insolvent. While both the U.S. Bankruptcy Code, as amended, and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a bankruptcy, insolvency, failure, or liquidation of a broker-dealer, there is no certainty that, in the event of a failure of a broker-dealer that has custody of Partnership assets, the Partnership would not incur losses due to its assets being unavailable for a period of time, the ultimate receipt of less than full recovery of its assets, or both.

The Partnership and/or the Custodian may appoint sub-custodians in certain non-U.S. jurisdictions to hold the assets of the Partnership. The Custodian may not be responsible for cash or assets which are held by sub-custodians in certain non-U.S. jurisdictions, nor for any losses suffered by the Partnership as a result of the bankruptcy or insolvency of any such sub-custodian. The Partnership may therefore have a potential exposure on the default of any sub-custodian and, as a result, many of the protections that would normally be provided to a fund by a custodian may not be available to the Partnership. Under certain circumstances, including certain transactions where the Partnership's assets are pledged as collateral for leverage from a non-broker-dealer custodian or a non-broker-dealer affiliate of the Custodian, or where the Partnership's assets are held at a non-U.S. custodian, the securities and other assets deposited with the custodian or broker may not be clearly identified as being assets of the Partnership and hence the Partnership could be exposed to a credit risk with regard to such parties. Custody services in certain non-U.S. jurisdictions remain undeveloped and, accordingly, there is a transaction and custody risk of dealing in certain non-U.S. jurisdictions. Given the undeveloped state of regulations on custodial activities and bankruptcy, insolvency, or mismanagement in certain non-U.S. jurisdictions, the ability of the Partnership to recover assets held by a sub-custodian in the event of the sub-custodian's bankruptcy or insolvency could be in doubt, as the Partnership may be subject to significantly less favorable laws than many of the protections that would be available under U.S. laws. In addition, there may be practical or time problems associated with enforcing the Partnership's rights to its assets in the case of a bankruptcy or insolvency of any such party.

Temporary Defensive Investments. If warranted under certain economic or market conditions or for other reasons, the Investment Manager may temporarily invest up to 100% of the Partnership's assets outside the scope of its principal investment focus in U.S. government securities, such as Treasury bills, notes and bonds, cash, money-market funds, certificates of deposit, time deposits, bankers' acceptances and other short-term debt instruments bearing a reasonable rate of interest. In such circumstances, the Partnership may not achieve its investment objectives.

Other Instruments. The Partnership may take advantage of opportunities with respect to certain other instruments that are not presently contemplated for use or that are currently not available, but that may be developed, to the extent such opportunities are both consistent with the investment objective of the Partnership and legally permissible. Special risks may apply to instruments that are invested in by the Partnership in the future that cannot be determined at this time or until such instruments are developed or invested

in by the Partnership.

Specific Risks Associated with Investing in Bank Loans

You should note that certain of the following risk factors specifically applicable with respect to Bank Loans have been discussed under "—Market Risks—General" above and are included in this sub-section for ease of reference.

Senior Loans Risk. Senior loans are usually rated below investment grade or may also be unrated. As a result, the risks associated with senior loans are similar to the risks of below investment grade fixed income instruments, although senior loans are senior and secured in contrast to other below investment grade fixed income instruments, which are often subordinated or unsecured. Investment in senior loans rated below investment grade is considered speculative because of the credit risk of their issuers. Such companies are more likely than investment grade issuers to default on their payments of interest and principal owed to the Partnership, and such defaults could have a materially adverse effect on the Partnership's performance. An economic downturn would generally lead to a higher non-payment rate, and a senior loan may lose significant market value before a default occurs. Moreover, any specific collateral used to secure a senior loan may decline in value or become illiquid, which would adversely affect the senior loan's value. Senior loans are subject to a number of risks described elsewhere in this Memorandum, including liquidity risk and the risk of investing in below investment grade fixed income instruments.

There may be less readily available and reliable information about most senior loans than is the case for many other types of securities, including securities issued in transactions registered under the Securities Act or registered under the Exchange Act. As a result, the Investment Manager will rely primarily on its own evaluation of a borrower's credit quality rather than on any available independent sources. Therefore, the Partnership will be particularly dependent on the analytical abilities of the Investment Manager.

In general, the secondary trading market for senior loans is not well developed. No active trading market may exist for certain senior loans, which may make it difficult to value them. Illiquidity and adverse market conditions may mean that the Partnership may not be able to sell senior loans quickly or at a fair price. To the extent that a secondary market does exist for certain senior loans the market for them may be subject to irregular trading activity, wide bid/ask spreads and extended trade settlement periods.

Variable Interest Rate Risk. Because senior loans with floating or variable rates reset their interest rates periodically, changes in prevailing interest rates can be expected to cause some fluctuations in the value of the Partnership's investments. Similarly, a sudden and significant increase in market interest rates may cause a decline in the value of the Partnership's investments. In addition, senior loans or similar securities may allow the borrower or issuer to opt between LIBOR-based interest rates and interest rates based on bank prime rates, which may have an impact on value of the Partnership's investments.

Bank Loans. The Partnership's investment program will include investments in significant amounts of Bank Loans and participations. These obligations are subject to unique risks, including: (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws; (ii) so-called lender-liability claims by the issuer of the obligations; (iii) environmental liabilities that may arise with respect to collateral securing the obligations; and (iv) limitations on the ability of the Partnership to directly enforce its rights with respect to participations. In analyzing each Bank Loan or participation, the Investment Manager compares the relative significance of the risks against the expected benefits of the investment. Successful claims by third parties arising from these and other risks will be borne by the Partnership.

DIP Loans. From time to time, the Partnership may invest in loans to companies that have filed for protection under Chapter 11 of the U.S. Bankruptcy Code, as amended. DIP loans are typically asset-based, revolving working-capital facilities put into place at the outset of a Chapter 11 bankruptcy to provide both immediate cash as well as ongoing

working capital during the reorganization process. Such loans are risky and present significant exposure for default risk to the Partnership.

Adjustments to Terms of Investments. The terms and conditions of loan agreements and related assignments may be amended, modified or waived only by the agreement of the lenders. Generally, any such agreement must include a majority or a super majority (measured by outstanding loans or commitments) or, in certain circumstances, a unanimous vote of the lenders. Consequently, the terms and conditions of the payment obligation arising from loan agreements could be modified, amended or waived in a manner contrary to the preferences of the Partnership if a sufficient number of the other lenders concurred with such modification, amendment or waiver. There can be no assurance that any obligations arising from a loan agreement will maintain the terms and conditions to which the Partnership originally agreed.

The exercise of remedies may also be subject to the vote of a specified percentage of the lenders thereunder. The Investment Manager will have the authority to cause the Partnership to consent to certain amendments, waivers or modifications to the Partnership's investments requested by obligors or the lead agents for loan syndication agreements. The Investment Manager may, in accordance with its investment management standards, cause the Partnership to extend or defer the maturity, adjust the outstanding balance of any investment, reduce or forgive interest or fees, release material collateral or guarantees, or otherwise amend, modify or waive the terms of any related loan agreement, including the payment terms thereunder. The Investment Manager will make such determinations in accordance with its investment management standards. Any amendment, waiver or modification of the terms of an investment could adversely impact the Partnership's investment returns.

Prepayments. Certain of the Partnership's investments may be prepaid more quickly than expected. Prepayment rates are influenced by changes in interest rates and a variety of economic, geographic and other factors beyond the Partnership's control and consequently cannot be predicted with certainty. Early prepayments give rise to increased re-investment risk, as the Partnership might realize excess cash earlier than it expected. If the Partnership is unable to reinvest the principle portion of a prepayment in a new investment with an expected rate of return at least equal to that of the investment repaid, this may reduce the Partnership's net investment income and, consequently, could have an adverse impact on the Partnership's ability to make distributions.

Investments in Loans Secured by Real Estate. While direct real estate investment is not intended to be the focus of the Partnership, it is possible that, from time to time, the Partnership may, as a result of default, foreclosure or otherwise, hold real estate assets. Special risks associated with such investments include changes in the general economic climate or local conditions (such as an oversupply of space or a reduction in demand for space), competition based on rental rates, attractiveness and location of the properties, changes in the financial condition of tenants, and changes in operating costs. Real estate values are also affected by such factors as government regulations (including those governing usage, improvements, zoning and taxes), interest rate levels, the availability of financing, and potential liability under changing environmental and other laws. Of particular concern may be those mortgaged properties which are, or have been, the site of manufacturing, industrial or disposal activity. Such environmental risks may give rise to a diminution in the value of property (including real property securing any portfolio investment) or liability for cleanup costs or other remedial actions, which liability could exceed the value of such property or the principal balance of the related portfolio investment. In certain circumstances, a lender may choose not to foreclose on contaminated property rather than risk incurring liability for remedial actions.

Environmental Hazards. Under environmental laws enacted by the United States and the various states, owners of property may be liable for the cleanup and removal of hazardous substances even where the owner was not responsible for placing the hazardous substances on the property or where the property was contaminated prior to the time the owner took title. The kinds of hazardous substances for which liability may be incurred include, among other things, chemicals and other materials commonly used by

small businesses and manufacturing operations. The costs of removal and clean-up of hazardous substances and wastes can be extremely expensive and, in some cases, can exceed the value of a property. If any property acquired by the Partnership through foreclosure or otherwise subsequently were found to have an environmental problem, such acquiring entity could incur substantial costs and suffer a complete loss of its investment in such property as well as of other assets. Similarly, real estate is subject to loss due to so-called "special hazards" (e.g., floods, earthquakes and hurricanes). It may be impractical or impossible to fully insure against such events and, should such an event occur, the Partnership could incur substantial costs and suffer a loss of its investment in such property.

Fraud. Of paramount concern in lending is the possibility of material misrepresentation or omission on the part of the borrower. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of the Partnership to perfect or effectuate a lien on the collateral securing the loan. The Partnership will rely upon the accuracy and completeness of representations made by borrowers to the extent reasonable, but cannot guarantee such accuracy or completeness. Under certain circumstances, payments to the Partnership may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

Debt Securities. The Partnership intends to invest in bonds or other fixed income securities, including, without limitation, commercial paper and "higher yielding" (and, therefore, higher risk) debt securities. It is likely that a major economic recession could disrupt severely the market for such securities and may have an adverse impact on the value of such securities. In addition, it is likely that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default for such securities.

Investing in High Yield Securities. The Partnership intends to invest in high-yield securities. Such securities are generally not exchange traded and, as a result, these instruments trade in the over-the-counter marketplace, which is less transparent than the exchange-traded marketplace. In addition, the Partnership will invest in bonds of issuers that do not have publicly traded equity securities, making it more difficult to hedge the risks associated with such investments. High-yield securities face ongoing uncertainties and exposure to adverse business, financial or economic conditions which could lead to the issuer's inability to meet timely interest and principal payments. The market values of certain of these lower- rated and unrated debt securities tend to reflect individual corporate developments to a greater extent than do higher-rated securities which react primarily to fluctuations in the general level of interest rates, and tend to be more sensitive to economic conditions than are higher-rated securities. Companies that issue such securities are often highly leveraged and may not have available to them more traditional methods of financing. It is possible that a major economic recession could disrupt severely the market for such securities and may have an adverse impact on the value of such securities. In addition, it is possible that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default of such securities.

Timing Risk. Many agency, corporate and municipal bonds, and all mortgage-backed securities, contain a provision that allows the issuer to "call" all or part of the issue before the bond's maturity date. The issuer usually retains the right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Partnership is exposed to reinvestment rate risk, i.e., the Partnership will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

Maturity Risk. In certain situations, the Partnership may purchase a bond of a given maturity as an alternative to another bond of a different maturity. Ordinarily, under these

circumstances, the Partnership will make an adjustment to account for the differential interest rate risks in the two bonds. This adjustment, however, makes an assumption about how the interest rates at different maturities will move. To the extent that the yield movements deviate from this assumption, there is a yield-curve or maturity risk. Another situation where yield-curve risk should be considered is in the analysis of bond swap transactions where the potential incremental returns are dependent entirely on the parallel shift assumption for the yield curve.

Revolving Credit Facilities. From time to time the Partnership may incur contingent liabilities in connection with an investment. For example, the Partnership may purchase from a lender a revolving credit facility that has not yet been fully drawn. If the borrower subsequently draws down on the facility, the Partnership would be obligated to fund the amounts due.

Investments in Stressed Debt. The Partnership is authorized to invest in securities and other obligations of stressed issuers. Stressed issuers are issuers that are not yet deemed distressed or bankrupt and whose debt securities are trading at a discount to par, but not yet at distressed levels. An example would be an issuer that is in technical default of its credit agreement, or undergoing strategic or operational changes, which results in market pricing uncertainty.

Investments in Distressed Securities. The Partnership may invest in securities and obligations of issuers in weak financial condition, experiencing poor operating results, having substantial capital needs or negative net worth, facing special competitive or product obsolescence problems, including companies involved in bankruptcy or other reorganization and liquidation proceedings. These securities are likely to be particularly risky investments although they also may offer the potential for correspondingly high returns. Among the risks inherent in investments in troubled entities is the fact that it frequently may be difficult to obtain information as to the true condition of such issuers. Such investments may also be adversely affected by laws relating to, among other things, fraudulent transfers and other voidable transfers or payments, lender liability and the bankruptcy court's power to disallow, reduce, subordinate or disenfranchise particular claims. Such companies' securities may be considered speculative, and the ability of such companies to pay their debts on schedule could be affected by adverse interest rate movements, changes in the general economic climate, economic factors affecting a particular industry or specific developments within such companies. In addition, there is no minimum credit standard that is a prerequisite to the Partnership's investment in any instrument, and a significant portion of the obligations and securities in which the Partnership invests may be less than investment grade. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There is no assurance that the Investment Manager will correctly evaluate the value of the assets collateralizing the Partnership's loans or the prospects for a successful reorganization or similar action. In any reorganization or liquidation proceeding relating to a company in which the Partnership invests, the Partnership may lose its entire investment, may be required to accept cash or securities with a value less than the Partnership's original investment and/or may be required to accept payment over an extended period of time. Under such circumstances, the returns generated from the Partnership's investments may not compensate the Limited Partners adequately for the risks assumed. In liquidation (both in and out of bankruptcy) and other forms of corporate reorganization, there exists the risk that the reorganization either will be unsuccessful (due to, for example, failure to obtain requisite approvals), will be delayed (for example, until various liabilities, actual or contingent, have been satisfied) or will result in a distribution of cash or a new security the value of which will be less than the purchase price to the Partnership of the security in respect to which such distribution was made.

Troubled Origination. The investments chosen by the Investment Manager may have been originated by financial institutions or other entities that are, or may in the future be, insolvent, in serious financial difficulty, or no longer in existence. As a result, the standards by which such investments were originated, the recourse to the selling institution, or the standards by which such investments are being serviced or operated

may be adversely affected.

Issuer Default Risk; Negative Loan Performance. There are varying sources of statistical default and recovery rate data for commercial loans and numerous methods for measuring default and recovery rates. The levels of defaults and delinquencies with respect to loans have been increasing, and slowing economic activity continues to contribute to a decline in overall credit quality. The historical performance of the loan market is not necessarily indicative of its future performance, and there is no way to determine whether such trends in the credit markets will improve or worsen in the future.

A substantial portion of the Partnership's income is expected to be derived, directly or indirectly, from repayments of principal and interest received in respect of debt securities. A wide range of factors may adversely affect an obligor's ability to make repayments, including: adverse changes in the financial condition of such obligor or the industries or regions in which it operates; the obligor's exposure to counterparty risk; systemic risk in the financial system and settlement; changes in law or taxation; changes in governmental regulations or other policies; natural disasters; terrorism; social unrest, civil disturbances; or general economic conditions. Default rates tend to accelerate during economic downturns. A continuing decreased ability of borrowers to obtain refinancing may result in a further economic decline that could delay an economic recovery and cause a further deterioration in loan performance generally.

To the extent that the Partnership invests in debt securities secured by collateral, there can be no assurance that the liquidation of any collateral securing any of the Partnership's investments would satisfy the borrower's obligation in the event of non-payment of scheduled interest or principal payments, or that the collateral could be readily liquidated. In the event of bankruptcy or insolvency of a borrower, the Partnership could experience delays or limitations with respect to its ability to realize the benefits of the collateral securing such investment. The collateral securing an investment may lose all or substantially all of its value in the event of the bankruptcy or insolvency of a borrower.

Any defaults will have a negative impact on the value of the Partnership's investments and may reduce the return that such Partnership receives from its investments in certain circumstances. While some amount of defaults is expected to occur in the Partnership's portfolio, in the event that the Partnership elects to apply leverage to an investment, defaults in or declines in the value of the portfolio investments in excess of these expected amounts may result in breaches of covenants under applicable financing arrangements, triggering credit enhancement requirements or accelerated repayment provisions and, if not cured within the relevant grace periods, permitting the finance provider to enforce its security over all the assets of the Partnership.

In the case of debt ranking equally with the loans or debt securities in which the Partnership invests, the Partnership would have to share on an equal basis any distributions with other creditors holding such debt in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the relevant company's debt securities. Each jurisdiction in which the Partnership invests has its own insolvency laws. As a result, investments in similarly situated companies in different jurisdictions may confer different rights in the event of insolvency.

Nature of Reorganization Proceedings. The Partnership will hold debt of companies and may, under certain circumstances, hold equity of companies as a result of the recapitalization or restructuring of debt obligations. Investments in the debt or equity of companies involved in reorganization proceedings typically entail a number of risks that do not normally apply to investments in financially sound companies. For example, if the Investment Manager's evaluation of the anticipated outcome of a reorganization or the timing of such outcome should prove incorrect, the Partnership could experience losses. A wide variety of considerations make any evaluation of the outcome of an investment in such a company uncertain. Such considerations include, for example, the possibility of litigation between the participants in a reorganization or liquidation proceeding or a requirement to obtain mandatory or discretionary consents from various governmental authorities or others. The uncertainties inherent in evaluating such investments may be

increased by legal and practical considerations which limit the access of the Investment Manager to reliable and timely information concerning material developments affecting a company, or which cause lengthy delays in the completion of a reorganization or liquidation proceeding. Competition from other investors may also render it difficult or impossible for the Partnership to achieve intended results or promptly effect transactions.

Insolvency and Enforceability of Security. The Partnership's investments may be secured by mortgages, charges, pledges, liens or other security interests. Depending on the jurisdiction in which such security interests are created, enforcement of such security interests may be a complicated and difficult process. For example, enforcement of security interests in certain jurisdictions may require a court order and a sale of the secured property through public bidding or auction. In addition, some jurisdictions grant courts the power to declare security interest arrangements to be void if they deem the security interest to be excessive.

Risks Associated with Bankruptcy Cases. Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions which may be contrary to the interests of the Partnership. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such if they are considered to have taken over management and functional operating control of a debtor.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, plan approval by creditors and confirmation by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and the Partnership; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganize and may be required to liquidate assets. Although the Partnership intends to invest primarily in debt, the debt of companies in financial reorganization will, in most cases, not pay current interest, may not accrue interest during reorganization and may be adversely affected by an erosion of the issuer's fundamental value. Such investments can result in a total loss of principal.

U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that the Partnership's influence with respect to a class of securities can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such when they take over management and functional operating control of a debtor. In those cases where the Partnership, by virtue of such action, is found to exercise "domination and control" of a debtor, the Partnership may lose its priority if the debtor can demonstrate that its business was adversely impacted or other creditors and equity holders were harmed by the Partnership.

The Partnership may invest in companies based outside the United States. Investment in the debt of financially distressed companies domiciled outside the United States involves additional risks. Bankruptcy law and process may differ substantially from that in the United States, resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganization timing and the classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganization remains highly uncertain.

The Investment Manager, on behalf of the Partnership, may elect to serve on creditors' committees, equity holders' committees or other groups to ensure preservation or

enhancement of the Partnership position as a creditor or equity holder. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If the Investment Manager concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to the Partnership, it will resign from that committee or group, and the Partnership may not realize the benefits, if any, of participation on the committee or group. In addition, and also as discussed above, if the Partnership is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of or increasing its investments in such company while it continues to be represented on such committee or group.

The Partnership may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

Equitable Subordination. Under common law principles that in some cases form the basis for lender liability claims, if a lender (a) intentionally takes an action that results in the undercapitalization of a borrower or issuer to the detriment of other creditors of such borrower or issuer, (b) engages in other inequitable conduct to the detriment of such other creditors, (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (d) uses its influence as a stockholder to dominate or control a borrower or issuer to the detriment of other creditors of such borrower or issuer, a court may elect to subordinate the claim of the offending lender or bondholder to the claims of the disadvantaged creditor or creditors (a remedy called "equitable subordination"). The Partnership does not intend to engage in conduct that would form the basis for a successful cause of action based upon the equitable subordination doctrine; however, because of the nature of the debt obligations, the Partnership may be subject to claims from creditors of an obligor that debt obligations of such obligor which are held by the issuer should be equitably subordinated.

Liability Following the Disposal of Investments. While the Partnership may hold certain of its investments to maturity, the Partnership may dispose of investments in some circumstances prior to termination and, in connection therewith, may be required to pay damages to the extent that any representations or warranties given in connection with such investments turn out to be inaccurate. The Partnership may become involved in disputes or litigation concerning such representations and warranties and may be required to make payments to third parties as a result of such disputes or litigation. In the event that the Partnership does not have cash available to conduct such litigation or make such payments, it may be forced to sell investments to obtain funds. Such sales may be effected on unsatisfactory terms.

Potential Involvement in Litigation. In the event that the Partnership holds investments in distressed investments, there is a possibility that the Investment Manager may participate in restructuring activities, it is possible that the Partnership may become involved in litigation respecting creditor disputes and similar issues among classes of claimants. Litigation entails expense and the possibility of counterclaims against the Partnership and the Investment Manager and ultimately judgments may be rendered against the Partnership for which the Partnership does not carry insurance.

Specific Risks Associated with Investing in CLOs

You should note that certain of the following risk factors specifically applicable with respect to CLOs have been discussed under "—Market Risks—General" above and are included in this sub-section for ease of reference.

Dependence Upon Other Unrelated Managers. The success of a CLO may depend on the management talents and efforts of one person or a small group of persons whose management could adversely affect the CLO and, accordingly, the Partnership as an

investor in such CLO. Given that the Investment Manager will not have an active role in the management of these CLOs, the return on the Partnership's investments in such CLOs will depend on the performance of unrelated managers.

Multiple Levels of Fees. The Partnership and the CLOs are expected to impose management fees, administrative fees, and/or transaction-based fees. This may result in greater expense than if Limited Partners were able to invest directly in the CLOs or underlying investments. Limited Partners should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a CLO may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (*e.g.*, break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees). Additionally, some of the CLOs may invest themselves in underlying hedge funds or CLOs. In such case, additional management costs and other administrative expenses may be incurred.

Limited Diversification. CLOs may invest in concentrated portfolios of assets. The concentration of an underlying portfolio in any one obligor would subject the related CLO Securities to a greater degree of risk with respect to defaults by such obligor and the concentration of a portfolio in any one industry would subject the related CLOs to a greater degree of risk with respect to economic downturns relating to such industry. The Partnership may have a concentrated exposure to CLOs of a particular type of CLO.

CLO Embedded Leverage Risk. The Partnership's participation in CLOs involves varying amounts of leverage. Leverage is embedded in all classes of a CLO other than the most senior tranche. If the Partnership retains either the most or one of the most subordinate tranches of the CLO's securities, it will hold the most leveraged investment in the CLO. While leverage presents opportunities for increasing the Partnership's total return, it has the effect of potentially increasing losses as well. Accordingly, any event which adversely affects the value of an investment in a CLO would be magnified to the extent such CLO is leveraged. The cumulative effect of the use of leverage by a CLO in a market that moves adversely to the CLO's investments could result in a substantial loss to the CLO which would be greater than if the CLO were not leveraged. The borrowing arrangements of CLOs will contain events of default that, under certain circumstances, could result in early amortization or in the acceleration of the maturities of these obligations. In the event of acceleration of the borrowing arrangements of a CLO, in whole or in part, it may be required to dispose of all or a significant portion of its investments. Such a forced disposal of securities could result in realization of value of such investments significantly below the anticipated market values for such securities. When the Partnership invests in derivative transactions, it may also gain leverage through such derivative transactions, which will expose the Partnership to a greater risk of loss.

Risks of Investment Focus. The Partnership's portfolio may consist of CLO Securities. CLO Securities are subject to, among other risks, credit, liquidity and interest rate risks.

The value of the CLO Securities that the Partnership may own generally will fluctuate with, among other things, the financial condition of the obligors or issuers of the CLO Securities' underlying portfolio of assets ("**CLO Collateral**"), general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. CLO Securities are issued on a non-recourse basis and holders of CLO Securities must rely solely on distributions on the CLO Collateral or proceeds thereof for payment in respect thereof. If distributions on the CLO Collateral are insufficient to make payments on the CLO Securities, no other assets will be available for payment of the deficiency and following realization of the CLO Securities, the obligations of such issuer to pay such deficiency generally will be extinguished.

Issuers of CLO Securities may acquire interests in loans and other debt obligations by way of sale, assignment or participation. The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to the loan or debt obligation; however, its rights can be more restricted than those of the assigning institution. CLO Collateral may consist

of corporate loans, leveraged loans and other instruments, which often are rated below investment grade (or of equivalent credit quality). Loans may be unsecured and may be subordinated to certain other obligations of the issuer thereof. The lower ratings of below investment grade loans reflect a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of the related issuer or obligor to make payments of principal or interest. Such investments may be speculative.

Interest Rate Mismatch. CLOs may be subject to interest rate risk. The CLO Collateral of an issuer of a CLO may bear interest at a fixed or floating rate, while the CLO Debt may bear interest at a floating or fixed rate. As a result, there could be a floating/fixed rate or basis mismatch between such CLO Debt and the CLO Collateral which bears interest at a fixed rate ("**Fixed Rate Assets**"), and there may be a timing mismatch between such CLO Debt and the assets that are not Fixed Rate Assets ("**Floating Rate Assets**"). In addition, the interest rate on Floating Rate Assets may adjust more frequently or less frequently, on different dates and based on different indices than the interest rates on the CLO Debt. As a result of such mismatches, an increase or decrease in the level of the floating rate indices could adversely impact the ability to make payments on such CLO Debt or Equity. Although many CLOs attempt to hedge this interest rate risk, the hedges may not eliminate this risk and payments by the CLO under the hedges may significantly reduce the distributions on the CLO securities. In addition, these hedges may have additional risks, such as counterparty risk, that are not present without these hedges.

Lower Credit Quality Securities. There are no restrictions on the credit quality of the investments of the Partnership. CLO Securities in which the Partnership will invest may have no ratings or may be deemed by rating agencies to have substantial vulnerability to default in payment of interest and/or principal and have the lowest quality ratings. The Partnership may purchase CLO Securities which have ratings that have been downgraded or placed on "credit watch" for future downgrading. Lower rated and unrated securities in which the Partnership may invest have large uncertainties or major risk exposures to adverse conditions and are considered to be predominantly speculative and may become a defaulted asset for a variety of reasons. Generally, such securities offer a higher return potential than higher rated securities, but involve greater volatility of price and greater risk of loss of income and principal.

The market values of certain of these securities (such as subordinated securities) also tend to be more sensitive to changes in economic conditions than higher rated securities. The value of leveraged loans and other assets underlying a CLO may also be affected by changes in the market's perception of the entity issuing or guaranteeing them, or by changes in government regulations and tax policies. Additionally, loans and interests in loans have significant liquidity and market value risks since they are not generally traded in organized exchange markets but are traded by banks and other institutional investors engaged in loan syndications. Because loans are privately syndicated and loan agreements are privately negotiated and customized, loans are not purchased or sold as easily as publicly traded securities. In addition, historically the trading volume in the loan market has been small relative to the high-yield debt securities market, and such illiquidity has been exacerbated during the current liquidity crisis.

Leveraged loans have historically experienced greater default rates than has been the case for investment grade securities. There can be no assurance as to the levels of defaults and/or recoveries that may be experienced on the assets underlying CLO Securities.

In general, the ratings of nationally recognized rating organizations represent the opinions of such agencies as to the quality of securities that they rate. Such ratings may be used by the Investment Manager as an initial basis for the selection of portfolio securities. Such ratings, however, are relative and subjective; they are not absolute standards of quality and do not evaluate the market value risk of the securities. Such ratings also do not reflect macroeconomic or systematic risk, including the risk of increased illiquidity in the credit markets. It is also possible that a rating agency might not change its rating of a particular issue on a timely basis to reflect subsequent events.

Defaulted Assets Underlying CLO Securities. If the assets underlying a CLO Security become defaulted assets, such defaulted assets may become subject to either substantial workout negotiations or restructuring, which may entail, among other things, a substantial reduction in the interest rate, a substantial write-down of principal, and a substantial change in the terms, conditions and covenants with respect to such defaulted asset. In addition, such negotiations or restructuring may be quite extensive and protracted over time, and therefore may result in substantial uncertainty with respect to the ultimate recovery on such defaulted asset. The liquidity for defaulted assets may be limited, and to the extent that defaulted assets are sold, it is highly unlikely that the proceeds from such sale will be equal to the amount of unpaid principal and interest thereon. Furthermore, there can be no assurance that the ultimate recovery on any defaulted assets will be at least equal to either the minimum recovery rate assumed by any rating agency that rates the notes of the CLO security. Therefore, if any CLO security has defaulted assets which correspond to the exposure of the Partnership's interest in the CLO security, the Partnership may be adversely affected.

There exist significant additional risks for CLO Securities and investors in such securities in the event of a liquidity crisis. Those risks include, among others, (i) the likelihood that the issuer of the CLO Security will find it harder to sell any of its assets in the secondary market, thus rendering it more difficult to dispose of assets which it has the discretion to manage, including credit risk obligations, credit improved obligations or defaulted obligations, (ii) the possibility that the price at which assets can be sold by the issuer of the CLO Security will have deteriorated from their effective purchase price and (iii) the increased illiquidity of the notes issued by the CLO Security. These additional risks may affect the returns on the investments in the Partnership's portfolio.

Subordination of CLO Debt. The Partnership's portfolio may subordinate CLO Debt. Subordinate CLO Debt generally is fully subordinated to the related CLO senior tranches. Thus, some of the investments of the Partnership in a CLO may rank behind other creditors of the CLO. To the extent that any losses are incurred by a CLO in respect of its related CLO Collateral, such losses are likely to be borne first by the holders of the related CLO Equity, next by the holders of any related subordinated CLO debt and finally by the holders of the related CLO senior tranches. In addition, if an event of default occurs under the governing instrument or underlying investment, as long as any CLO senior tranches are outstanding, the holders thereof generally are likely to be entitled to determine the remedies to be exercised under the instrument governing the CLO. Remedies pursued by such holders could be adverse to the interests of the holders of any related subordinated CLO Debt. Investments of the Partnership may be the first to absorb any losses by the CLO on its underlying portfolio. This may result in losses on the invested proceeds of the Partnership and could result in the complete loss of invested proceeds.

Mandatory Redemption of CLO Senior Tranches and CLO Debt. Under certain circumstances, cash flows from CLO Collateral that otherwise would have been paid to the holders of any related CLO Debt will be used to redeem the related CLO senior tranches. This could result in an elimination, deferral or reduction in the interest payments, principal repayments or other payments made to the holders of such CLO Debt, which could adversely impact the returns to the holders of such CLO Debt.

Optional Redemption of CLO Senior Tranches and CLO Debt. An optional redemption by a CLO of its securities and, in particular, the exercise of rights by the holders of one or more classes of its securities (or the requisite percentages thereof) so as to effect any such optional redemption, could require the collateral or portfolio manager of the related CLO to liquidate positions more rapidly than would otherwise be desirable, which is likely to materially and adversely affect the realized value of the items of CLO Collateral sold (and which in turn is likely to materially and adversely impact the holders of any related CLO securities, including the Partnership). As a result of any such rapid liquidation of a CLO, a holder of the related CLO securities (including the Partnership) could lose all or a substantial portion of its investment in such CLO securities.

Insolvency Risks. Various laws enacted for the protection of creditors may apply to the issuers of the CLO Collateral (solely for purposes of this risk factor, an "**Insolvent Company**"). The information in this paragraph and the following paragraph is applicable

with respect to U.S. issuers of CLO Collateral. Insolvency considerations may differ with respect to non-U.S. issuers of CLO Collateral. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an Insolvent Company, such as a trustee in bankruptcy, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the CLO or CLO Collateral (as applicable) and, after giving effect to such indebtedness, the Insolvent Company (i) was insolvent, (ii) was engaged in a business for which the remaining assets of the Insolvent Company constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of the Insolvent Company or to recover amounts previously paid by such issuer in satisfaction of such indebtedness. The measure of insolvency for purposes of the foregoing will vary. Generally, an Insolvent Company would be considered insolvent at a particular time if the sum of its debts were then greater than all of its property at a fair valuation or if the present fair saleable value of its assets were then less than the amount that would be required to pay its probable liabilities on its existing debts as they became absolute and matured. There can be no assurance as to what standard a court would apply in order to determine whether the Insolvent Company was "insolvent" after giving effect to the incurrence of the indebtedness constituting the CLO or CLO Collateral (as applicable) or that, regardless of the method of valuation, a court would not determine that the Insolvent Company was "insolvent" upon giving effect to such incurrence. In addition, in the event of the insolvency of an Insolvent Company, payments made on such CLO or CLO Collateral (as applicable) could be subject to avoidance as a "preference" if made within a certain period of time (which may be as long as one year) before insolvency.

In general, if payments on a CLO or CLO Collateral (as applicable) are avoidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Partnership) or from subsequent transferees of such payments (such as the Limited Partners). However, a court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from a Limited Partner only to the extent that such court has jurisdiction over such holder or its assets. Moreover, it is likely that avoidable payments could not be recaptured directly from a holder that has given value in exchange for its interest, in good faith and without knowledge that the payments were avoidable. Nevertheless, there can be no assurance that a Limited Partner will be able to avoid recapture on this or any other basis.

The preceding discussion is based upon principles of United States federal and state laws. Insofar as the Partnership's portfolio consists of the obligations of non-United States obligors, the laws of certain foreign jurisdictions may provide for avoidance remedies under factual circumstances similar to those described above or under different circumstances, with consequences that may or may not be analogous to those described above under United States Federal and state laws.

"Widening" Risk. For reasons not necessarily attributable to any of the risks set forth herein (for example, supply/demand imbalances or other market forces), the prices of the CLO Securities in which the Partnership invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even lower levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

There Is Limited Disclosure about the CLO Securities and the Underlying CLO Collateral in this Memorandum. The Investment Manager will not be required to provide the investors in the Partnership with financial or other information (which may include material non-public information) it receives related to the CLO Securities. The Investment Manager also may not disclose to investors notices the Investment Manager receives and it will not have any obligation to keep investors informed as to defaults in the CLO Securities, failure by the Partnership to receive any payment of principal, interest, or other amounts or to disclose the portfolio or the decisions of which CLO Securities were not purchased in general to any investor. In addition, the investors will not have any right to inspect any records relating to the CLO Securities, and the Investment Manager will not be obligated to disclose any further information or evidence regarding the existence or

terms of, or the identity of any obligor on, any CLO Securities.

Impact of the Volcker Rule on the Liquidity of the Notes. Section 619 of the Dodd-Frank Act added a provision, commonly referred to (together with the final regulations with respect thereto adopted on December 10, 2013) as the Volcker Rule, to federal banking laws to generally prohibit various covered banking entities from engaging in proprietary trading or acquiring or retaining an ownership interest in "covered funds" which generally include, sponsoring or having certain relationships with a hedge fund or private equity fund (defined in final regulations adopted on December 10, 2013 as any entity relying on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act to be exempt from registration under the Investment Company Act), subject to certain exemptions. The Volcker Rule also provides for certain supervised nonbank financial companies that engage in such activities or have such interests or relationships to be subject to additional capital requirements, quantitative limits or other restrictions. The conformance period for the Volcker Rule has been extended to July 21, 2015, and to July 21, 2017 for CLOs. Certain CLOs may be considered "covered funds" under the Volcker rule and therefore the most senior tranche of the CLO may be a restricted security for various banking and nonbanking entities. This may restrict the liquidity of certain non-Volcker compliant CLOs in the future and may affect the Partnership's ability to liquidate these positions on a timely basis.

Specific Risks Associated with Investing in Portfolio Funds and Illiquid Investments

You should note that certain of the following risk factors specifically applicable with respect to Portfolio Funds and Illiquid Investments have been discussed under "—Market Risks—General" above and are included in this sub-section for ease of reference.

Special Situations. The Portfolio Funds may invest in companies involved in (or the target of) acquisition attempts or tender offers or in companies involved in work-outs, liquidations, spin-offs, reorganizations, bankruptcies and similar transactions. In any investment opportunity involving any such type of special situation, there exists the risk that the contemplated transaction either will be unsuccessful, take considerable time or result in a distribution of cash or a new security the value of which will be less than the purchase price to the Portfolio Funds of the security or other financial instrument in respect of which such distribution is received. Similarly, if an anticipated transaction does not in fact occur, the Partnership may be required to sell its investment at a loss. In connection with such transaction (or otherwise), the Portfolio Funds may purchase securities on a when-issued basis, which means that delivery and payment take place sometime after the date of the commitment to purchase and are often conditioned upon the occurrence of a subsequent event, such as approval and consummation of a merger, reorganization or debt restructuring. The purchase price and/or interest create receivable with respect to a when-issue security are fixed when the Partnership enters into the commitment. Such securities are subject to changes in market value prior to their delivery. Because there is substantial uncertainty concerning the outcome of transactions involving companies in which the Portfolio Funds may invest, there is a potential risk of loss by a Portfolio Fund of its entire investment in such companies.

Alternative Investments. In the alternative asset class, the Investment Manager may invest assets of the Partnership in other pooled investment vehicles managed by the Investment Manager. The pooled investment vehicles managed by the Investment Manager may follow a variety of investment strategies including investments in commodities, managed futures, inflation-adjusted bonds, global real estate, "hedge fund strategies", which may be broadly characterized as "hedge funds", and mezzanine debt or Illiquid Investments.

Withdrawal Considerations. The Partnership may be subject to withdrawal restrictions of the individual Portfolio Fund(s) in which it will invest. In addition, the Partnership is permitted to invest in Illiquid Investments. There is no market for the Interests, and no market is expected to develop. Therefore, in certain circumstances, the Partnership may not be able to withdraw invested assets from a particular Portfolio Fund or with respect to Illiquid Investments at a time that would be most advantageous to the Partnership or at a time that would allow the Partnership to comply with its withdrawal obligations to its

Limited Partners. In this regard, the General Partner has the right to suspend in whole or in part certain withdrawal rights of the Limited Partners to the extent that the Partnership is unable to obtain liquidity from its investments in one or more of the Portfolio Funds. The illiquidity of Illiquid Investments and restrictions on withdrawals at the level of the individual Portfolio Funds could have a material adverse effect on the Partnership, as well as the ability of the Limited Partners to liquidate their investments in the Partnership during permitted withdrawal periods. Consequently, Limited Partners may be unable to liquidate their Interests except by withdrawing from the Partnership in accordance with the terms of this Memorandum, and, even in such event, payment of withdrawal proceeds may be delayed for a significant period of time. One or more affiliates of the Investment Manager may serve as general partner or manager of such Portfolio Funds, and will not be required to liquidate Portfolio Fund investments other than when they determine such liquidation is advisable or appropriate in their sole discretion, without regard to withdrawal provisions applicable to the Partnership. Limited Partners may be unable to liquidate their investment promptly in the event of an emergency or for any other reason.

High Growth Industry Related Risks. Portfolio Funds may have significant investments in the securities of high growth companies (e.g., technology, communications and healthcare). It is noted that these securities may be very volatile. In addition, these companies may face undeveloped or limited markets, have limited products, have no proven profit-making history, may operate at a loss or with substantial variations in operating results from period to period, have limited access to capital and/or be in the developmental stages of their businesses, have limited ability to protect their rights to certain patents, copyrights, trademarks and other trade secrets, or be otherwise adversely affected by the extremely competitive markets in which many of their competitors operate.

Risk of Illiquid Investments. Illiquid Investments involve a high degree of financial risk. There can be no assurance that Illiquid Investments will be profitable or that substantial losses will not occur. The companies in which the Illiquid Investments will invest are often dependent on the skills of a small number of executives and are vulnerable to changes in technology, fluctuations in demand for their products, changing interest rates and other factors. There can also be no assurance that the Illiquid Investments will be repaid, be able to sell or otherwise liquidate their investments at the optimal time or price. Therefore, there can be no assurance that the rate of return objectives of the Illiquid Investments will be realized or that there will be any return of capital to the Limited Partners.

Illiquid and Long-Term Investments. It is anticipated that there will be a significant period of time before certain Illiquid Investments will have completed their investments. Such investments may take several years from the date of initial investment to reach a state of maturity when realization of the investment can be achieved. Although investments by Illiquid Investments occasionally may generate some current income, private investment transaction structures typically will not provide for liquidity of the Illiquid Investment's investment prior to that time. The return of capital and the realization of gains, if any, from such investment will generally occur only upon the partial or complete disposition or refinancing of the investment. In light of the foregoing, it is likely that no significant return from the disposition of Illiquid Investment's underlying investments will occur for a substantial period of time from the commencement of the Illiquid Investment's operations. It is unlikely that there will be a public market for the securities held by the Illiquid Investment and/or its portfolio companies at the time of their acquisition. The Illiquid Investment generally will not be able to sell its securities publicly unless the issuer has consummated a public offering of its securities and such offered securities are registered under applicable securities laws, unless an exemption from such registration requirements is available. In addition, in some cases, the Partnership may be prohibited by contract from selling certain securities for a period of time and, as a result, may not be permitted to sell an underlying investment at a time it might otherwise desire to do so. Further, disposition of such investments may require a lengthy time period or may result in distributions in kind to investors.

Investments in Less Established Companies. The Partnership may invest a portion of its assets in the securities of less established companies, or early stage companies. Investments in such early stage companies may involve greater risks than those generally associated with investments in more established companies. For instance, less

established companies tend to have smaller capitalizations and fewer resources and, therefore, are often more vulnerable to financial failure. Such companies also may have shorter operating histories on which to judge future performance and in many cases, if operating, will have negative cash flow. In the case of start-up enterprises, such companies may not have significant or any operating revenues. In addition, less mature companies could be more susceptible to irregular accounting or other fraudulent practices. Furthermore, to the extent there is any public market for the securities held by the Illiquid Investment, securities of less established companies may be subject to more abrupt and erratic market price movements than those of larger, more established companies.

Some of the investments expected to be made by an Illiquid Investment would be considered highly speculative and may result in the loss of the Special Situation Investment's entire investment therein. There can be no assurance that any such losses will be offset by gains (if any) realized on the Illiquid Investment's other investments.

Investments in Restructurings or Underperforming Companies. The Partnership may make investments in companies that are experiencing or are expected to experience financial difficulties, which such companies may never overcome. Such investments could, in certain circumstances, subject the Partnership to additional potential liabilities, which may exceed the value of the Partnership's original investment therein. Such investments of the Partnership could also be subject to federal bankruptcy law and state fraudulent transfer laws, which may vary from state to state, if the securities relating to such investments were issued with the intent of hindering, delaying or defrauding creditors or, in certain circumstances, if the issuer receives less than reasonably equivalent value or fair consideration in return for issuing such securities. If such investments constitute debt and such debt is used for a buyout of shareholders, this risk is greater than if the debt proceeds are used for day-to-day operations or organic growth. If a court were to find that the issuance of the securities was a fraudulent transfer or conveyance, the court could void the payment obligations under the securities, further subordinate the securities to other existing and future indebtedness of the issuer or require the Partnership to repay any amounts received by it with respect to the securities. In the event of a finding that a fraudulent transfer or conveyance occurred, the Partnership may not receive any repayment on the securities.

Under the Bankruptcy Code, a lender that has inappropriately exercised control of the management and policies of a company may have its claims against the company subordinated or disallowed, or may be found liable for damages suffered by parties as a result of such actions. In addition, under certain circumstances, payments to the Partnership and distributions by the Partnership ion Investment to its limited partners may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment. Such debt may also be disallowed or subordinated to the claims of other creditors if the Partnership is found to have engaged in other inequitable conduct resulting in harm to other parties. The Partnership's underlying investment may be treated as equity if it is deemed to be a contribution to capital, or if the Partnership attempts to control the outcome of the business affairs of a company prior to its filing under the Bankruptcy Code. While the Partnership will attempt to avoid taking the types of action that would lead to such liability, there can be no assurance that such claims will not be asserted or that the Partnership will be able successfully to defend against them.

REGULATORY AND TAX RISKS

General Regulatory Risks. Statutes, regulations and policies are continually under review by the U.S. Congress and state legislatures and federal and state regulatory agencies. The introduction of new legislation or amendments to existing legislation and regulations (including changes in how they are interpreted or implemented) by governments, the decisions of courts and tribunals and the rulings and decisions of regulatory authorities, can adversely impact the Partnership's returns. The regulatory environment for private investment funds is evolving, and changes in the regulation of these funds may adversely affect the value of investments held by the Partnership, the cost of compliance with applicable regulations, and the ability of the Partnership to obtain the leverage it might otherwise obtain or to pursue its trading strategies.

Regulatory Risks Related to the Highland Transaction. In connection with the Highland Transaction (if consummated), there can be no assurance that such transaction (if consummated) will not result in adverse regulatory consequences (including, without limitation, being characterized as a "change of control" under applicable laws), even though the Highland Transaction only contemplates the acquisition of non-voting limited partnership interests in Highland.

Strategy Restrictions. Certain institutions may be restricted from directly utilizing investment strategies of the type in which the Partnership may engage. Such institutions, including entities subject to ERISA, should consult their own advisors, counsel and accountants to determine what restrictions may apply and whether an investment in the Partnership is appropriate.

Trading Limitations. For all securities, instruments and/or assets listed on an exchange, including options listed on a public exchange, the exchange generally has the right to suspend or limit trading under certain circumstances. Such suspensions or limits could render certain strategies difficult to complete or continue and subject the Partnership to loss. Also, such a suspension could render it impossible for the Investment Manager to liquidate positions and thereby expose the Partnership to potential losses relating thereto.

Limited Regulatory Oversight. The Partnership's investments are not supervised or monitored by any regulatory authority. The Partnership is not registered as an "investment company" under the Investment Company Act. Although the Investment Manager is registered as an investment adviser with the SEC, neither the General Partner nor the Investment Manager is registered as a commodity pool operator, pursuant to an exemption provided under Rule 4.13(a)(3) of the CEA. Consequently, Limited Partners will not benefit from some of the protections afforded by these statutes, including oversight by the Commodity Futures Trading Commission.

Prevention of Money Laundering and Terrorism. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended (the "**USA PATRIOT Act**"), signed into law on and effective as of October 26, 2001, requires that financial institutions, a term that includes banks, broker-dealers and investment companies, establish and maintain compliance programs to guard against money laundering activities. The USA PATRIOT Act requires the Secretary of the U.S. Treasury ("**Treasury**") to prescribe regulations in connection with anti- money laundering policies of financial institutions. The U.S. Federal Reserve Board, the Treasury and the SEC are currently studying what types of investment vehicles should be required to adopt anti-money laundering procedures, and it is unclear at this time whether such procedures will apply to pooled investment vehicles such as the Partnership. Future rules and regulations regarding money laundering or proceeds of crime could regulate the Partnership. In addition, in April 2000, the Treasury Department published proposed regulations that would require certain investment advisors to establish an anti-money laundering program. It is possible that there could be promulgated legislation or regulations that would require the Partnership or its affiliates, in connection with the establishment of anti-money laundering procedures, to share information with governmental authorities with respect to investors in the Interests. Such legislation and/or regulations could require the Partnership to implement additional restrictions on the transfer of the Interests. The Partnership reserves the right to request such information as is necessary to verify the identity of investors in the Interests, and the source of the payment of subscription monies, or as is necessary to comply with any customer identification programs required by Financial Crimes Enforcement Network and/or the SEC or such information as may be required in order for the Partnership to discharge its obligations under the laws of the Cayman Islands (including pursuant to the Proceeds of Criminal Conduct Law (2005 Revision)). In the event of delay or failure by the applicant to produce any information required for verification purposes, an application for or transfer of the Interests and the subscription monies relating thereto may be refused.

Recent Developments in the Financial Services Industry. Recent developments in the U.S. financial markets have heightened the risks associated with the investment activities and operations of hedge funds, including without limitation, those resulting from a

substantial reduction in the availability of credit and the increased cost of short-term credit, a decrease in market liquidity and an increased risk of insolvency of brokers and other counterparties. In addition, in July of 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**") was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. Even with the passage of Dodd-Frank, the implications of its passage for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory, or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Partnership or the Partnership's business, operations and performance.

Enhanced Regulation of Swaps. The Wall Street Transparency and Accountability Act of 2010 (the "**WSTAA**") will, subject to exceptions for certain hedgers, (1) require swaps accepted for clearing by a derivatives clearing organization (a "**DCO**") or for trading through a designated contract market or swaps-execution facility to be so cleared and traded, (2) require margin for almost all swap transactions, (3) subject traders with a "substantial position" in swaps to registration and regulation requirements as a "major swap participant" or "swap dealer", and (4) impose position limits on swaps either individually or in the aggregate with respect to positions in commodity-futures contracts. Due to the new requirements imposed by the WSTAA, the Partnership may experience increased transaction costs to pay for the clearing, execution and segregation obligations. In addition, margin requirements may increase once margin is set by DCOs with input from the CFTC, which may limit the Partnership's ability to engage in leverage and limit the Partnership's return. The application of position limits to swap contracts may also limit the Partnership's ability to concentrate in any particular contract or exposure to an underlying commodity and may negatively impact the Partnership's ability to take advantage of current market trends or conditions. Any tightening in the market for swaps may significantly impact the Partnership and its returns. In addition, if the Partnership were deemed to be a swap dealer or a major swap participant under WSTAA, the Partnership may be required to register with the CFTC and would be subject to a number of regulatory requirements that would significantly impact the Partnership's legal obligations and its returns.

Tax Risk. The tax aspects of an investment in the Partnership are complicated and each investor should have them reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. The Partnership is not intended and should not be expected to provide any tax shelter, but is organized as a limited partnership to avoid corporate taxation and to permit any distributions it might make to be made without being taxed as dividends. No assurance can be given that legislative, administrative or judicial changes will not occur which will alter, either prospectively or retroactively, the tax considerations or risk factors discussed in this Memorandum.

The tax consequences to a Limited Partner of an investment in the Partnership are uncertain. A significant portion of the Partnership is expected to be invested in illiquid Portfolio Funds and/or Illiquid Investments. Such investments are often structured as "pass through" entities for tax purposes and therefore may generate significant taxable income to the Limited Partners without any corresponding liquidity from such investments. As a result, an investment in the Partnership may be unsuitable for those investors that do not receive a corresponding deduction for such allocated income.

Neither the General Partner nor the Investment Manager makes any representations or warranties regarding any tax matters. Prospective investors are strongly urged to consult their own tax advisors regarding the U.S. federal, state and local and non-U.S. tax consequences to them arising from an investment in the Partnership, and should rely on the advice of their own tax advisors with respect to the possible impact on its investment in the Partnership of any future legislation or administrative or judicial action. You should review the section entitled "TAXATION" for a more complete discussion of certain of the

tax risks inherent in the acquisition of Interests.

Tax-Exempt Entities. Certain prospective Limited Partners may be subject to federal and state laws, rules and regulations that may regulate their participation in the Partnership, or their engaging, directly or indirectly through an investment in the Partnership, in investment strategies of the types that the Partnership utilizes from time to time. Tax-exempt entities should consider the applicability to them of the provisions relating to UBTI (as defined below). Investments in the Partnership by entities subject to ERISA and other tax-exempt entities require special consideration. See "ERISA CONSIDERATIONS" and "TAXATION—Tax-Exempt Investors".

Diversification. The tax benefits of the Policies may not be available in the event that the methodology used by the Partnership does not satisfy the diversification rules as described under "TAXATION" herein, including the risk that, if the Partnership fails to meet such diversification rules, owners of Policies funded by a Separate Account that is treated as holding interests in the Partnership would be subject to current taxation on the annual earnings of the Separate Account.

Diversification of Contracts. Interests in the Partnership will be held only by variable contract separate asset accounts of Insurance Companies and state and local governmental pension plans, §529 plans, and private sector qualified pension or retirement plans, as generally described in Treasury Regulation 1.817-5(f)(3). Variable contract separate asset accounts are subject to certain investment diversification requirements (the "**Diversification Rules**") of Section 817(h) of the Code and the Regulations with respect to assets held in such separate accounts. These rules apply to the investments made by separate accounts (such separate accounts are referred to as "segregated asset accounts") that are used to fund benefits under Policies that are "variable contracts" within the meaning of Section 817(d) of the Code, other than "pension plan contracts."

For purposes of satisfying the Diversification Rules, the assets of the Partnership must be invested in securities such that no more than 55% of total assets of the Partnership may be invested in the securities of any one (1) issuer, no more than 70% of total assets of the Partnership may be invested in the securities of any two (2) issuers, no more than 80% of total assets of the Partnership may be invested in the securities of any three (3) issuers, and no more than 90% of total assets of the Partnership may be invested in the securities of any four (4) issuers. For purposes of these Diversification Rules, all securities of the same issuer are treated as a single investment and in the case of government securities, each government agency or instrumentality is treated as a separate issuer. Thus, all securities issued by the Treasury would be considered a single investment, but securities issued by the Federal Home Loan Banks would be considered a separate investment from Treasury securities. The assets of the Partnership will be invested in compliance with these rules.

Under a "look-through" rule established by the IRS, if: (i) all Interests of the Partnership are held by one or more segregated asset accounts of Insurance Companies (other than Interests held by persons listed in §1.817-5(f)(3) of the Regulations) and (ii) public access to the Partnership is available exclusively through the purchase of a variable contract as defined in Section 817(d) of the Code, then the test for diversification is made by looking to the assets held by the Partnership. So long as the Partnership is subject to the "look-through" rule, Interests in the Partnership will not constitute a single investment for purposes of the Diversification Rules. For purposes of applying such Diversification Rules, the Partnership's investment on behalf of Series 1 in the PE Portfolio Fund will be treated as a single asset, since the "look-through" rule will not apply to the PE Portfolio Fund.

In the event that the Partnership fails to satisfy the look-through requirements of the Diversification Rules, any Policy based on a segregated asset account that has invested in the Partnership may not be treated as a life insurance or annuity contract for federal income tax purposes. For this purpose, a Policy is based on a segregated asset account if amounts received under such Policy, or earnings thereon, are allocated to such segregated asset account. If a Policy is no longer treated as a life insurance or annuity

contract, then the owner of the Policy would be subject to current taxation on the income on the Policy for taxable years in which such failure occurs, and thereafter. If the Policy is a life insurance or annuity contract under local law, however, then certain amounts paid as death benefits will be treated as amounts paid under a life insurance or annuity contract for federal income tax purposes. If the failure to meet the Diversification Rules is shown to be inadvertent, the Insurance Company that issued the Policy is permitted to bring the segregated asset account into compliance with those rules. In such cases, the Diversification Rules contemplate adjustments or the payment of a "toll charge" for the period during which the account failed to meet the Diversification Rules. Accordingly, compliance with the Diversification Rules, as they may be modified from time to time, is important and will be carefully monitored by the Investment Manager. Compliance with the Diversification Rules may have the effect of reducing the return of the Partnership, as the investments and strategies utilized by the Investment Manager may be different from what the Investment Manager might otherwise believe to be desirable.

Investor Control. The Partnership is an insurance-dedicated investment fund. In certain circumstances, the owner of a variable life insurance or annuity contract invested in a Separate Account may, for federal income tax purposes, be considered the owner of the assets of the Separate Account that funds the variable contract under an "investor control" theory. Each Policy Owner should consult his or her own tax advisors regarding the "investor control" theory and the particular tax risks, if any, posed by the Policy Owner's selection of the Partnership as his or her investment option under a related Policy.

Policy Owners have no right to communicate with or direct the investment policies or decisions of the General Partner, any administrator, Investment Manager, or Investment Manager relating in any way to the Partnership. For purposes of this Memorandum, the term Policy Owner includes: (i) any trustees of a Policy Owner; (ii) any Policy beneficiaries; (iii) any affiliated person (as this term is defined in Section 2(a)(3) of the Investment Company Act) of the foregoing persons; or (iv) any person that represents the Policy Owner.

There is not, nor shall there be, a pre-arranged binding agreement between the General Partner, the Administrator and the Investment Manager, on the one hand, and any Policy Owner, on the other hand, relating to the investments of the Partnership. Furthermore, Limited Partners have no right or power to take part in the management of the Partnership.

None of the Partnership, the General Partner, the Investment Manager or any of the Investment Manager Affiliates will be held responsible to any Limited Partner or Policy Owner for any loss, damage, liability or expense resulting from a violation of the "investor control" theory to the extent such violation is attributable to conduct of a Policy Owner.

Policy Owners should consult their own tax advisors regarding the "investor control" theory.

This Memorandum Intended for Limited Partners. This Memorandum does not address the tax treatment afforded by Policy Owners. Policy Owners should refer to their insurance contract and related explanatory materials for such a discussion. The Limited Partners are the owners of Interests in the Interests. Policy Owners are not Limited Partners of the Partnership and do not have rights as such.

Accounting Rules. The Partnership's assets and liabilities are valued in accordance with the Partnership Agreement. However, for purposes of preparing the Partnership's annual audited financial statements, which are prepared in accordance with GAAP, certain of the Partnership's assets and liabilities may be valued in a manner that, while consistent with GAAP, may be different from the manner in which such assets are valued in accordance with the valuation policies set forth in the Partnership Agreement.

The General Partner may at any time choose to change the Partnership's accounting guidelines from GAAP to the IFRS. In such event, the financial performance of the Partnership, as determined under IFRS, may vary from those determined under GAAP.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Limited Partners.

No Obligation of Full-Time Service. None of the General Partner, the Investment Manager, the Principal or any of the Investment Manager Affiliates has any obligation to devote its full time to the business of the Partnership. Each is only required to devote such time to the Partnership as the General Partner deems necessary to accomplish the purposes of the Partnership, and each may engage in other business activities, including competing ventures and/or unrelated employment, which may result in various conflicts of interest between such persons and the Partnership.

Services to Affiliated Funds. In addition to managing the Partnership and its investments, each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may provide investment management and other services to other parties and may manage and/or establish Affiliated Funds in the future, including those that may employ an investment program and strategy similar to that of the Partnership. Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to the PE Portfolio Fund that: (x) is expected to initially invest in the Highland Transaction, if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction; (ii) Rand PE Fund Management, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the PE Portfolio Fund; (iii) the Principal is the managing member and controlling person of Rand PE Fund Management, LLC. As such, the Investment Manager and the Principal owe fiduciary duties to different investment vehicles, which may conflict with each other; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series.

The investments made by Affiliated Funds that may be managed by the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates in the future may compete with investments for the Partnership's account, and the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates may decide to invest the funds of these Affiliated Funds rather than the assets of the Partnership in a particular security or strategy. In addition, the Investment Manager and/or such other persons will determine the allocation of funds by and among the Partnership and the Affiliated Funds to investment strategies and techniques on whatever basis they decide is appropriate or desirable in their sole and absolute discretion. The records of these Affiliated Funds will not be made available to Limited Partners. Nonetheless, in the event that certain securities, instruments and other assets are suitable for acquisition by the Partnership and by other accounts managed by the General Partner, the Investment Manager, the Principal or the Investment Manager Affiliates, and the Investment Manager or such other persons are not able to acquire the desired aggregate amount of such securities, instruments and other assets on terms and conditions which they deem advisable, the Investment Manager and such persons will endeavor in good faith to allocate the limited amount of such investment opportunities among the various accounts for which they consider to be suitable.

Certain Potential Conflicts Between the Principal and Highland Related to the Series 1 Interests. The Principal was previously a Partner and Co-Head of Private Equity at Highland, an investment manager with significant assets under management located in Dallas, Texas. Although Mr. Honis has retired from that position, he still currently serves on: (x) the Board of Trustees for each of Highland's affiliated registered investment companies, and receives compensation in connection with each of the foregoing, and (y) the Board of Directors for American HomePatient, Inc. and Turtle Bay Resort, LLC, which are portfolio companies of investment funds operated by Highland, and receives compensation in connection with each of the foregoing. Additionally, as part of his retirement, Mr. Honis has received or is in the process of receiving payments in the total

amount of approximately $3 million from certain affiliates of Highland.

In addition, pursuant to the Shared Services Agreement, Highland serves as the Shared Services Provider, which provides the Investment Manager and the Partnership with certain administrative, information technology, accounting, tax, back-office and other services. In addition, the Shared Services Provider may be (but, as of the date hereof, is not) engaged by the Partnership to act as the Partnership's Administrator, pursuant to a separate Administration Agreement.

Further, the Investment Manager and Highland have had preliminary discussions concerning the potential acquisition of all or substantially all of the non-voting limited partnership interests in Highland for the first series of the PE Portfolio Fund (such purchases or other acquisitions, if any, collectively, the "**Highland Transaction**"). Although, as of the date hereof, the PE Portfolio Fund and Highland have not actively negotiated documentation for the legal and economic terms of the Highland Transaction (and there can be no assurances that such transaction will be consummated), it is nonetheless the intention of such parties that the transaction should come about.

In light of the foregoing, the Principal, and indirectly the Investment Manager, are in a position of conflict with respect to the ultimate decision by the Partnership regarding whether it pursues the Highland Transaction, and under what terms (if any) it agrees to participate in any such transaction.

Also see "—Potential Directorship Positions; Other Roles" herein.

Highland Transaction; Limited Control. If the Highland Transaction is consummated, it is currently contemplated that the PE Portfolio Fund would acquire only limited partnership interests in Highland. As with investments in non-controlling interests in other partnerships, the Highland Transaction may involve special risks associated with the possibility that the controlling principals of Highland may: (i) have economic or business interests or goals that are inconsistent with those of the PE Portfolio Fund and therefore the Partnership, (ii) take actions contrary to the instructions or requests of the PE Portfolio Fund or contrary to the PE Portfolio Fund's policies or objectives, (iii) be unable or unwilling to fulfill its obligations under the organizational/governing documents, and/or (iv) experience financial difficulties. The occurrence of such problems could have a material adverse effect on the business and prospects of the PE Portfolio Fund's investment in the Highland Transaction and may affect management decisions and exit strategies in a manner adverse to the PE Portfolio Fund's and the Partnership's interests.

Conflicts Related to Shared Services Provider. The Investment Manager has certain affiliated entities that may provide services with respect to the Partnership, the Portfolio Funds (generally and the PE Portfolio Fund specifically) and certain investments held by the Partnership. The Shared Services Provider may provide services for the benefit of the Partnership under the Shared Services Agreement and/or may incur reimbursable expenses on behalf of the Partnership and/or the Investment Manager. In addition, the Shared Services Provider may be (but, as of the date hereof, is not) engaged by the Partnership to act as the Partnership's Administrator, pursuant to a separate Administration Agreement. The Principal is a former Partner and former Co-Head of Private Equity of the Shared Services Provider.

Potential Directorship Positions; Other Roles. The Investment Manager Affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories, and receive arm's length fees in connection with such service, for the Partnership or other entities that operate in the same or a related line of business as the Partnership, for other clients managed by the Investment Manager or any of the Investment Manager Affiliates, or for any Portfolio Fund or portfolio company of the Partnership, and the Partnership shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Partnership. Also see "—Certain Potential Conflicts Between the Principal and Highland Related to the Series 1 Interests" herein.

The Investment Manager and/or the Investment Manager Affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of investments purchased by the Partnership. Such transactions are on an arm's-length basis and may be subject to arm's-length fees. There is no expectation for preferential access to transactions involving investments that are underwritten, originated, arranged or placed by the Investment Manager and/or the Investment Manager Affiliates and the Partnership shall not have any right to any such fees.

Potential Cross-Trades. The Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Partnership and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Partnership any time that the Investment Manager believes such transaction to be fair to the Partnership and such other client. By purchasing an Interest in the Partnership, a Limited Partner is deemed to have consented to such client cross-transactions between the Partnership and another client of the Investment Manager or one of its affiliates.

Diverse Limited Partners. The Limited Partners may include taxable and tax-exempt entities and persons or entities resident of or organized in various jurisdictions. As a result, conflicts of interest may arise in connection with decisions made by the General Partner that may be more beneficial for one type of Limited Partner than for another. In making such decisions, the General Partner intends to consider the investment objectives of the Partnership as a whole, not the investment objectives of any Limited Partner individually.

Soft Dollars. The General Partner and the Investment Manager may be offered soft dollars in the form of research and brokerage and other products or services, which may be utilized by the General Partner, the Investment Manager and their respective affiliates in connection with the services they offer to clients other than the Partnership. The use of soft dollars presents the Investment Manager with potential conflicts of interest and may provide the Investment Manager with incentives to: (i) use certain brokers who may provide certain soft dollar benefits that other brokers may not, without regard to its obligations to the Partnership (including, without limitation, its best execution obligations); or (ii) trade more actively in order to generate more soft dollars and thereby reduce its expenses.

Referral of Investors. The General Partner and/or the Investment Manager may sell Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the capital contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. Such broker-dealers may have a conflict of interest in advising prospective investors to purchase Interests, as the broker-dealers are often only compensated upon the investment of the prospective investors.

Lack of Separate Representation; Potential Conflicts of Counsel. Neither the Partnership Agreement nor any of the agreements, contracts and arrangements between the Partnership, on the one hand, and the General Partner or the Investment Manager, on the other hand, were or will be the result of arm's-length negotiations. The attorneys, accountants and others who have performed services for the Partnership in connection with this offering, and who will perform services for the Partnership in the future, have been and will be selected by the General Partner. No independent counsel has been retained to represent the interests of prospective investors or Limited Partners. You are therefore urged to consult your own counsel as to the terms and provisions of the Partnership Agreement and all subscription and other related documents.

In addition, Sadis & Goldberg LLP has represented Highland and affiliates at different

times over a period lasting over a decade. It is currently expected that Sadis & Goldberg LLP will represent the General Partner, the Investment Manager, the Principal and certain of their respective affiliates in connection with the establishment of the Partnership and the PE Portfolio Fund, the possible consummation of the Highland Transaction, and certain related matters. The Principal and his affiliates are aware of the representation by Sadis & Goldberg LLP of Highland and affiliates.

Valuation of Assets. The Administrator will calculate the net asset value of the Partnership (based upon information provided by the Investment Manager). In the case of investments in Portfolio Funds that are not readily marketable, the net asset value calculation provided by the relevant managers (or any affiliates or service providers thereof) of those Portfolio Funds will generally be used in determining the Partnership's Net Asset Value. Such calculations could be incorrect, delayed or subject to significant adjustments, any of which events could adversely affect the valuation of the Partnership's investments. The Investment Manager intends to engage an independent third-party valuation agent (in addition to the Administrator) to appraise the Partnership's interests in Illiquid Investments, including, without limitation, the PE Portfolio Fund; *provided* that, if the PE Portfolio Fund engages its own independent third-party valuation agent, the Partnership may rely on such valuation of any investment in the PE Portfolio Fund. If the Investment Manager determines, in its sole discretion, that the valuation of any security, commodity, option or other financial instrument pursuant to the valuation methodologies described herein does not fairly represent its market value, the Investment Manager will value such security, option or other financial instrument as it reasonably determines. Likewise, any securities, commodities, options and other financial instruments that have no public market, investments in other asset classes (including those in Side Pocket Accounts), and all other assets of the Partnership for which a valuation methodology is not specified, will be valued by the Investment Manager in a manner determined in good faith to reflect their fair market value. The Investment Manager has a conflict of interest in that it will receive a higher Management Fee if the Partnership's assets are given a favorable valuation. See "SUMMARY OF OFFERING AND PARTNERSHIP TERMS—Determination of Net Asset Value".

The foregoing list of risk factors and conflicts of interest does not purport to be a complete enumeration or explanation of the risks and conflicts of interest involved in an investment in the Partnership. Offerees should read this entire Memorandum and the Partnership Agreement and consult with their own advisors before deciding to purchase Interests.

ERISA CONSIDERATIONS

An investment of benefit plan assets in the Partnership may raise issues under ERISA and the Code. ERISA and the Code impose certain duties on persons who are fiduciaries of a Plan (as defined below) and prohibit certain transactions involving the assets of a Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of a Plan or the management or disposition of the assets of a Plan, or who renders investment advice for a fee or other compensation to a Plan, is generally considered to be a fiduciary of the Plan.

In considering an investment in the Partnership of a portion of the assets of any employee benefit plan (including a "**Keogh**" plan) subject to the fiduciary and prohibited transaction provisions of ERISA or the Code or similar provisions under applicable state law (collectively, a "**Plan**"), a Plan fiduciary should determine, in light of the risks and limited liquidity inherent in an investment in the Partnership, whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA or similar law relating to a fiduciary's duties to the Plan. Furthermore, absent an exemption, the fiduciaries of a Plan should not purchase Interests with the assets of any Plan if the Investment Manager or any affiliate thereof is a fiduciary or other "party in interest" or "disqualified person" (collectively, a "**party in interest**") with respect to such Plan.

PLAN ASSETS

Regulations promulgated under ERISA by the U.S. Department of Labor ("**Plan Asset Regulations**") generally provide that when a Plan subject to Title I of ERISA or Section 4975 of the Code acquires an equity interest in an entity that is neither a "publicly-offered security" nor a security issued by an investment company registered under the Investment Company Act, the Plan's assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless it is established either that equity participation in the entity by "benefit plan investors" is not "significant" or that the entity is an "operating company", in each case as defined in the Plan Asset Regulations. The Interests will not constitute "publicly offered" securities or securities issued by an investment company registered under the Investment Company Act, and it is not expected that the Partnership will qualify as an "operating company" under the Plan Asset Regulations. For purposes of the Plan Asset Regulations, equity participation in an entity by benefit plan investors will not be "significant" so long as they own, in the aggregate less than 25%, directly or indirectly, of the value of each class of such entity's equity. For purposes of such calculation, equity interests held by persons (other than a benefit plan investor) with discretionary authority or control over the assets of the entity or who provide investment advice for a fee (direct or indirect) with respect to such assets, and any affiliates thereof, are disregarded. For purposes of this 25% test ("**Benefit Plan Investor Test**"), "benefit plan investors" include: employee benefit plans subject to the provisions of Part 4 of Title I of ERISA and plans subject to Section 4975 of the Code, including "Keogh" plans and individual retirement accounts ("**IRAs**"). The following are not included in the definition of benefit plan investor: employee benefit plans maintained outside the U.S. by foreign companies that cover non-U.S. persons, governmental plans, and certain church plans. Thus, absent satisfaction of another exception under the Plan Asset Regulations, if 25% or more of the value of any class of Interests in the Partnership were owned by benefit plan investors, an undivided interest in each of the underlying assets of the Partnership would be deemed to be "plan assets" of any Plan subject to Title I of ERISA or Section 4975 of the Code that invested in the Partnership.

Consequently, the General Partner intends to use reasonable efforts either (i) to prohibit plans subject to Title I of ERISA or Section 4975 of the Code from investing in the Partnership or (ii) to provide that investment by "benefit plan investors" in the Partnership will not be "significant" for purposes of the Plan Asset Regulations by limiting equity participation by benefit plan investors in the Partnership to less than 25% of the value of each class of Interests in the Partnership as described above. However, each Plan fiduciary should be aware that even if the Partnership were to avoid plan asset status

under the Benefit Plan Investor Test at the time a Plan acquires Interests in the Partnership, the exemption could become unavailable at a later date as a result, for example, of subsequent transfers or withdrawals of Interests in the Partnership, and that Interests held by benefit plan investors may be subject to mandatory withdrawal in such event in order for the Partnership to continue to avoid plan asset status under the Benefit Plan Investor Test.

Furthermore, there can be no assurance that notwithstanding the reasonable efforts of the Partnership, the Partnership will satisfy the Benefit Plan Investor Test, that the structure of particular investments of the Partnership will otherwise satisfy the Plan Asset Regulations or that the underlying assets of the Partnership will not otherwise be deemed to include ERISA plan assets.

PLAN ASSET CONSEQUENCES

If the assets of the Partnership were deemed to be "plan assets" under ERISA, (i) the prudence and other fiduciary responsibility standards of ERISA would extend to investments made by the Partnership and (ii) certain transactions in which the Partnership might seek to engage could constitute "prohibited transactions" under ERISA and the Code. If a prohibited transaction occurs for which no exemption is available, the Investment Manager and any other fiduciary that has engaged in the prohibited transaction could be required (x) to restore to the Plan any profit realized on the transaction and (y) to reimburse the Plan for any losses suffered by the Plan as a result of the investment. In addition, each party in interest involved could be subject to an excise tax equal to 15% of the amount involved in the prohibited transaction for each year the transaction continues and, unless the transaction is corrected within statutorily required periods, to an additional tax of 100%. Plan fiduciaries that decide to invest in the Partnership could, under certain circumstances, be liable for prohibited transactions or other violations as a result of their investment in the Partnership or as co-fiduciaries for actions taken by or on behalf of the Partnership or the Investment Manager. With respect to an IRA that invests in the Partnership, the occurrence of a prohibited transaction involving the individual who established the IRA, or his or her beneficiaries, could cause the IRA to lose its tax-exempt status.

Under the Partnership Agreement, the General Partner has the power to take certain actions to avoid having the assets of the Partnership characterized as plan assets, including, without limitation, the right to refuse a subscription, exclude a Limited Partner from an investment or to compulsorily redeem a Limited Partner's Interests in the Partnership. While the General Partner does not expect that it will need to exercise such power, it cannot give any assurance that such power will not be exercised.

Each Plan fiduciary should consult its own legal advisor concerning the considerations discussed above before making an investment in the Partnership.

Prospective investors are advised that: (i) any U.S. federal tax advice contained herein, including any opinion of counsel referred to herein, is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding U.S. federal tax penalties that may be imposed on the taxpayer; (ii) any such advice is written to support the promotion or marketing of the transactions described herein (or in any such opinion of counsel); and (iii) each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

INTRODUCTION

The following is a summary of certain aspects of the taxation of the Partnership and its Partners, which should be considered by a potential purchaser of an Interest in the Partnership. A complete discussion of all tax aspects of an investment in the Partnership is beyond the scope of this Memorandum. The following summary is only intended to identify and discuss certain salient issues.

This summary of certain tax considerations applicable to the Partnership is considered to be a correct interpretation of existing laws and regulations in force on the date of this Memorandum. No assurance can be given that changes in existing laws or regulations or their interpretation will not occur after the date of this Memorandum or that any such future guidance or interpretation will not be applied retroactively.

The following summary is not intended as a substitute for careful tax planning. The tax matters relating to the Partnership are complex and are subject to varying interpretations. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on Partners will vary with the particular circumstances of each Partner. Accordingly, each prospective investor must consult with and rely solely on his or its professional tax advisors with respect to the tax results of the investor's investment in the Partnership. In no event will the General Partner, its affiliates, counsel or other professional advisors be liable to any Limited Partner for any federal, state, local or other tax consequences of an investment in the Partnership, whether or not such consequences are as described below.

CLASSIFICATION OF THE PARTNERSHIP

Under the provisions of the Code and the Treasury Regulations promulgated thereunder ("**Regulations**"), as in effect on the date of this Memorandum, so long as the Partnership complies with the Partnership Agreement, the Partnership should be classified for U.S. federal income tax purposes as a partnership and not as an association taxable as a corporation.

The Partnership has been formed under the Delaware Act as a series limited partnership and may offering its Interests in multiple separate Series. Under the provisions of the Code and the Regulations, as in effect on the date of this Memorandum, so long as the Partnership complies with the Partnership Agreement and the Delaware Act, each Series of Interests in the Partnership should be classified for U.S. federal income tax purposes as equity interests in a separate partnership and not as equity interests in an association taxable as a corporation.

The Partnership has not sought and will not seek a ruling from the Internal Revenue Service ("**IRS**") with respect to its status as a partnership. If a Series of Interests in the Partnership should be classified as an association taxable as a corporation (e.g., as a result of a change in law or a material change in facts), the taxable income of the Partnership allocable to such Series would be subject to corporate income taxation; and distributions from the Partnership to the Limited Partners owning Interests in such Series would be treated as dividend income when received by such Limited Partners to the extent of the current or accumulated earnings and profits of the Partnership allocable to

such Series. Furthermore, the Insurance Company Limited Partners would lose their look-through treatment for the purposes of complying with the diversification requirements imposed by Section 817(h) of the Code.

Certain partnerships may be taxable as corporations for U.S. federal income tax purposes under the publicly traded partnership rules set forth in the Code and the Regulations, and a Series of the Partnership may not qualify for one of the safe harbors under the Regulations if such Series has more than 100 Partners. The Partnership expects that, under the facts and circumstances test set forth in the Regulations, the Interests will not be readily tradable on a secondary market (or the substantial equivalent thereof) and therefore, the Series partnerships will not be treated as publicly traded partnerships under the Regulations. It is assumed in the following discussion of tax considerations that each Series of the Partnership will be treated as a partnership for U.S. federal income tax purposes.

Unless otherwise indicated, references in the discussion below to the tax consequences of the "Partnership's" investments, activities, income and expenses refer to the investments, activities, income and expenses attributable to each Series that is treated as a separate tax partnership. Prospective investors should note that each Series will issue its annual Schedule K-1 tax reporting form to its Partners. Therefore, investors that own Interests in more than one Series will receive separate Schedule K-1 reporting forms for each Series in which the investor is treated as owning an equity interest.

TAXATION OF PARTNERSHIP OPERATIONS

As a partnership, the Partnership is not itself subject to U.S. federal income tax but will file an annual partnership information return with the IRS. Each Limited Partner, in computing his own federal income tax liability for a taxable year, is required to take into account such Partner's distributive share of the Partnership's net long-term capital gain or loss, net short-term capital gain or loss, net ordinary income or loss and any separately stated income items, deductions and credits for the taxable year of the Partnership that ends with or within such Partner's taxable year. The Partnership may utilize a variety of investment and trading strategies, which produce both short-term and long-term capital gain (or loss), as well as ordinary income (or loss). The Partnership will send annually to each Limited Partner a Schedule K-1 form reporting such Partner's distributive share of the Partnership items of income, gain, loss, deduction and credit. The Partnership intends to use the calendar year as its taxable year unless a different fiscal year is required under the Code.

Each Limited Partner will be subject to tax, and liable for such tax, on such Partner's distributive share of the Partnership's taxable income regardless of whether the Limited Partner has received or will receive any distribution of cash from the Partnership. Thus, in any particular year, a Limited Partner's distributive share of taxable income from the Partnership (and, generally, the taxes imposed on that income) could exceed the amount of cash, if any, such Limited Partner received or is entitled to withdraw from the Partnership.

Under Section 704 of the Code, a Limited Partner's distributive share of any Partnership item of income, gain, loss, deduction or credit is governed by the Partnership Agreement unless the allocation provided by the Partnership Agreement does not have "substantial economic effect". The Regulations promulgated under Section 704(b) of the Code provide certain "safe harbors" with respect to allocations, which, under the Regulations, will be deemed to have substantial economic effect. The validity of an allocation which does not satisfy any of the "safe harbors" of these Regulations is determined by taking into account all facts and circumstances relating to the economic arrangements among the Partners. While no assurance can be given, the allocations provided by the Partnership Agreement should have substantial economic effect and should be sustained under the facts and circumstances test. However, if it were determined by the IRS or otherwise that the allocations provided in the Partnership Agreement with respect to a particular item do not have substantial economic effect, each Limited Partner's distributive share of that item would be determined for tax purposes in accordance with that Limited Partner's interest in the Partnership, taking into account all facts and circumstances.

Cash distributions and withdrawals, to the extent they do not exceed a Limited Partner's tax basis in such Partner's interest in the Partnership, should not result in taxable gain to that Limited Partner, but reduce the tax basis in the Interest by the amount distributed or withdrawn. Cash distributed to a Limited Partner in excess of the tax basis of his or its Interest is generally taxable either as capital gain or ordinary income, depending on the circumstances. A distribution of property other than cash generally will not result in taxable income or loss to the Limited Partner to whom it is distributed until such time that the property is sold.

For financial statement presentation and capital account maintenance purposes, all securities held by the Partnership will be marked-to-market at the end of each relevant accounting period and the net gain or loss from marking to market will be reported as income or loss. This treatment differs from the general tax rule applicable to many securities transactions that a transaction does not result in gain or loss until it is closed by an actual sale or other disposition. The divergence between such accounting and tax treatments frequently may result in substantial variation between financial statement income (or loss) and taxable income (or loss) reported by the Partnership.

The income tax treatment of the Partnership will depend upon the tax treatment of the Portfolio Funds in which the Partnership invests.

The Partnership expects to be treated as engaged in a trade or business by reason of its anticipated investment, on behalf of Series 1, in the PE Portfolio Fund, which will own equity interests in one or more business partnerships. The Partnership may also engage in other trade or business activities, either directly or through investments in portfolio partnerships. Prospective investors that are U.S. tax-exempt entities should consider the impact of UBTI on an investment in the Partnership. See "—Tax-Exempt Investors" below.

The Partnership will also engage in investing and trading securities for its own account. Accordingly, a portion of the Partnership's direct and indirect expenses are expected to be deductible as trade or business expenses under Section 162 of the Code. Certain other expenses may be classified as Section 212 investment expenses, which, for certain types of Limited Partners, including trusts, would be classified as miscellaneous itemized deductions. Prospective investors that are classified as trusts for U.S. federal income tax purposes should consult their tax advisors concerning the limitations in the Code on deductions for miscellaneous itemized deductions.

LIMITATIONS ON LOSSES AND DEDUCTIONS

In General. A Limited Partner is not permitted to deduct Partnership losses that exceed the Partner's adjusted tax basis in its Interest at the end of the year in which such loss is incurred. A Limited Partner's basis for its Interest is generally equal the amount of such Partner's cash contributions made to the Partnership, increased by (i) the Partner's allocable share of Partnership taxable income, (ii) the Partner's allocable share of Partnership tax-exempt income, and (iii) the Partner's allocable share of nonrecourse liabilities of the Partnership (if any); and decreased by (w) the Limited Partner's allocable share of Partnership taxable losses and non-deductible expenses, (x) any distributions of cash received by the Limited Partner from the Partnership, (y) the tax basis of any property distributed by the Partnership to such Partner and (z) any decrease in the Partner's share of Partnership nonrecourse liabilities (if any). There are several other Code provisions that may limit the ability of a Limited Partner to claim deductions attributable to an investment in the Partnership. The most significant of these limitations are discussed below.

At Risk Limitations. Section 465 of the Code limits certain taxpayers' losses from certain activities to the amount they are "at risk" in the activities. Taxpayers subject to the "at risk" rules are non-corporate taxpayers, including trusts, and certain closely-held corporations. The activities subject to the "at risk" limitations include all activities in which the Partnership expects to engage. A Partner subject to the "at risk" rules will not be permitted to deduct in any year losses arising from its interest in the Partnership to the extent that the losses exceed the amount it is considered to have "at risk" in the

Partnership at the close of that year.

A taxpayer is considered to be "at risk" in any activity to the extent of his cash contribution to the activity, his basis in other property contributed to the activity and his personal liability for repayments of amounts borrowed for use in the activity. With respect to amounts borrowed for use in the activity, the taxpayer is not considered to be "at risk" even if he is personally liable for repayment if the borrowing was from a person who has an "interest" in the activity other than an interest as a creditor. Even if a taxpayer is personally liable for repayment of amounts borrowed for use in the activity, and even if the amount borrowed is borrowed from a person whose only interest in the activity is an interest as a creditor, a taxpayer will not be considered "at risk" in the activity to the extent his investment in the activity is protected against loss through guarantees, stop loss agreements, or other similar arrangements.

Each Limited Partner will be at risk initially for the amount of his capital contribution. A Partner's amount "at risk" will be increased by his distributive share of income from the Partnership and will be decreased by his distributive share of losses from the Partnership and distributions to him. If a Partner's amount "at risk" decreases to zero, he can take no further losses until he has an "at risk" amount to cover the losses. A Partner is subject to a recapture of losses previously allowed to the extent that his amount "at risk" is reduced below zero (limited to loss amounts previously allowed to the Partner over any amounts previously recaptured).

Investment Interest Limitations. To the extent that the Partnership incurs interest expense or short sale expenses, a non-corporate Limited Partner, including a trust, will likely be subject to the "investment interest expense" limitations of Section 163(d) of the Code. Investment interest expense includes (i) interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment and (ii) any amounts deductible in connection with a short sale. The deduction for investment interest expense is limited to the taxpayer's net investment income for the taxable year; i.e., the excess of investment income over investment expenses. Excess investment interest expense that is disallowed is not lost permanently but may be carried forward to succeeding years subject to the Section 163(d) limitation. Net capital gain (i.e., net long-term capital gain over net short-term capital loss) on property held for investment and qualified dividends are only included in investment income to the extent that the taxpayer elects to subject some or all of such gain or dividend income to taxation at ordinary income tax rates. The Section 163(d) limitations will apply at the Partner level with regard to the Partner's distributive share of the Partnership's interest expense.

To the extent that the Partnership is treated as engaged in a trade or business by reason of being deemed a trader, a non-corporate Limited Partner's share of the Partnership's interest expense from such trading activity would retain its character as investment interest subject to the Section 163(d) investment income limitation, but the allowable investment interest deduction would be deducted "above the line" in determining adjusted gross income and therefore fully deductible, rather than being treated as an itemized deduction.

Section 265(a)(2) of the Code disallows any deduction for interest paid by a taxpayer on indebtedness incurred or continued for the purpose of purchasing or carrying tax-exempt obligations. The IRS has announced that such purpose will be deemed to exist with respect to indebtedness incurred to finance a "portfolio investment", and that a limited partnership interest will be regarded as a "portfolio investment". Therefore, if the Partnership holds tax-exempt obligations, the IRS might take the position that all or part of the interest expense incurred by a Limited Partner in connection with the purchase of such Partner's Interest should be viewed as incurred to enable such Limited Partner to continue carrying tax-exempt obligations, and that such Limited Partner should not be allowed to deduct all or a portion of such interest.

Itemized Deduction Limitations. Under Section 67 of the Code, for non-corporate taxpayers, including trusts, certain miscellaneous itemized deductions are allowable only to the extent they exceed a "floor" amount equal to 2% of the taxpayer's adjusted gross income ("**2% Floor**"). To the extent that the Partnership's operations do not constitute a

trade or business within the meaning of Section 162 and other provisions of the Code, a non-corporate Limited Partner's distributive share of the Partnership's investment expenses, other than investment interest expense, would be deductible only as miscellaneous itemized deductions, subject to the 2% Floor. Moreover, a non-corporate taxpayer's investment expenses that are miscellaneous itemized deductions are also not deductible in calculating the taxpayer's alternative minimum tax liability.

Capital losses generally may be deducted only to the extent of capital gains, except for non-corporate taxpayers who are allowed to deduct $3,000 of excess capital losses per year against ordinary income. Corporate taxpayers may carry back unused capital losses for three years and may carry forward such losses for five years; non-corporate taxpayers may not carry back unused capital losses but may carry forward unused capital losses indefinitely.

ADDITIONAL TAX ISSUES

Gain or loss from a short sale of property is generally considered as capital gain or loss to the extent that the property used to close the short sale constitutes a capital asset in the Partnership's hands.

The "wash sale" rules of Section 1091 of the Code disallow any deduction for losses arising from the sale or other disposition of "stock or securities", where, within a period beginning 30 days before such sale or disposition and ending 30 days afterwards, the taxpayer acquires "substantially identical" stocks of securities by purchase or by an exchange on which the entire amount of gain or loss is recognized. This disallowance rule also applies where, within such 61-day period, the taxpayer enters into a contract or option to acquire substantially identical stock or securities. Thus, if the Partnership were to engage in such a "wash sale" transaction, the Partners would not be able to recognize their distributive share of any loss realized in connection with such sale in the current year.

Currency Fluctuations - "Section 988" Gains and Losses. To the extent that the Partnership's investments are made in securities denominated in a foreign currency, gain or loss realized by the Partnership frequently will be affected by the fluctuation in the value of such foreign currencies relative to the value of the U.S. dollar. Generally, gains or losses with respect to the Partnership's investments in common stock of foreign issuers will be taxed as capital gains or losses at the time of the Partnership's sale of such stock. However, under Section 988 of the Code, gains or losses of the Partnership on the acquisition or disposition of foreign currency (i.e., the purchase of foreign currency and subsequent use of such currency to acquire stock) will be treated as ordinary income or loss. Moreover, under Section 988, gains and losses from disposition of debt securities denominated in a foreign currency that are attributable to the fluctuations in such currency between the date of acquisition of the debt security and the date of its disposition will be treated as ordinary income or loss. Since the Code provides limitations on the ability of taxpayers to deduct capital losses against ordinary income, a Partner's share of capital losses realized by the Partnership on sale of foreign securities would not be available to offset the Partner's share of ordinary income realized by the Partnership on its currency hedging transactions.

The Partnership may acquire foreign currency forward contracts, enter into foreign currency futures contracts and acquire put and call options on foreign currencies. Generally, foreign currency regulated futures contracts and option contracts that qualify as "Section 1256 contracts" will not be subject to ordinary income and loss treatment under Section 988. However, if the Partnership acquires currency futures contracts or options contracts that are not Section 1256 contracts, or any currency forward contracts, any gain or loss realized by the Partnership with respect to such instruments will be ordinary income or loss, unless (i) the contract is a capital asset in the hands of the Partnership and is not part of a straddle transaction and (ii) the Partnership makes an election (by the close of the day the transaction is entered into) to treat the gain or loss attributable to such contract as capital gain or loss.

The taxation of debt obligations under the Code is complex; the following discussion is intended to provide only a general description of these rules. Generally, interest income and income items similar to stated interest, such as original issue discount (in general, the

annual portion of the discount on original issuance of debt obligations issued for less than their stated principal amount) and market discount (the amount by which debt obligations are acquired in the secondary market for less than their principal) are treated as items of ordinary income. Generally, debt obligations that are disposed of in a taxable transaction for an amount greater than their adjusted cost basis give rise to capital gain, which will be long-term if the debt obligation is held for longer than one year, and short-term, if held for a period of one year or less. Generally, debt obligations that are disposed of in a taxable transaction for an amount less than their adjusted cost basis give rise to capital loss, which will be long-term if the debt obligation is held for longer than one year, and short-term if held for a period of one year or less. In the event that any such debt obligations are not held as capital assets, such dispositions will generally give rise to ordinary gain or loss, as the case may be.

Section 1259 of the Code requires that the Partnership recognize gain on the constructive sale of any appreciated financial position in stock, a partnership interest, or certain debt instruments. A constructive sale of an appreciated financial position occurs if, among other things, the Partnership enters into (1) a short sale of the same or substantially identical property (a transaction commonly known as a “short sale against the box”), (2) an offsetting notional principal contract with respect to the same or substantially identical property, or (3) a futures or forward contract to deliver the same or substantially identical property. Exceptions to the foregoing apply to certain transactions closed within 30 days after the close of the taxable year if the underlying appreciated financial position remains “unhedged” for at least 60 days thereafter, and to transactions involving certain contracts to sell stock, debt instruments, or partnership interests if the contract settles within one year.

The IRS may treat certain positions in securities held (directly or indirectly) by a Partner and its indirect interest in similar securities held by the Partnership as “straddles” for federal income tax purposes. The application of the "straddle" rules in such a case could affect a Partner's holding period for the securities involved and may defer the recognition of losses with respect to such securities. In addition, if either of the Partner's positions in such a transaction is an “appreciated financial position”, application of the “straddle” rules may trigger a constructive sale of that position under the rules described above.

Section 1258 of the Code recharacterizes capital gain from a “conversion transaction” as ordinary income, with certain limitations. Conversion transactions are defined as transactions in which substantially all the expected return is attributable to the time value of money and either: (a) the transaction consists of the acquisition of property by the taxpayer and a substantially contemporaneous agreement to sell the same or substantially identical property in the future; (b) the transaction qualifies as a “straddle” (within the meaning of Section 1092(c) of the Code); (c) the transaction is one that was marketed or sold to the taxpayer on the basis that it would have the economic characteristics of a loan but the interest-like return would be taxed as capital gain; or (d) the transaction is described as a conversion transaction in the Regulations. The amount of gain so recharacterized will not exceed the amount of interest that would have accrued on the taxpayers' net investment for the relevant period at a yield equal to 120% of the “applicable rate”.

INVESTMENTS IN NON-U.S. CORPORATIONS

The Partnership may invest in certain foreign corporations that will be classified as “passive foreign investment companies” (“**PFICs**”) for U.S. tax purposes. Under the PFIC rules, unless the Partnership makes one of the elections described below, any gain realized by the Partnership on the sale or disposition of stock in a PFIC that is allocable to Partners that are U.S. Persons (as defined in the Code) will be treated as ordinary income and will be subject to U.S. federal income tax as if (i) the gain had been realized ratably over the Partnership’s holding period and (ii) the amount deemed realized had been subject to tax in each year of that holding period at the highest applicable federal income tax rate; in addition, an interest charge at the rate generally applicable to underpayments of federal income tax will be imposed on the amount. Further, any “excess distributions” from a PFIC (as defined in the Regulations) are treated as ordinary income (regardless of their original character) and subject to this deferred tax and interest charge.

Provided the PFIC complies with certain reporting requirements, the Partnership may elect to have the PFIC treated as a "qualified electing fund", in which case the Partnership would include annually in its gross income its *pro rata* share of the PFIC's net ordinary income and net realized capital gains, whether or not such amounts are actually distributed to the Partnership. Generally, any net operating losses or net capital losses of the PFIC will not pass through to the Partnership and will not offset any ordinary income or capital gains of the PFIC reportable to the Partnership in subsequent years. Alternatively, the Partnership could elect to "mark-to-market" stock in certain PFICs if such stock is considered "marketable stock" under the Code, and thereby avoid being subject to the deferred tax and interest charge discussed above. However, there can be no assurance that the Partnership will be able to make either of these elections with respect to any PFICs in which it invests. Further, Limited Partners may be subject to IRS reporting requirements with respect to the Partnership's investments in PFICs.

The Partnership may also invest in certain foreign corporations that will be considered "controlled foreign corporations" ("**CFCs**") for U.S. tax purposes. A CFC is a non-U.S. corporation in which certain U.S. shareholders own, directly or indirectly, more than 50% of either the total voting power of all classes of stock entitled to vote or the total value of all classes of stock. Under the CFC rules, certain U.S. shareholders are subject to U.S. federal income tax on certain types of income (generally passive income) realized by the CFC regardless of whether any amounts are distributed from the CFC to such U.S. shareholder. Further, such U.S. shareholders may be subject to IRS reporting requirements with respect to investments in CFCs.

In addition, if the Partnership invests in stock of foreign corporations that become PFICs or CFCs after the Partnership has made such investment, this may also result in adverse tax consequences for the Limited Partners that are U.S. Persons and may subject them to IRS reporting requirements with respect to such investments.

TAX-EXEMPT INVESTORS

If the Partnership derives income which would be considered "unrelated business taxable income" (as defined in Section 512 of the Code) ("**UBTI**"), if derived directly by a Limited Partner that is a qualified retirement plan or other organization exempt from tax under Sections 401 or 501(a) of the Code or an individual retirement account ("**IRA**") exempt under Section 408(e) of the Code (each, a "**Tax-Exempt Entity**"), such Limited Partner's allocable share of such Partnership income would be subject to tax. A Tax-Exempt Entity which is subject to tax on its allocable share of the Partnership's UBTI, including an IRA, may also be subject to the alternative minimum tax with respect to items of tax preference which enter into the computation of UBTI.

UBTI is generally the excess of gross income from any unrelated trade or business conducted by a Tax-Exempt Entity (or by a partnership of which the Tax-Exempt Entity is a member) over the deductions attributable to such trade or business. UBTI generally does not include certain passive income, including dividends, interest, annuities, royalties and gain or loss from the disposition of property held for investment, unless such income items are debt-financed income (as discussed below).

While UBTI itself is taxable, the receipt of UBTI by a Tax-Exempt Entity generally has no effect upon that entity's tax-exempt status or upon the exemption from tax of its other income. However, for certain types of Tax-Exempt Entities, the receipt of any UBTI may have extremely adverse consequences. In particular, for charitable remainder trusts (as defined under Section 664 of the Code), the receipt of any taxable income from UBTI during a taxable year will result in the imposition of an excise tax equal to the amount of such UBTI.

A Tax-Exempt Entity also includes in its UBTI its "unrelated debt-financed income" (and its allocable share of the "unrelated debt-financed income" of any partnership in which it invests) pursuant to Section 514 of the Code. In general, unrelated debt-financed income consists of: (i) income derived by a Tax-Exempt Entity (directly or through a partnership) from income producing property with respect to which there is "acquisition indebtedness"

at any time during the taxable year; and (ii) gains derived by a Tax-Exempt Entity (directly or through a partnership) from the disposition of property with respect to which there is "acquisition indebtedness". Acquisition indebtedness is generally defined as debt incurred to purchase or carry an investment. Such income and gains derived by a Tax-Exempt Entity from the ownership and sale of debt-financed property are taxable in the proportion to which such property is financed by acquisition indebtedness during the relevant period of time.

Income From the Partnership's Private Equity Investments. The Investment Manager will invest a substantial portion of the Partnership's Series 1 assets in the PE Portfolio Fund, and such partnership expects to invest in equity interests of other partnerships which will be engaged in business activities. It is anticipated that such portfolio companies may also use borrowed funds to acquire property. Accordingly, Limited Partners that are Tax-Exempt Entities should anticipate that a substantial portion, and possibly all, of their distributive share of the Partnership's net income realized from ownership of equity interests in such portfolio companies, including gain realized upon sales of such equity investments, will be subject to federal income tax as UBTI.

Income From the Partnership's Other Activities. The Investment Manager expects that the Partnership will incur indebtedness in connection with its operations from time to time. The law is not entirely clear regarding the appropriate method to be used to determine what portion of a tax-exempt Limited Partner's share of the Partnership's income is attributable to debt financing and therefore constitutes "debt-financed income". Accordingly while the Partnership will compute each tax-exempt Limited Partner's share of "debt-financed income" from the Partnership in a manner which the Partnership considers to be reasonable, there can be no assurance that the IRS will accept the method of computation used by the Partnership.

Tax-exempt Limited Partners will also realize UBTI if the Partnership acquires equity interests of publicly traded partnerships or private partnerships that are engaged in trade or business activities or the Partnership directly carries on other trade or business activities (other than as a securities trader).

OTHER TAXES

Partners may be subject to other taxes, such as the alternative minimum tax, state and local income taxes, and estate, inheritance or intangible property taxes that may be imposed by various jurisdictions. Each prospective investor should consider the potential consequences of such taxes due to an investment in the Partnership. It is the responsibility of each prospective investor to become satisfied as to the legal and tax consequences of an investment in the Partnership under state law, including the laws of the state(s) of its, his or her domicile and residence, by obtaining advice from such investor's own tax advisors, and to file all appropriate tax returns that may be required.

Income received by the Partnership from sources within non-U.S. countries may be subject to withholding and other taxes imposed by such countries. Each Partner may be entitled either to deduct (as an itemized deduction) such Partner's proportionate share of the non-U.S. taxes of the Partnership in computing such Partner's taxable income or to use the amount as a foreign tax credit against his or its U.S. federal income tax liability, subject to limitations. Generally, a credit for non-U.S. taxes is subject to the limitation that it may not exceed the taxpayer's U.S. tax attributable to his or its non-U.S. source taxable income. With respect to Partners that are U.S. Persons: (i) certain currency fluctuation gains, including fluctuation gains from non-U.S.-Dollar-denominated debt securities, receivables and payables, will be treated as ordinary income derived from U.S. sources; and (ii) Partnership gains from the sale of securities also will be treated as derived from U.S. sources. The limitation on the foreign tax credit is applied separately to non-U.S. source passive income (as defined for purposes of the foreign tax credit), including the non-U.S. source passive income realized by the Partnership. The foreign tax credit limitation rules do not apply to certain electing individual taxpayers who have limited creditable non-U.S. taxes and no non-U.S. source income other than passive investment-type income. The foreign tax credit generally is eliminated with respect to non-U.S. taxes withheld on income and gain if the Partnership fails to satisfy minimum holding period

requirements with respect to the property giving rise to the income and gain.

TAX ELECTIONS; RETURNS; TAX AUDITS

If the General Partner determines that the Partnership is treated as a securities trader for federal income tax purposes, the General Partner may cause the Partnership to elect to "mark-to-market" its securities at the end of each taxable year, in which case such securities would be treated for federal income tax purposes as though sold for fair market value on the last business day of such taxable year. Such an election under Code Section 475(f) would apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the IRS. If the Partnership were to make such an election, all or a portion of the Partnership's gains and losses would be considered ordinary income or loss, rather than capital gain or loss. Since for federal income tax purposes capital losses generally may be deducted only against capital gains, a Limited Partner may be unable to deduct capital losses realized from other investments and transactions in a taxable year against his share of the Partnership's income.

The Code provides for optional adjustments to the basis of partnership property upon distributions of partnership property to a partner and transfers of partnership interests (including by reason of death); provided that a partnership election has been made pursuant to Section 754 of the Code. Under the Partnership Agreement, the General Partner, in its sole discretion, may cause the Partnership to make such an election. Any such election, once made, cannot be revoked without the IRS's consent. The General Partner also has the authority and sole discretion to make or refrain from making other tax elections that are available to the Partnership.

Additionally, even if a partnership has not made a Section 754 election, Section 743 of the Code provides for a mandatory basis adjustment to partnership property on certain transfers of partnership interests (including transfers by reason of death), if the partnership has a "substantial built-in loss" immediately after such transfer. A partnership is treated as having a "substantial built-in loss" if the partnership's adjusted basis in partnership property exceeds the property's fair market value by more than $250,000. Section 734 of the Code also provides for mandatory basis adjustments in the case of certain property distributions to partners. Such Code provisions could cause the Partnership to decrease the basis of its remaining assets in such circumstances.

The General Partner will decide how to report partnership items on the Partnership's tax returns and all Limited Partners are required to treat such tax items consistently on their own returns, unless they file a statement with the IRS disclosing the inconsistency. Since the Partnership may engage in transactions whose treatment for tax purposes is not clear, there is a risk that a claim of tax liability could be asserted against the Partnership or its Partners. In the event that the income tax returns of the Partnership are audited by the IRS, the tax treatment of Partnership income and deductions generally is determined at the partnership level in a single proceeding rather than by individual audits of the Partners. As the "Tax Matters Partner", the General Partner has considerable authority to make decisions affecting the tax treatment and procedural rights of all Partners. In addition, the Tax Matters Partner has the authority to bind certain Partners to settlement agreements and the right on behalf of all Partners to extend the statute of limitations relating to the Partners' tax liabilities with respect to Partnership items. The General Partner may, in its sole discretion, consult with, and rely upon, the Partnership's auditors and their determinations or advice as to tax and/or accounting matters.

It is possible that the Partnership and or certain transactions executed by the Partnership would be subject to tax shelter disclosure registration and listing requirements under applicable U.S. tax laws and regulations.

PFIC Reporting. The Code provides that each U.S. Person (as defined herein) that is a direct or indirect shareholder of a PFIC (generally, an investment corporation organized under the laws of a foreign jurisdiction) is required to file an annual information return containing such information as the IRS may require. Limited Partners would be indirect shareholders of stock in any PFICs owned by the Partnership, and would satisfy such filing requirement (if applicable to such Partner) by completing a copy of IRS Form 8621

for the reportable PFIC investment and submitting such forms to the IRS with the Partner's federal income tax return.

FATCA Withholding and Compliance. The provisions of the Code known as the Foreign Account Tax Compliance Act ("**FATCA**") provide that a 30% withholding tax will be imposed on payments of U.S.-source dividends and interest (and certain other items of U.S.-source income) to certain foreign financial entities, and beginning on January 1, 2017 with regard to other withholdable payments (including gross proceeds from the sale of property that give rise to U.S.-source, interest or dividends), unless the foreign financial entity has registered with the IRS and agreed to provide specified U.S. tax information concerning "specified U.S. persons" that own interests in the foreign entity. The Partnership is a withholding agent with respect to such withholding taxes that may be imposed on any of its Partners. U.S. and non-U.S. Partners will be required to furnish appropriate documentation certifying as to their U.S. or non-U.S. tax status, together with such other additional tax information as the Partnership may from time to time request. Limited Partners that are "non-financial foreign entities" (as defined in Code Section 1472) are required to certify whether they have any "substantial United States owners" and, if so, to disclose the identity and tax identification numbers of such persons to the Partnership. Failure to provide such information may subject a Limited Partner to withholding taxes or mandatory withdrawal of its entire interest in the Partnership. Limited Partners are encouraged to consult with their own tax advisors regarding the possible impact of the FATCA legislation on their investment in the Partnership.

OTHER MATTERS

The Partnership may incur certain expenses in connection with its organization and the marketing of the Interests. Amounts paid or incurred to organize the Partnership are being amortized, for tax purposes, over a period of 180 months from the date the Partnership commenced operations. Amounts paid or incurred to market interests in a partnership (marketing and syndication expenses) are not deductible or amortizable.

SPECIAL CONSIDERATIONS FOR PARTNERS THAT ARE NOT U.S. PERSONS

A "**U.S. Person**" is (a) a citizen or resident of the United States, (b) a corporation, partnership, or other entity organized under the laws of the United States, any state, or the District of Columbia, other than a partnership that is not treated as a U.S. Person under the Regulations, (c) an estate whose income is subject to United States income tax, regardless of its source, or (d) a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have the authority to control all substantial decisions of the trust. In addition, to the extent provided in the Regulations, "U.S. Person" includes certain trusts in existence on August 20, 1996, and treated as U.S. Persons prior to such date, that have elected to be treated as U.S. Persons. Partners that are not U.S. Persons are referred to below as "non-U.S. Partners".

Taxation of Effectively Connected Income. The Partnership expects to be treated for U.S. tax purposes as being engaged in the conduct of a U.S. trade or business. As a result, non-U.S. Limited Partners that acquire interests in the Partnership will generally be treated as being engaged in the conduct of a U.S. trade or business. Thus, each non-U.S. Limited Partner will be subject to U.S. federal income taxation, at graduated rates, on its distributive share of the Partnership's income, gain or loss (whether ordinary or capital) that is effectively connected with the conduct of the Partnership's U.S. trade or business ("**ECI**"). Such Limited Partners will be required to file annual U.S. federal income tax returns with respect to such ECI, and the Partnership will be required to withhold and remit to the U.S. Treasury a portion of the non-U.S. Limited Partner's distributive share of such ECI. The Limited Partner would be entitled to claim a credit on his U.S. federal income tax return for the amount withheld by the Partnership with respect to such ECI. Non-U.S. Limited Partners may also be required to file applicable state and local tax returns in jurisdictions in which the Partnership is engaged in business or in which its real property interests are located.

U.S. Branch Profits Tax. In the case of a Limited Partner that is a non-U.S. corporation, in addition to the regular corporate income tax that must be paid on its ECI, the Code provides for an additional 30% "branch profits" tax. The branch profits tax is 30% (or lower rate permitted by tax treaty) of the foreign corporation's "dividend equivalent amount". This is the amount of the foreign corporation's effectively connected after-tax earnings that are not reinvested in a U.S. trade or business by the end of the tax year or disinvested in a later tax year. Certain income tax treaties may reduce or eliminate the branch profits tax; however, under certain circumstances, the branch profits tax may override income tax treaty benefits.

FIRPTA. The Foreign Investment in Real Property Tax Act of 1980, as amended ("**FIRPTA**"), imposes a tax on gain realized on disposition by a foreign person of a "U.S. real property interest" ("**USRPI**") by treating such gain as ECI, generally giving rise to the tax consequences described above. A USRPI includes a direct investment in U.S. real estate and buildings and also investments in stock and certain types of debt interests of a U.S. corporation that is classified as a "U.S. real property holding corporation" (as defined in the Code). A USRPI held by a partnership is deemed to be held proportionately by its partners.

Taxation of Non-ECI. The Partnership also expects to realize certain types of periodic income from U.S. sources (e.g., dividends and certain types of interest) which are not classified as ECI. Each non-U.S. Limited Partner will be subject to a flat 30% withholding tax on its allocable share of the gross amount of such income. Such withholding tax is sometimes reduced or eliminated by an applicable income tax treaty, provided that the proper certification is provided by the non-U.S. Limited Partner when necessary. The applicable IRS form or forms (W-8 series) should be submitted to the Partnership by each non-U.S. Limited Partner at the time such Limited Partner acquires an Interest in the Partnership, and should be resubmitted every three years thereafter (or earlier, if the information on such form changes before such date).

Disposition of Partnership Interests. A non-U.S. Limited Partner that disposes of its Interest in the Partnership, by sale or otherwise, may be subject to U.S. federal income

taxation on such disposition. A transferee of an Interest in the Partnership may be required to deduct and withhold a tax equal to 10% of the gross amount realized on such disposition. Any amount so withheld can be applied as a credit against the U.S. federal income tax liability of the non-U.S. Limited Partner and can be recovered as a refund in the event of overpayment.

U.S. Estate and Gift Taxation of Interests. Non-U.S. Limited Partners that are individuals should also be aware that Interests in the Partnership will be treated as U.S. situs property by reason of the Partnership's ownership of U.S. real property interests, and thus subject to U.S. estate taxation upon the death on a non-U.S. individual owner, or U.S. gift taxation upon a donative transfer of such Interest.

STATE TAXATION

In addition to the federal income tax consequences described above, prospective investors should consider potential state tax consequences of an investment in the Partnership. No attempt is made herein to provide a discussion of such state tax consequences. State laws often differ from federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Partner's distributive share of the taxable income or loss of the Partnership generally will be required to be included in determining the Partner's reportable income for state tax purposes in the jurisdiction in which such Partner a resident. Each prospective investor must consult such investor's own tax advisors regarding such state tax consequences.

FUTURE TAX LEGISLATION

Future amendments to the Code, other legislation, new or amended Regulations, administrative rulings or guidance by the IRS, or judicial decisions may adversely affect the federal income tax aspects of an investment in the Partnership, with or without advance notice, and retroactively or prospectively.

EXHIBIT 22

The Securities and Exchange Commission has not necessarily reviewed the information in this filing and has not determined if it is accurate and complete.
The reader should not assume that the information is accurate and complete.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM D

Notice of Exempt Offering of Securities

OMB APPROVAL	
OMB Number:	3235-0076
Estimated average burden hours per response:	4.00

1. Issuer's Identity

CIK (Filer ID Number)
0001660386

Previous Names: [X] None

Name of Issuer
Atlas IDF, LP

Jurisdiction of Incorporation/Organization
DELAWARE

Year of Incorporation/Organization
[X] Over Five Years Ago
[ ] Within Last Five Years (Specify Year)
[ ] Yet to Be Formed

Entity Type
[ ] Corporation
[X] Limited Partnership
[ ] Limited Liability Company
[ ] General Partnership
[ ] Business Trust
[ ] Other (Specify)

2. Principal Place of Business and Contact Information

Name of Issuer
Atlas IDF, LP

Street Address 1
C/O ATLAS IDF GP, LLC

Street Address 2
2101 CEDAR SPRINGS ROAD, SUITE 1200

City: DALLAS
State/Province/Country: TEXAS
ZIP/PostalCode: 75201
Phone Number of Issuer: (214) 288-9555

3. Related Persons

Last Name: Atlas IDF GP, LLC
First Name: N/A
Middle Name:

Street Address 1: 2101 Cedar Springs Road
Street Address 2: Suite 1200

City: Dallas
State/Province/Country: TEXAS
ZIP/PostalCode: 75201

Relationship: [ ] Executive Officer [ ] Director [X] Promoter

Clarification of Response (if Necessary):

The Issuer's General Partner

Last Name | First Name | Middle Name

First Name	Middle Name
Patrick	Mark

Street Address 1	Street Address 2
c/o Atlas IDF GP, LLC	2101 Cedar Springs Road, Suite 1200

City	State/Province/Country	ZIP/PostalCode
Dallas	TEXAS	75201

Relationship: [X] Executive Officer [ ] Director [ ] Promoter

Clarification of Response (if Necessary):

Controlling Person

4. Industry Group

- [ ] Agriculture
- Banking & Financial Services
  - [ ] Commercial Banking
  - [ ] Insurance
  - [ ] Investing
  - [ ] Investment Banking
  - [X] Pooled Investment Fund
    - [X] Hedge Fund
    - [ ] Private Equity Fund
    - [ ] Venture Capital Fund
    - [ ] Other Investment Fund

    Is the issuer registered as an investment company under the Investment Company Act of 1940?

    [ ] Yes [X] No
  - [ ] Other Banking & Financial Services
- [ ] Business Services
- Energy
  - [ ] Coal Mining
  - [ ] Electric Utilities
  - [ ] Energy Conservation
  - [ ] Environmental Services
  - [ ] Oil & Gas
  - [ ] Other Energy
- Health Care
  - [ ] Biotechnology
  - [ ] Health Insurance
  - [ ] Hospitals & Physicians
  - [ ] Pharmaceuticals
  - [ ] Other Health Care
- [ ] Manufacturing
- Real Estate
  - [ ] Commercial
  - [ ] Construction
  - [ ] REITS & Finance
  - [ ] Residential
  - [ ] Other Real Estate
- [ ] Retailing
- [ ] Restaurants
- Technology
  - [ ] Computers
  - [ ] Telecommunications
  - [ ] Other Technology
- Travel
  - [ ] Airlines & Airports
  - [ ] Lodging & Conventions
  - [ ] Tourism & Travel Services
  - [ ] Other Travel
- [ ] Other

5. Issuer Size

Revenue Range	OR	Aggregate Net Asset Value Range
[ ] No Revenues		[ ] No Aggregate Net Asset Value
[ ] $1 - $1,000,000		[ ] $1 - $5,000,000

☐ $1,000,001 - $5,000,000	☐ $5,000,001 - $25,000,000
☐ $5,000,001 - $25,000,000	☐ $25,000,001 - $50,000,000
☐ $25,000,001 - $100,000,000	☐ $50,000,001 - $100,000,000
☐ Over $100,000,000	☐ Over $100,000,000
☐ Decline to Disclose	☒ Decline to Disclose
☐ Not Applicable	☐ Not Applicable

6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

	☒ Investment Company Act Section 3(c)	
☐ Rule 504(b)(1) (not (i), (ii) or (iii))	☐ Section 3(c)(1)	☐ Section 3(c)(9)
☐ Rule 504 (b)(1)(i)	☐ Section 3(c)(2)	☐ Section 3(c)(10)
☐ Rule 504 (b)(1)(ii)	☐ Section 3(c)(3)	☐ Section 3(c)(11)
☐ Rule 504 (b)(1)(iii)	☐ Section 3(c)(4)	☐ Section 3(c)(12)
☒ Rule 506(b)	☐ Section 3(c)(5)	☐ Section 3(c)(13)
☐ Rule 506(c)	☐ Section 3(c)(6)	☐ Section 3(c)(14)
☐ Securities Act Section 4(a)(5)	☒ Section 3(c)(7)	

7. Type of Filing

☐ New Notice Date of First Sale 2015-12-15 ☐ First Sale Yet to Occur

☒ Amendment

8. Duration of Offering

Does the Issuer intend this offering to last more than one year? ☒ Yes ☐ No

9. Type(s) of Securities Offered (select all that apply)

☐ Equity	☒ Pooled Investment Fund Interests
☐ Debt	☐ Tenant-in-Common Securities
☐ Option, Warrant or Other Right to Acquire Another Security	☐ Mineral Property Securities
☐ Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security	☐ Other (describe)

10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? ☐ Yes ☒ No

Clarification of Response (if Necessary):

11. Minimum Investment

Minimum investment accepted from any outside investor $500,000 USD

12. Sales Compensation

Recipient		Recipient CRD Number [X] None	
(Associated) Broker or Dealer [X] None		(Associated) Broker or Dealer CRD Number	[X] None
Street Address 1		Street Address 2	
City		State/Province/Country	ZIP/Postal Code
State(s) of Solicitation (select all that apply) Check "All States" or check individual States	[ ] All States	[ ] Foreign/non-US	

13. Offering and Sales Amounts

Total Offering Amount	USD	or [X] Indefinite
Total Amount Sold	$37,975,518 USD	
Total Remaining to be Sold	USD	or [X] Indefinite

Clarification of Response (if Necessary):

14. Investors

[ ] Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, and enter the number of such non-accredited investors who already have invested in the offering.

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering: 3

15. Sales Commissions & Finder's Fees Expenses

Provide separately the amounts of sales commissions and finders fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions $0 USD [X] Estimate

Finders' Fees $0 USD [X] Estimate

Clarification of Response (if Necessary):

16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

$0 USD [X] Estimate

Clarification of Response (if Necessary):

Atlas IDF GP, LLC and/or its affiliates receive customary management fees, as described in the Issuer's Confidential Private Placement Memorandum.

Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Terms of Submission

In submitting this notice, each issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, in the accordance with applicable law, the information furnished to offerees.*
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against the issuer in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that, if the issuer is claiming a Regulation D exemption for the offering, the issuer is not disqualified from relying on Rule 504 or Rule 506 for one of the reasons stated in Rule 504(b)(3) or Rule 506(d).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Atlas IDF, LP	/s/ Mark Patrick	Mark Patrick	Controlling Person	2025-02-24

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 ("NSMIA") [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are "covered securities" for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA's preservation of their anti-fraud authority.

EXHIBIT 23

SIGNATURE PAGE

This page constitutes the signature page for the Subscription Agreement, the Prospective Investor Questionnaire and the Partnership Agreement, and execution of this signature page constitutes execution of each.

IN WITNESS WHEREOF, the Subscriber has executed this Subscription Agreement, the Prospective Investor Questionnaire and the Partnership Agreement this 21 day of December, 2015.

$ 7,000,000.
Capital Contribution

Series 1

For Individuals:

Name of Prospective Investor (print or type)

(Signature)

Name of Joint Prospective Investor (print or type)
(if applicable)

(Joint Signature, if applicable)

For Entities:

HHS IDF LP
Name of Prospective Investor (print or type)

By: _____
(Signature)

Name: John Honis
Title: Managing Member of GP

(Name and Initials of IRA custodian, if applicable)

$ 7,000,000.
Capital Contribution Accepted
Series 1

Accepted and Agreed, as of Dec 21, 2015:

RAND PE FUND I, L.P.
By: Rand PE Fund Management, LLC, as its general partner
(acting severally in the name of and for the account of each individual Series)

By: _____
Name: John Honis
Title: Managing Member

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above
ATLAS IDF, LP

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:
☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☒ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any)
Exemption from FATCA reporting code (if any)
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)
87 RAILROAD PLACE - SUITE 403

Requester's name and address (optional)

6 City, state, and ZIP code
Saratoga Springs, NY 12866

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number
☐☐☐ - ☐☐ - ☐☐☐☐

or

Employer identification number
47 - 5455343

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here | **Signature of U.S. person** ▶ [signature] **Date** ▶ 12/21/15

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

PART I – SUBSCRIBER INFORMATION PAGE

Subscriber Name: _____

Joint Subscriber Name (if necessary): _____

-or-

Entity Name: Atlas IDF, LP

Subscriber Social Security/Tax ID No.:
47-5455343

Joint Subscriber Social Security/Tax ID No. (if necessary):
_____

Subscriber Date of Birth/Date of Incorporation or Formation:
Oct 2015

Joint Subscriber Date of Birth/Date of Incorporation or Formation (if necessary): _____

State, or if not in the U.S., Country in which the Subscription Agreement was signed: New York

Residence (for individuals) or Principal Place of Business (for entities) (May not be a P.O. Box):

Address: 87 Railroad Place
Suite 403

Telephone: 214-335-7969

Facsimile: _____

City: Saratoga State: NY Zip: 12866

Email: THALE@RANDADVISORS.COM

Country: US

Mailing Address (if other than above)

Address: _____

Telephone: _____

Facsimile: _____

City: _____ State: _____ Zip: _____

Email: _____

Country: _____

Subscriber Type:

☐ Individual ☐ Joint Tenants with Right of Survivorship ☐ Trust ☒ Partnership ☐ Corporation ☐ LLC

☐ IRA (Self-directed) ☐ IRA (Custodian) ☐ Tenants in Common ☐ Other: _____

If through a custodian, please provide details:

_____

☐ Community Property (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington or Wisconsin).
PLEASE NOTE: if you are married and live in a community property state, both you and your spouse must sign the Signature Page to the Subscription Agreement.

Series of Interests:
Please indicate which Series of Interests you are subscribing for:

☒ Series 1 Interests

Prior to selecting a Series of Interests, Subscribers are advised to review the detailed descriptions of the rights and obligations applicable to such Series of Interests, which are set forth in the Memorandum (and/or a supplement to any such document), the Partnership Agreement and/or this Agreement.

Form PF Investor Type:

Under the reporting requirements on Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), a reporting entity must organize its investors by certain specified investor groups set forth in Form PF. Accordingly, please check below the investor type that best describes the Subscriber. (*If the Subscriber is acting as trustee, agent, representative or nominee for a beneficial owner, please check the item that best describes the beneficial owner.*)

Please check one:

- ☐ Individual that is a United States person[4] (or a trust of such a person)
- ☐ Individual that is not a United States person (or a trust of such a person)
- ☐ Broker-dealer
- ☐ Insurance company
- ☐ Investment company registered with the SEC
- ☒ Private fund[5]
- ☐ Non-profit
- ☐ Pension plan (other than a governmental pension plan)
- ☐ Banking or thrift institution (proprietary)
- ☐ State or municipal government entity (other than a governmental pension plan)
- ☐ State or municipal government pension plan
- ☐ Sovereign wealth fund or foreign official institution
- ☐ Investor that is not a United States person and about which the foregoing beneficial ownership information is not known and cannot reasonably be obtained because the beneficial interest is held through a chain involving one or more third-party intermediaries
- ☐ Other (*please specify*): _____

Payment Information:

Please insert your payment information. Please note **you must wire the payment from an account in your name**.

Bank Name: BBVA Compass
Bank ABA#: 062001186
City/State/Country: Dallas, TX
Account Name: Atlas IDF, LP
Account #: 6233738276

Swift Code*: _____
For Further Credit to: _____
Account Name: _____
Account #: _____

* Required for U.S. dollar wire transfer to non-U.S. banks. Please contact your bank for more information.

Was the Subscriber referred to the Partnership by a placement agent?

☐ Yes ☒ No

If yes, please provide the name of placement agent: _____

COMMUNICATIONS TO SUBSCRIBER:

Please send all communications to (please check one):

☒ Residence or Principal Place of Business

_____

[4] For purposes of Form PF, the term "United States person" has the meaning provided in Rule 203(m)-1 under the Advisers Act, which includes any natural person that is resident in the United States.
[5] For purposes of Form PF, the term "private fund" means any issuer that would be an investment company as defined in Section 3 of the Investment Company Act, but for Section 3(c)(1) or 3(c)(7) thereof.

☒ Mailing Address

Duplicate communications should be sent to an authorized representative as follows (complete if desired; otherwise, leave blank):

Name: _____

Address: _____

_____

_____

Facsimile: _____

Email: _____

Preferred Methods of Communication: Choose ***one*** for the Subscriber and ***one*** for the authorized representative whose address appears immediately above, if any; ***Note***: each of the Partnership, the Administrator, the Investment Manager, and the General Partner is permitted to send notices and other information relating to the Subscriber's investment in the Partnership in any manner it chooses but will send notices and other information by the method selected below if possible and may charge a related fee to the Subscriber in connection therewith.

	Mail	Facsimile	Email/Web-based Delivery
Subscriber	☐	☐	☒
Authorized Representative	☐	☐	☐

Electronic Delivery of Reports and Other Communications:

If you elected "Email/Web-based Delivery" above, at their discretion, the Partnership, the Administrator, the Investment Manager and/or the General Partner may provide to you (or your authorized representative) statements, reports and other communications relating to the Partnership and/or your investment in the Partnership in electronic form, such as email.

Do you consent to the sending of such statements, reports and other communications regarding the Partnership and your investment in the Partnership (including Net Asset Value information, subscription and withdrawal activity, and annual and other updates of the Partnership's consumer privacy policies and procedures) exclusively in electronic form without separate mailing of paper copies?

☒ Yes ☐ No

By consenting you also acknowledge that emails from the Partnership, the Administrator, the Investment Manager and/or the General Partner may be accessed by recipients other than you and may be interfered with, may contain computer viruses or other defects and may not be successfully replicated on other systems. The Partnership, the Administrator, the Investment Manager and the General Partner each give no warranties in relation to these matters. If you have any doubts about the authenticity of an email purportedly sent by the Partnership, the Administrator, the Investment Manager and/or the General Partner, please contact the purported sender immediately.

Schedule K-1s:

The annual Schedule K-1 statement will be sent to the Subscriber in physical form unless the Subscriber consents below to receive it electronically. Does the Subscriber grant permission for the annual Schedule K-1 to be sent electronically?

☒ Yes ☐ No

Please note that this choice will apply until the Subscriber informs the Administrator that it is electing to alter such permission, which the Subscriber is able to do at any time by contacting the Administrator and in such contact specifying the effective date of the new election. The Administrator will confirm the receipt of the Subscriber's

change in election and will specify the date on which such change will take effect. If the Subscriber has chosen to receive the Schedule K-1 electronically, a paper copy can be obtained by contacting the Administrator, and such a request will NOT alter the election noted above. The Schedule K-1s will only be sent for those periods for which the Subscriber was an investor in the Partnership. Subscribers should note that the electronic versions of the Schedule K-1 will be sent as Microsoft Word documents or .pdf files and that the Schedule K-1 may be required to be printed by the Subscriber for the purpose of attaching it to the Subscriber's federal, state and/or local income tax returns, if required by applicable law.

Compliance with the PATRIOT Act:

To comply with applicable anti-money laundering/OFAC rules and regulations, you and/or the institution remitting payment are required to provide the following payment information:

1. Name of the bank from which your payment to the Partnership is being wired (the "**Wiring Bank**")?
BBVA Compass

2. Is the Wiring Bank located in the United States or another "**FATF Member**"[6]?

☒ Yes ☐ No

If **yes**, please answer question 3 below.

If **no**, please provide the information described in Footnote 7 below and contact the Administrator.[7]

3. Are you a customer of the Wiring Bank?

YES

[6] As of November 1, 2015, members of the Financial Action Task Force on Money Laundering (each, an "**FATF Member**") include: Argentina; Australia; Austria; Belgium; Brazil; Canada; China; Denmark; the European Commission; Finland; France; Germany; Greece; the Gulf Co-operation Council; Hong Kong, China; Iceland; India; Ireland; Italy; Japan; the Kingdom of the Netherlands (including the Netherlands, Aruba, Curaçao and Saint Maarten); Luxembourg; Mexico; New Zealand; Norway; Portugal; the Republic of Korea; the Russian Federation; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; the United Kingdom; and the United States. This list may be expanded, from time to time, to include future FATF Members and FATF-compliant countries, as appropriate.

[7] Subscribers who responded "no" to question 2 or 3 of "Compliance with the PATRIOT Act" above must provide the following additional information and materials to the Administrator, and contact the Administrator to obtain further anti-money laundering schedules:

For Individual Investors: (i) a government-issued form of picture identification (*e.g.*, passport or driver's license); and (ii) proof of the individual's current address (*e.g.*, current utility bill), if not included in the form of picture identification.

For Funds-of-Funds or Entities that Invest on Behalf of Third Parties Not Located in the United States or Other FATF Members: (i) a certificate of due formation and organization and continued authorization to conduct business in the jurisdiction of its organization (*e.g.*, certificate of good standing); (ii) an incumbency certificate attesting to the title of the individual executing the Subscription Agreement on behalf of the prospective Subscriber; (iii) a completed form certifying that the entity has adequate anti-money laundering policies and procedures in place that are consistent with the PATRIOT Act, OFAC and other relevant federal, state or foreign anti-money laundering laws and regulations; and (iv) a letter of reference from a local office of a reputable bank or brokerage firm which is incorporated, or has its principal place of business located, in the United States or other FATF Member certifying that the prospective Subscriber (*i.e.*, the fund-of-funds or the entity investing on behalf of third parties) has maintained an account at such bank/brokerage firm for a length of time and containing a statement affirming the prospective Subscriber's integrity.

For All Other Entity Subscribers: (i) a certificate of due formation and organization and continued authorization to conduct business in the jurisdiction of its organization (*e.g.*, certificate of good standing); (ii) an incumbency certificate attesting to the title of the individual executing the Subscription Agreement on behalf of the prospective Subscriber; (iii) a letter of reference from a local office of a reputable bank or brokerage firm which is incorporated, or has its principal place of business located, in the United States or other FATF Member certifying that the prospective Subscriber has maintained an account at such bank/brokerage firm for a length of time and containing a statement affirming the prospective Subscriber's integrity; (iv) if the prospective Subscriber is a privately-held entity, a completed form listing the name of each person who directly, or indirectly through intermediaries, is the beneficial owner of 25% or more of any voting or non-voting class of equity interests of the prospective Subscriber; and (v) if the prospective Subscriber is a trust, a list of current beneficiaries of the trust that have, directly or indirectly, 25% or more of any interest in the trust, the settlors or grantors of the trust, and the trustees.

☒ Yes ☐ No

If **yes**, the information described in Footnote 7 below is not required.

If **no**, please provide the information described in Footnote 7 below and contact the Administrator.

PART III – TO BE COMPLETED BY IRAS (OTHER THAN SELF-DIRECTED IRAS), KEOGHS, CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, TRUSTS AND OTHER ENTITIES

A. ***General Information***

6. Is the Subscriber subscribing for an Interest as agent, nominee, trustee or otherwise on behalf of, for the account of or jointly with any other person or entity?

☐ Yes ☒ No

7. Will any other person or persons have a beneficial interest in the Interest acquired (other than as a shareholder, partner, member, trust beneficiary or other beneficial owner of equity interests in the Subscriber)?

☐ Yes ☒ No

8. Does the Subscriber control, or is the Subscriber controlled by or under common control with, any other existing or prospective investor in the Partnership?

☐ Yes ☒ No

PLEASE NOTE: If any of the above questions were answered "Yes", please provide identifying information or contact the Administrator.

9. Legal form of the Subscriber: LP

10. U.S. state or foreign jurisdiction in which the Subscriber was incorporated or formed: DELAWARE

11. Date of incorporation or formation of the Subscriber: OCT 2015

12. Is the Subscriber in any way affiliated with the General Partner or the Partnership?

☒ Yes ☐ No

If yes, please describe the relationship below.

FUND MANAGED BY THE SAME GENERAL PARTNER AS THE PARTNERSHIP

13. Is the Subscriber in any way affiliated with a senior foreign government, political or military official, or an immediate family member or close associate of such person (a "*politically exposed person*")?

☐ Yes ☒ No

If yes, (a) which government? _____

(b) what position in the government? _____

(c) if an immediate family member or close associate of a politically exposed person, what relationship to the politically exposed person? _____

14. Authorized individual who is executing the Subscription Agreement on behalf of the investing entity is:

Name: JOHN HOWIN

Current position or title: MANAGING MEMBER OF THE GENERAL PARTNER

Telephone number: 214-335-7969

Facsimile number: _____
Email: JHONIS@RANDADVISORS.COM

B. *Subscriber Qualification*

1. Accredited Investor. Interests will be sold only to investors who are "*accredited investors*" (as defined in Rule 501 of Regulation D promulgated under the Securities Act). Please indicate the basis of "*accredited investor*" status of the Subscriber by checking the applicable statement or statements.

☒ The Subscriber has total assets in excess of $5,000,000, was not formed for the purpose of investing in the Partnership and is one of the following:

- a corporation
- a partnership
- a limited liability company
- a business trust
- a tax-exempt organization described in Section 501(c)(3) of the Code.

☐ The Subscriber is a personal (non-business) trust, other than an employee benefit trust, with total assets in excess of $5,000,000 which was not formed for the purpose of investing in the Partnership and whose decision to invest in the Partnership has been directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the investment.

☐ The Subscriber is licensed, or subject to supervision, by U.S. federal or state examining authorities as a "*bank*", "*savings and loan association*", "*insurance company*", or "*small business investment company*" (as such terms are used and defined in 17 CFR §230.501(a)) or is an account for which a bank or savings and loan association is subscribing in a fiduciary capacity.

☐ The Subscriber is registered with the SEC as a broker or dealer or an investment company, or has elected to be treated or qualifies as a "*business development company*" (within the meaning of Section 2(a)(48) of the Investment Company Act or Section 202(a)(22) of the Advisers Act).

☐ The Subscriber is an employee benefit plan within the meaning of ERISA (including an IRA), which satisfies at least one of the following conditions:

___ it has total assets in excess of $5,000,000; or

___ the investment decision is being made by a plan fiduciary which is a bank, savings and loan association, insurance company or registered investment adviser; or

___ it is a self-directed plan (i.e., a tax-qualified defined contribution plan in which a participant may exercise control over the investment of assets credited to the participant's account) and the decision to invest is made by those participants investing, and each such participant qualifies as an accredited investor.

☐ The Subscriber is an employee benefit plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions, which has total assets in excess of $5,000,000.

☐ The Subscriber is an entity in which all of the equity owners are at least one of the following: (a) natural persons who are "accredited investors", (b) grantor trusts where the individual grantors are "accredited investors" or (c) non-natural persons described above.

If the Subscriber does <u>not</u> qualify in any accredited investor category above (and is not a natural person or grantor trust), please indicate this in the space provided below.

☐ The Subscriber does not qualify in any of the above accredited investor categories.

2. **Qualified Client.** Interests will be sold only to investors who are "*qualified clients*" (as defined in Rule 205-3 promulgated under the Advisers Act). Please indicate the basis of "*qualified client*" status of the Subscriber by checking the applicable statement or statements.

(a) Is the Subscriber an entity with net assets at the time of entering into the Subscription Agreement exceeding $2,000,000?

☐ Yes ☐ No

(b) Is the Subscriber an entity that has at least $1,000,000 under the management of the Investment Manager immediately after entering into the Subscription Agreement?

☐ Yes ☐ No

(c) Is the Subscriber a "*qualified purchaser*" as defined in Section 2(a)(51)(A) of the Investment Company Act at the time of entering into the Subscription Agreement?

☒ Yes ☐ No

If the Subscriber does not qualify in any qualified client category above (and is not a natural person or grantor trust), please indicate this in the space provided below.

☐ The Subscriber does not qualify in any of the above qualified client categories.

3. **Qualified Purchaser.** The Partnership intends to claim exemption from registration under the Investment Company Act in reliance on Section 3(c)(7) thereof, and accordingly Interests will be sold only to investors who are "*qualified purchasers*" (as defined in Section 2(a)(51) of the Investment Company Act). Please indicate the basis of "*qualified purchaser*" status of the Subscriber by checking the applicable statement or statements. In connection therewith, **the Subscriber must read Annexes B and C to these Subscription Documents** for the definition of "*investments*" and for information regarding the valuation of "*investments,*" respectively.

☐ (a) A company, partnership or trust that owns not less than $5,000,000 in "*investments*" and that is owned directly or indirectly by or for two or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations or trusts established by or for the benefit of such persons.

☐ (b) A trust that is not covered by (a) above as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (a), (c), (d) or (e) hereof (or under Part II, Section (B)(3) above).

☐ (c) An entity, acting for its own account or the accounts of other qualified purchasers, which, in the aggregate, owns and invests on a discretionary basis not less than $25,000,000 in "*investments.*"

☐ (d) A qualified institutional buyer as defined in paragraph (a) of Rule 144A under the Securities Act, acting for its own account, the account of another qualified institutional buyer, or the account of a qualified purchaser; *provided* that: (i) a dealer described in paragraph (a)(1)(ii) of Rule 144A shall own and invest on a discretionary basis at least $25,000,000 in securities of issuers that are not affiliated persons of the dealer and (ii) a plan referred to in paragraph (a)(1)(i)(D) or (a)(1)(i)(E) of Rule 144A, or a trust fund referred to in paragraph (a)(1)(i)(F) of Rule 144A that holds the assets of such a plan, will not be deemed to be acting for its own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan.

☒ (e) An entity, each beneficial owner of which is a qualified purchaser. ***PLEASE NOTE:*** ***This certification does not apply to beneficiaries of an irrevocable trust.***

If the Subscriber does not qualify in a qualified purchaser category above (and is not a natural person or grantor trust), please indicate this in the space provided below.

☐ The Subscriber does not qualify in any of the above qualified purchaser categories.

4. Supplemental Data

(a) Was the Subscriber organized or reorganized for the specific purpose of acquiring Interests in the Partnership?

☐ Yes ☒ No

PLEASE NOTE: If the answer to question 4(a) is "Yes", each person who is an equity owner of the Subscriber must complete a copy of the Prospective Investor Questionnaire as if such person were directly purchasing an Interest.

(b) With respect to its acquisition of the Interests, is the Subscriber a participant-directed defined contribution plan (such as a 401(k) plan), or a partnership or other investment vehicle (1) in which its partners or participants have or will have any discretion as to their level of investment in the Subscriber or in investments made by the Subscriber (including the Subscriber's investment in an Interest), or (2) that is otherwise an entity managed to facilitate the individual decisions of its beneficial owners to invest in the Partnership?

☐ Yes ☒ No

(c) Will the Subscriber, at any time, invest more than 40% of the Subscriber's assets in the Partnership?

☒ Yes ☐ No

5. ERISA and Tax-Exempt Information

(a) Is the Subscriber a pension, profit-sharing, annuity or employee benefit plan (a "**Plan**") described in ERISA, whether or not subject to ERISA, or a "*plan*" (as defined in Section 4975(e)(i) of the Code), or is the Subscriber an entity whose underlying assets include Plan assets by reason of a Plan's investment in the Subscriber?

☐ Yes ☒ No

If the answer to question 5(a) is "No", please skip to question 4(b) below.

If the answer to question 5(a) is "*Yes*", is the Subscriber subject to ERISA?

☐ Yes ☐ No

If the answer to question 5(a) is "*Yes*", is the Subscriber a "*governmental plan*" (as defined in Section 3(32) of ERISA) or a "*church plan*" (as defined in Section 3(33) of ERISA)?

☐ Yes ☐ No

(b) Is the Subscriber a partnership, a limited liability company, an S Corporation, trust or other pass-through entity?

☒ Yes ☐ No

If the answer to question 5(b) is "*Yes*", please supply the approximate percentage of ERISA plan assets to be invested in the Partnership by the Subscriber as compared to the total assets of such Subscriber?

0 % John Honis
Please identify a contact for confirmation

If the answer to question 5(b) is "*Yes*", please provide the approximate percentage of ERISA plan assets to be invested in the Partnership as compared with the total assets of the ERISA plan sponsor 0 %

If the answer to question 5(b) is "*Yes*", please provide the percentage of assets of such entity that constitute "plan assets" as defined in DOL Reg. Sec. 2510.3-101.

0 %

(c) If the Subscriber is subscribing as a trustee or custodian for an IRA, is the Subscriber a qualified IRA custodian or trustee?

☐ Yes ☒ No ☐ N/A

(d) If applicable, if the Subscriber is an IRA, the IRA beneficiary must complete the Subscription Agreement. The IRA custodian must approve the Subscription Agreement and retain legal title of the Interest for the benefit of the IRA beneficiary. By initialing on the line below, the Subscriber represents that the IRA custodian has approved the Subscription Agreement and will retain legal title of the Interest for the benefit of the IRA beneficiary.

_____ _____
Initial Name of IRA Custodian (Note: cannot be an individual)

6. Bank Holding Company Act Information

Does the Subscriber wish to be treated as if it were subject to the Bank Holding Company Act of 1956, as amended from time to time ("**BHCA**")?

☐ Yes ☒ No

By checking "*Yes*", the Subscriber acknowledges and agrees that the Partnership shall not be deemed to be providing any legal advice to Limited Partners that are subject to the BHCA and that all such Limited Partners should consult their own counsel regarding an investment in the Partnership.

7. Tax Information

(a) Is the Subscriber a "*United States person*" as defined in Section 7701(a)(30) of the Code and the regulations promulgated thereunder?[10]

☒ Yes ☐ No

If the answer to question 7(a) is "*Yes*", has the Subscriber included a fully executed Form W-9 with this Prospective Investor Questionnaire?

[10] As per Section 7701(a)(30) of the Code and the regulations promulgated thereunder, "United States person" means (i) a citizen or resident of the United States, (ii) a U.S. partnership, (iii) a U.S. corporation, (iv) any estate (other than a non-United States estate, within the meaning of Section 7701(a)(31) of the Code), (v) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust, or (vi) any trust which has elected to be taxed as a trust described in (v).

☒ Yes ☐ No

If the answer to question 7(a) is "No", has the Subscriber included a fully executed Form W-8BEN, Form W-8BEN-E, Form W-8ECI, Form W-8IMY or Form W-8EXP, as applicable, with this Prospective Investor Questionnaire?

☐ Yes ☐ No

(b) Please provide the Subscriber's U.S. state or foreign country of residence for tax purposes:

Delaware

(c) The Subscriber reports income for federal income tax purposes on the following basis:

☒ calendar year taxable year;

☐ other taxable year (please specify):_____; or

☐ N/A

(d) Is the Subscriber exempt from U.S. federal income tax (e.g., a qualified employee benefit plan or trust, retirement account, charitable remainder trust, or a charitable foundation or other tax-exempt organization described in Section 501(c)(3) of the Code)?

☐ Yes ☐ No ☐N/A

(e) Is the Subscriber treated as a "disregarded entity" for U.S. federal income tax purposes?

☐ Yes ☐ No

If the answer to question 7(e) is "No", pleas skip to question 7(f) below.

If the answer to question 7(e) is "*Yes*", is the owner of the Subscriber a "*United States person*"?

☐ Yes ☐ No

If the answer to the previous question is "*Yes*", please provide a fully executed Form W-9.

If the answer to the previous question is "No", please provide a fully executed Form W-8BEN, Form W-8BEN-E, Form W-8ECI, Form W-8IMY or Form W-8EXP, as applicable.

(f) Is the Subscriber a "*simple trust*" or a "*grantor trust*" for U.S. federal income tax purposes?

☐ Yes ☐ No

If the answer to question 7(f) is "Yes", please provide a fully executed Form W-9 or Form W-8BEN, Form W-8BEN-E, Form W-8ECI, Form W-8IMY or Form W-8EXP, as applicable, with respect to the persons who are subject to U.S. federal income tax on the trust's income.

(g) Is the Subscriber a "*grantor trust*", "*S Corporation*" or an entity treated as a partnership for U.S. federal income tax purposes?

☐ Yes ☐ No

[*remainder of page intentionally left blank*]

PART IV—NEW ISSUES CERTIFICATION TO BE COMPLETED BY ALL SUBSCRIBERS

The Subscriber must complete this Certification in order for the Partnership to be able to determine the extent to which the Subscriber may participate in "new issue" securities in accordance with Rule 5130 (the "**New Issues Rule**") of the Securities Offering and Trading Standards and Practices of FINRA. If the Subscriber is a corporation, partnership, limited liability company, trust or any other entity or a nominee for another person, the person completing this Certification with respect to the Subscriber *must* be a person authorized to represent the beneficial owner(s) of the Subscriber, or a bank, foreign bank, broker-dealer, investment adviser or other conduit acting on behalf of the beneficial owner(s) of the Subscriber.

INSTRUCTIONS: Each Subscriber must complete this Certification by checking the box next to all applicable categories under Section A below to determine whether the Subscriber is a restricted person under the New Issues Rule (a "**Restricted Person**") or indicating that none of the Restricted Person categories apply to it and the Subscriber is eligible to participate in new issues. A Subscriber that is an entity and that is also a Restricted Person under Section A may still be able to participate fully in new issue investments if it indicates in Section B that it is also an exempted entity (an "**Exempted Entity**"). Accordingly, each such Subscriber should check the box next to any applicable categories under Section B to determine whether or not the Subscriber is an Exempted Entity.

If the Subscriber is a corporation, partnership, limited liability company, trust or any other entity (including a hedge fund, fund-of-funds, investment partnership or any other collective investment vehicle, or a broker-dealer organized as an investment fund) (any of the foregoing, an "**Entity Investor**"), such Entity Investor must complete the certification of beneficial ownership in Section C. Based on such information and the size of the investment by such Entity Investor in the Partnership, such Entity Investor may be deemed to be a Restricted Person with respect to the entirety of its investment in the Partnership or any portion thereof (such determination of Restricted Person status by the Partnership shall be final and conclusive).

☒ *The Subscriber does not wish to participate in new issues and will be deemed a Restricted Person.* If this box is checked, no further responses to Section A, B or C are necessary.

A. Determination of Restricted Person Status. Please check all appropriate boxes.

The Subscriber is:

☐ (i) a broker-dealer;

☐ (ii) an officer, director, general partner, associated person[11] or employee of a broker-dealer (other than a limited business broker-dealer)[12];

☐ (iii) an agent of a broker-dealer (other than a limited business broker-dealer) that is engaged in the investment banking or securities business;

☐ (iv) an immediate family member[13] of a person described in (ii) or (iii) above. Under certain circumstances, a Subscriber who checks this box may be able to participate in new issue investments. The Partnership may request additional information in order to determine the eligibility of a Subscriber under this Restricted Person category;

---

[11] A person "associated with" a broker-dealer includes any natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a broker-dealer, or any partner, director, officer or sole proprietor of a broker-dealer.

[12] A "limited business broker-dealer" is any broker-dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities.

[13] The term "immediate family" includes the Subscriber's: (i) parents, (ii) mother-in-law or father-in-law, (iii) husband or wife, (iv) brother or sister, (v) brother-in-law or sister-in-law, (vi) son-in-law or daughter-in-law, (vii) children, and (viii) any other person who is supported, directly or indirectly, to a material extent by an officer, director, general partner, employee, agent of a broker-dealer or person associated with a broker-dealer.

☐ (v) a finder or any person acting in a fiduciary capacity to a managing underwriter, including, but not limited to, attorneys, accountants and financial consultants. Notwithstanding the foregoing, a Subscriber who is a finder or fiduciary but who is not acting in such capacity with respect to the security being offered, may be able to participate in new issue investments, and, accordingly, the Partnership may request additional information from a Subscriber who checks this box in order to determine the Subscriber's eligibility under this Restricted Person category;

☐ (vi) a person who has authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor or collective investment account[14] (including a private investment vehicle such as a hedge fund);

☐ (vii) an immediate family member of a person described in (v) or (vi) above who materially supports[15], or receives material support from, the Subscriber;

☐ (viii) a person listed or required to be listed in Schedule A, B or C of a Form BD (other than with respect to a limited business broker-dealer), except persons whose listing on Schedule A, B or C is related to a person identified by an ownership code of less than 10% on Schedule A;

☐ (ix) a person that (A) directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD, or (B) directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed in Schedule B of a Form BD, in each case (A) or (B), other than a reporting company that is listed on a national securities exchange, or other than with respect to a limited business broker/dealer;

☐ (x) an immediate family member of a person described in (viii) or (ix) above. Under certain circumstances, a Subscriber who checks this box may be able to participate in new issue investments. The Partnership may request additional information in order to determine the eligibility of a Subscriber under this Restricted Person category; or

☐ (xi) any entity (including a corporation, partnership, limited liability company, trust or other entity) in which any person or persons listed in (i)-(x) above has a beneficial interest[16].

☐ None of the above categories apply and the Subscriber is eligible to participate in new issue securities.

---

[14] A "collective investment account" is any hedge fund, investment corporation, or any other collective investment vehicle that is engaged primarily in the purchase and/or sale of securities. Investment clubs (groups of individuals who pool their money to invest in stock or other securities and who are collectively responsible for making investment decisions) and family investment vehicles (legal entities that are beneficially owned solely by immediate family members (as defined above)) are not considered collective investment accounts.

[15] The term "material support" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to materially support each other.

[16] The term "beneficial interest" means any economic interest such as the right to share in gains or losses. The initial receipt of a management or performance-based fee for operating a collective investment account, or other fee for acting in a fiduciary capacity, is not considered a beneficial interest in the account; however, if such payments are accumulated and subsequently invested into the account (as a deferred fee arrangement or otherwise), they would constitute a beneficial interest in that account.

B. Determination of Exempted Entity Status. A Subscriber that is an entity and that is also a Restricted Person under Section A may still be able to participate fully in new issue investments, whether directly or through an account in which such Subscriber has a beneficial interest, if it indicates below that it is also an Exempted Entity. Please check all appropriate boxes.

The Subscriber is:

☐ (i) a publicly-traded entity (other than a broker-dealer or an affiliate of a broker-dealer, where such broker-dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that is listed on a national securities exchange, or is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange;

☐ (ii) an investment company registered under the Investment Company Act;

☐ (iii) an investment company organized under the laws of a foreign jurisdiction and:

(a) the investment company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; and

(b) no person owning more than 5% of the shares of the investment company is a Restricted Person;

☐ (iv) (A) an employee benefit plan under ERISA that is qualified under Section 401(a) of the Code and that is not sponsored solely by a broker-dealer, (B) a state or municipal government benefits plan that is subject to state and/or municipal regulation or (C) a church plan under Section 414(e) of the Code;

☐ (v) a tax-exempt charitable organization under Section 501(c)(3) of the Code;

☐ (vi) a common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Exchange Act, and the fund

(a) has investments from 1,000 or more accounts, and

(b) does not limit beneficial interests in the fund principally to trust accounts of Restricted Persons;

☐ (vii) an insurance company general, separate or investment account, and

(a) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders, and

(b) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to Restricted Persons, or, if a general account, the insurance company does not limit its policyholders principally to Restricted Persons; or

☐ (viii) an entity (including a private investment vehicle, such as a hedge fund or fund of hedge funds) (a) in which the beneficial interests of Restricted Persons do not exceed in the aggregate 10% of such entity, or (b) that limits participation in New Issue profits by Restricted Persons to not more than 10% of the profits from New Issues.

C. Determination of Beneficial Ownership.

If the box for (viii) in Section B above is checked, please specify the current percentage of the net profits from New Issues allocable to beneficial owners of such entity who are Restricted Persons:

_____%

[*remainder of page intentionally left blank*]

PART V—SPINNING PROHIBITION CERTIFICATION TO BE COMPLETED BY ALL SUBSCRIBERS

The Subscriber must complete this Certification in order for the Partnership to be able to determine the extent to which the Subscriber may participate in "new issue" securities in accordance with FINRA Rule 5131(b) (the "**Spinning Prohibition Rule**"), which prohibits a FINRA member who provides investment banking services from allocating new issues to accounts in which officers and directors of certain current, former or prospective investment banking clients have an interest. To enable the Partnership to purchase new issues, the Partnership must determine whether the Subscriber is an executive officer or director or person materially supported by an executive officer or director of a public company or a "covered non-public company" under the Spinning Prohibition Rule. Please note that the Spinning Prohibition Rule (FINRA Rule 5131(b)) is in addition to, not a replacement of, the New Issues Rule (FINRA Rule 5130) covered in Part IV of this Questionnaire.

If the Subscriber is a corporation, partnership, limited liability company, trust or any other entity or a nominee for another person, the person completing this Certification with respect to the Subscriber *must* be a person authorized to represent the beneficial owner(s) of the Subscriber, or a bank, foreign bank, broker-dealer, investment adviser or other conduit acting on behalf of the beneficial owner(s) of the Subscriber.

INSTRUCTIONS: Each Subscriber must complete this Certification by checking the box next to all applicable categories under Section A below to determine whether the Subscriber is a restricted investor under the Spinning Prohibition Rule (a "**Restricted Investor**"), or indicating that none of the Restricted Investor categories apply to it and that the Subscriber is eligible to participate in new issues. A Subscriber that is an entity which is deemed a Restricted Investor under Section A may still be able to participate in new issues if it indicates in Section B below that it is an unrestricted investor under the Spinning Prohibition Rule (an "**Unrestricted Investor**").

☒ *The Subscriber does not wish to participate in new issues and will be deemed a Restricted Investor.* If this box is checked, no further responses to Section A or B are necessary.

A. Determination of Restricted Investor Status. Please check all appropriate boxes.

The Subscriber is:

☐ (i) an executive officer or director of a public company[17] or a covered non-public company[18].

If this box is checked, please provide the name and ticker symbol (where applicable) of each such company (include additional sheets if necessary):

_____

_____

_____

☐ (ii) a person who receives material support[19] from an executive officer or director of a public company or a covered non-public company.

If this box is checked, please provide the name and ticker symbol (where applicable) of each such company (include additional sheets if necessary):

_____

[17] A "public company" is any company that is registered under Section 12 of the Exchange Act, or files periodic reports pursuant to Section 15(d) of the Exchange Act.

[18] A "covered non-public company" is any non-public company satisfying the following criteria: (i) income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years.

[19] The term "material support" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support.

_____

_____

☐ (iii) an entity (including a corporation, partnership, limited liability company, trust or other entity) in which a person or persons listed in (i) and (ii) above has a beneficial interest[20] (each such person, a "**Restricted Participant**").

If this box is checked, please indicate the company or companies (and ticker symbol(s) where applicable) on whose behalf such executive officers or directors serve and the percentage share of profits or losses attributable to new issues to be received by all Restricted Participants related to each company (include additional sheets if necessary):

Name and ticker symbol of each such company:	Share of profits:
_____	_____
_____	_____
_____	_____

☐ (iv) None of the above categories apply and the Subscriber is not a Restricted Investor and is eligible to participate in new issues. The Subscriber does not need to complete Section B below.

B. Determination of Unrestricted Investor Status. A Subscriber that is an entity which is deemed a Restricted Investor under Section A may still be able to participate in new issues if it indicates below that it is also an Unrestricted Investor. Please check all appropriate boxes.

The Subscriber is:

☐ (i) an entity (including a corporation, partnership, limited liability company, trust or other entity) in which a Restricted Participant(s) has/have a beneficial interest, but the Subscriber hereby represents and warrants that such Restricted Participant(s) affiliated with the same public company or covered non-public company in aggregate (as to each such public company or covered non-public company) is/are allocated no more than 25% of any profits or losses attributable to new issues received by the Subscriber.

If this box is checked, please indicate the company or companies (and ticker symbol(s) where applicable) on whose behalf such executive officers or directors serve and the percentage share of profits or losses attributable to new issues to be received by all Restricted Participants related to each company (include additional sheets if necessary):

Name and ticker symbol of each such company:	Share of profits:
_____	_____
_____	_____
_____	_____

☐ (ii) a publicly-traded entity (other than a broker-dealer or an affiliate of a broker-dealer, where such broker-dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that is listed on a national securities exchange, or is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange;

[20] The term "beneficial interest" means any economic interest such as the right to share in gains or losses. The initial receipt of a management or performance-based fee for operating a collective investment account, or other fee for acting in a fiduciary capacity, is not considered a beneficial interest in the account; however, if such payments are accumulated and subsequently invested into the account (as a deferred fee arrangement or otherwise), they would constitute a beneficial interest in that account.

☐ (iii) an investment company registered under the Investment Company Act;

☐ (iv) an investment company organized under the laws of a foreign jurisdiction and:

(a) the investment company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; and

(b) no person owning more than 5% of the shares of the investment company is a Restricted Person;

☐ (v) (A) an employee benefit plan under ERISA that is qualified under Section 401(a) of the Code and that is not sponsored solely by a broker-dealer, (B) a state or municipal government benefits plan that is subject to state and/or municipal regulation or (C) a church plan under Section 414(e) of the Code;

☐ (vi) a tax-exempt charitable organization under Section 501(c)(3) of the Code;

☐ (vii) a common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Exchange Act, and the fund

(a) has investments from 1,000 or more accounts, and

(b) does not limit beneficial interests in the fund principally to trust accounts of Restricted Persons; or

☐ (viii) an insurance company general, separate or investment account, and

(a) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders, and

(b) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to Restricted Persons, or, if a general account, the insurance company does not limit its policyholders principally to Restricted Persons.

[*remainder of page intentionally left blank*]

EXHIBIT 24

ADDITIONAL CONTRIBUTION FORM

Rand PE Fund I, L.P.
c/o Administrator
[address to be provided upon request]

Dear Sir or Madam:

The undersigned hereby wishes to make an additional capital contribution ("**Additional Capital Contribution**") to Rand PE Fund I, L.P., a Delaware limited partnership (the "**Partnership**"). Subject to the discretion of the Partnership's general partner, Rand PE Fund Management, LLC, a Delaware limited liability company (the "**General Partner**"), to accept a lower amount, the minimum Additional Capital Contribution is $500,000. The amount of the undersigned's Additional Capital Contribution to Series 1 is: $9,253,000.

The undersigned acknowledges and agrees that: (i) the undersigned is making the Additional Capital Contribution on the terms and conditions contained in the Subscription Agreement, dated 12/21/15, previously executed by the undersigned and accepted by the General Partner (the "**Subscription Agreement**"); (ii) the representations of the undersigned contained in the Subscription Agreement are true and correct in all material respects as of the date set forth below; (iii) the undersigned has complied in all material respects through the date set forth below with all covenants contained in the Subscription Agreement; and (iv) the information provided by the undersigned in the Prospective Investor Questionnaire submitted with the Subscription Agreement is true and correct as of the date set forth below. **THE UNDERSIGNED AGREES TO NOTIFY THE PARTNERSHIP PROMPTLY SHOULD THERE BE ANY CHANGE IN ANY OF THE FOREGOING INFORMATION.**

Dated: Dec 23, 2015

For Individuals:

_____
Name of Investor (print or type)

_____
(Signature)

_____
Name of Joint Investor (print or type) (if applicable)

_____
(Joint Signature, if applicable)

For Entities:

Atlas IDF, LP
Name of Investor (print or type)

By: _____
(Signature)

Name: John Honis
Title: Managing Member of the General Partner
(Name and Initials of IRA custodian, if applicable)

FOR INTERNAL USE ONLY:

$9,253,000.00
Additional Capital Contribution Accepted

Accepted and Agreed, as of Dec 23, 2015:

RAND PE FUND I, L.P.
By: Rand PE Fund Management, LLC, as its general partner
(acting severally in the name of and for the account of each individual Series)

By: _____
Name: John Honis
Title: Managing Member

EXHIBIT 25

PARTICIPATION AGREEMENT

among

CROWN GLOBAL LIFE INSURANCE LTD.

and

CROWN GLOBAL LIFE INSURANCE LTD. acting on behalf of each its Separate Accounts set out in Schedule A hereto as may be amended from time to time

and

ATLAS IDF, LP

and

RAND ADVISORS, LLC

Dated as of

November 30, 2015

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THIS PARTICIPATION AGREEMENT (this "**Agreement**") is made and entered into by and among **CROWN GLOBAL LIFE INSURANCE LTD.** ("**CGLI**"), a Bermuda exempted company registered as a long term Class C insurer, the Company on behalf of each of its separate accounts (and subaccounts, if any, thereof) set forth on Schedule A hereto ("**Schedule A Separate Accounts**" and together with CGIL, the "**Company**"), as the same may be amended from time to time, **ATLAS IDF, LP**, a Delaware limited partnership (the "**Fund**"), and **RAND ADVISORS, LLC**, a Delaware limited liability company (the "**Adviser**") (collectively, the "**Parties**" and each, a "**Party**"), and shall be effective as of the date set forth on the counterpart signature page hereto.

WITNESSETH:

WHEREAS, the Fund was organized as a private investment vehicle and is offering its limited partnership interests ("**Interests**") to Eligible Insurance Funds and to separate accounts, or subaccounts thereof, that fund Variable Contracts offered by Eligible Insurance Companies, as such terms are defined below;

WHEREAS, the offering and sale of Interests will be exempt from registration or qualification under the U.S. Securities Act of 1933, as amended (the "**1933 Act**");

WHEREAS, the Company has established a Separate Account, and may in the future establish additional Separate Accounts (and subaccounts thereof) to hold one or more Interests; and

WHEREAS, the Company desires to purchase, and the Fund desires to issue, Interests in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I. CERTAIN DEFINITIONS

1.1 "**Business Day**" means each day the NYSE is open for regular trading, unless defined differently on Schedule A-2 hereto.

1.2 "**Code**" means the U.S. Internal Revenue Code of 1986, as amended.

1.3 "**Company Contracts**" means those Variable Contracts issued by the Company and listed on Schedule A hereto, as the same may be amended from time to time.

1.4 "**Compliant Seed Investment**" means an investment in the Fund by the Adviser made in compliance with the Tax Requirements.

1.5 "**Confidential Information**" as used in this provision means any term of this Agreement, any transaction in connection with this Agreement, and any other non-public information concerning the Parties and their respective businesses and affiliates that may be acquired by reason of this Agreement or any transaction in connection therewith, but shall not include any information that is in or has entered the public domain other than due to a breach of Section 10 hereof.

1.6 "**Contract PPM**" means offering memorandum, including any amendment, supplement or addendum thereto, as amended from time to time, utilized in connection with the offering of the Company Contracts.

1.7 "**Customer Information**" means any "non-public personal information" (as defined in Regulation S-P of the U.S. Securities and Exchange Commission (the "**SEC**")) about a Policy Owner or prospective Policy Owner. Customer Information includes, but is not limited to, a Policy Owner's (or prospective Policy Owner's) name, social security number and health and financial information.

1.8 "**Eligible Insurance Company**" means a life insurance company that is taxed as a U.S. life insurance company under Subchapter L of the Code and is eligible to purchase and hold Interests under the Tax Requirements.

1.9 "**Eligible Insurance Fund**" means a regulated investment company, real estate investment trust, limited liability company, limited partnership or trust that is eligible to purchase and hold Interests under the Tax Requirements and is in compliance with Revenue Ruling 2005-7.

1.10 "**Fund PPM**" means offering memorandum, including any amendment, supplement or addendum thereto, as amended from time to time, provided by the Fund or the Adviser to the Company in connection with the offering of Interests.

1.11 "**Fund Agreements**" means the Operating Agreement and the subscription documents of the Fund.

1.12 "**Fund Reports**" shall have the meaning set forth in Section 5.2(b) hereof.

1.13 "**Interest Owner**" means (a) any Eligible Insurance Fund that and (b) any separate account (or a subaccount thereof) of an Eligible Insurance Company on behalf of which the Eligible Insurance Company has invested in one or more Interests.

1.14 "**Operating Agreement**" means the Fund's amended and restated limited partnership agreement dated as of the date set forth on Schedule A-2 hereto.

1.15 "**Policy Owner**" means the owner of a Company Contract.

1.16 "**Policy Representative**" means any agent or representative of a Policy Owner, the grantor or beneficiary of any Policy Owner that is a trust, or any agent or representative of such grantor or beneficiary.

1.17 "**Privacy Law**" means any applicable privacy law.

1.18 "**Sales Literature**" means (i) the Fund PPM and reports provided to the Company by the Fund or the Adviser, (ii) any written or other communication distributed or made available to existing or potential investors or their agents or employees, including brochures, circulars, research reports, market letters, form letters, seminar texts, or reprints of or excerpts from any other advertisement, sales literature, or published article, with respect to the Fund, and (iii) any other material regarding the Fund constituting sales literature or advertising, including all offering materials.

1.19 "**Separate Accounts**" means those separate accounts (or subaccounts thereof) established by the Company for the purpose of holding one or more Interests and listed on

Schedule A hereto, as the same may be amended from time to time. Each Separate Account shall be a separate and distinct owner of Interest(s).

1.20 "**Tax Requirements**" means the requirements of Section 817(h) of the Code, Regulations 1.817-5 thereunder and any amendments or successor provisions thereto.

1.21 "**Valuation Date**" means the last Business Day of each calendar month.

1.22 "**Variable Contract**" means a variable life insurance policy, variable annuity policy or other variable insurance policy that is characterized as a "variable contract" under Section 817(d) of the Code.

ARTICLE II. SALE AND WITHDRAWAL OF INTERESTS

2.1 Offering and Sale of Interests.

(a) Subject to Section 8.2 and subject to and on the terms of the Fund PPM, the Fund may offer Interests for purchase in any amount by the Company on behalf of the Separate Accounts, subject to the minimum initial investment amount set forth on Schedule A-2 hereto. The Fund may accept additional capital contributions in any amount, subject to the minimum additional investment amount set forth on Schedule A-2 hereto. Capital contributions will be accepted as of the first Business Day of each calendar month or quarter (as specified on Schedule A-2 hereto) (each, a "**Subscription Date**"). The Company shall notify the Adviser of its intent to purchase Interests by providing notice no later than the date and time set forth on Schedule A-2 hereto. The Company shall complete and send to the Fund the Subscription Form set forth in Appendix A. The Company shall not be required to enter into any agreement other than this Agreement and the Fund Agreements in order to purchase Interests.

(b) The Fund may suspend or discontinue its offering of Interests solely in conformity with the Fund PPM upon at least the number of days' prior written notice to the Company set forth on Schedule A-2 hereto.

(c) The issuance and transfer of Interests shall be by book entry only, and certificates therefor shall not be issued to the Company or the Separate Accounts.

2.2 Payment for Interests. The Company shall transmit by wire transfer federal funds in the amount of the purchased Interests to be received by the Fund no later than the date and time set forth on Schedule A-2 hereto. Federal funds received after that time and date shall be held in a subscription account of the Fund's custodian until the next Subscription Date or returned to the Company upon its request.

2.3 Withdrawal of Interests.

(a) General Withdrawal Terms. Any withdrawal request shall specify the number and value of the Interest(s) to be withdrawn, shall not be less than the amount set forth on Schedule A-2 hereto and shall be subject to any other requirements set forth on Schedule A-2 hereto. Any partial withdrawal of Interest(s) that leaves the value of the Interest(s) held by a Separate Account at less than the amount set forth on Schedule A-2 hereto as of the date of withdrawal shall be deemed a complete withdrawal. (See Appendix

B for Withdrawal Form.) The terms of this Section 2.3(a) shall apply unless otherwise provided in Sections 2.3(b) through 2.3(f) or on Schedule A-2 hereto.

(b) Standard Withdrawals. Subject to Section 2.3(f), the Company will be permitted to redeem for cash any Interest, in whole or in part, held by a Separate Account upon not less than the number of days' prior written notice to the Adviser set forth on Schedule A-2 hereto (each such notice, a "**Standard Withdrawal Request**") as of the last day of any calendar month or quarter as set forth on Schedule A-2 hereto (each, a "**Standard Withdrawal Date**") following the lock-up period set forth on Schedule A-2 hereto. The Adviser may waive the notice period in its discretion. The withdrawal proceeds in connection with a Standard Withdrawal Request shall be paid in accordance with the timeline set forth on Schedule A-2.

(c) Death Benefit Withdrawals. Subject to Section 2.3(f), with respect to withdrawals required for the payment of a death benefit, the Company may redeem for cash any Interest, in whole or in part, held by a Separate Account upon not less than the number of days' prior written notice to the Adviser set forth on Schedule A-2 hereto (each such notice, a "**Death Benefit Withdrawal Request**") as of the last day of any calendar month (each, a "**Death Benefit Withdrawal Date**"). The Adviser may waive the notice period in its discretion. The withdrawal proceeds in connection with a Death Benefit Withdrawal Request shall be paid in accordance with the timeline set forth on Schedule A-2.

(d) Special Withdrawals. Subject to Section 2.3(f), with respect to withdrawals required for the payment of any insurance charges and/or expenses of the Company Contracts or as otherwise agreed upon by the Adviser, the Company may redeem for cash any Interest, in whole or in part, held by a Separate Account upon not less than the number of days' prior written notice to the Adviser set forth on Schedule A-2 hereto (each such notice, a "**Special Withdrawal Request**") as of the last day of any calendar month (each, a "**Special Withdrawal Date**"). The Adviser may waive the notice period in its discretion. The withdrawal proceeds in connection with a Special Withdrawal Request shall be paid in accordance with the timeline set forth on Schedule A-2.

(e) Withdrawal Events. Subject to Section 2.3(f), the Company may redeem for cash Interests if any of the following events ("**Withdrawal Events**") occur: (i) the Fund fails to comply with the Tax Requirements, and such noncompliance cannot be cured in a reasonable period of time pursuant to the regulations and proceedings of the U.S. Department of the Treasury (the "**Treasury**") and the U.S. Internal Revenue Service; or (ii) there is a violation of the requirements set forth on Schedule D hereto. The Adviser shall notify the Company as soon as any Withdrawal Event occurs. Upon the occurrence of a Withdrawal Event, the Company may redeem its Interests as of the last day of any calendar month (each, an "**Event Withdrawal Date**") upon not less than 30 days' prior written notice to the Adviser (each such notice an "**Event Withdrawal Request**"). Upon an Event Withdrawal Request, the Fund shall pay 100% of the withdrawal proceeds within 30 days following the Event Withdrawal Date. Event Withdrawal Requests shall not be subject to any lock-up withdrawal requests.

(f) Limitations on Withdrawal Rights Granted Hereunder. Notwithstanding the foregoing provisions of this Section 2.3, and any other terms of this Agreement, if the

Adviser determines that compliance with any of the withdrawal and payment rights granted pursuant to this Section 2.3 or any other provisions of this Agreement shall (i) cause it or the Fund to fail to adhere to the Tax Requirements, or (ii) require it to liquidate any asset which is then illiquid and/or part of a Side Pocket Account (as defined in the Operating Agreement), then it may defer such compliance until such failure or requirement shall no longer exist; *provided* that for so long as (x) such condition continues and (y) the Company shall not be receiving payment of any insurance charges and/or expenses of the Company Contracts as a result of such delayed compliance, the Adviser agrees that it shall defer its fees pursuant to Operating Agreement, and such amounts otherwise payable to the Adviser shall instead be paid by the Fund to the Company for such insurance charges and/or expenses.

2.4 Payment of Withdrawal Proceeds.

(a) Payment of Withdrawal Proceeds Generally. Subject always to any liquidity limitations set out in the Fund PPM, the Fund shall transfer to the Company, or to any person designated by the Company in writing, any withdrawal proceeds via wire transfer in the form of federal funds.

(b) Payment of Withdrawal Proceeds In-Kind. The Fund may, but only if permitted by applicable law and in conformity with the Operating Agreement and the Fund PPM, transfer in-kind interests in an underlying investment of the Fund to (i) the Company and/or the Separate Accounts in full or partial satisfaction of any withdrawal request, or (ii) a Policy Owner in full or partial satisfaction of a full or partial surrender of a Company Contract, or to a beneficiary under a Company Contract in full or partial satisfaction of a death benefit payment under such Company Contract; provided, however, that such transfer to a Policy Owner is conducted as a transaction exempt from registration under the 1933 Act. For the avoidance of doubt, notwithstanding the foregoing, the provisions of this Section 2.4(b) shall be subject to the limitations on liquidity and withdrawals, and terms therein on payments with withdrawal proceeds (including, in particular, the payment of withdrawal proceeds in-kind) set forth in in the Fund Agreements.

2.5 Company Contracts. The Fund and the Adviser acknowledge and agree that, subject to each Company Contract, CGLI shall have the exclusive right, in its sole discretion, to suspend the offer or sale of any of the Company Contracts or to reject any application for the purchase of any Company Contract.

ARTICLE III. NET ASSET VALUE

3.1 NAV Generally. The Fund shall determine its net asset value (the "**NAV**") on each Valuation Date in the manner prescribed in the Operating Agreement and the Fund PPM. The Adviser shall make the NAV available to the Company in an electronic data file in a format specified by the Company, and shall do so as soon as reasonably practicable after each Valuation Date, and in any event no later than the date and time set forth on Schedule A-2 hereto.

3.2 Adjustments. The NAV information provided pursuant to Section 3.1 hereof may be based on estimated values and/or values determined by the Adviser acting in good faith and using reasonable judgment ("**Reasonable Valuations**"), and prospective adjustments shall be made, if necessary, to correct the NAV within a reasonable period of time after the Fund or

the Adviser is in receipt of the Fund's audited financials. No retroactive adjustments shall be made.

ARTICLE IV. REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Representations, Warranties and Covenants of the Company. The Company represents and warrants to, and for the benefit of, and covenants and agrees with the Fund and the Adviser that:

(a) CGLI is an Eligible Insurance Company that is duly organized, validly existing and in good standing under the laws of Bermuda.

(b) The Separate Account(s) are legally and validly established segregated asset accounts (or subaccounts thereof) under the laws of Bermuda (including, without limitation the Bermuda Insurance Act 1978, as amended ("Bermuda Insurance Act") and related rules and regulations and any Bermuda private act to which CGLI or the Separate Accounts are subject), applicable state insurance and tax laws and regulations, and were established by CGIL to set aside and invest premiums attributable to Company Contracts.

(c) CGLI has the power and is duly qualified and has all necessary licences, consents, permits and authorities necessary (including those referred to in paragraph 4.1(a) above) to offer and sell the Company Contracts and for the Company to purchase the Interests, all of which are valid and subsisting.

(d) The Company shall be an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the 1933 Act (an "**Accredited Investor**"), a "qualified client" within the meaning of Rule 205-3 promulgated under the U.S. Investment Advisers Act of 1940, as amended, and a "qualified purchaser" within the meaning of Section 2(a)(51) of the U.S. Investment Company Act of 1940, as amended (a "**Qualified Purchaser**"; such statute, the "**1940 Act**").

(e) The Company Contracts shall be offered and sold, and the Contract PPM and the Fund PPM shall be disseminated to prospective or existing Policy Owners, in compliance in all material respects with all applicable Bermuda, U.S. and other foreign securities, commodities, tax and insurance laws and regulations.

(f) CGLI shall sell Company Contracts only to persons that CGLI or its agents reasonably believe to be Accredited Investors and Qualified Purchasers.

(g) The Company Contracts shall be treated as Variable Contracts under the Code, provided that the Fund and the Adviser comply with all of the terms of the Operating Agreement and this Agreement, and CGLI shall promptly notify the Fund and the Adviser in writing upon forming a reasonable belief that the Company Contracts will or may no longer qualify for such treatment.

(h) The Separate Accounts shall not be subject to the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

(i) The Contract PPM does not contain any untrue statement of material fact, other than with respect to information provided in writing by the Fund or the Adviser for

inclusion in the Contract PPM. For the avoidance of doubt, the Company is not representing whether the Contract PPM meets the full standards of disclosure contemplated under the 1933 Act, and the U.S. Securities and Exchange Act, as amended, for issuers registered under such Acts, or for issuers that are not so registered.

(j) The Company shall not disseminate any information, or make any representation or statement, to any person concerning the offer or sale of Interests or the Company Contracts other than the information, representations and statements contained in the Contract PPM, the Fund PPM, Fund Reports, or any Sales Literature approved by the Adviser for such purposes. This Section 4.1(j) shall not in any way restrict the right of the Company to disseminate materials (such as illustrations) describing the Company, its operations and its products, as well as those materials describing the insurance industry and insurance products generally.

(k) The Company shall establish and implement policies and procedures reasonably designed to discharge its obligations under applicable federal laws and regulations regarding money laundering, including, but not limited the Company's Know Your Client (KYC) and due diligence requirements under the Bermuda Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, as amended the regulations of the Treasury and the Executive Orders related to the Treasury's Office of Foreign Assets Control ("**OFAC**"; and, together, the "**AML Procedures**"). The Fund and the Adviser acknowledge that in connection with, and as a complement to its own AML Procedures, where permitted by applicable law, the Company shall be entitled to rely on AML Procedures implemented by third parties with respect to Policy Owners; provided that such acknowledgement shall not limit any rights of the Fund or the advisor relating to AML under the Fund Agreements.

The Company's AML Procedures shall include those reasonably designed to ensure the accuracy of the following representations of the Company:

(i) the identity of each purchaser of a Company Contract has been established by evidence that the Company reasonably believes is genuine;

(ii) the Company reasonably believes that no premium funds tendered for the purchase of a Company Contract are derived directly or indirectly from activities that may contravene relevant U.S. federal or state, or international, laws or regulations related to money laundering; and

(iii) unless the Fund, in its sole discretion, lawfully waives such a requirement, CGIL shall not issue a Variable Contract to any person or entity that the Company reasonably believes, at the time of the possible purchase of the Company Contract, to be:

1. a country, territory, organization, person or entity named in OFAC's List of Specially Designated Nationals and Blocked Persons, as such list may be amended from time to time;

2. a person or entity that resides or has a place of business in a country or territory named on an OFAC list, or that is designated as a

"Non-Cooperative Jurisdiction" by the Financial Action Task Force on Money Laundering, or whose premium funds tendered for the acquisition of a Company Contract are transferred from or through any such country or territory;

3. a "foreign shell bank" as such term is defined in 31 U.S.C. § 5318(j) and Treasury regulations thereunder;

4. a person or entity that resides in, or is organized under, the laws of a jurisdiction designated by the Secretary of the Treasury as a "jurisdiction of primary money laundering concern" pursuant to 31 U.S.C. § 5318A; or

5. a "senior foreign political figure," or a "family member" or "close associate" of a senior foreign political figure as such terms are defined in the *Guidance on Enhanced Scrutiny for Transactions that May Involve the Proceeds of Foreign Official Corruption* issued by the Treasury, unless CGIL has diligently scrutinized the proposed purchase of the Company Contract by or for the benefit of such person and has determined to permit such purchase.

(l) The Company shall promptly notify the Fund and the Adviser of any change in the information set forth in this Section 4.1.

(m) The Company is not aware of any conflict between this Agreement and any law or regulation to which it may be subject (including under any Bermuda private act).

4.2 Of the Fund. The Fund represents and warrants to, and for the benefit of, and covenants and agrees with the Company that:

(a) The Fund has been established under the laws of the jurisdiction of its formation and is in good standing thereunder, and qualifies for the exclusion from the definition of "investment company" provided by Section 3(c)(7) of the 1940 Act.

(b) The Interests shall be offered and sold in compliance in all material respects with all applicable federal and state laws and regulations.

(c) None of the Fund; any predecessor of the Fund; any affiliated issuer of the Fund; any director, executive officer, other officer who is participating in the offering of interests in the Fund, general partner or managing member of the Fund; any beneficial owner of 20% or more of the Fund's outstanding voting equity securities (calculated on the basis of voting power); any promoter connected with the Fund in any capacity; the Adviser; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of interests in the Fund (a "**Solicitor**"); any general partner or managing member of the Adviser or a Solicitor; or any director, executive officer or other officer who is participating in the offering of interests in the Fund of the Adviser or a Solicitor or general partner or managing member of the Adviser or a Solicitor is subject to any event listed in Rule 506(d)(1).

(d) The Fund shall offer and sell Interests only to Eligible Insurance Funds and Eligible Insurance Companies that have certified that they (i) are Accredited Investors and

Qualified Purchasers and (ii) will purchase and hold Interests, directly or indirectly, solely for the benefit of policy owners that they reasonably believe are Accredited Investors and Qualified Purchasers; provided, however, that the Fund may offer and sell Interests to employee benefit plans and other funds subject to ERISA and/or Section 4975 of the Code that meet the requirements of clause (i). Further, the Fund shall, with the exception of any Compliant Seed Investment, issue Interests only to Eligible Insurance Funds and Eligible Insurance Companies with which it has entered into an agreement containing provisions substantially similar to those provisions of this Agreement listed on Schedule A-2 hereto.

(e) The Fund shall invest, hold and dispose of its assets in compliance with the Tax Requirements. The Fund or the Adviser shall promptly notify the Company upon forming a reasonable belief that the Fund has ceased, or may cease, to comply with the Tax Requirements, and shall cure any non-conformance within the period for cure afforded by Regulations 1.817-5. The Fund and the Adviser acknowledge that the Fund's compliance with the Tax Requirements is material to their performance under this Agreement.

(f) The Fund shall be operated so as to maintain its treatment for U.S. federal income tax purposes as a partnership, or if there is only one Interest Owner, a disregarded entity, under the Code, and the Fund or the Adviser shall promptly notify the Company upon forming a reasonable belief that the Fund has ceased, or may cease, to qualify for such tax treatment.

(g) The Fund, the Adviser and their respective officers, directors, employees, principals, affiliates and other representatives shall comply with the requirements set forth on Schedule D hereto so as to prevent any Policy Owner from having "incidents of control" under the Investor Control Doctrine (as defined on Schedule D hereto).

(h) The Fund's assets shall be invested in compliance with the investment restrictions set forth on Schedule B hereto, as the same may be modified from time to time pursuant to Section 5.1.

(i) The Adviser is and will exercise commercially reasonable best efforts to remain registered with the SEC as an investment adviser; provided that the Adviser shall be deemed to be so registered if it qualifies as a "relying" Adviser. If the Adviser applies to withdraw its registration, the Adviser shall notify the Company at least thirty (30) days prior to the intended effective date of its withdrawal.

(j) The Adviser is exempt from registration as a commodity pool operator ("**CPO**") pursuant to CFTC Rule 4.13(a)(3) and shall notify the Company as soon as reasonably practicable upon forming a reasonable belief that such exempt status will change.

(k) The Adviser shall have the sole discretionary authority over the Fund's investments and shall manage the Fund in accordance with the Operating Agreement and the Fund PPM; provided that, for the avoidance of doubt, the Fund may invest in Portfolio Funds (as defined in the Fund PPM) and the like, in the manner contemplated in the Fund PPM.

(l) The Fund PPM does not contain any untrue statement of material fact, other than with respect to information provided in writing by the Company for inclusion in the Fund PPM. For the avoidance of doubt, the Fund is not representing whether the Fund PPM

meets the full standards of disclosure contemplated under the 1933 Act, and the U.S. Securities and Exchange Act, as amended, for issuers registered under such Acts, or for issuers that are not so registered.

(m) No material change shall be made to the Operating Agreement or the Fund PPM (e.g., a change to the Fund's investment objective or strategies) without at least thirty (30) days' prior notice to the Company. Any updates thereto shall be promptly delivered to the Company.

(n) Subject to Section 4.1(k), the Fund shall be responsible for anti-money laundering compliance related to its activities, and shall maintain and implement policies and procedures reasonably designed to discharge its obligations under applicable federal laws and regulations regarding money laundering, including, but not limited to, the USA PATRIOT Act of 2001, the regulations of the Treasury and the Executive Orders related to OFAC; provided that for the avoidance of doubt the Fund may delegate such compliance in a manner that is substantially consistent with standard practices of private investment funds in the U.S.

(o) The Company shall be provided the most recent audited financial statements of the Fund as soon as reasonably practicable after they become available.

(p) Neither the Fund nor the Adviser shall disseminate any information, or make any representation or statement, to any person concerning the Company or the Company Contracts other than the information, representations and statements contained in the Contract PPM, the Fund PPM, any Sales Literature approved by the Company pursuant to Section 5.3, or available in the public domain.

(q) Unless the Company otherwise consents, the Fund and the Adviser shall use its commercially reasonable best efforts to ensure that all communications related specifically to the Company Contracts, shall only be between the Company and a Policy Owner or Policy Representative.

(r) The Fund shall maintain and implement commercially reasonable procedures to safeguard the confidentiality and integrity of their records with respect to the Fund and the Company.

(s) The Fund shall promptly notify the Company upon any change to a service provider to the Company.

(t) The Fund is not aware of any conflict between this Agreement and any law or other obligation to which it or the Advisor may not be subject.

(u) The Fund shall promptly notify the Company of any change in the information set forth in this Section 4.2.

(v) The Fund shall not invest in a "passive foreign investment company" (a "**PFIC**") as defined in Section 1297(a) of the Code unless, prior to making such investment, the Fund has certified to the Company that (i) such PFIC will comply with the requirements of Section 1295(a)(2) of the Code and the Treasury regulations thereunder (e.g., that the PFIC provide its "qualifying electing fund" ("**QEF**") shareholders with a PFIC Annual

Information Statement) or (ii) the Fund will provide information reasonably equivalent to the information contained in a PFIC Annual Information Statement. If the Fund or the Company determines that a PFIC is not in compliance with its QEF reporting requirements, the Fund shall take any steps necessary to cause the PFIC to comply therewith.

4.3 Of the Adviser. The Adviser represents, warrants and covenants to the Company that the Adviser shall use reasonable efforts to provide the Company with any information concerning the Adviser that the Company requires in making any filings with any government authority having regulatory authority over the Company.

4.4 Mutual Representations, Warranties and Covenants. Each of the Company and the Fund hereto represents and warrants to, and for the benefit of, and covenants and agrees with the other Parties that:

(a) it shall use reasonable efforts to cooperate with each other Party and any governmental authority in respect of any such authority's investigation or inquiry concerning this Agreement or any of the transactions contemplated hereby;

(b) the Adviser and the Company are not in an affiliate or agency relationship;

(c) upon reasonable notice, the execution and delivery of this Agreement and the consummation of the transactions contemplated herein (i) have been duly authorized by all necessary corporate or other formal action by such Party and, when executed and delivered, this Agreement shall be a valid and binding obligation upon such Party enforceable in accordance with its terms; and (ii) the transactions contemplated thereto do not and will not violate, conflict with or constitute a default under any requirement of any law or any regulation of Bermuda, the U.S. or otherwise (including, without limitation, any Bermuda private act);

(d) except as otherwise set forth herein, the provisions of this Agreement shall be deemed to control in the case of any conflict between the provisions of this Agreement and the provisions of the Fund PPM, Operating Agreement, or any other agreement entered into between the Company and the Fund or the Adviser;

(e) the Operating Agreement and the Fund PPM, as currently in effect, shall have been delivered to the Company prior to the signing of this Agreement; and

(f) the representations, warranties and covenants contained in this Agreement and the Fund Agreements (collectively, the "**Party Documents**") are the only representations, warranties and covenants that have been made by any Party to any other Party, and in entering into this Agreement, each Party has relied solely on the information contained in the Party Documents or that it obtained by its own independent investigation.

4.5 Duration. The representations, warranties and covenants contained in this Article IV shall be deemed continuing at all times until the termination of this Agreement.

ARTICLE V. INVESTMENT RESTRICTIONS; INFORMATION AND REPORTS; OTHER OBLIGATIONS

5.1 Revision of Investment Restrictions. The investment restrictions of the Company are as set forth on Schedule B hereto. The Company shall be permitted to request a change in such investment restrictions only if such change is necessitated by a change in the laws, regulations or interpretations thereof to which the Company is subject. The Company shall make a request for a change in its investment restrictions in writing to the Fund and the Adviser. If the Adviser determines in its absolute discretion that causing the Fund to comply with the revised investment restrictions proposed by the Company is in the best interests of the Interest Owners, the Parties shall amend Schedule B hereto accordingly. If the Adviser determines otherwise, it shall notify the Company within thirty (30) days of such determination.

5.2 Provision of Reports and Information. The Company shall provide to the Adviser, upon request, a specimen copy of the Contract PPM and each Company Contract. The Fund shall on a timely basis provide to the Company the following without charge:

(a) a current copy of the Fund PPM (and any amendment or supplement thereto) in any form the Company may reasonably request;

(b) electronic copies of those reports and other communications that the Fund provides to its Interest Owners, including its periodic performance reports (collectively, the "**Fund Reports**");

(c) any reports and information that the Company requires as a U.S. taxpayer; and

(d) any other documents that the Company may reasonably request of the Fund, including, but not limited to, its governing instruments, tax reports, marketing materials, and any government filings and updates and amendments thereto, including, but not limited to, the Adviser's Form ADV; provided that neither the Fund nor the Adviser need supply any agreements or documents of the Fund or the Adviser that are confidential.

5.3 Review of Sales Literature. Neither the Fund, the Adviser nor any person acting on their behalf shall use any Sales Literature in which the Company is named without the consent of the Company which shall not be unreasonably withheld or delayed.

5.4 Distribution of Certain Information by the Company. The Company shall be permitted, without further review or consent of the Fund or the Adviser, to deliver to Policy Owners, prospective Policy Owners, and their agents and representatives, the Fund PPM (and any amendments or supplements thereto), Fund Reports and any Sales Literature approved for such purposes by the Adviser.

5.5 Provision of Information Prior to Signing of Agreement. Prior to signing this Agreement, the Adviser has provided the Company with its most recent Form ADV, and any amendments thereto, as filed with the SEC.

Prior to signing this Agreement, the Fund or the Adviser has provided the Company with (a) the name and address of the Fund's independent auditor(s) and (b) upon the Company's

request, a consent and authorization for the Company to contact the auditor(s) for information reasonably required about the auditor(s) and its/their relationship with the Fund and the Adviser. At any time the Fund retains a different independent auditor, the Fund or the Adviser shall provide the Company with the same consent and authorization upon request. For avoidance of doubt, the Company shall not be entitled to obtain access to the Fund's books and records pursuant to this Section 5.5.

Prior to signing this Agreement, CGIL has provided the Fund with its Class C certificate of registration issued to it by the Bermuda Monetary Authority and any directions and/or approvals relating to it issued by the Bermuda Monetary Authority pursuant to the Bermuda Insurance Act.

5.6 Certification of Investment Diversification. As soon as reasonably practicable after the end of each calendar quarter, but in no event later than the number of days after the end of such calendar quarter set forth on Schedule A-2 hereto, the Adviser shall deliver to the Company a written certification in the form of Schedule C hereto.

ARTICLE VI. EXPENSES

6.1 Expenses Borne by the Company. The Company shall bear all of the costs incurred in connection with the (i) filing and qualification of the Company Contracts under any applicable state insurance or securities laws; (ii) preparation of the Contract PPM and any other necessary disclosure documents or regulatory filings with respect to the Company Contracts or the Separate Accounts; (iii) preparation and dissemination to Policy Owners of Fund Reports and of all statements, notices or other documents required by applicable federal and state laws and regulations; (iv) dissemination of the Fund PPM to Policy Owners and prospective Policy Owners; and (v) performance of its obligations under this Agreement.

6.2 Expenses Borne by the Fund. The Fund shall bear all of the costs incurred in connection with the offering and sale of Interests to Interest Owners and the performance of its obligations under this Agreement, in addition to the other expenses it bears pursuant to the Operating Agreement and the Fund PPM.

ARTICLE VII. INDEMNIFICATION

7.1 Indemnification of Fund Parties. The Company shall indemnify and hold harmless the Fund and the Adviser (collectively, the "**Fund Parties**" and each, a "**Fund Party**"), against any and all claims, losses, damages or expenses, including without limitation any judgment, settlement, reasonable attorney's and accountant's fees and other costs or expenses incurred in connection with the defense of any actual or threatened action or proceeding (collectively, "**Claims**" and each, a "**Claim**"); provided, however, that a Fund Party shall be entitled to indemnification in respect of a Claim only if:

(a) the Claim does not arise out of its or another Fund Party's willful misfeasance, bad faith, gross negligence or breach of, or material failure to fulfill any of its representations, warranties or covenants contained herein, and

(b) the Claim arises out of, or is based upon, one of the following:

(i) the Company's fraud, willful default or gross negligence in performing its obligations under this Agreement; or

(ii) the Company's breach of, or material failure to fulfill, any representation, warranty, or covenant contained herein, or any material misrepresentation in connection therewith.

7.2 Indemnification of Company Parties. The Fund shall indemnify and hold harmless the Company and the Separate Accounts (collectively, the "**Company Parties**" and each, a "**Company Party**"), against any and all Claims; provided, however, that a Company Party shall be entitled to indemnification in respect of a Claim only if:

(a) the Claim does not arise out of its or another Company Party's willful misfeasance, bad faith, gross negligence or breach of, or material failure to fulfill to satisfy any of its representations, warranties or covenants contained herein, and

(b) the Claim arises out of, or is based upon, one of the following:

(i) the fraud, willful default or gross negligence of a Fund Party in performing its obligations under this Agreement; or

(ii) the breach of, or material failure to fulfill, by any Fund Party any representation, warranty, or covenant contained herein, or any material misrepresentation in connection therewith.

7.3 Other Indemnification Provisions. No indemnification, hold harmless, limitation of liability or similar provision in the Fund's Certificate of Formation, the Operating Agreement or any agreement to which the Fund or the Adviser is a party shall preclude or serve as a defense to the indemnification by the Fund of a Company Party pursuant to Section 7.2.

7.4 Notice of Claim of Indemnification. A Fund Party or Company Party seeking indemnification under this Article VII (an "**Indemnified Party**") shall give the Party obliged to provide indemnification under this Article VII (an "**Indemnifying Party**") written notice within a reasonable time after the Indemnified Party receives notice of a Claim; provided, however, that a failure to provide, or delay in providing, such notice shall not relieve the Indemnifying Party of any obligation it may have under this Article VII to indemnify the Indemnified Party, unless such failure or delay is the sole or primary cause of the Indemnifying Party's inability to effectively defend against the Claim and materially disadvantages the Indemnifying Party.

7.5 Assumption of or Participation in Defense Against Claims. In any situation where an Indemnified Person is directly involved in defending against a Claim, an Indemnifying Party shall be entitled to, at its own expense, (i) participate in the defense of the Claim or (ii) assume the defense against the Claim with counsel reasonably satisfactory to the Indemnified Party. If the Indemnifying Party elects to assume the defense of a Claim, the Indemnifying Party shall, after notice to the Indemnified Party of such election, have no obligation to bear any subsequent fees and expenses independently incurred by the Indemnified Party in connection with the defense of the Claim (excluding reasonable costs of investigation), except that the Indemnifying Party shall be liable for reasonable fees and expenses associated with additional counsel retained by the Indemnified Party where the Indemnifying Party and the Indemnified

Person are both parties to the Claim and their representation by the same counsel would be inappropriate due to an actual or potential conflict of interests. Any assumption or participation in the defense of a Claim pursuant to this Section 7.5 shall not be construed as, or be deemed to create a presumption or inference of, an admission of liability or responsibility by the Indemnifying Party, and shall not estop or otherwise limit the Indemnifying Party from contesting liability in respect of the Claim.

7.6 Settlements. An Indemnifying Party shall not be obliged to indemnify an Indemnified Party for the settlement of any Claim that is effected without the former's prior written consent. An Indemnifying Party may settle any Claim on behalf of an Indemnified Party without the Indemnified Party's consent; provided, however, that the settlement involves solely the payment of damages, such damages are fully paid and results in a total release of the Indemnified Party from the Claim. To the extent that its consent to a settlement is required, an Indemnified Party shall not unreasonably withhold its consent to any settlement not involving injunctive relief.

7.7 Successors. A successor to any Party shall be entitled to all of the benefits, and shall be subject to the burdens, of this Article VII.

7.8 Survival. This Article VII shall survive the termination of this Agreement including, without limitation, a termination by reason of the breach or alleged breach of any representation, warranty or covenant of this Agreement.

ARTICLE VIII. TERMINATION

8.1 Termination Generally. Except as otherwise set forth in this Article VIII, no term of this Agreement shall terminate until the Separate Accounts no longer hold any Interests.

8.2 Effectiveness of Termination of Offering Obligation. A termination of the Offering Obligation pursuant to Section 8.2(a) shall take effect immediately. A termination pursuant to Section 8.2(b), (c), (d), (e) or (f) shall be effective immediately after the Fund provides notice to the Company of such termination.

8.3 Mandatory Withdrawal. The Fund shall have the right to require the Company, upon at least the number of days' prior written notice to the Company set forth on Schedule A-2 hereto, to redeem any Interest(s) attributable to any Company Contract that ceases to qualify as a Variable Contract or that the Fund reasonably believes will fail to so qualify. The timing of such mandatory withdrawal shall be specified in the Fund's notice to the Company and shall be determined with reference to Section 817(h) of the Code.

8.4 Termination by Company. Notwithstanding anything in this Agreement to the contrary, either the Fund or the Company may terminate this Agreement immediately and without penalty to such party:

(a) from the date hereof until November 30, 2017, upon at least 30 days' prior written notice to the Fund and the Adviser, or

(b) if the Fund or the Adviser has materially breached a representation, warranty or covenant under this Agreement and has failed to cure such breach after being given a reasonable opportunity to cure; provided, however, that the Company need not provide the

Fund or the Adviser a reasonable opportunity to cure if the material breach may, in the Company's reasonable judgment, materially and adversely affect the Company or any of its Separate Accounts or Company Contracts, or any regulatory authority, including, but not limited to, the SEC and any state regulatory authority, has instituted a formal proceeding against the Fund or the Adviser, and the anticipated outcome of such proceeding would, in the Company's reasonable judgment, materially impair the Fund's or the Adviser's ability to perform its obligations under this Agreement or under the Operating Agreement.

ARTICLE IX. NOTICES, REQUESTS OR CONSENTS

9.1 Any notice, consent, request or other communication required or permitted by this Agreement (a "**Communication**") to the Fund or the Adviser shall be sent to its address set forth on Schedule A-2 hereto or such other address as the Fund or the Adviser shall designate in writing to the other Parties. Any Communication to the Company required or permitted by this Agreement shall be sent to the address set forth below. Every Communication shall be in writing; shall be sent by registered or certified U.S. mail with return receipt requested, by overnight delivery with a nationally recognized courier, or by electronically transmitted facsimile or other electronic transmission, including electronic mail, with confirmed electronic receipt; and shall be effective upon the earlier of actual receipt and the 10th Business Day after sending.

If to the Company: Crown Global Life Insurance Ltd.
Canon's Court
22 Victoria Street
Hamilton HM 12
Bermuda

With a copy to: Crown Global Life Insurance (Cayman) Ltd
Landmark Square, 2nd Floor
64 Earth Close, SMB, P.O. Box 10467
Grand Cayman KY1-1004
Cayman Islands

9.2 Each Party may rely conclusively upon, and shall not incur any liability for any action taken in reliance upon, any Communication that it reasonably believes, in good faith, to be genuine and properly authorized by another Party.

ARTICLE X. PRIVACY OBLIGATIONS

10.1 The Company is, and each of the Fund and the Adviser may be, a financial institution subject to Privacy Law. To the extent that a Party is subject to Privacy Law, it shall not use or disclose any Customer Information received from another Party unless such use or disclosure is:

(a) required by law, regulation or rule, or permitted by Privacy Law;

(b) necessary to carry out the purposes for which the Party was given the Customer Information; or

(c) authorized by the express written consent of the Policy Owner or prospective Policy Owner to which the Customer Information relates, where such consent specifies the purposes for which such Customer Information may be used or disclosed.

10.2 Each Party shall establish and maintain safeguards against any unauthorized access to, or destruction, loss or alteration of, any Customer Information in its possession or control, which safeguards must be at least as rigorous as those the Party uses to secure its own information of a similar nature.

10.3 Notwithstanding anything in this Agreement to the contrary, including Section 11.7, each Party is expressly authorized hereby to disclose to any person, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated herein and all materials related thereto that are or were provided to such Party.

10.4 Each Party agrees to keep confidential any Confidential Information that such Party may acquire as a result of this Agreement or any transaction in connection therewith and to ensure that no such Confidential Information is disclosed to or utilized by any of such Party's affiliates or any of its or their respective officers, directors, employees, agents or other representatives (each, a "**Relevant Person**") except for the purpose of permitting a Party to perform its obligations and/or enforce such Party's rights under this Agreement, the Fund Agreements or any transaction in connection therewith or pursuant to this Section 10 and Section 11.4 hereof.

ARTICLE XI. MISCELLANEOUS

11.1 Governing Law. It is the intention of the Parties that the internal laws of Bermuda, as the same may be amended from time to time, shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the Parties.

11.2 Entire Agreement. This Agreement, together with any amendments hereto and any other agreements referred to herein (including, without limitation, the Fund Agreements), shall constitute the entire agreement among the Parties with respect to the subject matter hereof, and shall supersede any prior agreement or understanding, oral or written, among the Parties with respect to the subject matter hereof.

11.3 Waiver. A Party's failure to insist, or delay in insisting, upon another Party's performance of any term of this Agreement shall not be construed as a waiver of the performance of such term.

11.4 Access to Books and Records. Each Party shall, upon request, provide each other Party and any governmental authority with reasonable access to its books and records to the extent that such request relates to a governmental authority's investigation or inquiry concerning this Agreement or any of the transactions contemplated herein. To the extent permitted by applicable law, the access provided pursuant to this Section 11.4 shall not extend to any attorney work product or information protected by the attorney-client privilege.

11.5 Assignment. No Party shall assign any right or obligation under this Agreement to a third party without the prior written consent of all of the Parties, which consent shall not be unreasonably withheld. Notwithstanding the previous sentence, the Company may assign,

without the consent of the Fund or the Adviser, any right or obligation under this Agreement to another insurance company that controls, is controlled by or under common control with the Company; provided, however, that the Company provides the Fund and the Adviser with notice as soon as reasonably practicable after such assignment.

11.6 Third-Party Beneficiary. This Agreement is not intended to and shall not convey any rights to persons not party to this Agreement.

11.7 Confidentiality. No Party shall disclose the terms of this Agreement to any persons not party to this Agreement, except that a Party may disclose the terms of this Agreement to comply with a legal or regulatory requirement or request, or to its representatives where such disclosure is necessary to the Party's performance of its obligations under this Agreement; provided that the Company agrees and acknowledges the disclosures concerning the subject matter hereof set forth in the Fund PPM, and disclosures of a similar nature.

11.8 Amendment. No amendment or modification to this Agreement shall be binding upon any Party unless reduced to a writing signed by all of the Parties.

11.9 Rights and Remedies. The rights, remedies and obligations contained in this Agreement are in addition to any and all rights, remedies and obligations, at law or in equity, to which the Parties are entitled under state and federal laws.

11.10 Severability. In the event that any provision of this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this Agreement, it being hereby agreed that such provisions are severable and that this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

11.11 Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be considered part of this Agreement or affect this Agreement's interpretation.

11.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, each of the Parties hereto has caused this Participation Agreement to be executed in its name and on its behalf by its duly authorized representative hereto as of November 30, 2015.

CROWN GLOBAL LIFE INSURANCE LTD.,

By: _____

Name: TERRIA GODWIN

Title: Director

By: _____

Name: Avi Hasen

Title: Director

CROWN GLOBAL LIFE INSURANCE LTD., on behalf of each of its Separate Accounts, as set out in Schedule A hereto as may be amended from time to time.

By: _____

Name: TERRIA GODWIN

Title: Director

By: _____

Name: Avi Hasen

Title: Director

ATLAS IDF, LP

By: Atlas IDF GP, LLC, it general partner

By: _____

Name: John Harris

Title: Managing Member

RAND ADVISORS, LLC

By: _____

Name: John Harris

Title: Managing Member

SCHEDULE A
As of November 30, 2015

SEPARATE ACCOUNTS AND ASSOCIATED POLICIES

No.	Name of Separate Account and each Subaccount, if any, thereof:	Form Nos. of Policies Funded by Separate Account:

SCHEDULE A-2
As of November 30, 2015

SUPPLEMENT TO PARTICIPATION AGREEMENT

FUND: Atlas IDF, LP
ADVISER: Rand Advisors, LLC

To the extent that the information below is also provided in the Fund PPM or the Operating Agreement, the parties agree that the information below is the same as the information contained in the Fund PPM or Operating Agreement and is provided for ease of reference.

Section 1.2 "Business Day"	No change to standard definition.
Section 1.13 "Operating Agreement"	Dated as of November 30, 2015.
Section 2.1(a) Minimum Initial and Additional Investment Amounts / Notice of Intent to Purchase / "Subscription Date"	Minimum initial investment amount: $500,000 or as otherwise consented to in writing by Adviser Minimum additional investment amount: $500,000, or as determined by the Adviser in its sole discretion. The Company shall notify the Adviser of its intent to purchase Interests by providing notice no later than 12:00 am Eastern time on the 3rd Business Day prior to the relevant Subscription Day. The Subscription Date shall be the first Business Day of each calendar month.
Section 2.1(b) Suspension or Discontinuation of Offering	The Fund may suspend or discontinue its offering of Interests at the discretion of the Adviser upon at least **30** Business Days' prior written notice to the Company.
Section 2.2 Payment for Interests	The Company shall transmit by wire transfer federal funds in the amount of the purchased Interests to be received by the Fund no later than 5:00pm Eastern time on the 3rd Business Day prior to the relevant Subscription Day.
Section 2.3(a) General Withdrawal Terms	Minimum withdrawal amount: $100,000 Any partial withdrawal of Interest(s) that leaves the value of the Interest(s) held by a Separate Account at less than $500,000 as of the date of withdrawal shall be deemed a complete withdrawal. Payment of Withdrawal Proceeds: For the avoidance of doubt, such withdrawals may be satisfied by payments in kind in accordance with the terms of this Agreement.
Section 2.3(b) Standard Withdrawals	Notice Period: 91 days Standard Withdrawal Date: Last day of each calendar quarter.

	Lock-up Period: 12 months. Payment of Withdrawal Proceeds: 90% of the withdrawal proceeds shall be paid within 90 days following the Standard Withdrawal Date. The balance of the amount payable upon such withdrawal will be paid, without interest, within 90 days after completion of the audited financial statements for the fiscal year in which the withdrawal occurs. Payment of Withdrawal Proceeds: For the avoidance of doubt, such withdrawals may be satisfied by payments in kind in accordance with the terms of this Agreement.
Section 2.3(c) Death Benefit Withdrawals	Notice Period: 91 days prior to Death Benefit Withdrawal Date on prior written notice to the Adviser. Death Benefit Withdrawal Date: Last day of any calendar quarter. Payment of Withdrawal Proceeds: 100% of the withdrawal proceeds shall be paid as soon as reasonably practicable, but in no case more than 330 days following the Death Benefit Withdrawal Date. For the avoidance of doubt, such withdrawals may be satisfied by payments in kind.
Section 2.3(d) Special Withdrawals	Notice Period: 91 days prior to a Special Withdrawal Date prior written notice to the Adviser. Special Withdrawal Date: Last day of each calendar quarter. Payment of Withdrawal Proceeds: 100% of the withdrawal proceeds shall be paid within 90 days following the Special Withdrawal Date.
Section 3.1 NAV Generally	The Adviser shall make the NAV available to the Company no later than 12am Eastern time on the 20th Business Day following each Valuation Date.
Section 4.3(a) Errors and Omissions Insurance Policy	The Fund shall obtain commercially reasonable coverage in favor of the Adviser, within a reasonable period following the execution of this Agreement.
Section 5.6 Certification of Investment Diversification	The Adviser shall deliver the certification required by Section 5.6 no later than 20 Business Days after the end of the calendar quarter following the quarter to which such certification relates.
Section 8.4 Mandatory Withdrawal	The Fund must provide the Company with at least 5 days' prior written notice of a Mandatory Withdrawal.
Section 9.1 Notices, Consents, Requests or Other Communications	**If to the Fund:** Atlas IDF, LP c/o Atlas IDF GP, LLC 87 Railroad Place, Suite 403 Saratoga Springs, New York 12866 **If to the Adviser:** Rand Advisors, LLC 87 Railroad Place, Suite 403 Saratoga Springs, New York 12866

SCHEDULE B
As of November 30, 2015

INVESTMENT RESTRICTIONS

The Company will not participate in the allocation of gains or losses derived from "New Issues" as defined in the Rules of the U.S. Financial Industry Regulatory Authority ("**FINRA**"), except that the Fund, in its sole discretion, may allocate de minimis levels of such gains or losses in a manner consistent with applicable FINRA Rules.

SCHEDULE C

FORM OF COMPLIANCE CERTIFICATION

This compliance certificate ("**Compliance Certificate**") is given by Rand Advisors, LLC, as the adviser (the "**Adviser**") of Atlas IDF, LP (the "**Fund**"), pursuant to Section 5.6 of that Participation Agreement, dated as of November 30, 2015, among the Fund, the Adviser, Crown Global Life Insurance Ltd. ("**CGLI**"), a Bermuda exempted company registered as a long term Class C insurer, the Company (on behalf of each of its separate accounts (and subaccounts, if any, thereof) set forth on Schedule A of the Participation Agreement (as defined below), as such Schedule A may be amended from time to time) ("**Schedule A Separate Accounts**" and together with CGIL, the "**Company**")), as the same may be amended, restated, supplemented or otherwise modified from time to time (the "**Participation Agreement**"). Capitalized terms used, but not defined, in this Compliance Certificate shall have the meanings set forth in the Participation Agreement.

By executing this Compliance Certificate, the Adviser certifies that, as of the calendar quarter ended [March 31/June 30/September 30/December 31], 201[-]:

1. The Fund's assets have been invested in compliance with the diversification requirements of Regulations 1.817-5(b) under the Code.

a. No more than 55% of the value of the total assets of the Fund is represented by any one investment;

b. No more than 70% of the value of the total assets of the Fund is represented by any two investments;

c. No more than 80% of the value of the total assets of the Fund is represented by any three investments; and

d. No more than 90% of the value of the total assets of the Fund is represented by any four investments.

Diversification Test	Name of Issuer	% of Total Assets	Cum %	Test
Largest Issuer	[Issuer one]	x.xx%	x.xx%	< 55% TA
Second Largest Issuer	[Issuer two]	x.xx%	x.xx%	< 70% TA
Third Largest Issuer	[Issuer three]	x.xx%	x.xx%	< 80% TA
Fourth Largest Issuer	[Issuer four]	x.xx%	x.xx%	< 90% TA

2. If the Fund relied on the "look through" provision of Regulation 1.817-5(f), the investments of any underlying investment vehicle must be sufficiently diverse to permit the Fund to comply with the diversification requirements of Regulation 1.817-5(b).

3. The Adviser has in all respects complied with the requirements set forth on Schedule D to the Participation Agreement.

4. The Adviser has reviewed the foregoing statements and certifies that they are true and correct.

IN WITNESS WHEREOF, the Adviser has caused this Compliance Certificate to be executed by one of its authorized officers this ____ day of _____, 201__.

Rand Advisors, LLC

Authorized Signature: _____

Name: _____

SCHEDULE D

INVESTOR CONTROL REQUIREMENTS

The Adviser and each of its officers, employees, agents, affiliates or sub-advisers that is in any capacity responsible for, or involved in the determination of, the Fund's investments or investment objective, strategies or policies (each, an "**Adviser Party**"), shall not take any action that would cause any Policy Owner or Policy Representative (together with such Policy Owner, a "**Policy Party**") to be deemed to have such incidents of control as would cause the Fund's income and gains to be currently taxable to the Policy Owner pursuant to the "Investor Control Doctrine" as set forth in Revenue Rulings 77-85, 80-274, 81-225, 82-54, 2003-91, 2003-92, or 2007-7, or described in other materials published by the U.S. Department of the Treasury or the U.S. Internal Revenue Service. In seeking to ensure that no Policy Party is deemed to have incidents of control, each Adviser Party shall at all times act in compliance with the requirements of this Schedule D, as set forth below:

1. All decisions involving the investment of the Fund's assets shall be made by the relevant Adviser Party in its sole and absolute discretion, without any direct or indirect input from any Policy Party.

2. No Adviser Party shall enter into, directly or indirectly, any agreement, plan or other arrangement, whether written or otherwise, with a Policy Party regarding (i) the Fund's investments or investment objective, strategies or policies; (ii) the availability of the Fund as an investment option under the Policy Owner's policy; or (iii) the assets to be held by the Fund.

3. To the extent that the Adviser provides information (i) to a prospective Policy Owner or representative thereof as part of a direct or indirect sale of a Variable Contract, or (ii) to the Company for the Company to communicate with a Policy Party, any Adviser Party may describe: (a) the past performance of the Fund or related performance information with respect to the Fund; (b) its general view of market and industry trends (e.g., its belief that interest rates will rise in the short-term or that technology stocks are over-valued); (c) the background, education and past employment of its staff, including the performance of other funds under its management; and (d) other due diligence information that the Adviser generally provides to prospective investors with respect to the Adviser's other funds and accounts so long as such information does not relate to the quality or rate of return of any investment or group of investments of the Fund.

4. Without limiting the foregoing, no Adviser Party shall knowingly discuss, communicate or solicit in any manner, whether directly or indirectly, the views of any Policy Party on the current or future investments, objectives, strategies or policies of the Fund, either in general or specific terms.

5. No Adviser Party shall at any time be affiliated with a Policy Party; provided, however, that an Adviser Party may maintain such an affiliation if it establishes, pursuant to a legally binding written agreement, procedures to prevent any communication prohibited by this Schedule D.

6. The Company understands that the Adviser provides investment management services to a variety of clients outside the context of Variable Contracts. The Company further understands that the Adviser may provide such services to clients that are Policy Parties. The Adviser recognizes that these relationships could present an opportunity for a Policy Party to communicate with any Adviser Party concerning the Fund in a manner prohibited by this Schedule D. The Adviser shall take appropriate steps to comply with this Schedule D in the context of any such relationships.

APPENDIX A

Instructions:

A completed and signed copy of the Subscription Form must be delivered by electronic mail to:

jhonis@randadvisors.com

Payment Instructions for Subscription:

All contributions should be made by wire transfer to the following account:

[bank name/address]
ABA:
ABA:
For the account of:

Account No.:
For further credit to the account of: [ ]
Account No.: [ ]
Ref: [subscriber's name]

After you have given your bank these wire instructions, please notify the Fund of the exact amount and date of your wire using the contact information above. Doing so will help us identify your payment and credit it to the appropriate account.

APPENDIX A (Continued)
SUBSCRIPTION FORM
FOR ATLAS IDF, LP

Subscriber's Name:

Crown Global Life Insurance Ltd. on Behalf of Separate Account _____, _____ Division [Fund #].

Tax I.D. Number: _____

Type of entity (check one):
☐ *Corporation*
☐ *Other (_____)*

Subscription Amount in US $ _____ **Policy/Series Identifier (if any):** _____
☐ *Initial Subscription (minimum US $[_____])**
☐ *Additional Subscription (minimum US $[_____])**

Date of Investment: ___/___/____

Subscriber's Domicile Address:
Canon's Court
22 Victoria Street
Hamilton HM 12
Bermuda

Subscriber's Mailing Address:
Landmark Square, 2nd Floor
64 Earth Close
P.O. Box 10467
Grand Cayman KY1-1004
Cayman Islands

Contact Name:	*[_____]*	*Contact Name:*	*[_____]*
Tel:	*[_____]*	*Tel:*	*[_____]*
Fax:	*[_____]*	*Fax:*	*[_____]*
E-Mail:	*[_____]*	*E-Mail*	*[_____]*

* Each subscription shall be treated as a separate Interest/Capital Account.

Subscriber's Wiring Instructions from which funds will originate:
Bank _____
ABA # _____
For the Account of _____
Account #: _____
Reference: _____

CROWN GLOBAL LIFE INSURANCE LTD., on behalf of itself and each of the Accounts named above.

By: _____ By: _____

Name: Name:

Title: Title:

_____

Date of Execution

APPENDIX B
WITHDRAWAL FORM
FOR ATLAS IDF, LP

Date:_____

To:

[Tel.:]
[Fax:]
Attn: [contact name]

The undersigned hereby requests to redeem the amounts specified below on the next available date following the Fund's receipt of this Withdrawal Request.

Subscriber's Name:

_____Crown Global Life Insurance Ltd._____ on Behalf of Separate Account _____, _____ Division [Fund #].

Policy/Series Identifier (if any): _____

Withdrawal Amount:
☐ *Full Withdrawal*
☐ *Partial Withdrawal* – Amount in US$* _____
(minimum US $100,000)

Type of Withdrawal:
☐ *Standard Withdrawal* ☐ *Special Withdrawal*
☐ *Death Benefit Withdrawal* ☐ *Event Withdrawal*

Date of Withdrawal ___/___/____

Subscriber's Domicile Address:
Canon's Court
22 Victoria Street
Hamilton HM 12
Bermuda

Subscriber's Mailing Address:
Landmark Square, 2nd Floor
64 Earth Close
P.O. Box 10467
Grand Cayman KY1-1004
Cayman Islands

Contact Name:	*[_____]*	*Contact Name:*	*[_____]*
Tel:	*[_____]*	*Tel:*	*[_____]*
Fax:	*[_____]*	*Fax:*	*[_____]*
E-Mail:	*[_____]*	*E-Mail*	*[_____]*

Crown Global Life Insurance Ltd.

* Any partial withdrawal of Interest(s) that leaves the value of the Interest(s) held by an Account at less than **$500,000** as of the date of withdrawal shall be deemed a complete withdrawal.

Subscriber's Wiring Instructions from which funds will originate:

Bank _____
ABA # _____
For the Account of _____
Account #: _____
Reference: _____

CROWN GLOBAL LIFE INSURANCE LTD., on behalf of itself and each of the Accounts named above.

By: _____ By: _____

Name: Name:
Title: Title:

_____
Date of Execution

EXHIBIT 26

CROWN GLOBAL INSURANCE

Deferred Variable Annuity Policy

Crown Global Life Insurance Ltd.

Canon's Court
22 Victoria Street
Hamilton HM 12
Bermuda

www.crownglobalinsurance.com

This Policy is a Deferred Variable Annuity (DVA) Policy. This Policy is Non-Participating. Crown Global Life Insurance Ltd., a Bermuda Class C insurance company, will pay, subject to the provisions of this Policy, the Annuity Payments to the Beneficiaries as provided by this Policy, provided that the Policy is In Force.

Signed for the Insurer at its Home Office located at Hamilton, Bermuda on the Issue Date.

12/15/15 Ken Goertzen,

12/16/15 Juanita Burke

THIS IS A LEGAL CONTRACT.
PLEASE READ IT CAREFULLY.

THE INSURER IS INCORPORATED IN BERMUDA AND IS REGISTERED AS A CLASS C INSURER IN BERMUDA PERMITTING IT TO WRITE DEFERRED VARIABLE ANNUITY POLICIES AND CONDUCT OTHER LONG-TERM INSURANCE BUSINESS. THE INSURER IS NOT AUTHORIZED IN ANY JURISDICTION OTHER THAN BERMUDA TO CARRY ON ANY INSURANCE BUSINESS. POLICY ACCOUNT VALUES UNDER THIS POLICY ARE BASED ON THE INVESTMENT EXPERIENCE OF A SEPARATE ACCOUNT ESTABLISHED UNDER THIS POLICY AND THE PRIVATE ACT. THE POLICY ACCOUNT VALUES UNDER THIS POLICY MAY INCREASE OR DECREASE IN AMOUNT. INVESTMENTS OF FUNDS HELD IN THE SEPARATE ACCOUNT MAY BE MADE IN NON-U.S. INVESTMENTS AS WELL AS U.S. INVESTMENTS. THE ASSETS IN THE SEPARATE ACCOUNT MAY BE ADVERSELY AFFECTED BY CHANGES IN FOREIGN GOVERNMENTS, AND OTHER ECONOMIC AND POLITICAL EVENTS, WHICH MIGHT NOT AFFECT U.S. INVESTMENTS OR ENTITIES, AND BY FLUCTUATIONS IN THE ENTITIES, AND BY FLUCTUATIONS IN THE VALUE OF FOREIGN CURRENCY.

continued on next page

CROWNGLOBAL INSURANCE

Deferred Variable Annuity Policy

Crown Global
Life Insurance Ltd.

Canon's Court
22 Victoria Street
Hamilton HM 12
Bermuda

www.crownglobalinsurance.com

THIS POLICY CANNOT BE TRANSFERRED, ASSIGNED, HYPOTHECATED, OR PLEDGED, WITHOUT THE INSURER'S PRIOR WRITTEN CONSENT, WHICH THE INSURER MAY WITHHOLD IN ITS SOLE AND ABSOLUTE DISCRETION. THIS POLICY HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER U.S. FEDERAL OR STATE SECURITIES LAWS OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND, THEREFORE, CANNOT BE TRANSFERRED UNLESS SO REGISTERED OR UNLESS SUCH REGISTRATION IS NOT REQUIRED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THIS POLICY IS AN APPROPRIATE INVESTMENT ONLY FOR PURCHASERS WHO ARE QUALIFIED PURCHASERS WITHIN THE MEANING OF THE U.S. INVESTMENT COMPANY ACT OF 1940 AND ACCREDITED INVESTORS WITHIN THE MEANING OF RULE 501(a) OF REGULATION D PROMULGATED UNDER THE U.S. SECURITIES ACT OF 1933. THIS POLICY IS ALSO APPROPRIATE ONLY FOR SOPHISTICATED PURCHASERS WHO, AMONG OTHER THINGS, HAVE NO NEED FOR ACCESS TO AMOUNTS DESCRIBED IN THE POLICY. ADDITIONAL INFORMATION ON THE RISKS OF PURCHASING A POLICY APPEARS IN THE CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM, AS AMENDED THROUGH THE DATE HEREOF, DESCRIBING THE POLICY.

THE INSURER MAKES NO REPRESENTATION AS TO THE TAX TREATMENT OF THIS POLICY FOR U.S. FEDERAL INCOME TAX PURPOSES OR FOR THE PURPOSES OF THE TAX LAWS OF ANY OTHER JURISDICTION. NO REPRESENTATION IS MADE THAT A PROPOSED POLICYHOLDER WOULD NOT BE SUBJECT TO AUDIT OR EXAMINATION BY THE TAX AUTHORITIES OF ANY JURISDICTION AS A RESULT OF PURCHASING A POLICY.

NO REPRESENTATION IS MADE REGARDING THE LIKELIHOOD THAT THE CURRENT U.S. FEDERAL INCOME TAX LAWS, REGULATIONS AND OFFICIAL INTERPRETATIONS OF THE LAW MAY BE CHANGED IN THE FUTURE. IT IS POSSIBLE THAT SUCH CHANGES COULD OCCUR, AND THAT SUCH CHANGES COULD APPLY TO THE POLICY, AND COULD APPLY RETROACTIVELY. THE INSURER HAS RESERVED THE RIGHT IN ITS SOLE AND ABSOLUTE DISCRETION TO MAKE CHANGES TO THE POLICY THAT IT DEEMS NECESSARY TO PRESERVE THE EXPECTED TAX CONSEQUENCES OF THE OWNERSHIP OF THE POLICY AS A RESULT OF CHANGES IN THE LAWS OF THE U.S. OR ANY OTHER JURISDICTION.

CROWNGLOBAL INSURANCE

Policy Data Page

General Policy Data

All amounts expressed in "$" or "dollars" are in United States dollars

Proposed Policyholder:	Proposed Annuitant:
Empower Dallas Foundation, Inc	Grant Scott

Proposed Annuitant's Date of Birth:	Gender:
29 May, 1962	Male

Policy Effective Date: 10 Dec, 2015 Issue Date: 10 Dec, 2015

Annuity Starting Date: Deferred

until Annuitant's 85th birthday

at the latest

Beneficiary:	Beneficiary Interest	Revocable/Irrevocable?
Empower Dallas Foundation, Inc	100%	Irrevocable

Separate Account number : 30218

Premium Amounts

Initial Premium:	$ 15,903,108.54
Premium Limit:	n/a
Premium Deposit:	n/a

Net Premiums will be deposited to the Separate Account established by the Insurer with respect to the Policy.

CROWNGLOBAL INSURANCE

Policy Data Page

Initial Allocation of Payments to Investment Options

Investment Options	Initial Allocation
1. IDF: Atlas IDF, LP/ Rand Advisors LLC	100%

Custodian Bank: n/a

Investment Manager: n/a

CROWN GLOBAL INSURANCE

Policy Data Page

Policy Fees and Charges

Charge	Due Date	Amount of Charge
Policy Administration Fee	In equal installments in advance on each Liquidity Date	$2,900 per annum
Agreed Upon Procedures Fee	Annually	As charged by the outside auditors, currently $1,975.
DAC Charges	Each date the Insurer receives a Premium	0.25% of the amount of Premium payment. *See* Section 9.2 of the Policy.
Management & Expense Fee	In advance on each Liquidity Date	The following annual rates expressed as a percentage of the Policy Account Value: 0.45% p.a $10mm of Premium 0.35% p.a. $11-20mm of Premium 0.25% p.a. $21mm+of Premium, provided that if the Policy Account Value exceeds $50mm, the annual rate shall be 0.1% p.a. on the portion of Policy Account Value in excess of $50mm (adjusted for additional premium payments and withdrawals, as applicable) *See* Section 9.3 of the Policy.
Policy Set-Up Deposit	Upon submission of the completed Annuity Application Form.	N/A
Acceptance Fee	Each date the Insurer receives a Premium payment	Zero
Taxes	When paid by the Insurer or its affiliate	*See* Section 9.7 of the Policy.

CROWN GLOBAL INSURANCE

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Definitions

Acceptance Fee – The fee deducted by the Insurer as stated in the Policy Data Page and described in Section 9.5.

Accredited Investor – An "accredited investor" as defined in Rule 501(a) under Regulation D of the Securities Act.

Age – A Proposed Annuitant or Proposed Joint Annuitant's age on their last birthday.

Agreed Upon Procedures ("AUP") Fee – The fee deducted by the Insurer as stated on the Policy Data Page and described in Section 9.8.

Annuity Application Form – The annuity application provided by the Insurer as completed and signed by the Proposed Policyholder.

Annuity Payments – The benefits payable to the Beneficiary under Section 6.1 of this Policy (each an "Annuity Payment").

Annuity Starting Date – The date on which Annuity Payments under Section 6.4 of this Policy commence.

Beneficiary – The persons or entities designated as such on the Annuity Application Form, as amended from time to time, by the Proposed Policyholder, who is entitled to receive Annuity Payments under the Policy, and distributions following the death of the Proposed Policyholder as applicable, in accordance with the terms of the Policy.

Business Day – Any day on which banks in the U.S. and Bermuda are open for business.

Claim Date – The date on which the Insurer receives written notice and due proof of death of the Proposed Annuitant (or the survivor of the Proposed Joint Annuitants) in accordance with Section 10.2 at the Insurer's Home Office.

Code – The U.S. Internal Revenue Code of 1986, as amended.

Confidential Private Placement Memorandum – The confidential private placement memorandum describing the Policy including all schedules, appendices, attachments,

exhibits, amendments and supplements thereto, as amended and restated from time to time.

Contestable Period – The period of time described in Section 12.6 which extends for two (2) years from the Issue Date during the lifetime of the Proposed Annuitant.

DAC Charges – The amount deducted by the Insurer as set forth in the Policy Data Page and described in Section 9.2.

Death Benefit – The death benefit calculated and payable under the provisions of Article X of this Policy.

Fees and Charges – Any applicable fees and charges due under the Policy including, without limitation, the Policy Administration Fee, the DAC Charges, the Management & Expense Fee, the Acceptance Fee, Taxes, and the Agreed Upon Procedures Fee.

FINMA – The Swiss Financial Market Supervisory Authority.

Full Surrender – A Surrender pursuant to Section 8.2.

Grace Period – A period of thirty days following the date on which the Insurer makes available to the Proposed Policyholder information indicating that (i) the Policy Account Value is less than $250,000, or (ii) the Policy Account Value is insufficient to pay the Fees and Charges due under the Policy without the Policy Account Value becoming less than $250,000 following payment of such Fees and Charges.

Home Office – The Insurer's office in Hamilton, Bermuda. The Insurer's mailing address is Crown Global Life Insurance Ltd., Canon's Court, 22 Victoria Street, Hamilton HM 12, Bermuda, email: info@crownglobalinsurance.com, facsimile: +1-345-945-6121.

IDF – An insurance dedicated fund.

In Force – A condition that the Policy has not terminated.

Initial Premium – The first Premium payment by the Proposed Policyholder as shown on the Policy Data Page.

Insurance Dedicated Fund – An Investment Option involving investment in an investment fund generally formed as a limited partnership or limited liability company

(i) which is intended to operate as an insurance dedicated fund (an "IDF") and (ii) investment in which is available only to a U.S. or non-U.S. insurance company that regularly engages in the sale of life insurance policies and annuity policies in the ordinary course of its business and is acquiring interests in the IDF to hold in a Separate Account established in connection with a Policy and not as part of the general assets of the insurance company.

Insurer – Crown Global Life Insurance Ltd. The Insurer has elected under Code section 953(d) to be treated as a U.S. domestic corporation for U.S. federal income tax purposes.

Investment Adviser Act – The U.S. Investment Adviser Act of 1940, as amended.

Investment Company Act – The U.S. Investment Company Act of 1940, as amended.

Investment Option – A separate investment option consisting of all or a portion of the assets held in a Separate Account and managed by the investment manager identified therein directly or through an IDF.

IRS – The U.S. Internal Revenue Service.

Issue Date – The issue date of the Policy as stated on the Policy Data Page.

Joint Life Annuity – An annuity issued on the life of two Proposed Annuitants and under which payments continue as long as either Proposed Annuitant is alive.

Liquid Asset Subaccount – A Subaccount of the Separate Account, the funds in which are primarily invested in interest-bearing commercial bank accounts.

Liquidity Date – The last Business Day of each calendar quarter.

Managed Subaccount – An Investment Option where assets held in a Subaccount are managed by an investment manager unrelated to the Insurer. For the avoidance of doubt, a Managed Subaccount does not include an IDF.

Management & Expense Fee – The Management & Expense Fee as stated on the Policy Data Page and described in Section 9.3.

Minimum Liquid Asset Allocation – An amount not in excess of the expected annual Fees and Charges related to the Policy that the Insurer may place in the Liquid Asset Subaccount.

Net Premium – A Premium payment less applicable Fees and Charges, including, without limitation, the Acceptance Fee set forth on the Policy Data Page and described in Section 9.5.

Next Available Liquidity Date – For any specified day, the Liquidity Date on or next following the 100th calendar day following the specified day.

Partial Surrender – A Surrender pursuant to Section 8.3.

Policy – This Deferred Variable Annuity (DVA) Policy offered by the Insurer.

Policy Account Value – The net fair market value of all assets in the Separate Account backing the Policy, less any accrued but unpaid Fees or Charges.

Policy Administration Fee – The fee deducted by the Insurer as stated on the Policy Data Page and described in Section 9.1.

Policy Anniversary – The anniversary of the Policy Effective Date.

Policy Data Page – The pages of this Policy titled "Policy Data Page." The Insurer will reissue these pages by means of an endorsement whenever the information on the Policy Data Page is amended, in accordance with the Policy.

Policy Effective Date – The "Policy Effective Date" of this Policy as stated on the Policy Data Page.

Policy Set-Up Deposit – A non-refundable screening deposit due upon submission of the completed Annuity Application Form as stated on the Policy Data Page and described in Section 9.4.

Policy Year – Any one year period beginning on the Policy Effective Date or a Policy Anniversary and ending on the day before the next Policy Anniversary.

Premiums – The Initial Premium and any subsequent Premiums paid to the Insurer under this Policy.

Private Act – The private act entitled "The Scottish Annuity & Life International Insurance Company (Bermuda) Ltd. Consolidation and Amendment Act 2001," as amended and consolidated from time to time.

Proposed Annuitant – The individual whose life is used to determine the duration of the period during which the Annuity Payments will be paid by the Insurer.

Proposed Joint Annuitants – Each Proposed Annuitant (each being a "Proposed Joint Annuitant") when a second Proposed Annuitant is designated under the Policy and a Joint Life Annuity is selected. Each Proposed Annuitant, including the second Proposed Annuitant, is to generally be designated by the Proposed Policyholder in the Annuity Application Form but may be designated by the Proposed Policyholder after the Issue Date with the consent of the Insurer. The second named Proposed Annuitant shall be designated as the Proposed Joint Annuitant by the Proposed Policyholder in the Annuity Application Form and reflected as such on the Policy Data Page.

Proposed Policyholder – Proposed Policyholder means the individual or entity that proposes or is considering the purchase of a Policy pursuant to the Confidential Private Placement Memorandum. This term shall include a person who has become an actual policyholder through the purchase of a Policy or pursuant to a change made pursuant to Section 11.2.

Qualified Purchaser – A Qualified Purchaser within the meaning of Section 2(a)(51) of the Investment Company Act.

SEC – The U.S. Securities and Exchange Commission.

Securities Act – The U.S. Securities Act of 1933, as amended.

Separate Account – A separate investment account established by the Insurer for this Policy pursuant to the terms hereof, and Bermuda law (including the Private Act), the assets of which can be used for the sole purpose of paying claims under this Policy. A Separate Account is not a legal entity under Bermuda law and any references to the Separate Account performing any tasks means the Insurer in respect of the Separate Account.

Single Life Annuity – An annuity measured by the life of a single Proposed Annuitant.

Subaccount – A subaccount established by the Insurer as a bookkeeping entry within the Separate Account.

Surrender – A surrender under Article VIII including a Full Surrender under Section 8.2 and a Partial Surrender under Section 8.3.

Taxes – The taxes defined in Section 9.7 of this Policy.

Unscheduled Premium – Any Premium payment other than the Initial Premium or a Premium scheduled on the Policy Data Page or as set forth in an endorsement or attachment to the Policy.

U.S. Treasury Regulations – The U.S. Treasury regulations promulgated under the Code, as amended.

Article I General Provisions

Section 1.1 Consideration

This Policy is issued in consideration of the payment of the Initial Premium.

Section 1.2 Entire Policy

This Policy, any endorsements or riders, and the Annuity Application Form constitute the entire contract between the Proposed Policyholder and the Insurer. The Proposed Policyholder, on behalf of the Proposed Policyholder, the Proposed Annuitant, and the Beneficiaries represents, acknowledges, and agrees that the Insurer has relied, and is entitled to rely, upon the accuracy of the information and statements made in the Annuity Application Form in deciding to issue this Policy.

Section 1.3 Survival of Representations, Warrants, Covenants

The representations, warrants, covenants, and other statements made in the Annuity Application Form are incorporated herein by reference and shall survive the execution of this Policy.

Section 1.4 Amendment or Modification

The Insurer cannot modify the Policy without the Proposed Policyholder's consent, provided that, the Insurer may take any action it deems necessary in order to preserve the U.S. tax treatment of the Policy without the Proposed Policyholder's consent, so long as the Insurer provides 90 days prior notice of any such proposed action to the Proposed Policyholder and discusses with the Proposed Policyholder the legal basis for such change.

Section 1.5 Misstatement of Age

If the Age of any Proposed Annuitant or Proposed Joint Annuitant is misstated on the Annuity Application Form, the Insurer will adjust the Annuity Payments to reflect the correct Age. Any amount that the Insurer has overpaid as a result of any such misstatement shall be deducted from future Annuity Payments made under the Policy. The Insurer will require due proof of the Age or survival of any person on

whose continued life any payment or benefit under the Policy is dependent. It is the Proposed Policyholder's obligation to provide proof that is satisfactory to the Insurer.

Section 1.6 Non-Participating Policy

This Policy is non-participating, which means that the Proposed Policyholder will not share in the Insurer's profits or surplus earnings and that the Insurer will not pay dividends on this Policy.

Section 1.7 Ownership of Assets

Assets held in the Separate Account are the sole property of the Insurer. The Proposed Policyholder will have no direct proprietary interest in the assets held in any separate account, including, without limitation, the Separate Account with respect to this Policy.

Section 1.8 Rule of Construction

For purposes of this Policy, the period denoted by the phrase "prior to a Liquidity Date" shall include the Liquidity Date.

Section 1.9 Governing Law

The Policy will be governed by the laws of Bermuda without regard to its conflict of laws principles, including without limitation, the Private Act and the Life Insurance Act, 1978 as may be amended from time to time.

Section 1.10 Effective Date of Coverage

Coverage of the Proposed Annuitants under this Policy will begin on the Policy Effective Date.

Article II Premium Provisions

Section 2.1 Premiums

The minimum Initial Premium payable under the Policy is $2 million. Such minimum may be met by aggregating Policies having initial Premiums of $1 million each and purchased by the same Proposed Policyholder. The Insurer has not placed a limitation on the maximum amount of Premiums that may be contributed by a Proposed Policyholder. Subject to Section 2.2, additional Premium Payments may be made at any time and from time to time as the Proposed Policyholder's financial situation permits, provided that the minimum additional Premium Payment may not be less than the minimum Unscheduled Premium.

The Initial Premium is due on the Issue Date. Premiums must be paid or mailed from outside the U.S. to the Insurer at its Home Office. Upon request, a receipt will be provided at the Insurer's Home Office (or other non-U.S. jurisdiction designated by the Insurer from time to time).

No Initial Premium or additional Premium payments may be made from the U.S. by any Proposed Policyholder (nor will the same be accepted by the Insurer) if said Proposed Policyholder is in the U.S. at the time the decision to make said Premium payment occurs. Further, the Proposed Policyholder may not direct that a Premium payment be made while the Proposed Policyholder is in the U.S. even if the Premium payment is made from outside the U.S.

Premium payments are generally to be made in U.S. Dollars. The Insurer may, in its sole and absolute discretion, accept certain in-kind asset contributions as Premium payments. The Insurer may reject in-kind asset contributions in its sole and absolute discretion.

Section 2.2 Insurer's Right to Refuse Premiums

The Insurer reserves the right to refuse Premiums and to return Premiums with interest if such Premiums would adversely affect the U.S. tax consequences the Policy is intended to provide or the tax consequences under the laws of any other applicable jurisdiction.

The Insurer reserves the right not to accept any Premium payments from a Proposed Policyholder who ceases to be a Qualified Purchaser or an Accredited Investor. The Insurer may require any Proposed Policyholder to provide confirmation of the Proposed Policyholder's status as a Qualified Purchaser or an Accredited Investor before accepting any additional Premium payments. However, subject to any other limitation set forth in this Section 2.2, Premium payments during a Policy Year that do not exceed the sum of expected Fees and Charges under the Policy for the Policy Year will be accepted.

Section 2.3 Nonpayment of Premium

If no Premiums are paid after the Initial Premium, the Policy will continue In Force as long as the Policy Account Value is sufficient to pay any applicable Fees and Charges and, following the payment of such Fees and Charges, the Policy Account Value is $500,000 or more.

Article III Termination Provisions

Section 3.1 Insurer's Cancellation Rights

The Insurer may, in its sole and absolute discretion, cancel the Policy and distribute the Policy Account Value to the Proposed Policyholder if:

1. The Policy Account Value is less than $250,000 at the end of any calendar quarter prior to the Annuity Starting Date but following the Insurer's acceptance of the Initial Premium payment, notwithstanding any potential negative tax consequences to the Proposed Policyholder or any other person or entity; or

2. The continuing existence of the Policy would require the Insurer, the Policy or the Separate Account backing the Policy to register, or make information filings, with the SEC under the Securities Act, the U.S. Investment Company Act, the U.S. Investment Adviser Act, each as amended from time to time, or the securities laws of any jurisdiction in which the Insurer, the Policy or the Separate Account is not currently registered or required to make information filings; or

3. The Proposed Policyholder or the Proposed Annuitant (or any Proposed Joint Annuitant) changes his or her country of residence for tax, securities regulation, or other purposes; or

4. Subject to the provisions of section 12.6 of the Policy, any declaration in the Annuity Application Form is not exact, truthful, and complete in all material respects; or

5. If the Proposed Policyholder fails to comply with the terms of any of the covenants or declarations made in the Annuity Application Form.

Prior to the Policy termination, the Insurer will provide 90 day notice of such termination to the Proposed Policyholder, which notice shall include the reason for such termination. The Insurer will pay to the Proposed Policyholder the amount, if any, of the Policy Account Value determined as of the Next Available Liquidity Date. Surrender charges will not apply.



Section 3.2 Reinstatement

If the Policy terminates as the result of the expiration of a Grace Period, it may not be reinstated unless reinstatement is required by Bermuda law.

Article IV Premium Investment; Policy Account Values

Section 4.1 The Separate Account

The Insurer will establish a Separate Account pursuant to the terms of the Private Act to hold assets that fund obligations arising under each Policy issued by it together with any supplementary contracts hereunder and certain other funds. Income, gains, or losses of each Separate Account are credited to or charged against the assets held in such Separate Account, without regard to other income, gains, or losses of any other Separate Account or business of the Insurer. Under the terms of this Policy and the laws of Bermuda, assets allocated or credited to each Separate Account are the property of the Insurer and the Proposed Policyholder has no direct proprietary interest in such assets.

Section 4.2 Premiums

Net Premiums received by the Insurer with respect to the Policy will be credited to the related Separate Account. To the extent that Premiums are insufficient to pay all Fees and Charges due to the Insurer under the Policy, the Insurer will deduct Fees and Charges from the Separate Account.

Amounts payable to the Proposed Policyholder or any Beneficiary under the Policy will be made by the Insurer from the related Separate Account to the Proposed Policyholder or Beneficiary in accordance with the terms of this Policy. The Insurer will establish Subaccounts within the Separate Account for each Investment Option selected by the Proposed Policyholder. Each Subaccount will correspond to an Investment Option. The Insurer may from time to time change the Investment Options and investment managers available to Proposed Policyholders, provided that the Insurer shall only remove an investment manager available to the Proposed Policyholder for cause (as described in the Insurer's investment management or similar agreement with such investment manager).

Section 4.3 Allocations to Investment Options

On the Annuity Application Form, the Proposed Policyholder will designate the initial allocation of Net Premiums among the available Investment Options and on each Liquidity Date a Proposed Policyholder's Net Premiums will be allocated among the

Investment Options according to the allocation percentages selected. Allocation percentages must be zero or a whole number not less than ten nor greater than 100. The sum of the allocation percentages must equal 100. The Insurer will document the initial allocation on the Policy Data Page. The Insurer has reserved the right to require allocation of an amount equal to the expected aggregate quarterly Fees and Charges related to the Policy to the Liquid Asset Subaccount before application of the allocation percentages designated by the Proposed Policyholder. In addition, the Insurer may transfer amounts from other Investment Options and Subaccounts to the Liquid Asset Subaccount equal to the expected quarterly Fees and Charges.

The specific Investment Options can generally be divided into two categories: IDFs and Managed Subaccounts. The Insurer is not obligated to offer both IDFs and Managed Subaccounts as Investment Options at any time. Accordingly, at any given time only one of these types of Investment Options may be available.

The Insurer and its affiliates make no recommendations, and provide no investment advice, as to the selection of, and allocations to, Investment Options. The Insurer has not evaluated any of the investment manager's investment performance and makes no recommendation regarding the selection of any investment manager or any IDF. The Insurer does not act as a custodian of cash or investments held in the Separate Account.

Section 4.4 Compliance with Investor Control Rules

The Proposed Policyholder agrees that, except for the selection of the allocation of Separate Account assets among Investment Options as contemplated in Section 4.3, and changes to such allocations as contemplated in Section 4.5, it will not select, identify or recommend, nor will it contact any investment manager for the purpose of influencing, any particular investment or group of investments to be made directly or indirectly with the assets of any Subaccount, including, without limitation, an investment manager with respect to an IDF in which funds held in a particular Subaccount are invested.

A Proposed Policyholder may not have direct contact or communicate with the investment manager of either an IDF or a Managed Subaccount and may not directly participate in the management of the Separate Account or any IDF or Managed Subaccount.

Section 4.5 Changes in Allocations to Investment Options

The Proposed Policyholder may, at quarterly intervals, reallocate funds among then available Investment Options but may do so no more than twice per calendar year. If a change in allocation percentages requires a transfer of funds between Investment Options, there may be a delay after the Separate Account receives the proceeds from one Investment Option until the next date on which it is possible to reinvest the funds in a different Investment Option. During this delay period (which may be up to one calendar quarter), funds will be invested in the Liquid Asset Subaccount. The Proposed Policyholder acknowledges that this delay may result in the funds having a lower return for this period.

In the event of such a delay, the funds from the liquidated investments will be invested in the Liquid Asset Subaccount until the next Liquidity Date at which time the funds will be re-allocated (together with any related earnings) to the applicable Subaccount originally designated by the Proposed Policyholder for the transfer.

Unless and until the Proposed Policyholder notifies the Insurer in writing of a new Net Premium allocation, the Net Premium allocations as specified in “Initial Allocation of Payment to Investment Options” on the Policy Data Page will continue to apply to any additional Premium payments.

Section 4.6 Responsibility for Selecting Investment Options

The Insurer does not and will not make any recommendation as to the Proposed Policyholder’s selection or retention of investment managers, allocation of assets among Subaccounts, Investment Options, or investments in particular securities or categories of securities, nor will it evaluate the investment performance of any investment manager. Inclusion of an Investment Option shall not be deemed to be a recommendation of that investment or as an indication that such an investment is suitable for the Proposed Policyholder.

Each Proposed Policyholder acknowledges, represents, warrants, and covenants that it is solely responsible for determining for themselves whether a particular Investment Option is suitable in light of their individual situations. The Insurer and its affiliates make no recommendations, and provide no advice, as to the selection of Investment Options and provide no warranty, representation, or indemnity with respect to the

performance of any Investment Option. Each Proposed Policyholder should consult his or her personal financial advisor concerning Premium allocations.

Section 4.7 Appointment of Investment Manager and Custodian Bank

The Insurer shall have the right, exercisable in its sole and absolute discretion, to appoint, change, or remove the investment manager and custodian bank with respect to each Investment Option or Separate Account, provided that an investment manager shall only be removed for cause (as described in the Insurer's investment management or similar agreement with such investment manager). A Proposed Policyholder may recommend to the Insurer one or more investment managers or custodian banks who meet the Insurer's general requirements after the initial policy date, but the Insurer may accept or reject such recommendation in its sole and absolute discretion.

Section 4.8 Timing of Allocations

The Insurer will allocate the Proposed Policyholder's Net Premiums among one or more Investment Options in the percentages specified on the Policy Data Page, as amended from time to time at the written request of the Proposed Policyholder, within two business days following the date the Insurer receives the Net Premiums. Net Premiums received and which are to be allocated to an Investment Option will be initially invested in the Liquid Asset Subaccount and subsequently allocated (together with any related earnings) within two business days to the applicable Investment Option (subject to deferral due to liquidity constraints imposed by the applicable investment manager or IDF and subject to such provisions as to valuation and unit calculation as may be specified by the applicable investment manager).

Section 4.9 Investment of Separate Account Assets

The Insurer will require each investment manager with respect to a portfolio of an IDF or Managed Account held in the Separate Account and the investment manager of each investment fund or other investment fund in which the assets of the Separate Account are invested, to comply with the following:

1. Investment of assets held in each Subaccount will be sufficiently diversified to comply with the requirements of U.S. Treasury Regulation section 1.817-5(b). Assets of any investment fund relying upon a "look-through" basis for purposes

of meeting such diversification requirements will themselves be sufficiently diversified so as to allow the Subaccount to comply with such requirements.

2. The investment manager and its employees who are responsible for investment decisions will not accept investment recommendations or make any investment decisions regarding the direct or indirect investment of Separate Account assets based, in whole or in part, on information regarding any investment or group of investments received from any Proposed Policyholder or any representative or adviser of a Proposed Policyholder.

3. No Proposed Policyholder (or any representative or adviser of a Proposed Policyholder) will have the right or be permitted to select or identify any particular investment or group of investments to be made directly or indirectly with the assets of any Subaccount.

4. The investment manager will not commit to invest assets of any Subaccount (or of any underlying investment fund or Managed Account in which a Subaccount has invested directly or indirectly) in mutual funds or other collective investment funds or publicly available investment products (including, without limitation, market-linked deposits and flexible deposits) managed, advised and/or distributed by the investment manager or its affiliates and will only do so if (a) in the investment manager's sole judgment at the time the investment is made, such fund or product is appropriate within the investment objectives and policies of the Subaccount fund or Managed Account and (b) no more than 55% of the assets on an initial purchase basis (excluding market value increases) of the Subaccount fund or Managed Account are invested in such funds or products at any time. Subject to the foregoing, for the avoidance of doubt, assets may be invested in an IDF.

5. In accordance with Section 4.4, except for general descriptions of the investment policies of the Investment Options, there will not be any direct or indirect prearrangement, plan or agreement between any Proposed Policyholder (or any Proposed Policyholder's advisers or representatives) and the investment manager (or any of its employees) regarding the investments to be made directly or indirectly by any Subaccount.

Section 4.10 Request for Extension of Investment Rights With Respect to Adequate Diversification

A Proposed Policyholder may make a request for an extension of the Proposed Policyholder's investment rights described in Section 4.4 and partial or complete release of the investment manager's obligations in Section 4.9 to adequately diversify the assets held in the Separate Account by delivering a written request to the Insurer's Home Office expressing a specific desire for the same. The Insurer may grant or deny such requests in its sole and absolute discretion, for any reason or for no reason whatsoever. Any such request must be approved by the Insurer in writing (and, in the case of an IDF, may also require the consent of the IDF). Absent written approval of the request, the request shall be deemed to have been denied.

The Insurer expresses no opinion and makes no representations or warranties regarding the tax consequences under the laws of the U.S. or any other jurisdiction of the Insurer's decision to grant such requests. By making such a request, a Proposed Policyholder waives any claim against the Insurer, its shareholders, directors, officers, employees, agents or affiliates on behalf of the Proposed Policyholder, any Beneficiaries or any other person for any loss from the Insurer's decision to grant or deny the Proposed Policyholder's request and agrees to hold harmless hereunder the Insurer and its shareholders, directors, officers, employees, agents or affiliates for any such loss.

Section 4.11 Changes in Investment Options

The Insurer at any time may add additional Investment Options, remove or restrict existing Investment Options, or add or eliminate an investment manager subject to any required regulatory approval, provided that the Insurer shall only remove an investment manager available to the Proposed Policyholder for cause (as described in the Insurer's investment management or similar agreement with such investment manager). If an Investment Option is removed or restricted or an investment manager is terminated, the Insurer may eliminate the Investment Option as an option for future Premium payments or transfers and may also transfer funds from the Subaccount in which assets invested in the terminated Investment Option were held, to the Liquid Asset Subaccount. An affected Proposed Policyholder may submit instructions to adjust the allocation of Net Premiums among the remaining Investment Options, without charge, for a period of 60 days following receipt of the Insurer's notice of any

such termination. The Insurer will implement those instructions on the Next Available Liquidity Date after receipt.

Section 4.12 Policy Account Value

The Policy Account Value is equal to the net fair market value of all assets in the Separate Account backing the Policy, less any accrued but unpaid fees or expenses. The Insurer will determine the Policy Account Value on each Liquidity Date. The Separate Account value will increase or decrease, depending upon the investment experience of the related Subaccounts.

Assets allocated or credited to a Separate Account may be commingled with assets allocated or credited to another Separate Account for purposes of investment. In such circumstances, the Insurer may determine the Policy Account Value of each such Separate Account by the use of accumulation units, which are calculated separately with respect to each commingled investment. The accumulation unit value for each commingled investment will vary to reflect the investment experience of the assets invested therein.

The value of an accumulation unit will be determined on each Liquidity Date. When a commingled investment is made, the Insurer will credit the Separate Account with a number of accumulation units determined by dividing the amount of the investment by the value of the accumulation unit. When assets allocated or credited to a Separate Account are withdrawn from an investment, the accumulation units are reduced.

Article V Transfers Among Investment Options

Section 5.1 General

The Proposed Policyholder may request one transfer among Investment Options per calendar quarter, but no more than twice per calendar year.

Section 5.2 Conditions on Transfer

To effect any transfer, the Proposed Policyholder must submit a transfer request to the Insurer. All transfers are subject to the following conditions:

1. Any applicable Fees and Charges will be deducted from the Subaccount or from the amount which is transferred.

2. Transfers will be effected within 60 days following receipt by the Insurer of a transfer request. Actual settlement of a disposition or redemption from the relevant Subaccount, and reinvestment of the proceeds may be delayed as described below.

3. Any transfer request must clearly specify: (a) the amount which is to be transferred; and (b) the Subaccounts which are to be affected.

4. Payments to effect a transfer are subject to the disbursement rules and restrictions of the Subaccount(s).

5. The minimum amount that may be transferred in a single transfer will be the lesser of $250,000 or the entire interest in a Subaccount.

6. No transfer may be made from the Liquid Asset Subaccount if the amount remaining therein would not equal or exceed the Minimum Liquid Asset Allocation.

7. In the case of an IDF, any additional conditions set forth in the governing documents in the IDF must be satisfied.

Section 5.3 Liability

Neither the Insurer nor any of the Insurer's affiliates will be liable for any losses incurred as a result of transfers made in accordance with a Proposed Policyholder's transfer request including lower returns which may result.

Section 5.4 Limits on Right of Transfer

The Insurer may in its sole and absolute discretion defer the right of transfer for any period when it reasonably determines that additional time is necessary to obtain sufficient cash to make the transfer payments. Additional limitations on transfer may be imposed under the terms of any IDF in which assets held in a Separate Account are invested. For the avoidance of doubt, a transfer described in this Section 5.4 is a situation where a change from one Investment Option to another Investment Option occurs.

Article VI Annuity Provisions

Section 6.1 Annuity Payments

The Insurer will make periodic payments to the Beneficiaries beginning on the Annuity Starting Date and continuing thereafter on each Policy Anniversary to an account located outside the U.S. The amount of each Annuity Payment will equal the product of the applicable Annuity Percentage and the Policy Account Value (determined as of the end of the calendar quarter immediately preceding each Annuity Payment) and will vary depending upon the investment experience of the Investment Options in which the Separate Account assets are invested and the age of the Proposed Annuitant.

Section 6.2 Annuity Percentage

The Annuity Percentages are listed in the Appendix I to this Policy. The applicable Annuity Percentage will, depend upon the benefit option selected by the Policyholder. In the case of a Single Life Annuity, the Annuity Percentage is the percentage corresponding to the age of the Proposed Annuitant. In the case of a Joint Life Annuity, the applicable Annuity Percentage is the percentage corresponding to the age of the younger Proposed Joint Annuitant or the survivor of the Proposed Joint Annuitants. The Annuity Percentage is adjusted for each Annuity Payment.

Section 6.3 No Guaranteed Payments

The Policy Account Value, and thus, the Annuity Payments may increase or decrease depending upon the investment experience of the Investment Options selected by the Proposed Policyholder. The sole source for the payment of the Annuity Payments are the assets held in the Separate Account backing the Policy. The Policy does not provide for guaranteed annuity or death benefits. All payments, including upon the death of the Proposed Policyholder or Proposed Annuitant (or Proposed Joint Annuitants) are strictly limited to the assets held in the Separate Account backing the Policy and no Annuity Payments or any other payments under the Policy are payable from any other source.

Section 6.4 Annuity Starting Date

The Annuity Starting Date must be on the first day of a calendar quarter and may not be later than the first day of the calendar quarter of the Proposed Annuitant's (or elder Proposed Joint Annuitant's or surviving Proposed Joint Annuitant's) eighty-fifth (85th) birthday. If the Proposed Policyholder has not chosen an Annuity Starting Date, then the first day of the calendar quarter of the Proposed Annuitant's (or elder Proposed Joint Annuitant's or surviving Proposed Joint Annuitant's) eighty- fifth (85th) birthday shall be the Annuity Starting Date.

Section 6.5 Change of Annuity Starting Date

The Proposed Policyholder may change the Annuity Starting Date prior to the then current Annuity Starting Date by delivering a written notice to the Insurer. The new Annuity Starting Date may not be before the Next Available Liquidity Date for any Investment Option under the Policy as of the date the Insurer receives the notice from the Proposed Policyholder, and may not be later than the first day of the calendar month following the Proposed Annuitant's 85th birthday. Distributions must commence after the Annuity Starting Date in accordance with requirements under the Code.

Section 6.6 Annuity Income Options

Two (2) basic benefit options are offered under the Policy: (i) a Single Life Annuity, and (ii) a Joint Life Annuity. The benefit option may be changed by the Proposed Policyholder; however, no such change may be made at any time on or after the Annuity Starting Date. A Policyholder may change the selection of any benefit option by giving the Insurer at least thirty (30) calendar days' written notice prior to the Annuity Starting Date from outside the U.S.

In the case of a Single Life Annuity, the applicable Annuity Percentage is the percentage corresponding to the age of the Proposed Annuitant. In the case of a Joint Life Annuity, the applicable Annuity Percentage is the percentage corresponding to the age of the younger Proposed Joint Annuitant or the survivor of the Proposed Joint Annuitants.

Under both basic benefit options, the amount of each annual Annuity Payment made on or after the Annuity Starting Date will vary in accordance with the age of the Proposed Annuitant (or Proposed Joint Annuitant(s)) and the investment performance of the assets held in the Separate Account and shall be computed by the Insurer's

actuary each year (and recomputed on the annual anniversary date each year thereafter) by multiplying the applicable Annuity Percentage in the Annuity Percentage Table attached as Appendix I to this Policy by the then current Policy Account Value as of the Annuity Starting Date and predetermined on the annual anniversary date each year thereafter. If the Policy Account Value is zero, then all payments will cease. All Annuity Payments shall be made to an account outside the U.S. The Insurer may consider the adoption of additional benefit options at the request of a Proposed Policyholder.

Section 6.7 Maturity Payment

Upon the death of the Proposed Annuitant (or survivor of the Proposed Joint Annuitants), the Insurer will pay to the Beneficiaries, or their successors as Beneficiaries, as the case may be, the balance of the Policy Account Value.

Article VII Loan Provisions

Section 7.1 Policy Loans

The Proposed Policyholder shall have no guaranteed rights or privileges with respect to loans under a Policy. The Insurer may, in its sole and absolute discretion consider whether to facilitate a Proposed Policyholder's request to pledge a Policy as collateral security for a loan to be made by the Insurer or institutional or other third party lenders. A pledge of a Policy as collateral security for a loan may be effected only with the prior written consent of the Insurer, which may be granted or denied in the Insurer's sole and absolute discretion.

Article VIII Surrender Provisions

Section 8.1 General

At any time after the Issue Date and prior to the Annuity Starting Date, the Proposed Policyholder may request one or more withdrawals under the Policy from the Separate Account in the form of a Partial Surrender. Withdrawals are possible up to 100% of the Policy Account Value. Should the Policy Account Value be equal to or less than $250,000, the Policy will lapse. The rights of a Proposed Policyholder to make a Surrender under the Policy shall be subject to the consent of all Beneficiaries who have been irrevocably designated by the Proposed Policyholder under the Policy. Subject to this Article VIII, the Proposed Policyholder may Surrender the Policy, in whole or in part, by filing a written request with the Insurer at the Insurer's Home Office at any time during the lifetime of the Proposed Annuitant. The Policy Account Value which is the subject of the Surrender will be determined as of the Next Available Liquidity Date occurring after the Insurer receives the request to Surrender.

Although the amount of the Surrender proceeds will be determined as of the Next Available Liquidity Date after receipt of the Surrender request, the Insurer will use reasonable efforts to pay Surrender proceeds as soon as practicable whether on a Liquidity Date or another date (subject to such liquidity constraints and provisions as to valuation and unit calculation as may be specified by the investment manager of the applicable Investment Option).

Section 8.2 Full Surrender

If the Proposed Policyholder requests a Full Surrender of the Policy Account Value of the Policy, the Policy will terminate on the date the Proposed Policyholder submits its Surrender request in accordance with Section 12.3.

Section 8.3 Partial Surrender

The Proposed Policyholder may request a Partial Surrender of the Policy for up to and including 90% of the Policy Account Value of the Policy. No more than one Partial Surrender may be requested by the Proposed Policyholder during each quarter of a Policy Year. As provided in Section 3.1, any Partial Surrender that causes the Policy Account Value to be reduced to an amount that is less than

$250,000 may be deemed by the Insurer to be a request for Full Surrender and if so deemed will cause the Policy to be terminated, notwithstanding any potential negative tax consequences to the Proposed Policyholder or any other person or entity. If the Policy Account Value is reduced to an amount that is less than $250,000, then the Insurer shall have the right, exercisable in its sole and absolute discretion, to treat a Partial Surrender request as a Full Surrender request.

Each Partial Surrender will reduce the Policy Account Value and the amount of any Annuity Payment to be paid after the Annuity Starting Date. An amendment to the Policy will be sent to the Proposed Policyholder outside the U.S. for countersignature upon any request for a Partial Surrender under the Policy. Said amendment shall become a part of the Policy.

Article IX Policy Fees and Charges

Section 9.1 Policy Administration Fee

The Insurer will deduct the Policy Administration Fee from the Separate Account as set forth in the Policy Data Page for general administrative expenses.

Section 9.2 DAC Charges

The amount deducted by the Insurer as set forth on the Policy Data Page to pay for the costs imposed by virtue of the treatment of certain deferred acquisition costs for U.S. federal income tax purposes under section 848 of the Code. The amount of the DAC Charge as set forth on the Policy Data Page shall be adjusted to reflect any change in the applicable U.S. federal income tax rate. The Insurer shall provide the Proposed Policyholder notice of any change in the DAC Charge.

Section 9.3 Management & Expense Fee

The Insurer will deduct the Management & Expense Fee from the Separate Account. The Management & Expense Fee is an on-going insurance administration fee described on the Policy Data Page.

Section 9.4 Policy Set-Up Deposit

The Policy Set-Up Deposit is due to the Insurer as set forth on the Policy Data Page upon submission of the completed Annuity Application Form by the Proposed Policyholder. The Policy Set-Up Deposit will be paid into the General Account of the Insurer. Upon issuing the Policy, an amount equal to the Policy Set-Up Deposit will be used to offset the Acceptance Fee. If for any reason, a Policy is not issued, the Insurer will retain the Policy Set-Up Deposit to cover medical, underwriting, administration and any other costs incurred by the Insurer in the processing of the application.

Section 9.5 Acceptance Fee

The Insurer will deduct the Acceptance Fee set forth in the Policy Data Page on each date the Insurer receives a Premium payment.

Section 9.6 Surrender Charge

Surrender charges will not apply to this Policy.

Section 9.7 Taxes

The Insurer will deduct only those Taxes (as defined below) paid by the Insurer or its affiliates to any governmental entity that relate to the Policy or the related Separate Account. These taxes (the "Taxes") exclusively include withholding taxes, excise taxes, sales taxes, stamp taxes, value added taxes, state taxes imposed on the Insurer or its affiliates, and taxes imposed on Subpart F income of a Separate Account attributable to its investment in a controlled foreign corporation, as well as the deferred tax amount and any interest charge or other taxes imposed on the investments of a Separate Account in a passive foreign investment company, or under the corresponding tax laws of other jurisdictions.

The Insurer may, in its sole and absolute discretion, pay Taxes when due and deduct such amounts from the Separate Account at a later date. The Insurer will, in its absolute discretion, determine when Taxes have resulted from the investment experience of any Subaccount or receipt by the Insurer of Premiums.

Section 9.8 Agreed Upon Procedures Fee

The Insurer will deduct the Agreed Upon Procedures Fee from the Separate Account if the Proposed Policyholder instructs the Insurer to engage a third party audit firm to review charges and provide an Agreed Upon Procedures (AUP) report.

Section 9.9 Deductions for Fees and Charges

The Fees and Charges are paid to the Insurer under the Policy initially by making deductions from Premiums and then by making deductions from the Separate Account. To the extent that the Insurer deducts Fees and Charges from the Separate Account, amounts will be deducted first from the Liquid Asset Subaccount and then from the Subaccounts pursuant to the terms of the Policy.

Section 9.10 Custodian Bank and Investment Manager Fees

Each custodian bank and investment manager will separately deduct any applicable fees charged by it from any Separate Account or Investment Option for which it is acting as custodian or investment manager, as the case may be. The fees of the

custodian bank and investment manager are calculated on an individual basis and may vary depending upon the investment manager and Investment Option(s) selected by the Proposed Policyholder. The list of investment managers and custodians retained by the Insurer is available from the Insurer upon request.

Article X Death Benefit Provisions

Section 10.1 Death Benefit

If all Beneficiaries and any alternative Beneficiaries predecease the Proposed Policyholder and Proposed Annuitant (or the survivor of the Proposed Joint Annuitants, in the case where a Joint Life Annuity benefit option is selected), then the benefits payable under the Policy to the Beneficiaries or alternative Beneficiaries shall be paid to the Proposed Policyholder until the first to die of the Proposed Policyholder or Proposed Annuitant (or the survivor of the Proposed Joint Annuitants, in the case where a Joint Life Annuity benefit option is selected).

If none of the Beneficiaries or alternative Beneficiaries survives the Proposed Annuitant(s), then the Policy Account Value shall be paid to the Proposed Policyholder upon the Proposed Annuitant's death (or survivor of the Proposed Joint Annuitants' death, in the case where a Joint Life Annuity benefit option is selected).

If the Proposed Policyholder is not living at the time any benefit under the Policy is payable to the Proposed Policyholder, then such benefit shall be paid to the Proposed Policyholder's estate, if then open, or if not then to his heirs *per stirpes*, in accordance with the laws of succession in the jurisdiction of the Proposed Policyholder's last known domicile on the date of the Proposed Policyholder's death.

If the Proposed Policyholder is not an individual, then the Proposed Annuitant (or the younger of the Proposed Joint Annuitants or the survivor of the Proposed Joint Annuitants) shall be recognized as the "primary Proposed Annuitant" and treated as the Proposed Policyholder of the Policy. Any change in the designation of such Proposed Annuitant (or Proposed Joint Annuitant) following the Issue Date (in the case where the Proposed Policyholder is not an individual) shall be treated as the death of the Proposed Policyholder.

If the Proposed Policyholder dies prior to the "annuity starting date" (defined under Code Section 72(c)(4) as the first day of the first period for which an amount is received as an annuity under the contract; such definition possibly differing from the Annuity Starting Date designated under the Policy), then the Proposed Policyholder's entire interest in the Policy shall be distributed to the Beneficiaries within five (5) years from the date of the Proposed Policyholder's death, unless the Beneficiaries

elect to receive such interest in distributions made over their life or lives (or over a period not extending beyond their respective life expectancies), and such distributions begin within one (1) year from the date of the Proposed Policyholder's death. Any such election must be made in writing and received by the Insurer at the Insurer's Home Office within 180 calendar days from the date of the Proposed Policyholder's death.

If the Proposed Policyholder dies on or after the "annuity starting date" (as defined under Code Section 72(c)(4)) and before the entire interest in the Policy has been distributed, the remaining portion of the Policy Account Value shall be distributed to the Beneficiaries at least as rapidly as under the method of distributions being used as of the date of the Proposed Policyholder's death.

Notwithstanding any provision of the Policy, all Death Benefits must be distributed in compliance with the provision of section 72(s) of the Code. Death Benefits payable hereunder will be includible in the gross income of the Beneficiary.

Section 10.2 Due Proof of Death

Due proof of death is one of the following received at the Insurer's Home Office in a form satisfactory to the Insurer in its absolute discretion:

1. A certified copy of a death certificate;
2. A certified copy of a decree of a court of competent jurisdiction as to the finding of death; or
3. Any other proof of death satisfactory to the Insurer.

Article XI Owner, Beneficiary, Assignment

Section 11.1 Proposed Policyholder

The Proposed Policyholder is the person so named on the Policy Data Page or his or her assignee in accordance with a valid assignment as provided in Section 11.2.

Under Bermuda law, the Proposed Policyholder or his personal representative, trustee in bankruptcy or legal assignee will be the owner of the rights to payments under the Policy. While the Proposed Policyholder is alive, all rights in the Policy belong to the Proposed Policyholder and may be exercised without the consent of any Beneficiary, provided that, once an irrevocable designation of Beneficiary is filed, changes or elections under the Policy that impair the rights of an irrevocable Beneficiary will not be allowed without the consent of the irrevocable Beneficiary. All of the Proposed Policyholder's rights in the Policy belong to the estate of the Proposed Policyholder if the Proposed Policyholder dies before the Proposed Annuitant. Joint ownership is permitted.

Section 11.2 Change of Proposed Policyholder

The Proposed Policyholder may change the ownership of the Policy by submitting a request to the Insurer's Home Office and obtaining written approval of the Insurer. Any approved change will take effect on the date specified in the approval.

Section 11.3 Proposed Annuitant

The Proposed Policyholder has the right to designate one Proposed Annuitant or two Proposed Joint Annuitants. The Proposed Annuitants or Proposed Joint Annuitants will be as stated in the Annuity Application Form, unless otherwise endorsed at issue or subsequently changed.

Section 11.4 Change of Proposed Annuitant

Each Proposed Policyholder will have the right to designate and in some cases change the Proposed Annuitant or Proposed Joint Annuitant.

Section 11.5 Beneficiary

The Proposed Policyholder shall initially designate one or more Beneficiaries on the Policy Data Page. All designations of Beneficiaries are revocable unless specified as irrevocable by the Proposed Policyholder. Once an irrevocable designation of Beneficiary is filed, any changes or elections under the Policy that impair the rights of an irrevocable Beneficiary will not be allowed without the consent of the irrevocable Beneficiary under the Policy.

Section 11.6 Change of Beneficiary

Except in the case of an irrevocable Beneficiary, the Proposed Policyholder may change the Beneficiaries by filing a written request from outside the U.S. with the Insurer at its Home Office at any time prior to the Annuity Starting Date. In the case of an irrevocable Beneficiary, the consent of the irrevocable Beneficiary to the change is also required. The change will take effect as of the date the notice is received by the Insurer subject to any payment made or action taken by the Insurer before the Insurer receives the document at its Home Office. A new Beneficiary designation will automatically revoke all prior designations (except an irrevocable Beneficiary designation where the consent of the irrevocable Beneficiary has not been obtained). The Insurer will not be liable for any payment made or action taken before the effective date of the change of Beneficiary.

Section 11.7 Assignment

The Proposed Policyholder may transfer, assign, or pledge the Policy or any of their rights under the Policy, including a Section 1035 exchange of the Policy with another carrier, without the prior written consent of the Insurer, provided that the Policy may not be assigned unless (i) it is registered under the U.S. federal securities and/or state securities laws or the securities laws of any other jurisdiction unless such registration is not required or an exemption from registration is available and (ii) the assignee is a Qualified Purchaser and Accredited Investor. The Insurer may require satisfactory evidence as to the non-applicability of any such registration requirement or the availability of an exemption from any applicable registration requirement and the Insurer may in its discretion for this purpose request, at the transferor's expense, a favourable legal opinion from transferor's counsel that the provisions of this Section 11.7 have been met.

The Insurer represents and warrants that, subject to the foregoing, it will fully cooperate with any assignment, transfer or exchange, including a "1035" exchange of the Policy with another carrier and will cooperate to exchange underlying IDFs or sub-accounts with such carrier. Failure by the Insurer to cooperate with the Proposed Policyholder in a proposed 1035 exchange or other transfer, assignment, or pledge of the Policy or any of the Proposed Policyholder's rights under the Policy, such failure to cooperate as determined by a final judgement in a Bermuda court or other court of relevant jurisdiction, among any other injunctive or other relief resulting therefrom, will result in liquidated damages to the Proposed Policyholder equal to the sum of the (a) then Policy Account Value and (b) any fees or charges, including Management and Expense Fees, accruing during the period that the non-cooperation (as determined by the a Bermuda court or other court of relevant jurisdiction) exists and is continuing, and the Insurer shall be strictly liable for payment of such amount to the Proposed Policyholder. For the avoidance of doubt, the Proposed Policyholder shall be entitled to its Policy Account Value separate from the liquidated damages amount provided for herein. The Proposed Policyholder (x) acknowledges that the Insurer's ordinary and customary process for 1035 exchanges includes obtaining satisfactory assurance from the transferor of compliance with relevant tax and disclosure laws with respect to the Policy and indemnification from the new carrier regarding any tax obligations relating to the Policy and (y) agrees that following the Insurer's 1035 exchange process will not be considered to be a failure to cooperate by the Insurer.

Article XII Other General Provisions

Section 12.1 Periodic Reports

The Insurer will make available to the Proposed Policyholder, for every calendar quarter or portion thereof during which the Policy is In Force, a report that shows activity in the Proposed Policyholder's Separate Account. The Proposed Policyholder expressly authorizes the Insurer to rely upon the information or valuations provided by the selected investment manager and custodian without further inquiry or verification of any kind, nature, or description. Each quarterly statement will set forth the Policy Account Value less applicable expenses and charges at the beginning and end of the reporting period and aggregate adjustments to the same throughout. These quarterly statements shall be made available to the Proposed Policyholder at the Insurer's Home Office. The Insurer will forward annual Separate Account statements to an address of the Proposed Policyholder outside of the U.S. if a request to do so is made by the Proposed Policyholder in writing and delivered to the Insurer's Home Office.

Section 12.2 Currency and Place of Payment

All transactions between the Proposed Policyholder and the Insurer will be made in U.S. dollars unless otherwise confirmed by the Insurer in writing. All Payments will be made outside the U.S.

Section 12.3 Notices, Requests and Elections

To be effective, all notices, requests, and elections the Proposed Policyholder makes under the Policy must be in writing, signed by the Proposed Policyholder or sent electronically or via facsimile by the Proposed Policyholder and received by the Insurer. Unless otherwise provided, all notices, requests and elections will be effective when received by the Insurer. Notices, requests and elections may be made by the Proposed Policyholder under the Policy in writing, signed by the Policyholder, sent by facsimile or electronic communication and received by the Insurer at its Home Office or administrative office, provided that the Insurer will not be liable for following instructions communicated by facsimile or electronically and, provided further that acceptance of facsimile or electronic communication by the Insurer will not impose any requirement on the Insurer to employ any procedures to confirm that instructions

received by facsimile communication are genuine. Any notice or report required to be given by the Insurer to the Proposed Policyholder or any other person will be deemed given when sent to such person or such person's authorized representative.

Section 12.4 Policy Settlement

Prior to any payment of a Death Benefit, due certified proof of death must be submitted to the Insurer.

Section 12.5 Deferment

The Insurer will execute allowable requests for a transfer, Full Surrender or Partial Surrender by the Proposed Policyholder within 60 days of a request. Such requests may require conversion of certain Investment Option assets to cash or in-kind distributions, where possible. This may take longer than 60 days for a variety of reasons, including underlying restrictions on redemptions of assets held pursuant to an Investment Option. In such cases, the Insurer will take reasonable steps to comply with such requests at the earliest time possible. The foregoing will be subject to time restrictions within the Insurance Dedicated Fund purchased by a Subaccount.

Section 12.6 Incontestability

Except as expressly provided in the Policy, the Insurer will not contest the validity of the Policy for misstatement, misrepresentation or non-disclosure after the Policy has been In Force for two years from the Issue Date during the lifetime of the Proposed Annuitant. The Policy will be voidable in the event of fraud at any time. If the validity of the Policy is so contested, then (1) the Insurer's obligation to pay Annuity Payments under the Policy will terminate as of the date the Insurer discovers such misstatement, misrepresentation or non-disclosure, and (2) the Policy Account Value will be determined as of the Next Available Liquidity Date occurring after the Insurer discovers such misstatement, misrepresentation or non-disclosure and returned to the Proposed Policyholder or the Beneficiaries within 90 days. The Insurer will notify the Proposed Policyholder that the Policy is so terminated and such notice will include the date of termination. The return of the Policy Account Value will be in full and final satisfaction of all the Insurer's obligations under the Policy. Following the return of the Policy Account Value, the Policy will be void.

Section 12.7 Policyholder Information

The Insurer may disclose Policyholder information to third parties such as banks or independent asset managers. Specifically with respect to banking relationships in Switzerland and in accordance with FINMA Newsletter 18 (2010) "handling of Life insurance with separately managed accounts/portfolios" dated December 20, 2010, the Insurer may disclose Policyholder or source of funding information to banking partners including Policyholder name, date of birth, nationality and address. In any event, the Insurer may be required to confirm in accordance with FINMA Newsletter 18 (2010) that the insurance product related to account openings is set up as a life insurance product according to the legal provisions, including provisions concerning biometric risks, of the Insurer's domicile.

Each U.S. person who has a financial interest in or signature or other authority over any foreign financial accounts, including bank, securities, or other types of financial accounts, in a foreign country, if the aggregate value of these financial accounts exceeds $10,000 at any time during the calendar year, must report that relationship each calendar year by filing Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts), commonly referred to as an "FBAR", with the Department of the Treasury on or before June 30 of the succeeding year. In addition, and irrespective of the independent FBAR filing obligations that a Proposed Policyholder (or its owner) who is a U.S. person may have, U.S. person directors, officers, or employees of the Insurer who have signature authority over the Separate Account, Subaccounts, or other accounts with respect to the Policy would need to file an FBAR with respect to such accounts and so will the Insurer itself as a U.S. Person with a financial interest in such accounts. On the basis of such filings, the IRS could request information with respect to such filings and the Proposed Policyholder acknowledges that the Insurer may provide such FBAR-related information to the IRS if requested to do so.

Section 12.8 Tax Matters

The Proposed Policyholder acknowledges that he or she is responsible for complying with all tax reporting, filing and payment obligations with respect to this Policy in any jurisdiction in which the Proposed Policyholder is subject to tax. The Proposed Policyholder must consult its own tax advisor with respect to such obligations. The Insurer has not provided, and shall have no responsibility for providing, advice to the Proposed Policyholder with respect to such issues.

CROWN GLOBAL INSURANCE

Section 12.9 Limitation on Liability of Insurer

THE LIABILITY OF THE INSURER FOR BENEFITS UNDER THE POLICY OR FOR ANY LOSS OR OTHER DAMAGES WITH RESPECT TO THE POLICY IS LIMITED TO THE POLICY ACCOUNT VALUE.

CROWNGLOBAL INSURANCE

Appendix I - Annuity Percentage Table

Annuitant's Age	Life Expectancy	Annuity Percentage	Annuitant's Age	Life Expectancy	Annuity Percentage
10	86.2	1.1601%	63	33.9	2.9499%
11	85.2	1.1737%	64	33.0	3.0303%
12	84.2	1.1876%	65	32.0	3.1250%
13	83.2	1.2019%	66	31.1	3.2154%
14	82.2	1.2165%	67	30.2	3.3113%
15	81.2	1.2315%	68	29.2	3.4247%
16	80.2	1.2469%	69	28.3	3.5336%
17	79.2	1.2626%	70	27.4	3.6496%
18	78.2	1.2788%	71	26.5	3.7736%
19	77.3	1.2937%	72	25.6	3.9063%
20	76.3	1.3106%	73	24.7	4.0486%
21	75.3	1.3280%	74	23.8	4.2017%
22	74.3	1.3459%	75	22.9	4.3668%
23	73.3	1.3643%	76	22.0	4.5455%
24	72.3	1.3831%	77	21.2	4.7170%
25	71.3	1.4025%	78	20.3	4.9261%
26	70.3	1.4225%	79	19.5	5.1282%
27	69.3	1.4430%	80	18.7	5.3476%
28	68.3	1.4641%	81	17.9	5.5866%
29	67.3	1.4859%	82	17.1	5.8480%
30	66.3	1.5083%	83	16.3	6.1350%
31	65.3	1.5314%	84	15.5	6.4516%
32	64.3	1.5552%	85	14.8	6.7568%
33	63.3	1.5798%	86	14.1	7.0922%
34	62.3	1.6051%	87	13.4	7.4627%
35	61.4	1.6287%	88	12.7	7.8740%
36	60.4	1.6556%	89	12.0	8.3333%
37	59.4	1.6835%	90	11.4	8.7719%
38	58.4	1.7123%	91	10.8	9.2593%
39	57.4	1.7422%	92	10.2	9.8039%
40	56.4	1.7730%	93	9.6	10.4167%
41	55.4	1.8051%	94	9.1	10.9890%
42	54.4	1.8382%	95	8.6	11.6279%
43	53.4	1.8727%	96	8.1	12.3457%
44	52.4	1.9084%	97	7.6	13.1579%
45	51.5	1.9417%	98	7.1	14.0845%
46	50.5	1.9802%	99	6.7	14.9254%
47	49.5	2.0202%	100	6.3	15.8730%
48	48.5	2.0619%	101	5.9	16.9492%
49	47.5	2.1053%	102	5.5	18.1818%
50	46.5	2.1505%	103	5.2	19.2308%
51	45.5	2.1978%	104	4.9	20.4082%
52	44.6	2.2422%	105	4.5	22.2222%
53	43.6	2.2936%	106	4.2	23.8095%
54	42.6	2.3474%	107	3.9	25.6410%
55	40.6	2.4631%	108	3.7	27.0270%
56	40.7	2.4570%	109	3.4	29.4118%
57	39.7	2.5189%	110	3.1	32.2581%
58	38.7	2.5840%	111	2.9	34.4828%
59	37.8	2.6455%	112	2.6	38.4615%
60	35.8	2.7933%	113	2.4	41.6667%
61	35.8	2.7933%	114	2.1	47.6190%
62	34.9	2.8653%	115	1.9	52.6316%

EXHIBIT 27

CROWN GLOBAL INSURANCE

TERMSHEET

Policy Number	:	# 30218 Separate Account
Policyholder	:	Empower Dallas Foundation, Inc
Annuitant	:	Grant Scott
Beneficiary	:	Empower Dallas Foundation, Inc
Premiums planned	:	Approx. US$ 20'000'000
Premium Date	:	TBA
Policy Date	:	TBA
Policy Type	:	Deferred Variable Annuity (DVA)
Issuing Company	:	Crown Global Life Insurance Ltd., Bermuda (953d)
Custodian Bank	:	n/a
Account/Portfolio Number	:	n/a
Investment Manager	:	n/a
Asset Allocation/Investment Profile	:	IDF: Atlas IDF, LP/ Rand Advisors LLC
Investment of Funds Model:	:	n/a
Acceptance Fee	:	Zero
Mgmt. & Expense Fee	:	0.45% p.a $10mm of Premium 0.35% p.a. $11-20mm of Premium 0.25% p.a. $21mm+ of Premium, provided that if the Policy Account Value exceeds $50mm, the annual rate shall be 0.1% p.a. on the portion of Policy Account Value in excess of $50mm.
Policy Administration Fee	:	US$ 2,900 p.a.
DAC Tax	:	0.25% of all premium payments
Federal Excise Tax – 1% of Premium	:	n/a
Surrender Charge	:	US$ 5'000
Policy Audit (optional)	:	US$ 1'975 p.a.

Place, Date: GRAND CAYMAN, DEC 9TH 2015.

Signature

Policyholder

EXHIBIT 28

CROWNGLOBAL INSURANCE

Deferred Variable Annuity Policy

Crown Global Life Insurance Ltd.

Canon's Court
22 Victoria Street
Hamilton HM 12
Bermuda

www.crownglobalinsurance.com

This Policy is a Deferred Variable Annuity (DVA) Policy. This Policy is Non-Participating. Crown Global Life Insurance Ltd., a Bermuda Class C insurance company, will pay, subject to the provisions of this Policy, the Annuity Payments to the Beneficiaries as provided by this Policy, provided that the Policy is In Force.

Signed for the Insurer at its Home Office located at Hamilton, Bermuda on the Issue Date.

12/15/15 Ken Greerteen,

12/16/15 Janita Burke,

THIS IS A LEGAL CONTRACT.
PLEASE READ IT CAREFULLY.

THE INSURER IS INCORPORATED IN BERMUDA AND IS REGISTERED AS A CLASS C INSURER IN BERMUDA PERMITTING IT TO WRITE DEFERRED VARIABLE ANNUITY POLICIES AND CONDUCT OTHER LONG-TERM INSURANCE BUSINESS. THE INSURER IS NOT AUTHORIZED IN ANY JURISDICTION OTHER THAN BERMUDA TO CARRY ON ANY INSURANCE BUSINESS. POLICY ACCOUNT VALUES UNDER THIS POLICY ARE BASED ON THE INVESTMENT EXPERIENCE OF A SEPARATE ACCOUNT ESTABLISHED UNDER THIS POLICY AND THE PRIVATE ACT. THE POLICY ACCOUNT VALUES UNDER THIS POLICY MAY INCREASE OR DECREASE IN AMOUNT. INVESTMENTS OF FUNDS HELD IN THE SEPARATE ACCOUNT MAY BE MADE IN NON-U.S. INVESTMENTS AS WELL AS U.S. INVESTMENTS. THE ASSETS IN THE SEPARATE ACCOUNT MAY BE ADVERSELY AFFECTED BY CHANGES IN FOREIGN GOVERNMENTS, AND OTHER ECONOMIC AND POLITICAL EVENTS, WHICH MIGHT NOT AFFECT U.S. INVESTMENTS OR ENTITIES, AND BY FLUCTUATIONS IN THE ENTITIES, AND BY FLUCTUATIONS IN THE VALUE OF FOREIGN CURRENCY.

continued on next page

CROWN GLOBAL INSURANCE

Deferred Variable Annuity Policy

Crown Global
Life Insurance Ltd.

Canon's Court
22 Victoria Street
Hamilton HM 12
Bermuda

www.crownglobalinsurance.com

THIS POLICY CANNOT BE TRANSFERRED, ASSIGNED, HYPOTHECATED, OR PLEDGED, WITHOUT THE INSURER'S PRIOR WRITTEN CONSENT, WHICH THE INSURER MAY WITHHOLD IN ITS SOLE AND ABSOLUTE DISCRETION. THIS POLICY HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER U.S. FEDERAL OR STATE SECURITIES LAWS OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND, THEREFORE, CANNOT BE TRANSFERRED UNLESS SO REGISTERED OR UNLESS SUCH REGISTRATION IS NOT REQUIRED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THIS POLICY IS AN APPROPRIATE INVESTMENT ONLY FOR PURCHASERS WHO ARE QUALIFIED PURCHASERS WITHIN THE MEANING OF THE U.S. INVESTMENT COMPANY ACT OF 1940 AND ACCREDITED INVESTORS WITHIN THE MEANING OF RULE 501(a) OF REGULATION D PROMULGATED UNDER THE U.S. SECURITIES ACT OF 1933. THIS POLICY IS ALSO APPROPRIATE ONLY FOR SOPHISTICATED PURCHASERS WHO, AMONG OTHER THINGS, HAVE NO NEED FOR ACCESS TO AMOUNTS DESCRIBED IN THE POLICY. ADDITIONAL INFORMATION ON THE RISKS OF PURCHASING A POLICY APPEARS IN THE CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM, AS AMENDED THROUGH THE DATE HEREOF, DESCRIBING THE POLICY.

THE INSURER MAKES NO REPRESENTATION AS TO THE TAX TREATMENT OF THIS POLICY FOR U.S. FEDERAL INCOME TAX PURPOSES OR FOR THE PURPOSES OF THE TAX LAWS OF ANY OTHER JURISDICTION. NO REPRESENTATION IS MADE THAT A PROPOSED POLICYHOLDER WOULD NOT BE SUBJECT TO AUDIT OR EXAMINATION BY THE TAX AUTHORITIES OF ANY JURISDICTION AS A RESULT OF PURCHASING A POLICY.

NO REPRESENTATION IS MADE REGARDING THE LIKELIHOOD THAT THE CURRENT U.S. FEDERAL INCOME TAX LAWS, REGULATIONS AND OFFICIAL INTERPRETATIONS OF THE LAW MAY BE CHANGED IN THE FUTURE. IT IS POSSIBLE THAT SUCH CHANGES COULD OCCUR, AND THAT SUCH CHANGES COULD APPLY TO THE POLICY, AND COULD APPLY RETROACTIVELY. THE INSURER HAS RESERVED THE RIGHT IN ITS SOLE AND ABSOLUTE DISCRETION TO MAKE CHANGES TO THE POLICY THAT IT DEEMS NECESSARY TO PRESERVE THE EXPECTED TAX CONSEQUENCES OF THE OWNERSHIP OF THE POLICY AS A RESULT OF CHANGES IN THE LAWS OF THE U.S. OR ANY OTHER JURISDICTION.

CROWNGLOBAL INSURANCE

Policy Data Page

General Policy Data

All amounts expressed in "$" or "dollars" are in United States dollars

Proposed Policyholder:	Proposed Annuitant:	
The Okada Family Foundation, Inc	Mark Okada	
Proposed Annuitant's Date of Birth:	Gender:	
11 May, 1962	Male	
Policy Effective Date: 11 Dec, 2015	Issue Date: 11 Dec, 2015	
Annuity Starting Date: Deferred		
until Annuitant's 85th birthday		
Beneficiary:	Beneficiary Interest	Revocable/Irrevocable?
The Okada Family Foundation, Inc	100%	Irrevocable

Separate Account number : 30219

Premium Amounts

Initial Premium:	$ 5,301,065.12
Premium Limit:	n/a
Premium Deposit:	n/a

Net Premiums will be deposited to the Separate Account established by the Insurer with respect to the Policy.

CROWNGLOBAL INSURANCE

Policy Data Page

Initial Allocation of Payments to Investment Options

Investment Options	Initial Allocation
1. IDF: Atlas IDF, LP/ Rand Advisors LLC	100%

Custodian Bank: n/a

Investment Manager: n/a

CROWNGLOBAL INSURANCE

Policy Data Page

Policy Fees and Charges

Charge	Due Date	Amount of Charge
Policy Administration Fee	In equal installments in advance on each Liquidity Date	$2,900 per annum
Agreed Upon Procedures Fee	Annually	As charged by the outside auditors, currently $1,975.
DAC Charges	Each date the Insurer receives a Premium	0.25% of the amount of Premium payment. *See* Section 9.2 of the Policy.
Management & Expense Fee	In advance on each Liquidity Date	The following annual rates expressed as a percentage of the Policy Account Value: 0.45% p.a $10mm of Premium 0.35% p.a. $11-20mm of Premium 0.25% p.a. $21mm+of Premium, provided that if the Policy Account Value exceeds $50mm, the annual rate shall be 0.1% p.a. on the portion of Policy Account Value in excess of $50mm (adjusted for additional premium payments and withdrawals, as applicable) *See* Section 9.3 of the Policy.
Policy Set-Up Deposit	Upon submission of the completed Annuity Application Form.	N/A
Acceptance Fee	Each date the Insurer receives a Premium payment	Zero
Taxes	When paid by the Insurer or its affiliate	*See* Section 9.7 of the Policy.

CROWN GLOBAL INSURANCE

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Definitions

Acceptance Fee – The fee deducted by the Insurer as stated in the Policy Data Page and described in Section 9.5.

Accredited Investor – An "accredited investor" as defined in Rule 501(a) under Regulation D of the Securities Act.

Age – A Proposed Annuitant or Proposed Joint Annuitant's age on their last birthday.

Agreed Upon Procedures ("AUP") Fee – The fee deducted by the Insurer as stated on the Policy Data Page and described in Section 9.8.

Annuity Application Form – The annuity application provided by the Insurer as completed and signed by the Proposed Policyholder.

Annuity Payments – The benefits payable to the Beneficiary under Section 6.1 of this Policy (each an "Annuity Payment").

Annuity Starting Date – The date on which Annuity Payments under Section 6.4 of this Policy commence.

Beneficiary – The persons or entities designated as such on the Annuity Application Form, as amended from time to time, by the Proposed Policyholder, who is entitled to receive Annuity Payments under the Policy, and distributions following the death of the Proposed Policyholder as applicable, in accordance with the terms of the Policy.

Business Day – Any day on which banks in the U.S. and Bermuda are open for business.

Claim Date – The date on which the Insurer receives written notice and due proof of death of the Proposed Annuitant (or the survivor of the Proposed Joint Annuitants) in accordance with Section 10.2 at the Insurer's Home Office.

Code – The U.S. Internal Revenue Code of 1986, as amended.

Confidential Private Placement Memorandum – The confidential private placement memorandum describing the Policy including all schedules, appendices, attachments,

exhibits, amendments and supplements thereto, as amended and restated from time to time.

Contestable Period – The period of time described in Section 12.6 which extends for two (2) years from the Issue Date during the lifetime of the Proposed Annuitant.

DAC Charges – The amount deducted by the Insurer as set forth in the Policy Data Page and described in Section 9.2.

Death Benefit – The death benefit calculated and payable under the provisions of Article X of this Policy.

Fees and Charges – Any applicable fees and charges due under the Policy including, without limitation, the Policy Administration Fee, the DAC Charges, the Management & Expense Fee, the Acceptance Fee, Taxes, and the Agreed Upon Procedures Fee.

FINMA – The Swiss Financial Market Supervisory Authority.

Full Surrender – A Surrender pursuant to Section 8.2.

Grace Period – A period of thirty days following the date on which the Insurer makes available to the Proposed Policyholder information indicating that (i) the Policy Account Value is less than $250,000, or (ii) the Policy Account Value is insufficient to pay the Fees and Charges due under the Policy without the Policy Account Value becoming less than $250,000 following payment of such Fees and Charges.

Home Office – The Insurer's office in Hamilton, Bermuda. The Insurer's mailing address is Crown Global Life Insurance Ltd., Canon's Court, 22 Victoria Street, Hamilton HM 12, Bermuda, email: info@crownglobalinsurance.com, facsimile: +1-345-945-6121.

IDF – An insurance dedicated fund.

In Force – A condition that the Policy has not terminated.

Initial Premium – The first Premium payment by the Proposed Policyholder as shown on the Policy Data Page.

Insurance Dedicated Fund – An Investment Option involving investment in an investment fund generally formed as a limited partnership or limited liability company

(i) which is intended to operate as an insurance dedicated fund (an "IDF") and (ii) investment in which is available only to a U.S. or non-U.S. insurance company that regularly engages in the sale of life insurance policies and annuity policies in the ordinary course of its business and is acquiring interests in the IDF to hold in a Separate Account established in connection with a Policy and not as part of the general assets of the insurance company.

Insurer – Crown Global Life Insurance Ltd. The Insurer has elected under Code section 953(d) to be treated as a U.S. domestic corporation for U.S. federal income tax purposes.

Investment Adviser Act – The U.S. Investment Adviser Act of 1940, as amended.

Investment Company Act – The U.S. Investment Company Act of 1940, as amended.

Investment Option – A separate investment option consisting of all or a portion of the assets held in a Separate Account and managed by the investment manager identified therein directly or through an IDF.

IRS – The U.S. Internal Revenue Service.

Issue Date – The issue date of the Policy as stated on the Policy Data Page.

Joint Life Annuity – An annuity issued on the life of two Proposed Annuitants and under which payments continue as long as either Proposed Annuitant is alive.

Liquid Asset Subaccount – A Subaccount of the Separate Account, the funds in which are primarily invested in interest-bearing commercial bank accounts.

Liquidity Date – The last Business Day of each calendar quarter.

Managed Subaccount – An Investment Option where assets held in a Subaccount are managed by an investment manager unrelated to the Insurer. For the avoidance of doubt, a Managed Subaccount does not include an IDF.

Management & Expense Fee – The Management & Expense Fee as stated on the Policy Data Page and described in Section 9.3.

Minimum Liquid Asset Allocation – An amount not in excess of the expected annual Fees and Charges related to the Policy that the Insurer may place in the Liquid Asset Subaccount.

Net Premium – A Premium payment less applicable Fees and Charges, including, without limitation, the Acceptance Fee set forth on the Policy Data Page and described in Section 9.5.

Next Available Liquidity Date – For any specified day, the Liquidity Date on or next following the 100th calendar day following the specified day.

Partial Surrender – A Surrender pursuant to Section 8.3.

Policy – This Deferred Variable Annuity (DVA) Policy offered by the Insurer.

Policy Account Value – The net fair market value of all assets in the Separate Account backing the Policy, less any accrued but unpaid Fees or Charges.

Policy Administration Fee – The fee deducted by the Insurer as stated on the Policy Data Page and described in Section 9.1.

Policy Anniversary – The anniversary of the Policy Effective Date.

Policy Data Page – The pages of this Policy titled "Policy Data Page." The Insurer will reissue these pages by means of an endorsement whenever the information on the Policy Data Page is amended, in accordance with the Policy.

Policy Effective Date – The "Policy Effective Date" of this Policy as stated on the Policy Data Page.

Policy Set-Up Deposit – A non-refundable screening deposit due upon submission of the completed Annuity Application Form as stated on the Policy Data Page and described in Section 9.4.

Policy Year – Any one year period beginning on the Policy Effective Date or a Policy Anniversary and ending on the day before the next Policy Anniversary.

Premiums – The Initial Premium and any subsequent Premiums paid to the Insurer under this Policy.

Private Act – The private act entitled "The Scottish Annuity & Life International Insurance Company (Bermuda) Ltd. Consolidation and Amendment Act 2001," as amended and consolidated from time to time.

Proposed Annuitant – The individual whose life is used to determine the duration of the period during which the Annuity Payments will be paid by the Insurer.

Proposed Joint Annuitants – Each Proposed Annuitant (each being a "Proposed Joint Annuitant") when a second Proposed Annuitant is designated under the Policy and a Joint Life Annuity is selected. Each Proposed Annuitant, including the second Proposed Annuitant, is to generally be designated by the Proposed Policyholder in the Annuity Application Form but may be designated by the Proposed Policyholder after the Issue Date with the consent of the Insurer. The second named Proposed Annuitant shall be designated as the Proposed Joint Annuitant by the Proposed Policyholder in the Annuity Application Form and reflected as such on the Policy Data Page.

Proposed Policyholder – Proposed Policyholder means the individual or entity that proposes or is considering the purchase of a Policy pursuant to the Confidential Private Placement Memorandum. This term shall include a person who has become an actual policyholder through the purchase of a Policy or pursuant to a change made pursuant to Section 11.2.

Qualified Purchaser – A Qualified Purchaser within the meaning of Section 2(a)(51) of the Investment Company Act.

SEC – The U.S. Securities and Exchange Commission.

Securities Act – The U.S. Securities Act of 1933, as amended.

Separate Account – A separate investment account established by the Insurer for this Policy pursuant to the terms hereof, and Bermuda law (including the Private Act), the assets of which can be used for the sole purpose of paying claims under this Policy. A Separate Account is not a legal entity under Bermuda law and any references to the Separate Account performing any tasks means the Insurer in respect of the Separate Account.

Single Life Annuity – An annuity measured by the life of a single Proposed Annuitant.

Subaccount – A subaccount established by the Insurer as a bookkeeping entry within the Separate Account.

Surrender – A surrender under Article VIII including a Full Surrender under Section 8.2 and a Partial Surrender under Section 8.3.

Taxes – The taxes defined in Section 9.7 of this Policy.

Unscheduled Premium – Any Premium payment other than the Initial Premium or a Premium scheduled on the Policy Data Page or as set forth in an endorsement or attachment to the Policy.

U.S. Treasury Regulations – The U.S. Treasury regulations promulgated under the Code, as amended.

Article I General Provisions

Section 1.1 Consideration

This Policy is issued in consideration of the payment of the Initial Premium.

Section 1.2 Entire Policy

This Policy, any endorsements or riders, and the Annuity Application Form constitute the entire contract between the Proposed Policyholder and the Insurer. The Proposed Policyholder, on behalf of the Proposed Policyholder, the Proposed Annuitant, and the Beneficiaries represents, acknowledges, and agrees that the Insurer has relied, and is entitled to rely, upon the accuracy of the information and statements made in the Annuity Application Form in deciding to issue this Policy.

Section 1.3 Survival of Representations, Warrants, Covenants

The representations, warrants, covenants, and other statements made in the Annuity Application Form are incorporated herein by reference and shall survive the execution of this Policy.

Section 1.4 Amendment or Modification

The Insurer cannot modify the Policy without the Proposed Policyholder's consent, provided that, the Insurer may take any action it deems necessary in order to preserve the U.S. tax treatment of the Policy without the Proposed Policyholder's consent, so long as the Insurer provides 90 days prior notice of any such proposed action to the Proposed Policyholder and discusses with the Proposed Policyholder the legal basis for such change.

Section 1.5 Misstatement of Age

If the Age of any Proposed Annuitant or Proposed Joint Annuitant is misstated on the Annuity Application Form, the Insurer will adjust the Annuity Payments to reflect the correct Age. Any amount that the Insurer has overpaid as a result of any such misstatement shall be deducted from future Annuity Payments made under the Policy. The Insurer will require due proof of the Age or survival of any person on

whose continued life any payment or benefit under the Policy is dependent. It is the Proposed Policyholder's obligation to provide proof that is satisfactory to the Insurer.

Section 1.6 Non-Participating Policy

This Policy is non-participating, which means that the Proposed Policyholder will not share in the Insurer's profits or surplus earnings and that the Insurer will not pay dividends on this Policy.

Section 1.7 Ownership of Assets

Assets held in the Separate Account are the sole property of the Insurer. The Proposed Policyholder will have no direct proprietary interest in the assets held in any separate account, including, without limitation, the Separate Account with respect to this Policy.

Section 1.8 Rule of Construction

For purposes of this Policy, the period denoted by the phrase "prior to a Liquidity Date" shall include the Liquidity Date.

Section 1.9 Governing Law

The Policy will be governed by the laws of Bermuda without regard to its conflict of laws principles, including without limitation, the Private Act and the Life Insurance Act, 1978 as may be amended from time to time.

Section 1.10 Effective Date of Coverage

Coverage of the Proposed Annuitants under this Policy will begin on the Policy Effective Date.

Article II Premium Provisions

Section 2.1 Premiums

The minimum Initial Premium payable under the Policy is $2 million. Such minimum may be met by aggregating Policies having initial Premiums of $1 million each and purchased by the same Proposed Policyholder. The Insurer has not placed a limitation on the maximum amount of Premiums that may be contributed by a Proposed Policyholder. Subject to Section 2.2, additional Premium Payments may be made at any time and from time to time as the Proposed Policyholder's financial situation permits, provided that the minimum additional Premium Payment may not be less than the minimum Unscheduled Premium.

The Initial Premium is due on the Issue Date. Premiums must be paid or mailed from outside the U.S. to the Insurer at its Home Office. Upon request, a receipt will be provided at the Insurer's Home Office (or other non-U.S. jurisdiction designated by the Insurer from time to time).

No Initial Premium or additional Premium payments may be made from the U.S. by any Proposed Policyholder (nor will the same be accepted by the Insurer) if said Proposed Policyholder is in the U.S. at the time the decision to make said Premium payment occurs. Further, the Proposed Policyholder may not direct that a Premium payment be made while the Proposed Policyholder is in the U.S. even if the Premium payment is made from outside the U.S.

Premium payments are generally to be made in U.S. Dollars. The Insurer may, in its sole and absolute discretion, accept certain in-kind asset contributions as Premium payments. The Insurer may reject in-kind asset contributions in its sole and absolute discretion.

Section 2.2 Insurer's Right to Refuse Premiums

The Insurer reserves the right to refuse Premiums and to return Premiums with interest if such Premiums would adversely affect the U.S. tax consequences the Policy is intended to provide or the tax consequences under the laws of any other applicable jurisdiction.

The Insurer reserves the right not to accept any Premium payments from a Proposed Policyholder who ceases to be a Qualified Purchaser or an Accredited Investor. The Insurer may require any Proposed Policyholder to provide confirmation of the Proposed Policyholder's status as a Qualified Purchaser or an Accredited Investor before accepting any additional Premium payments. However, subject to any other limitation set forth in this Section 2.2, Premium payments during a Policy Year that do not exceed the sum of expected Fees and Charges under the Policy for the Policy Year will be accepted.

Section 2.3 Nonpayment of Premium

If no Premiums are paid after the Initial Premium, the Policy will continue In Force as long as the Policy Account Value is sufficient to pay any applicable Fees and Charges and, following the payment of such Fees and Charges, the Policy Account Value is $500,000 or more.

Article III Termination Provisions

Section 3.1 Insurer's Cancellation Rights

The Insurer may, in its sole and absolute discretion, cancel the Policy and distribute the Policy Account Value to the Proposed Policyholder if:

1. The Policy Account Value is less than $250,000 at the end of any calendar quarter prior to the Annuity Starting Date but following the Insurer's acceptance of the Initial Premium payment, notwithstanding any potential negative tax consequences to the Proposed Policyholder or any other person or entity; or

2. The continuing existence of the Policy would require the Insurer, the Policy or the Separate Account backing the Policy to register, or make information filings, with the SEC under the Securities Act, the U.S. Investment Company Act, the U.S. Investment Adviser Act, each as amended from time to time, or the securities laws of any jurisdiction in which the Insurer, the Policy or the Separate Account is not currently registered or required to make information filings; or

3. The Proposed Policyholder or the Proposed Annuitant (or any Proposed Joint Annuitant) changes his or her country of residence for tax, securities regulation, or other purposes; or

4. Subject to the provisions of section 12.6 of the Policy, any declaration in the Annuity Application Form is not exact, truthful, and complete in all material respects; or

5. If the Proposed Policyholder fails to comply with the terms of any of the covenants or declarations made in the Annuity Application Form.

Prior to the Policy termination, the Insurer will provide 90 day notice of such termination to the Proposed Policyholder, which notice shall include the reason for such termination. The Insurer will pay to the Proposed Policyholder the amount, if any, of the Policy Account Value determined as of the Next Available Liquidity Date. Surrender charges will not apply.



Section 3.2 Reinstatement

If the Policy terminates as the result of the expiration of a Grace Period, it may not be reinstated unless reinstatement is required by Bermuda law.

Article IV Premium Investment; Policy Account Values

Section 4.1 The Separate Account

The Insurer will establish a Separate Account pursuant to the terms of the Private Act to hold assets that fund obligations arising under each Policy issued by it together with any supplementary contracts hereunder and certain other funds. Income, gains, or losses of each Separate Account are credited to or charged against the assets held in such Separate Account, without regard to other income, gains, or losses of any other Separate Account or business of the Insurer. Under the terms of this Policy and the laws of Bermuda, assets allocated or credited to each Separate Account are the property of the Insurer and the Proposed Policyholder has no direct proprietary interest in such assets.

Section 4.2 Premiums

Net Premiums received by the Insurer with respect to the Policy will be credited to the related Separate Account. To the extent that Premiums are insufficient to pay all Fees and Charges due to the Insurer under the Policy, the Insurer will deduct Fees and Charges from the Separate Account.

Amounts payable to the Proposed Policyholder or any Beneficiary under the Policy will be made by the Insurer from the related Separate Account to the Proposed Policyholder or Beneficiary in accordance with the terms of this Policy. The Insurer will establish Subaccounts within the Separate Account for each Investment Option selected by the Proposed Policyholder. Each Subaccount will correspond to an Investment Option. The Insurer may from time to time change the Investment Options and investment managers available to Proposed Policyholders, provided that the Insurer shall only remove an investment manager available to the Proposed Policyholder for cause (as described in the Insurer's investment management or similar agreement with such investment manager).

Section 4.3 Allocations to Investment Options

On the Annuity Application Form, the Proposed Policyholder will designate the initial allocation of Net Premiums among the available Investment Options and on each Liquidity Date a Proposed Policyholder's Net Premiums will be allocated among the

Investment Options according to the allocation percentages selected. Allocation percentages must be zero or a whole number not less than ten nor greater than 100. The sum of the allocation percentages must equal 100. The Insurer will document the initial allocation on the Policy Data Page. The Insurer has reserved the right to require allocation of an amount equal to the expected aggregate quarterly Fees and Charges related to the Policy to the Liquid Asset Subaccount before application of the allocation percentages designated by the Proposed Policyholder. In addition, the Insurer may transfer amounts from other Investment Options and Subaccounts to the Liquid Asset Subaccount equal to the expected quarterly Fees and Charges.

The specific Investment Options can generally be divided into two categories: IDFs and Managed Subaccounts. The Insurer is not obligated to offer both IDFs and Managed Subaccounts as Investment Options at any time. Accordingly, at any given time only one of these types of Investment Options may be available.

The Insurer and its affiliates make no recommendations, and provide no investment advice, as to the selection of, and allocations to, Investment Options. The Insurer has not evaluated any of the investment manager's investment performance and makes no recommendation regarding the selection of any investment manager or any IDF. The Insurer does not act as a custodian of cash or investments held in the Separate Account.

Section 4.4 Compliance with Investor Control Rules

The Proposed Policyholder agrees that, except for the selection of the allocation of Separate Account assets among Investment Options as contemplated in Section 4.3, and changes to such allocations as contemplated in Section 4.5, it will not select, identify or recommend, nor will it contact any investment manager for the purpose of influencing, any particular investment or group of investments to be made directly or indirectly with the assets of any Subaccount, including, without limitation, an investment manager with respect to an IDF in which funds held in a particular Subaccount are invested.

A Proposed Policyholder may not have direct contact or communicate with the investment manager of either an IDF or a Managed Subaccount and may not directly participate in the management of the Separate Account or any IDF or Managed Subaccount.

Section 4.5 Changes in Allocations to Investment Options

The Proposed Policyholder may, at quarterly intervals, reallocate funds among then available Investment Options but may do so no more than twice per calendar year. If a change in allocation percentages requires a transfer of funds between Investment Options, there may be a delay after the Separate Account receives the proceeds from one Investment Option until the next date on which it is possible to reinvest the funds in a different Investment Option. During this delay period (which may be up to one calendar quarter), funds will be invested in the Liquid Asset Subaccount. The Proposed Policyholder acknowledges that this delay may result in the funds having a lower return for this period.

In the event of such a delay, the funds from the liquidated investments will be invested in the Liquid Asset Subaccount until the next Liquidity Date at which time the funds will be re-allocated (together with any related earnings) to the applicable Subaccount originally designated by the Proposed Policyholder for the transfer.

Unless and until the Proposed Policyholder notifies the Insurer in writing of a new Net Premium allocation, the Net Premium allocations as specified in “Initial Allocation of Payment to Investment Options” on the Policy Data Page will continue to apply to any additional Premium payments.

Section 4.6 Responsibility for Selecting Investment Options

The Insurer does not and will not make any recommendation as to the Proposed Policyholder’s selection or retention of investment managers, allocation of assets among Subaccounts, Investment Options, or investments in particular securities or categories of securities, nor will it evaluate the investment performance of any investment manager. Inclusion of an Investment Option shall not be deemed to be a recommendation of that investment or as an indication that such an investment is suitable for the Proposed Policyholder.

Each Proposed Policyholder acknowledges, represents, warrants, and covenants that it is solely responsible for determining for themselves whether a particular Investment Option is suitable in light of their individual situations. The Insurer and its affiliates make no recommendations, and provide no advice, as to the selection of Investment Options and provide no warranty, representation, or indemnity with respect to the

performance of any Investment Option. Each Proposed Policyholder should consult his or her personal financial advisor concerning Premium allocations.

Section 4.7 Appointment of Investment Manager and Custodian Bank

The Insurer shall have the right, exercisable in its sole and absolute discretion, to appoint, change, or remove the investment manager and custodian bank with respect to each Investment Option or Separate Account, provided that an investment manager shall only be removed for cause (as described in the Insurer's investment management or similar agreement with such investment manager). A Proposed Policyholder may recommend to the Insurer one or more investment managers or custodian banks who meet the Insurer's general requirements after the initial policy date, but the Insurer may accept or reject such recommendation in its sole and absolute discretion.

Section 4.8 Timing of Allocations

The Insurer will allocate the Proposed Policyholder's Net Premiums among one or more Investment Options in the percentages specified on the Policy Data Page, as amended from time to time at the written request of the Proposed Policyholder, within two business days following the date the Insurer receives the Net Premiums. Net Premiums received and which are to be allocated to an Investment Option will be initially invested in the Liquid Asset Subaccount and subsequently allocated (together with any related earnings) within two business days to the applicable Investment Option (subject to deferral due to liquidity constraints imposed by the applicable investment manager or IDF and subject to such provisions as to valuation and unit calculation as may be specified by the applicable investment manager).

Section 4.9 Investment of Separate Account Assets

The Insurer will require each investment manager with respect to a portfolio of an IDF or Managed Account held in the Separate Account and the investment manager of each investment fund or other investment fund in which the assets of the Separate Account are invested, to comply with the following:

1. Investment of assets held in each Subaccount will be sufficiently diversified to comply with the requirements of U.S. Treasury Regulation section 1.817-5(b). Assets of any investment fund relying upon a "look-through" basis for purposes

of meeting such diversification requirements will themselves be sufficiently diversified so as to allow the Subaccount to comply with such requirements.

2. The investment manager and its employees who are responsible for investment decisions will not accept investment recommendations or make any investment decisions regarding the direct or indirect investment of Separate Account assets based, in whole or in part, on information regarding any investment or group of investments received from any Proposed Policyholder or any representative or adviser of a Proposed Policyholder.

3. No Proposed Policyholder (or any representative or adviser of a Proposed Policyholder) will have the right or be permitted to select or identify any particular investment or group of investments to be made directly or indirectly with the assets of any Subaccount.

4. The investment manager will not commit to invest assets of any Subaccount (or of any underlying investment fund or Managed Account in which a Subaccount has invested directly or indirectly) in mutual funds or other collective investment funds or publicly available investment products (including, without limitation, market-linked deposits and flexible deposits) managed, advised and/or distributed by the investment manager or its affiliates and will only do so if (a) in the investment manager's sole judgment at the time the investment is made, such fund or product is appropriate within the investment objectives and policies of the Subaccount fund or Managed Account and (b) no more than 55% of the assets on an initial purchase basis (excluding market value increases) of the Subaccount fund or Managed Account are invested in such funds or products at any time. Subject to the foregoing, for the avoidance of doubt, assets may be invested in an IDF.

5. In accordance with Section 4.4, except for general descriptions of the investment policies of the Investment Options, there will not be any direct or indirect prearrangement, plan or agreement between any Proposed Policyholder (or any Proposed Policyholder's advisers or representatives) and the investment manager (or any of its employees) regarding the investments to be made directly or indirectly by any Subaccount.

Section 4.10 Request for Extension of Investment Rights With Respect to Adequate Diversification

A Proposed Policyholder may make a request for an extension of the Proposed Policyholder's investment rights described in Section 4.4 and partial or complete release of the investment manager's obligations in Section 4.9 to adequately diversify the assets held in the Separate Account by delivering a written request to the Insurer's Home Office expressing a specific desire for the same. The Insurer may grant or deny such requests in its sole and absolute discretion, for any reason or for no reason whatsoever. Any such request must be approved by the Insurer in writing (and, in the case of an IDF, may also require the consent of the IDF). Absent written approval of the request, the request shall be deemed to have been denied.

The Insurer expresses no opinion and makes no representations or warranties regarding the tax consequences under the laws of the U.S. or any other jurisdiction of the Insurer's decision to grant such requests. By making such a request, a Proposed Policyholder waives any claim against the Insurer, its shareholders, directors, officers, employees, agents or affiliates on behalf of the Proposed Policyholder, any Beneficiaries or any other person for any loss from the Insurer's decision to grant or deny the Proposed Policyholder's request and agrees to hold harmless hereunder the Insurer and its shareholders, directors, officers, employees, agents or affiliates for any such loss.

Section 4.11 Changes in Investment Options

The Insurer at any time may add additional Investment Options, remove or restrict existing Investment Options, or add or eliminate an investment manager subject to any required regulatory approval, provided that the Insurer shall only remove an investment manager available to the Proposed Policyholder for cause (as described in the Insurer's investment management or similar agreement with such investment manager). If an Investment Option is removed or restricted or an investment manager is terminated, the Insurer may eliminate the Investment Option as an option for future Premium payments or transfers and may also transfer funds from the Subaccount in which assets invested in the terminated Investment Option were held, to the Liquid Asset Subaccount. An affected Proposed Policyholder may submit instructions to adjust the allocation of Net Premiums among the remaining Investment Options, without charge, for a period of 60 days following receipt of the Insurer's notice of any

such termination. The Insurer will implement those instructions on the Next Available Liquidity Date after receipt.

Section 4.12 Policy Account Value

The Policy Account Value is equal to the net fair market value of all assets in the Separate Account backing the Policy, less any accrued but unpaid fees or expenses. The Insurer will determine the Policy Account Value on each Liquidity Date. The Separate Account value will increase or decrease, depending upon the investment experience of the related Subaccounts.

Assets allocated or credited to a Separate Account may be commingled with assets allocated or credited to another Separate Account for purposes of investment. In such circumstances, the Insurer may determine the Policy Account Value of each such Separate Account by the use of accumulation units, which are calculated separately with respect to each commingled investment. The accumulation unit value for each commingled investment will vary to reflect the investment experience of the assets invested therein.

The value of an accumulation unit will be determined on each Liquidity Date. When a commingled investment is made, the Insurer will credit the Separate Account with a number of accumulation units determined by dividing the amount of the investment by the value of the accumulation unit. When assets allocated or credited to a Separate Account are withdrawn from an investment, the accumulation units are reduced.

Article V Transfers Among Investment Options

Section 5.1 General

The Proposed Policyholder may request one transfer among Investment Options per calendar quarter, but no more than twice per calendar year.

Section 5.2 Conditions on Transfer

To effect any transfer, the Proposed Policyholder must submit a transfer request to the Insurer. All transfers are subject to the following conditions:

1. Any applicable Fees and Charges will be deducted from the Subaccount or from the amount which is transferred.

2. Transfers will be effected within 60 days following receipt by the Insurer of a transfer request. Actual settlement of a disposition or redemption from the relevant Subaccount, and reinvestment of the proceeds may be delayed as described below.

3. Any transfer request must clearly specify: (a) the amount which is to be transferred; and (b) the Subaccounts which are to be affected.

4. Payments to effect a transfer are subject to the disbursement rules and restrictions of the Subaccount(s).

5. The minimum amount that may be transferred in a single transfer will be the lesser of $250,000 or the entire interest in a Subaccount.

6. No transfer may be made from the Liquid Asset Subaccount if the amount remaining therein would not equal or exceed the Minimum Liquid Asset Allocation.

7. In the case of an IDF, any additional conditions set forth in the governing documents in the IDF must be satisfied.

Section 5.3 Liability

Neither the Insurer nor any of the Insurer's affiliates will be liable for any losses incurred as a result of transfers made in accordance with a Proposed Policyholder's transfer request including lower returns which may result.

Section 5.4 Limits on Right of Transfer

The Insurer may in its sole and absolute discretion defer the right of transfer for any period when it reasonably determines that additional time is necessary to obtain sufficient cash to make the transfer payments. Additional limitations on transfer may be imposed under the terms of any IDF in which assets held in a Separate Account are invested. For the avoidance of doubt, a transfer described in this Section 5.4 is a situation where a change from one Investment Option to another Investment Option occurs.

Article VI Annuity Provisions

Section 6.1 Annuity Payments

The Insurer will make periodic payments to the Beneficiaries beginning on the Annuity Starting Date and continuing thereafter on each Policy Anniversary to an account located outside the U.S. The amount of each Annuity Payment will equal the product of the applicable Annuity Percentage and the Policy Account Value (determined as of the end of the calendar quarter immediately preceding each Annuity Payment) and will vary depending upon the investment experience of the Investment Options in which the Separate Account assets are invested and the age of the Proposed Annuitant.

Section 6.2 Annuity Percentage

The Annuity Percentages are listed in the Appendix I to this Policy. The applicable Annuity Percentage will, depend upon the benefit option selected by the Policyholder. In the case of a Single Life Annuity, the Annuity Percentage is the percentage corresponding to the age of the Proposed Annuitant. In the case of a Joint Life Annuity, the applicable Annuity Percentage is the percentage corresponding to the age of the younger Proposed Joint Annuitant or the survivor of the Proposed Joint Annuitants. The Annuity Percentage is adjusted for each Annuity Payment.

Section 6.3 No Guaranteed Payments

The Policy Account Value, and thus, the Annuity Payments may increase or decrease depending upon the investment experience of the Investment Options selected by the Proposed Policyholder. The sole source for the payment of the Annuity Payments are the assets held in the Separate Account backing the Policy. The Policy does not provide for guaranteed annuity or death benefits. All payments, including upon the death of the Proposed Policyholder or Proposed Annuitant (or Proposed Joint Annuitants) are strictly limited to the assets held in the Separate Account backing the Policy and no Annuity Payments or any other payments under the Policy are payable from any other source.

Section 6.4 Annuity Starting Date

The Annuity Starting Date must be on the first day of a calendar quarter and may not be later than the first day of the calendar quarter of the Proposed Annuitant's (or elder Proposed Joint Annuitant's or surviving Proposed Joint Annuitant's) eighty-fifth (85th) birthday. If the Proposed Policyholder has not chosen an Annuity Starting Date, then the first day of the calendar quarter of the Proposed Annuitant's (or elder Proposed Joint Annuitant's or surviving Proposed Joint Annuitant's) eighty-fifth (85th) birthday shall be the Annuity Starting Date.

Section 6.5 Change of Annuity Starting Date

The Proposed Policyholder may change the Annuity Starting Date prior to the then current Annuity Starting Date by delivering a written notice to the Insurer. The new Annuity Starting Date may not be before the Next Available Liquidity Date for any Investment Option under the Policy as of the date the Insurer receives the notice from the Proposed Policyholder, and may not be later than the first day of the calendar month following the Proposed Annuitant's 85th birthday. Distributions must commence after the Annuity Starting Date in accordance with requirements under the Code.

Section 6.6 Annuity Income Options

Two (2) basic benefit options are offered under the Policy: (i) a Single Life Annuity, and (ii) a Joint Life Annuity. The benefit option may be changed by the Proposed Policyholder; however, no such change may be made at any time on or after the Annuity Starting Date. A Policyholder may change the selection of any benefit option by giving the Insurer at least thirty (30) calendar days' written notice prior to the Annuity Starting Date from outside the U.S.

In the case of a Single Life Annuity, the applicable Annuity Percentage is the percentage corresponding to the age of the Proposed Annuitant. In the case of a Joint Life Annuity, the applicable Annuity Percentage is the percentage corresponding to the age of the younger Proposed Joint Annuitant or the survivor of the Proposed Joint Annuitants.

Under both basic benefit options, the amount of each annual Annuity Payment made on or after the Annuity Starting Date will vary in accordance with the age of the Proposed Annuitant (or Proposed Joint Annuitant(s)) and the investment performance of the assets held in the Separate Account and shall be computed by the Insurer's

actuary each year (and recomputed on the annual anniversary date each year thereafter) by multiplying the applicable Annuity Percentage in the Annuity Percentage Table attached as Appendix I to this Policy by the then current Policy Account Value as of the Annuity Starting Date and predetermined on the annual anniversary date each year thereafter. If the Policy Account Value is zero, then all payments will cease. All Annuity Payments shall be made to an account outside the U.S. The Insurer may consider the adoption of additional benefit options at the request of a Proposed Policyholder.

Section 6.7 Maturity Payment

Upon the death of the Proposed Annuitant (or survivor of the Proposed Joint Annuitants), the Insurer will pay to the Beneficiaries, or their successors as Beneficiaries, as the case may be, the balance of the Policy Account Value.

Article VII Loan Provisions

Section 7.1 Policy Loans

The Proposed Policyholder shall have no guaranteed rights or privileges with respect to loans under a Policy. The Insurer may, in its sole and absolute discretion consider whether to facilitate a Proposed Policyholder's request to pledge a Policy as collateral security for a loan to be made by the Insurer or institutional or other third party lenders. A pledge of a Policy as collateral security for a loan may be effected only with the prior written consent of the Insurer, which may be granted or denied in the Insurer's sole and absolute discretion.

Article VIII Surrender Provisions

Section 8.1 General

At any time after the Issue Date and prior to the Annuity Starting Date, the Proposed Policyholder may request one or more withdrawals under the Policy from the Separate Account in the form of a Partial Surrender. Withdrawals are possible up to 100% of the Policy Account Value. Should the Policy Account Value be equal to or less than $250,000, the Policy will lapse. The rights of a Proposed Policyholder to make a Surrender under the Policy shall be subject to the consent of all Beneficiaries who have been irrevocably designated by the Proposed Policyholder under the Policy. Subject to this Article VIII, the Proposed Policyholder may Surrender the Policy, in whole or in part, by filing a written request with the Insurer at the Insurer's Home Office at any time during the lifetime of the Proposed Annuitant. The Policy Account Value which is the subject of the Surrender will be determined as of the Next Available Liquidity Date occurring after the Insurer receives the request to Surrender.

Although the amount of the Surrender proceeds will be determined as of the Next Available Liquidity Date after receipt of the Surrender request, the Insurer will use reasonable efforts to pay Surrender proceeds as soon as practicable whether on a Liquidity Date or another date (subject to such liquidity constraints and provisions as to valuation and unit calculation as may be specified by the investment manager of the applicable Investment Option).

Section 8.2 Full Surrender

If the Proposed Policyholder requests a Full Surrender of the Policy Account Value of the Policy, the Policy will terminate on the date the Proposed Policyholder submits its Surrender request in accordance with Section 12.3.

Section 8.3 Partial Surrender

The Proposed Policyholder may request a Partial Surrender of the Policy for up to and including 90% of the Policy Account Value of the Policy. No more than one Partial Surrender may be requested by the Proposed Policyholder during each quarter of a Policy Year. As provided in Section 3.1, any Partial Surrender that causes the Policy Account Value to be reduced to an amount that is less than

$250,000 may be deemed by the Insurer to be a request for Full Surrender and if so deemed will cause the Policy to be terminated, notwithstanding any potential negative tax consequences to the Proposed Policyholder or any other person or entity. If the Policy Account Value is reduced to an amount that is less than $250,000, then the Insurer shall have the right, exercisable in its sole and absolute discretion, to treat a Partial Surrender request as a Full Surrender request.

Each Partial Surrender will reduce the Policy Account Value and the amount of any Annuity Payment to be paid after the Annuity Starting Date. An amendment to the Policy will be sent to the Proposed Policyholder outside the U.S. for countersignature upon any request for a Partial Surrender under the Policy. Said amendment shall become a part of the Policy.

Article IX Policy Fees and Charges

Section 9.1 Policy Administration Fee

The Insurer will deduct the Policy Administration Fee from the Separate Account as set forth in the Policy Data Page for general administrative expenses.

Section 9.2 DAC Charges

The amount deducted by the Insurer as set forth on the Policy Data Page to pay for the costs imposed by virtue of the treatment of certain deferred acquisition costs for U.S. federal income tax purposes under section 848 of the Code. The amount of the DAC Charge as set forth on the Policy Data Page shall be adjusted to reflect any change in the applicable U.S. federal income tax rate. The Insurer shall provide the Proposed Policyholder notice of any change in the DAC Charge.

Section 9.3 Management & Expense Fee

The Insurer will deduct the Management & Expense Fee from the Separate Account. The Management & Expense Fee is an on-going insurance administration fee described on the Policy Data Page.

Section 9.4 Policy Set-Up Deposit

The Policy Set-Up Deposit is due to the Insurer as set forth on the Policy Data Page upon submission of the completed Annuity Application Form by the Proposed Policyholder. The Policy Set-Up Deposit will be paid into the General Account of the Insurer. Upon issuing the Policy, an amount equal to the Policy Set-Up Deposit will be used to offset the Acceptance Fee. If for any reason, a Policy is not issued, the Insurer will retain the Policy Set-Up Deposit to cover medical, underwriting, administration and any other costs incurred by the Insurer in the processing of the application.

Section 9.5 Acceptance Fee

The Insurer will deduct the Acceptance Fee set forth in the Policy Data Page on each date the Insurer receives a Premium payment.

Section 9.6 Surrender Charge

Surrender charges will not apply to this Policy.

Section 9.7 Taxes

The Insurer will deduct only those Taxes (as defined below) paid by the Insurer or its affiliates to any governmental entity that relate to the Policy or the related Separate Account. These taxes (the "Taxes") exclusively include withholding taxes, excise taxes, sales taxes, stamp taxes, value added taxes, state taxes imposed on the Insurer or its affiliates, and taxes imposed on Subpart F income of a Separate Account attributable to its investment in a controlled foreign corporation, as well as the deferred tax amount and any interest charge or other taxes imposed on the investments of a Separate Account in a passive foreign investment company, or under the corresponding tax laws of other jurisdictions.

The Insurer may, in its sole and absolute discretion, pay Taxes when due and deduct such amounts from the Separate Account at a later date. The Insurer will, in its absolute discretion, determine when Taxes have resulted from the investment experience of any Subaccount or receipt by the Insurer of Premiums.

Section 9.8 Agreed Upon Procedures Fee

The Insurer will deduct the Agreed Upon Procedures Fee from the Separate Account if the Proposed Policyholder instructs the Insurer to engage a third party audit firm to review charges and provide an Agreed Upon Procedures (AUP) report.

Section 9.9 Deductions for Fees and Charges

The Fees and Charges are paid to the Insurer under the Policy initially by making deductions from Premiums and then by making deductions from the Separate Account. To the extent that the Insurer deducts Fees and Charges from the Separate Account, amounts will be deducted first from the Liquid Asset Subaccount and then from the Subaccounts pursuant to the terms of the Policy.

Section 9.10 Custodian Bank and Investment Manager Fees

Each custodian bank and investment manager will separately deduct any applicable fees charged by it from any Separate Account or Investment Option for which it is acting as custodian or investment manager, as the case may be. The fees of the

custodian bank and investment manager are calculated on an individual basis and may vary depending upon the investment manager and Investment Option(s) selected by the Proposed Policyholder. The list of investment managers and custodians retained by the Insurer is available from the Insurer upon request.

Article X Death Benefit Provisions

Section 10.1 Death Benefit

If all Beneficiaries and any alternative Beneficiaries predecease the Proposed Policyholder and Proposed Annuitant (or the survivor of the Proposed Joint Annuitants, in the case where a Joint Life Annuity benefit option is selected), then the benefits payable under the Policy to the Beneficiaries or alternative Beneficiaries shall be paid to the Proposed Policyholder until the first to die of the Proposed Policyholder or Proposed Annuitant (or the survivor of the Proposed Joint Annuitants, in the case where a Joint Life Annuity benefit option is selected).

If none of the Beneficiaries or alternative Beneficiaries survives the Proposed Annuitant(s), then the Policy Account Value shall be paid to the Proposed Policyholder upon the Proposed Annuitant's death (or survivor of the Proposed Joint Annuitants' death, in the case where a Joint Life Annuity benefit option is selected).

If the Proposed Policyholder is not living at the time any benefit under the Policy is payable to the Proposed Policyholder, then such benefit shall be paid to the Proposed Policyholder's estate, if then open, or if not then to his heirs *per stirpes*, in accordance with the laws of succession in the jurisdiction of the Proposed Policyholder's last known domicile on the date of the Proposed Policyholder's death.

If the Proposed Policyholder is not an individual, then the Proposed Annuitant (or the younger of the Proposed Joint Annuitants or the survivor of the Proposed Joint Annuitants) shall be recognized as the "primary Proposed Annuitant" and treated as the Proposed Policyholder of the Policy. Any change in the designation of such Proposed Annuitant (or Proposed Joint Annuitant) following the Issue Date (in the case where the Proposed Policyholder is not an individual) shall be treated as the death of the Proposed Policyholder.

If the Proposed Policyholder dies prior to the "annuity starting date" (defined under Code Section 72(c)(4) as the first day of the first period for which an amount is received as an annuity under the contract; such definition possibly differing from the Annuity Starting Date designated under the Policy), then the Proposed Policyholder's entire interest in the Policy shall be distributed to the Beneficiaries within five (5) years from the date of the Proposed Policyholder's death, unless the Beneficiaries

elect to receive such interest in distributions made over their life or lives (or over a period not extending beyond their respective life expectancies), and such distributions begin within one (1) year from the date of the Proposed Policyholder's death. Any such election must be made in writing and received by the Insurer at the Insurer's Home Office within 180 calendar days from the date of the Proposed Policyholder's death.

If the Proposed Policyholder dies on or after the "annuity starting date" (as defined under Code Section 72(c)(4)) and before the entire interest in the Policy has been distributed, the remaining portion of the Policy Account Value shall be distributed to the Beneficiaries at least as rapidly as under the method of distributions being used as of the date of the Proposed Policyholder's death.

Notwithstanding any provision of the Policy, all Death Benefits must be distributed in compliance with the provision of section 72(s) of the Code. Death Benefits payable hereunder will be includible in the gross income of the Beneficiary.

Section 10.2 Due Proof of Death

Due proof of death is one of the following received at the Insurer's Home Office in a form satisfactory to the Insurer in its absolute discretion:

1. A certified copy of a death certificate;
2. A certified copy of a decree of a court of competent jurisdiction as to the finding of death; or
3. Any other proof of death satisfactory to the Insurer.

Article XI Owner, Beneficiary, Assignment

Section 11.1 Proposed Policyholder

The Proposed Policyholder is the person so named on the Policy Data Page or his or her assignee in accordance with a valid assignment as provided in Section 11.2.

Under Bermuda law, the Proposed Policyholder or his personal representative, trustee in bankruptcy or legal assignee will be the owner of the rights to payments under the Policy. While the Proposed Policyholder is alive, all rights in the Policy belong to the Proposed Policyholder and may be exercised without the consent of any Beneficiary, provided that, once an irrevocable designation of Beneficiary is filed, changes or elections under the Policy that impair the rights of an irrevocable Beneficiary will not be allowed without the consent of the irrevocable Beneficiary. All of the Proposed Policyholder's rights in the Policy belong to the estate of the Proposed Policyholder if the Proposed Policyholder dies before the Proposed Annuitant. Joint ownership is permitted.

Section 11.2 Change of Proposed Policyholder

The Proposed Policyholder may change the ownership of the Policy by submitting a request to the Insurer's Home Office and obtaining written approval of the Insurer. Any approved change will take effect on the date specified in the approval.

Section 11.3 Proposed Annuitant

The Proposed Policyholder has the right to designate one Proposed Annuitant or two Proposed Joint Annuitants. The Proposed Annuitants or Proposed Joint Annuitants will be as stated in the Annuity Application Form, unless otherwise endorsed at issue or subsequently changed.

Section 11.4 Change of Proposed Annuitant

Each Proposed Policyholder will have the right to designate and in some cases change the Proposed Annuitant or Proposed Joint Annuitant.

Section 11.5 Beneficiary

The Proposed Policyholder shall initially designate one or more Beneficiaries on the Policy Data Page. All designations of Beneficiaries are revocable unless specified as irrevocable by the Proposed Policyholder. Once an irrevocable designation of Beneficiary is filed, any changes or elections under the Policy that impair the rights of an irrevocable Beneficiary will not be allowed without the consent of the irrevocable Beneficiary under the Policy.

Section 11.6 Change of Beneficiary

Except in the case of an irrevocable Beneficiary, the Proposed Policyholder may change the Beneficiaries by filing a written request from outside the U.S. with the Insurer at its Home Office at any time prior to the Annuity Starting Date. In the case of an irrevocable Beneficiary, the consent of the irrevocable Beneficiary to the change is also required. The change will take effect as of the date the notice is received by the Insurer subject to any payment made or action taken by the Insurer before the Insurer receives the document at its Home Office. A new Beneficiary designation will automatically revoke all prior designations (except an irrevocable Beneficiary designation where the consent of the irrevocable Beneficiary has not been obtained). The Insurer will not be liable for any payment made or action taken before the effective date of the change of Beneficiary.

Section 11.7 Assignment

The Proposed Policyholder may transfer, assign, or pledge the Policy or any of their rights under the Policy, including a Section 1035 exchange of the Policy with another carrier, without the prior written consent of the Insurer, provided that the Policy may not be assigned unless (i) it is registered under the U.S. federal securities and/or state securities laws or the securities laws of any other jurisdiction unless such registration is not required or an exemption from registration is available and (ii) the assignee is a Qualified Purchaser and Accredited Investor. The Insurer may require satisfactory evidence as to the non-applicability of any such registration requirement or the availability of an exemption from any applicable registration requirement and the Insurer may in its discretion for this purpose request, at the transferor's expense, a favourable legal opinion from transferor's counsel that the provisions of this Section 11.7 have been met.

The Insurer represents and warrants that, subject to the foregoing, it will fully cooperate with any assignment, transfer or exchange, including a "1035" exchange of the Policy with another carrier and will cooperate to exchange underlying IDFs or sub-accounts with such carrier. Failure by the Insurer to cooperate with the Proposed Policyholder in a proposed 1035 exchange or other transfer, assignment, or pledge of the Policy or any of the Proposed Policyholder's rights under the Policy, such failure to cooperate as determined by a final judgement in a Bermuda court or other court of relevant jurisdiction, among any other injunctive or other relief resulting therefrom, will result in liquidated damages to the Proposed Policyholder equal to the sum of the (a) then Policy Account Value and (b) any fees or charges, including Management and Expense Fees, accruing during the period that the non-cooperation (as determined by the a Bermuda court or other court of relevant jurisdiction) exists and is continuing, and the Insurer shall be strictly liable for payment of such amount to the Proposed Policyholder. For the avoidance of doubt, the Proposed Policyholder shall be entitled to its Policy Account Value separate from the liquidated damages amount provided for herein. The Proposed Policyholder (x) acknowledges that the Insurer's ordinary and customary process for 1035 exchanges includes obtaining satisfactory assurance from the transferor of compliance with relevant tax and disclosure laws with respect to the Policy and indemnification from the new carrier regarding any tax obligations relating to the Policy and (y) agrees that following the Insurer's 1035 exchange process will not be considered to be a failure to cooperate by the Insurer.

Article XII Other General Provisions

Section 12.1 Periodic Reports

The Insurer will make available to the Proposed Policyholder, for every calendar quarter or portion thereof during which the Policy is In Force, a report that shows activity in the Proposed Policyholder's Separate Account. The Proposed Policyholder expressly authorizes the Insurer to rely upon the information or valuations provided by the selected investment manager and custodian without further inquiry or verification of any kind, nature, or description. Each quarterly statement will set forth the Policy Account Value less applicable expenses and charges at the beginning and end of the reporting period and aggregate adjustments to the same throughout. These quarterly statements shall be made available to the Proposed Policyholder at the Insurer's Home Office. The Insurer will forward annual Separate Account statements to an address of the Proposed Policyholder outside of the U.S. if a request to do so is made by the Proposed Policyholder in writing and delivered to the Insurer's Home Office.

Section 12.2 Currency and Place of Payment

All transactions between the Proposed Policyholder and the Insurer will be made in U.S. dollars unless otherwise confirmed by the Insurer in writing. All Payments will be made outside the U.S.

Section 12.3 Notices, Requests and Elections

To be effective, all notices, requests, and elections the Proposed Policyholder makes under the Policy must be in writing, signed by the Proposed Policyholder or sent electronically or via facsimile by the Proposed Policyholder and received by the Insurer. Unless otherwise provided, all notices, requests and elections will be effective when received by the Insurer. Notices, requests and elections may be made by the Proposed Policyholder under the Policy in writing, signed by the Policyholder, sent by facsimile or electronic communication and received by the Insurer at its Home Office or administrative office, provided that the Insurer will not be liable for following instructions communicated by facsimile or electronically and, provided further that acceptance of facsimile or electronic communication by the Insurer will not impose any requirement on the Insurer to employ any procedures to confirm that instructions

received by facsimile communication are genuine. Any notice or report required to be given by the Insurer to the Proposed Policyholder or any other person will be deemed given when sent to such person or such person's authorized representative.

Section 12.4 Policy Settlement

Prior to any payment of a Death Benefit, due certified proof of death must be submitted to the Insurer.

Section 12.5 Deferment

The Insurer will execute allowable requests for a transfer, Full Surrender or Partial Surrender by the Proposed Policyholder within 60 days of a request. Such requests may require conversion of certain Investment Option assets to cash or in-kind distributions, where possible. This may take longer than 60 days for a variety of reasons, including underlying restrictions on redemptions of assets held pursuant to an Investment Option. In such cases, the Insurer will take reasonable steps to comply with such requests at the earliest time possible. The foregoing will be subject to time restrictions within the Insurance Dedicated Fund purchased by a Subaccount.

Section 12.6 Incontestability

Except as expressly provided in the Policy, the Insurer will not contest the validity of the Policy for misstatement, misrepresentation or non-disclosure after the Policy has been In Force for two years from the Issue Date during the lifetime of the Proposed Annuitant. The Policy will be voidable in the event of fraud at any time. If the validity of the Policy is so contested, then (1) the Insurer's obligation to pay Annuity Payments under the Policy will terminate as of the date the Insurer discovers such misstatement, misrepresentation or non-disclosure, and (2) the Policy Account Value will be determined as of the Next Available Liquidity Date occurring after the Insurer discovers such misstatement, misrepresentation or non-disclosure and returned to the Proposed Policyholder or the Beneficiaries within 90 days. The Insurer will notify the Proposed Policyholder that the Policy is so terminated and such notice will include the date of termination. The return of the Policy Account Value will be in full and final satisfaction of all the Insurer's obligations under the Policy. Following the return of the Policy Account Value, the Policy will be void.

Section 12.7 Policyholder Information

The Insurer may disclose Policyholder information to third parties such as banks or independent asset managers. Specifically with respect to banking relationships in Switzerland and in accordance with FINMA Newsletter 18 (2010) “handling of Life insurance with separately managed accounts/portfolios” dated December 20, 2010, the Insurer may disclose Policyholder or source of funding information to banking partners including Policyholder name, date of birth, nationality and address. In any event, the Insurer may be required to confirm in accordance with FINMA Newsletter 18 (2010) that the insurance product related to account openings is set up as a life insurance product according to the legal provisions, including provisions concerning biometric risks, of the Insurer’s domicile.

Each U.S. person who has a financial interest in or signature or other authority over any foreign financial accounts, including bank, securities, or other types of financial accounts, in a foreign country, if the aggregate value of these financial accounts exceeds $10,000 at any time during the calendar year, must report that relationship each calendar year by filing Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts), commonly referred to as an “FBAR”, with the Department of the Treasury on or before June 30 of the succeeding year. In addition, and irrespective of the independent FBAR filing obligations that a Proposed Policyholder (or its owner) who is a U.S. person may have, U.S. person directors, officers, or employees of the Insurer who have signature authority over the Separate Account, Subaccounts, or other accounts with respect to the Policy would need to file an FBAR with respect to such accounts and so will the Insurer itself as a U.S. Person with a financial interest in such accounts. On the basis of such filings, the IRS could request information with respect to such filings and the Proposed Policyholder acknowledges that the Insurer may provide such FBAR-related information to the IRS if requested to do so.

Section 12.8 Tax Matters

The Proposed Policyholder acknowledges that he or she is responsible for complying with all tax reporting, filing and payment obligations with respect to this Policy in any jurisdiction in which the Proposed Policyholder is subject to tax. The Proposed Policyholder must consult its own tax advisor with respect to such obligations. The Insurer has not provided, and shall have no responsibility for providing, advice to the Proposed Policyholder with respect to such issues.

CROWN GLOBAL INSURANCE

Section 12.9 Limitation on Liability of Insurer

THE LIABILITY OF THE INSURER FOR BENEFITS UNDER THE POLICY OR FOR ANY LOSS OR OTHER DAMAGES WITH RESPECT TO THE POLICY IS LIMITED TO THE POLICY ACCOUNT VALUE.

CROWNGLOBAL INSURANCE

Appendix I - Annuity Percentage Table

Annuitant's Age	Life Expectancy	Annuity Percentage	Annuitant's Age	Life Expectancy	Annuity Percentage
10	86.2	1.1601%	63	33.9	2.9499%
11	85.2	1.1737%	64	33.0	3.0303%
12	84.2	1.1876%	65	32.0	3.1250%
13	83.2	1.2019%	66	31.1	3.2154%
14	82.2	1.2165%	67	30.2	3.3113%
15	81.2	1.2315%	68	29.2	3.4247%
16	80.2	1.2469%	69	28.3	3.5336%
17	79.2	1.2626%	70	27.4	3.6496%
18	78.2	1.2788%	71	26.5	3.7736%
19	77.3	1.2937%	72	25.6	3.9063%
20	76.3	1.3106%	73	24.7	4.0486%
21	75.3	1.3280%	74	23.8	4.2017%
22	74.3	1.3459%	75	22.9	4.3668%
23	73.3	1.3643%	76	22.0	4.5455%
24	72.3	1.3831%	77	21.2	4.7170%
25	71.3	1.4025%	78	20.3	4.9261%
26	70.3	1.4225%	79	19.5	5.1282%
27	69.3	1.4430%	80	18.7	5.3476%
28	68.3	1.4641%	81	17.9	5.5866%
29	67.3	1.4859%	82	17.1	5.8480%
30	66.3	1.5083%	83	16.3	6.1350%
31	65.3	1.5314%	84	15.5	6.4516%
32	64.3	1.5552%	85	14.8	6.7568%
33	63.3	1.5798%	86	14.1	7.0922%
34	62.3	1.6051%	87	13.4	7.4627%
35	61.4	1.6287%	88	12.7	7.8740%
36	60.4	1.6556%	89	12.0	8.3333%
37	59.4	1.6835%	90	11.4	8.7719%
38	58.4	1.7123%	91	10.8	9.2593%
39	57.4	1.7422%	92	10.2	9.8039%
40	56.4	1.7730%	93	9.6	10.4167%
41	55.4	1.8051%	94	9.1	10.9890%
42	54.4	1.8382%	95	8.6	11.6279%
43	53.4	1.8727%	96	8.1	12.3457%
44	52.4	1.9084%	97	7.6	13.1579%
45	51.5	1.9417%	98	7.1	14.0845%
46	50.5	1.9802%	99	6.7	14.9254%
47	49.5	2.0202%	100	6.3	15.8730%
48	48.5	2.0619%	101	5.9	16.9492%
49	47.5	2.1053%	102	5.5	18.1818%
50	46.5	2.1505%	103	5.2	19.2308%
51	45.5	2.1978%	104	4.9	20.4082%
52	44.6	2.2422%	105	4.5	22.2222%
53	43.6	2.2936%	106	4.2	23.8095%
54	42.6	2.3474%	107	3.9	25.6410%
55	40.6	2.4631%	108	3.7	27.0270%
56	40.7	2.4570%	109	3.4	29.4118%
57	39.7	2.5189%	110	3.1	32.2581%
58	38.7	2.5840%	111	2.9	34.4828%
59	37.8	2.6455%	112	2.6	38.4615%
60	35.8	2.7933%	113	2.4	41.6667%
61	35.8	2.7933%	114	2.1	47.6190%
62	34.9	2.8653%	115	1.9	52.6316%

EXHIBIT 29

CROWN GLOBAL
INSURANCE

TERMSHEET

Policy Number	:	# 30219 Separate Account
Policyholder	:	The Okada Family Foundation, Inc
Annuitant	:	Mark Okada
Beneficiary	:	The Okada Family Foundation, Inc
Premiums planned	:	Approx. US$ 20'000'000
Premium Date	:	TBA
Policy Date	:	TBA
Policy Type	:	Deferred Variable Annuity (DVA)
Issuing Company	:	Crown Global Life Insurance Ltd., Bermuda (953d)
Custodian Bank	:	n/a
Account/Portfolio Number	:	n/a
Investment Manager	:	n/a
Asset Allocation/Investment Profile	:	IDF: Atlas IDF, LP/ Rand Advisors LLC
Investment of Funds Model:	:	n/a
Acceptance Fee	:	Zero
Mgmt. & Expense Fee	:	0.45% p.a $10mm of Premium 0.35% p.a. $11-20mm of Premium 0.25% p.a. $21mm+ of Premium, provided that if the Policy Account Value exceeds $50mm, the annual rate shall be 0.1% p.a. on the portion of Policy Account Value in excess of $50mm.
Policy Administration Fee	:	US$ 2,900 p.a.
DAC Tax	:	0.25% of all premium payments
Federal Excise Tax – 1% of Premium	:	n/a
Surrender Charge	:	US$ 5'000
Policy Audit (optional)	:	US$ 1'975 p.a.

Place, Date: GRAND CAYMAN, DEC 9TH 2015.

Signature: Christopher Pezalla

Policyholder

EXHIBIT 30

BYLAWS

OF

THE OKADA FAMILY FOUNDATION, INC.

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BYLAWS

OF

THE OKADA FAMILY FOUNDATION, INC.

ARTICLE I.

OFFICES

Section 1.1 Registered Office. The registered office of THE OKADA FAMILY FOUNDATION, INC. (the "Corporation") shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is The Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have an office in the City of Dallas, State of Texas, and also offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II.

MEMBERSHIP

Section 2.1 Classes and Number. The Corporation shall have two classes of members and one member in each such class: the Institutional Member, which shall be The Dallas Foundation, and the Individual Member, which shall be Mark Okada or an individual designated as the Individual Member in accordance with these Bylaws.

Section 2.2 Voting. Except as otherwise provided in these Bylaws, the Institutional Member shall be entitled to two (2) votes upon each matter submitted to a vote of the members, and the Individual Member shall be entitled to one (1) vote upon each matter submitted to a vote of the members, In addition to any voting rights provided in these Bylaws, members shall be entitled to vote upon any matter with respect to which the General Corporation Law of the State of Delaware, or its successor statute, as amended (the "Law"), requires a vote of the members.

Section 2.3 Transfer of Membership. Institutional Membership in the Corporation is not transferable or assignable. The Individual Membership is transferable or assignable as provided herein only upon the approval of the Institutional Member, with such approval not to be unreasonably withheld by the Institutional Member. Subject to the approval of the Institutional Member, Mr. Okada, as the initial Individual Member, may at any time pursuant to a written notice delivered to the Institutional Member during his lifetime or by a provision in his Will or other testamentary document, transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. Each successor Individual Member shall succeed to the rights of the initial Individual Member. Subject to the approval of the Institutional Member, each successor Individual Member may in the same manner transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the

death or failure to act of a current or future Individual Member. In the event of a conflict between such transfer documents, the one bearing the latest date shall control. Each Individual Member may at any time revoke his transfer document that is to be effective in the future, in whole or in part, by written notice delivered to the Institutional Member. If at any time an Individual Member shall be disabled and no transfer of such member's interest is to occur as a result of such disability in accordance with the foregoing provisions of this Section, then such member's attorney-in-fact under a valid, effective power of attorney instrument may act for such member hereunder. In the event of the death of an Individual Member, such member's personal representative of his estate, or trustee of a trust to which the Individual Member transferred his interest, may, if necessary, act as the Individual Member hereunder until such time as the Individual Member interest is transferred from the estate or trust.

Section 2.4 Resignation of Member. A member may resign at any time upon written notice to the Secretary.

Section 2.5 Place of Meetings. All meetings of the members be held shall by means of remote communication as authorized by the Law, unless the Board of Directors decides to hold such a meeting by another permitted means.

Section 2.6 Annual Meetings. Except as otherwise provided by these Bylaws, annual meeting of the members, commencing with the year 2015, shall be held at such date and time in the month of December as shall be provided by resolution of the Board of Directors, at which the members shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.7 Special Meetings. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by the Law or by the Certificate of Incorporation, may be called by the President and shall he called by the Secretary at the request of a majority of the Board of Directors, or at the request in writing of a member entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.8 Notice of Meetings of Members. When notice is required to be given for a meeting of the members, such notice shall specify the date, time, and location of the meeting and shall be given to each member at least ten (10) days prior to the meeting (at least three (3) days in the case of a special meeting). Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the member's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the

telephone message shall reach and be communicated to a responsible individual at the phone number listed for a member's residence or place of business.

Section 2.9 Quorum. Both the Institutional Member and the Individual Member must be present in person or represented by proxy in order to constitute a quorum at all meetings of the members for the transaction of business, except as otherwise required by Law, the Certificate of Incorporation or these Bylaws. lf, however, such quorum shall not be present or represented at any meeting of the members, the member entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting, if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 2.10 Voting. When a quorum is present at any meeting, the vote of a majority of the number of votes held by the members, present in person or represented by proxy, shall be the act of the members, unless the act of a greater number is required by Law or expressly by these Bylaws.

Section 2.11 Proxies. At any meeting of the members, any member entitled to vote, consent or approve any action or matter may do so in person or by proxy authorized by an instrument in writing or by a transmission permitted by law. Any member represented by proxy shall be counted as present at such meeting for all purposes. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to these Bylaws may be substituted or used in lieu of the original writing or transmission that could be used, provided that the copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.12 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the members may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by the member(s) holding the number of votes necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 2.12. Prompt notice of the taking of an action by the members without a meeting by less than unanimous written consent shall be given to each member who did not consent in writing to the action. Each such consent must state the date of each member's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the members at an actual meeting,

Section 2.13 Control of Investments. Notwithstanding any other provision contained in these Bylaws to the contrary, the Institutional Member shall have the sole and exclusive power and authority to direct the management and investment of the assets of the Corporation. Such power and authority shall be exercised by the Institutional Member in its sole discretion and shall be separate and independent of any power and authority of the Board of Directors and officers of

the Corporation which have no power or authority with respect to the matters delegated hereby to the Institutional Member with respect to investments. Such power and authority of the Institutional Member shall include, but not be limited to: [a] the power to purchase, sell and retain assets of the Corporation; [b] the power to exercise voting, subscription, conversion, redemption, withdrawal, cancellation, option and similar rights with respect to such assets; [c] the power to participate in and consent to any voting trust, reorganization, merger, dissolution or other action affecting any such property; [d] the power to acquire life insurance policies, annuities, and/or other insurance or similar products (including the exercise or non-exercise or any rights, or the prosecution or defense of any disputes with the issuer or other parties regarding legal, regulatory, contractual, or other matters, arising under or relating to such products) and [e] the power to direct, and delegate to, the officers of the Corporation the taking of such acts and the execution of such documents as may be necessary to effectuate the decisions of the Institutional Member with respect to investments. The Corporation shall furnish the Institutional Member with such information as is necessary or desirable for it to fulfill its responsibilities. The Corporation shall furnish the Institutional Member with such clerical and other assistance as the Institutional Member may need to carry out its powers and authority. The Institutional Member shall advise the Board of Directors periodically of the investments of the assets of the Corporation and changes thereto. The Institutional Member shall have the sole power to retain investment advisors and custodians to assist it in carrying out its powers and authority under this Section 2.13 and it may delegate to any such investment advisors and custodians any and all such powers and authority subject to limitations on such delegation provided under the law, if any. The Corporation shall be responsible for all costs and expenses incurred by the Institutional Member in carrying out its powers and authority under this Section 2.13.

ARTICLE III.

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such acts and things as are not by the Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the members, so long as the exercise of such powers and doing of such acts are consistent with the Corporation's prescribed purposes.

Section 3.2 Number of Directors. The number of Directors that shall constitute the Board of Directors shall be three (3). Two (2) Directors (the "Institutional Directors") shall be elected annually by the institutional Member and one (1) Director (the "Individual Director") shall be elected annually by the Individual Member. Each Director shall hold office until such Director's successor is elected and qualified or until such Director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3 Vacancies. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, then (i) with respect to a vacancy of an Institutional Director seat, the Institutional Member shall elect a person to fill such vacancy, and (ii) with respect to a vacancy of an Individual Director seat, the Individual Member shall elect a person to fill such vacancy. If at any time there is no Individual

Member who is able to fill a vacancy of an Individual Director seat, then the Institutional Member shall elect a successor Individual Director. Each Director elected to fill a vacancy shall hold office for the unexpired term of such Director's predecessor in office.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Committees of Directors. The Corporation shall have no committees unless the Board of Directors, by resolution or resolutions passed by the unanimous vote of the Board, designates one or more committees.

Section 3.6 Compensation of Directors. Except to the extent prohibited by section 4958(c)(3) of the Internal Revenue Code of 1986 (the "Code"), Directors, as such, may receive such stated salary for their services and/or such fixed sums and expenses for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Annual Meeting. The annual meeting of the Board of Directors shall be held at such place and at such time as may be determined by the Board of Directors. If the date, time and location of the annual meeting are specified by a resolution adopted by the Board of Directors, no further notice of such annual meeting shall be required. If the date, time and location of an annual meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.8 Additional Regular Meetings. The Board of Directors may hold additional regular meetings for the purpose of taking any action and conducting any business that may properly come before the Board of Directors. If the date, time and location of the regular meeting are specified by a resolution adopted by the Board of Directors, no further notice of such regular meeting shall be required. If the date, time and location of a regular meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.9 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of any one or more Directors upon not less than three (3) days' notice to each director. The person or persons calling a special meeting of the Board of Directors shall fix a date, time and location for holding such special meeting, which shall be specified in a notice provided for such special meeting consistent with the requirements of Section 3.10 below.

Section 3.10 Method and Timing of Notice. Unless otherwise provided herein, when notice is required to be given for a meeting of the Board of Directors, such notice shall be given to each Director at least ten (10) days prior to the meeting. Any notice given herein shall specify the date, time, and location of the meeting. Notice shall be given (a) by written notice delivered

personally, or (b) by written notice sent by mail, email, or facsimile to the Director's mailing address, email address, or facsimile number as shown by the records of the Corporation. If mailed, such notice shall he deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number.

Section 3.11 Purpose not Required in Notice. Unless specifically required by the Law or these Bylaws for a particular action, the purpose of and business to be transacted at a meeting need not be specified in the notice of such meeting or in a waiver of notice of such meeting.

Section 3.12 Waiver of Notice. Any Director may waive notice of any meeting by a writing signed by the Director, whether signed before or after the holding of such meeting, and such signed written waiver shall he deemed the equivalent of the Director having received notice. A Director's attendance at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business of such meeting on the ground that the meeting is not lawfully called or convened.

Section 3.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the Board of Directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, are signed by all of the then-serving Directors. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 3.13. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the Board of Directors at an actual meeting.

Section 3.14 Validation of Action by Consent. All actions taken at a meeting of the Board of Directors which is not regularly called or noticed shall be valid as if taken at a meeting regularly called and noticed if each Director either consents in writing or is present at such meeting and does not object to the meeting being held. At such meeting any business may be transacted which is not excepted from the written consent or which is not objected to at such meeting for want of notice. If any meeting of the Board of Directors is irregular for want of notice, the proceedings of such meeting may be ratified, approved and rendered valid, and the irregularity or defect therein waived, by a writing signed by all Directors, provided a quorum was present at such meeting.

Section 3.15 Quorum and Manner of Acting. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. Except as otherwise provided by the Law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall he the act of the Board of Directors. Any Director may participate in a meeting of the Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such

participation shall constitute presence in person at the meeting. In the absence of a quorum, a majority of the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given, except that notice shall be given to all Directors if the adjournment is for more than thirty days.

Section 3.16 Resignation and Removal of Directors. Each Director may resign at any time by written notice delivered to the member that appointed such Director and to the President and Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. The Institutional Member may remove an Institutional Director at any time, with or without cause. The Individual Member may remove an Individual Director at any time, with or without cause.

ARTICLE IV.

OFFICERS

Section 4.1 Officers. The officers of the Corporation shall include a President and a Secretary, and may include a Chairman and a Chief Financial Officer. A person may hold multiple offices.

Section 4.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting or at a special meeting held in lieu thereof Each officer, except such officers as may be appointed in accordance with the provisions of Section 4.3, shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal. None of the officers other than the Chairman need be members of the Board of Directors.

Section 4.3 Subordinate Officers. The Board of Directors may appoint such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers, Controller and other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board of Directors may from time to time determine. The Board of Directors may, by specific resolution, empower the President or another officer of the Corporation to appoint any such subordinate officers or agents.

Section 4.4 Removal. The President, the Secretary, the Chairman and/or the Chief Financial Officer may be removed at any time by the Board of Directors with or without cause. Any subordinate officer appointed pursuant to Section 4.3 may be removed at any time, with or without cause, by the Board of Directors or by the person holding the officer position by which the subordinate officer was appointed.

Section 4.5 The President and The Co-Presidents. The President shall be the chief executive officer of the Corporation. He or she shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by the Law, the Certificate of Incorporation, or these Bylaws, shall administer and be responsible for the management of the business and affairs of the

Corporation. In general the President shall perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him or her by the Board of Directors. A second person may be appointed by the Board of Directors having the same duties and powers as provided for under this Section 4.5, and in the case of such an appointment, each person serving pursuant to this Section 4.5 shall be referred to as Co-President. When Co-Presidents are serving either Co-President may act alone without the concurrence of the other Co-President. Should the Co-Presidents disagree as to the taking or not taking of an action provided for by this Section 4.5, then the Members shall decide whether to take or not take such action.

Section 4.6 The Secretary. The Secretary shall:

(a) keep the minutes of the meetings of the members and of the Board of Directors;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; and

(d) in general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him or her by the Board of Directors or by the President of the Corporation.

Section 4.7 The Assistant Secretaries. If one or more Assistant Secretaries shall be appointed pursuant to the provisions of Section 4,3 respecting subordinate officers, then, at the request of the Secretary, or in his or her absence or disability, the Assistant Secretary designated by the Secretary (or in the absence of such designations, then any one of such Assistant Secretaries) shall perform the duties of the Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

Section 4.8 Chairman and Co-Chairs. The Chairman, if any, shall preside when present at meetings of the Board of Directors; advise and counsel the other officers of the Corporation; and shall perform such other duties as may be prescribed by the Board of Directors from time to time. A second person may be appointed by the Board of Directors having the same duties and powers as provided for under this Section 4.8, and in the case of such an appointment, each person serving pursuant to this Section 4.8 shall be referred to as a Co-Chair. When Co-Chairs are serving either Co-Chair may act alone without the concurrence of the other Co-Chair.

Section 4.9 The Chief Financial Officer. The Chief Financial Officer, if any, shall:

(a) receive and he responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depository as the Board of Directors or an officer designated by the

Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized;

(b) render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation; and

(c) in general, perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to the Chief Financial Officer by the Board of Directors or by the chief executive officer of the Corporation.

Section 4.10 The Assistant Chief Financial Officers. If one or more Assistant Chief Financial Officers shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Chief Financial Officer, or in the Chief Financial Officer's absence or disability, the Assistant Chief Financial Officer designated by the Chief Financial Officer (or in the absence of such designation, then any one of such Assistant Chief Financial Officers) shall perform all the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon, the Chief' Financial Officer.

Section 4.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE V.

BOOKS AND RECORDS

Section 5.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 5.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection at all times by any member and by any member of the Board of Directors.

ARTICLE VI.

MISCELLANEOUS PROVISIONS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless changed by the Board of Directors.

Section 6.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 6.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board of Directors.

Section 6.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances,

Section 6.5 Conflicts of Interest. No contract or agreement may be entered into by and between the corporation and any of the following: (a) a Director, officer, or employee of the corporation (hereinafter an "Insider"); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an "Entity") in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 144 of the Delaware General Corporation Law to the extent such provision is applicable to the transaction; and (ii) if one or more of the parties to the contract or transaction is a "disqualified person" with respect to the corporation within the meaning of Section 4958 of the Code, either (x) such transaction is reviewed and approved in accordance with the "rebuttable presumption safe harbor" provisions set forth in the regulations promulgated under Section 4958 of the Code or (y) the Board of Directors determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a gratuitous transfer of assets or promise to transfer assets to the corporation of any kind, including but not limited to, (i) a gift annuity, charitable remainder trust, charitable lead trust or similar split-interest arrangement which benefits both the Insider and the corporation; or (ii) a loan, lease, agreement of sale or purchase, pledge, guarantee, assumption of liability, bailment, or consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a Director, officer, and/or employee of the corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

Section 6.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the Law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members. Directors or members of a committee of directors need be specified in any written waiver of notice.

Section 6.7 Ownership Interests in Other Entities. Any ownership interests (e.g., shares of stock in any other corporation which may from time to time be held by this Corporation) may be represented and voted at any meeting of owners of such entity by the President, or by any other person or persons thereunto authorized by the Board of Directors, or

by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President.

Section 6.8 Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that the person is or was a Director or officer of the Corporation or is or was a Director or officer of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the laws of Delaware as the same now or may hereafter exist (but, in the case of any change, only to the extent that such change authorizes the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such change) against all, costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the person's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking. by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that the director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors and officers.

(b) If a claim under subsection (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea

of nolo contendere or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct,

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of incorporation, these Bylaws, agreement, vote of members or disinterested Directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any Director, member, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) To the extent that any Director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, such person shall be indemnified against all costs and expenses actually and reasonably incurred by such person or on such person's behalf in connection therewith.

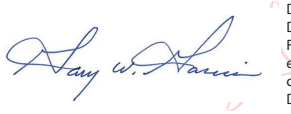
(f) Any amendment, repeal or modification of any provision of this Section by the members or the Directors of the Corporation shall not adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such amendment, repeal or modification.

(g) The provisions of this Section 6.7, and the limitations on liability and indemnification provided in such Section, shall survive the winding up and termination of the Corporation to the extent permitted by applicable law.

Section 6.9 Amendment of Bylaws. Only the members, by the affirmative unanimous vote of the members entitled to vote, may adopt, amend, or repeal these Bylaws, and alterations or amendments of these Bylaws made by the members shall not be altered or amended by the Board of Directors to the extent such alteration or amendment expressly states that it can only be altered or amended by the members.

* * * * *

The undersigned, being the duly elected and qualifying Secretary of the Corporation, hereby certifies that the foregoing initial Bylaws of the Corporation were duly adopted by the Board of Directors of the Corporation by unanimous written consent on March 9, 2015.



Digitally signed by Gary Garcia
DN: cn=Gary Garcia, o=The Dallas Foundation, ou, email=gwgarcia@dallasfoundation.org, c=US
Date: 2015.03.09 16:09:08 -05'00'

Gary W. Garcia, Secretary

EXHIBIT 31

BYLAWS

OF

EMPOWER DALLAS FOUNDATION, INC.

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BYLAWS

OF

EMPOWER DALLAS FOUNDATION, INC.

ARTICLE I.

OFFICES

Section 1.1 Registered Office. The registered office of EMPOWER DALLAS FOUNDATION, INC. (the "Corporation") shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is The Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have an office in the City of Dallas, State of Texas, and also offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II.

MEMBERSHIP

Section 2.1 Classes and Number. The Corporation shall have two classes of members and one member in each such class: the Institutional Member, which shall be The Dallas Foundation, and the Individual Member, which shall be Grant Scott or an individual designated as the Individual Member in accordance with these Bylaws.

Section 2.2 Voting. Except as otherwise provided in these Bylaws, the Institutional Member shall be entitled to two (2) votes upon each matter submitted to a vote of the members, and the Individual Member shall be entitled to one (1) vote upon each matter submitted to a vote of the members, In addition to any voting rights provided in these Bylaws, members shall be entitled to vote upon any matter with respect to which the General Corporation Law of the State of Delaware, or its successor statute, as amended (the "Law"), requires a vote of the members.

Section 2.3 Transfer of Membership. Institutional Membership in the Corporation is not transferable or assignable. The Individual Membership is transferable or assignable as provided herein only upon the approval of the Institutional Member, with such approval not to be unreasonably withheld by the Institutional Member. Subject to the approval of the Institutional Member, Mr. Scott, as the initial Individual Member, may at any time pursuant to a written notice delivered to the Institutional Member during his lifetime or by a provision in his Will or other testamentary document, transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. Each successor Individual Member shall succeed to the rights of the initial Individual Member. Subject to the approval of the Institutional Member, each successor Individual Member may in the same manner transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the

death or failure to act of a current or future Individual Member. In the event of a conflict between such transfer documents, the one bearing the latest date shall control. Each Individual Member may at any time revoke his transfer document that is to be effective in the future, in whole or in part, by written notice delivered to the Institutional Member. If at any time an Individual Member shall be disabled and no transfer of such member's interest is to occur as a result of such disability in accordance with the foregoing provisions of this Section, then such member's attorney-in-fact under a valid, effective power of attorney instrument may act for such member hereunder. In the event of the death of an Individual Member, such member's personal representative of his estate, or trustee of a trust to which the Individual Member transferred his interest, may, if necessary, act as the Individual Member hereunder until such time as the Individual Member interest is transferred from the estate or trust.

Section 2.4 Resignation of Member. A member may resign at any time upon written notice to the Secretary.

Section 2.5 Place of Meetings. All meetings of the members be held shall by means of remote communication as authorized by the Law, unless the Board of Directors decides to hold such a meeting by another permitted means.

Section 2.6 Annual Meetings. Except as otherwise provided by these Bylaws, annual meeting of the members, commencing with the year 2015, shall be held at such date and time in the month of December as shall be provided by resolution of the Board of Directors, at which the members shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.7 Special Meetings. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by the Law or by the Certificate of Incorporation, may be called by the President and shall he called by the Secretary at the request of a majority of the Board of Directors, or at the request in writing of a member entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.8 Notice of Meetings of Members. When notice is required to be given for a meeting of the members, such notice shall specify the date, time, and location of the meeting and shall be given to each member at least ten (10) days prior to the meeting (at least three (3) days in the case of a special meeting). Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the member's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the

telephone message shall reach and be communicated to a responsible individual at the phone number listed for a member's residence or place of business.

Section 2.9 Quorum. Both the Institutional Member and the Individual Member must be present in person or represented by proxy in order to constitute a quorum at all meetings of the members for the transaction of business, except as otherwise required by Law, the Certificate of Incorporation or these Bylaws. lf, however, such quorum shall not be present or represented at any meeting of the members, the member entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting, if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 2.10 Voting. When a quorum is present at any meeting, the vote of a majority of the number of votes held by the members, present in person or represented by proxy, shall be the act of the members, unless the act of a greater number is required by Law or expressly by these Bylaws.

Section 2.11 Proxies. At any meeting of the members, any member entitled to vote, consent or approve any action or matter may do so in person or by proxy authorized by an instrument in writing or by a transmission permitted by law. Any member represented by proxy shall be counted as present at such meeting for all purposes. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to these Bylaws may be substituted or used in lieu of the original writing or transmission that could be used, provided that the copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.12 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the members may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by the member(s) holding the number of votes necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 2.12. Prompt notice of the taking of an action by the members without a meeting by less than unanimous written consent shall be given to each member who did not consent in writing to the action. Each such consent must state the date of each member's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the members at an actual meeting,

Section 2.13 Control of Investments. Notwithstanding any other provision contained in these Bylaws to the contrary, the Institutional Member shall have the sole and exclusive power and authority to direct the management and investment of the assets of the Corporation. Such power and authority shall be exercised by the Institutional Member in its sole discretion and shall be separate and independent of any power and authority of the Board of Directors and officers of

the Corporation which have no power or authority with respect to the matters delegated hereby to the Institutional Member with respect to investments. Such power and authority of the Institutional Member shall include, but not be limited to: [a] the power to purchase, sell and retain assets of the Corporation; [b] the power to exercise voting, subscription, conversion, redemption, withdrawal, cancellation, option and similar rights with respect to such assets; [c] the power to participate in and consent to any voting trust, reorganization, merger, dissolution or other action affecting any such property; [d] the power to acquire life insurance policies, annuities, and/or other insurance or similar products (including the exercise or non-exercise or any rights, or the prosecution or defense of any disputes with the issuer or other parties regarding legal, regulatory, contractual, or other matters, arising under or relating to such products) and [e] the power to direct, and delegate to, the officers of the Corporation the taking of such acts and the execution of such documents as may be necessary to effectuate the decisions of the Institutional Member with respect to investments. The Corporation shall furnish the Institutional Member with such information as is necessary or desirable for it to fulfill its responsibilities. The Corporation shall furnish the Institutional Member with such clerical and other assistance as the Institutional Member may need to carry out its powers and authority. The Institutional Member shall advise the Board of Directors periodically of the investments of the assets of the Corporation and changes thereto. The Institutional Member shall have the sole power to retain investment advisors and custodians to assist it in carrying out its powers and authority under this Section 2.13 and it may delegate to any such investment advisors and custodians any and all such powers and authority subject to limitations on such delegation provided under the law, if any. The Corporation shall be responsible for all costs and expenses incurred by the Institutional Member in carrying out its powers and authority under this Section 2.13.

ARTICLE III.

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such acts and things as are not by the Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the members, so long as the exercise of such powers and doing of such acts are consistent with the Corporation's prescribed purposes.

Section 3.2 Number of Directors. The number of Directors that shall constitute the Board of Directors shall be three (3). Two (2) Directors (the "Institutional Directors") shall be elected annually by the institutional Member and one (1) Director (the "Individual Director") shall be elected annually by the Individual Member. Each Director shall hold office until such Director's successor is elected and qualified or until such Director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3 Vacancies. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, then (i) with respect to a vacancy of an Institutional Director seat, the Institutional Member shall elect a person to fill such vacancy, and (ii) with respect to a vacancy of an Individual Director seat, the Individual Member shall elect a person to fill such vacancy. If at any time there is no Individual

Member who is able to fill a vacancy of an Individual Director seat, then the Institutional Member shall elect a successor Individual Director. Each Director elected to fill a vacancy shall hold office for the unexpired term of such Director's predecessor in office.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Committees of Directors. The Corporation shall have no committees unless the Board of Directors, by resolution or resolutions passed by the unanimous vote of the Board, designates one or more committees.

Section 3.6 Compensation of Directors. Except to the extent prohibited by section 4958(c)(3) of the Internal Revenue Code of 1986 (the "Code"), Directors, as such, may receive such stated salary for their services and/or such fixed sums and expenses for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Annual Meeting. The annual meeting of the Board of Directors shall be held at such place and at such time as may be determined by the Board of Directors. If the date, time and location of the annual meeting are specified by a resolution adopted by the Board of Directors, no further notice of such annual meeting shall be required. If the date, time and location of an annual meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.8 Additional Regular Meetings. The Board of Directors may hold additional regular meetings for the purpose of taking any action and conducting any business that may properly come before the Board of Directors. If the date, time and location of the regular meeting are specified by a resolution adopted by the Board of Directors, no further notice of such regular meeting shall be required. If the date, time and location of a regular meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.9 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of any one or more Directors upon not less than three (3) days' notice to each director. The person or persons calling a special meeting of the Board of Directors shall fix a date, time and location for holding such special meeting, which shall be specified in a notice provided for such special meeting consistent with the requirements of Section 3.10 below.

Section 3.10 Method and Timing of Notice. Unless otherwise provided herein, when notice is required to be given for a meeting of the Board of Directors, such notice shall be given to each Director at least ten (10) days prior to the meeting. Any notice given herein shall specify the date, time, and location of the meeting. Notice shall be given (a) by written notice delivered

personally, or (b) by written notice sent by mail, email, or facsimile to the Director's mailing address, email address, or facsimile number as shown by the records of the Corporation. If mailed, such notice shall he deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number.

Section 3.11 Purpose not Required in Notice. Unless specifically required by the Law or these Bylaws for a particular action, the purpose of and business to be transacted at a meeting need not be specified in the notice of such meeting or in a waiver of notice of such meeting.

Section 3.12 Waiver of Notice. Any Director may waive notice of any meeting by a writing signed by the Director, whether signed before or after the holding of such meeting, and such signed written waiver shall he deemed the equivalent of the Director having received notice. A Director's attendance at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business of such meeting on the ground that the meeting is not lawfully called or convened.

Section 3.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the Board of Directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, are signed by all of the then-serving Directors. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 3.13. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the Board of Directors at an actual meeting.

Section 3.14 Validation of Action by Consent. All actions taken at a meeting of the Board of Directors which is not regularly called or noticed shall be valid as if taken at a meeting regularly called and noticed if each Director either consents in writing or is present at such meeting and does not object to the meeting being held. At such meeting any business may be transacted which is not excepted from the written consent or which is not objected to at such meeting for want of notice. If any meeting of the Board of Directors is irregular for want of notice, the proceedings of such meeting may be ratified, approved and rendered valid, and the irregularity or defect therein waived, by a writing signed by all Directors, provided a quorum was present at such meeting.

Section 3.15 Quorum and Manner of Acting. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. Except as otherwise provided by the Law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall he the act of the Board of Directors. Any Director may participate in a meeting of the Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such

participation shall constitute presence in person at the meeting. In the absence of a quorum, a majority of the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given, except that notice shall be given to all Directors if the adjournment is for more than thirty days.

Section 3.16 Resignation and Removal of Directors. Each Director may resign at any time by written notice delivered to the member that appointed such Director and to the President and Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. The Institutional Member may remove an Institutional Director at any time, with or without cause. The Individual Member may remove an Individual Director at any time, with or without cause.

ARTICLE IV.

OFFICERS

Section 4.1 Officers. The officers of the Corporation shall include a President and a Secretary, and may include a Chairman and a Chief Financial Officer. A person may hold multiple offices.

Section 4.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting or at a special meeting held in lieu thereof Each officer, except such officers as may be appointed in accordance with the provisions of Section 4.3, shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal. None of the officers other than the Chairman need be members of the Board of Directors.

Section 4.3 Subordinate Officers. The Board of Directors may appoint such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers, Controller and other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board of Directors may from time to time determine. The Board of Directors may, by specific resolution, empower the President or another officer of the Corporation to appoint any such subordinate officers or agents.

Section 4.4 Removal. The President, the Secretary, the Chairman and/or the Chief Financial Officer may be removed at any time by the Board of Directors with or without cause. Any subordinate officer appointed pursuant to Section 4.3 may be removed at any time, with or without cause, by the Board of Directors or by the person holding the officer position by which the subordinate officer was appointed.

Section 4.5 The President. The President shall be the chief executive officer of the Corporation. He or she shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by the Law, the Certificate of Incorporation, or these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. In general the

President shall perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.6 The Secretary. The Secretary shall:

(a) keep the minutes of the meetings of the members and of the Board of Directors;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; and

(d) in general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him or her by the Board of Directors or by the President of the Corporation.

Section 4.7 The Assistant Secretaries. If one or more Assistant Secretaries shall be appointed pursuant to the provisions of Section 4,3 respecting subordinate officers, then, at the request of the Secretary, or in his or her absence or disability, the Assistant Secretary designated by the Secretary (or in the absence of such designations, then any one of such Assistant Secretaries) shall perform the duties of the Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

Section 4.8 Chairman. The Chairman, if any, shall preside when present at meetings of the Board of Directors; advise and counsel the other officers of the Corporation; and shall perform such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.9 The Chief Financial Officer. The Chief Financial Officer, if any, shall:

(a) receive and he responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depository as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized;

(b) render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation; and

(c) in general, perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to the Chief Financial Officer by the Board of Directors or by the chief executive officer of the Corporation.

Section 4.10 The Assistant Chief Financial Officers. If one or more Assistant Chief Financial Officers shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Chief Financial Officer, or in the Chief Financial Officer's absence or disability, the Assistant Chief Financial Officer designated by the Chief Financial Officer (or in the absence of such designation, then any one of such Assistant Chief Financial Officers) shall perform all the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon, the Chief' Financial Officer.

Section 4.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE V.

BOOKS AND RECORDS

Section 5.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 5.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection at all times by any member and by any member of the Board of Directors.

ARTICLE VI.

MISCELLANEOUS PROVISIONS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless changed by the Board of Directors.

Section 6.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 6.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board of Directors.

Section 6.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances,

Section 6.5 Conflicts of Interest. No contract or agreement may be entered into by and between the corporation and any of the following: (a) a Director, officer, or employee of the corporation (hereinafter an "Insider"); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an "Entity") in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 144 of the Delaware General Corporation Law to the extent such provision is applicable to the transaction; and (ii) if one or more of the parties to the contract or transaction is a "disqualified person" with respect to the corporation within the meaning of Section 4958 of the Code, either (x) such transaction is reviewed and approved in accordance with the "rebuttable presumption safe harbor" provisions set forth in the regulations promulgated under Section 4958 of the Code or (y) the Board of Directors determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a gratuitous transfer of assets or promise to transfer assets to the corporation of any kind, including but not limited to, (i) a gift annuity, charitable remainder trust, charitable lead trust or similar split-interest arrangement which benefits both the Insider and the corporation; or (ii) a loan, lease, agreement of sale or purchase, pledge, guarantee, assumption of liability, bailment, or consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a Director, officer, and/or employee of the corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

Section 6.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the Law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members. Directors or members of a committee of directors need be specified in any written waiver of notice.

Section 6.7 Ownership Interests in Other Entities. Any ownership interests (e.g., shares of stock in any other corporation which may from time to time be held by this Corporation) may be represented and voted at any meeting of owners of such entity by the President, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President.

Section 6.8 Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that the person is or was a Director or officer of the Corporation or is or was a Director or officer of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held

harmless by the Corporation to the fullest extent authorized by the laws of Delaware as the same now or may hereafter exist (but, in the case of any change, only to the extent that such change authorizes the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such change) against all, costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the person's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking. by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that the director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors and officers.

(b) If a claim under subsection (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct,

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of incorporation, these Bylaws, agreement, vote of members or disinterested Directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any Director, member, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense,

liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) To the extent that any Director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, such person shall be indemnified against all costs and expenses actually and reasonably incurred by such person or on such person's behalf in connection therewith.

(f) Any amendment, repeal or modification of any provision of this Section by the members or the Directors of the Corporation shall not adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such amendment, repeal or modification.

(g) The provisions of this Section 6.7, and the limitations on liability and indemnification provided in such Section, shall survive the winding up and termination of the Corporation to the extent permitted by applicable law.

Section 6.9 Amendment of Bylaws. Only the members, by the affirmative unanimous vote of the members entitled to vote, may adopt, amend, or repeal these Bylaws, and alterations or amendments of these Bylaws made by the members shall not be altered or amended by the Board of Directors to the extent such alteration or amendment expressly states that it can only be altered or amended by the members.

* * * * *

The undersigned, being the duly elected and qualifying Secretary of the Corporation, hereby certifies that the foregoing initial Bylaws of the Corporation were duly adopted by the Board of Directors of the Corporation by unanimous written consent on March 9, 2015.

Digitally signed by Gary Garcia
DN: cn=Gary Garcia, o=The Dallas Foundation, ou, email=gwgarcia@dallasfoundation.org, c=US
Date: 2015.03.09 15:47:15 -05'00'

Gary W. Garcia, Secretary

EXHIBIT 32

CERTIFICATE OF HIGHLAND CAPITAL MANAGEMENT, LP

Reference is hereby made to that certain U.S. federal income tax opinion, dated January 29, 2016 (the "**Tax Opinion**"), attached hereto as Exhibit A, which Highland Capital Management, L.P. ("**HCM**") has requested from Sadis & Goldberg LLP ("**S&G**") to provide to HCM regarding certain U.S. federal income tax issues described in Part IV of such Tax Opinion. Each term herein with an initial capital not required by standard capitalization rules is a defined term, and each such term not parenthetically defined herein shall have the meaning ascribed to it in the Tax Opinion.

HCM acknowledges and understands that S&G is relying upon the validity of each of the statements set forth below as the factual basis for the conclusions expressed in the Tax Opinion and that any inaccuracy in the matters set forth herein could adversely affect the conclusions in such Tax Opinion.

Pursuant to the foregoing, HCM hereby represents, warrants, covenants and certifies, after reasonable investigation and review and consultation as appropriate, as follows:

1. The Statement of Facts set forth in Part II of the Tax Opinion is accurate and complete in all material respects. The Assumptions Made set forth in Part III of the Tax Opinion are believed by HCM to be reasonable, and to the extent that factual matters appear in Part III, they are accurate.

2. We have reviewed the Tax Opinion attached as Exhibit A hereto and, to the best of our knowledge, information and belief, there are no additional facts, conditions or circumstances which should have been disclosed to S&G for purposes of preparing this Tax Opinion.

3. S&G has been provided with true, correct and complete copies of the Relevant Documents as well as any other documents provided to S&G in connection with its services in connection with the Tax Opinion (collectively, "**Opinion Documents**"). Except to the extent made clear in the Opinion Documents themselves, each of the Opinion Documents has not been further amended, altered, modified, or restated and, to the extent that such document is an agreement, is in full force and effect on the date hereof and has been at all times since the date of such amendments. No resolution, proceeding or other action has been taken for the further amendment, alteration, modification or restatement of such Opinion Documents.

[Signature Page follows.]

Highland Capital Management, L.P.
Certificate of Representations

IN WITNESS WHEREOF, HCM has executed this Certificate under seal by its duly authorized representative as of January 29, 2016.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.

Its: General Partner

By: _____

Name and Title:
James Dondero, President

EXHIBIT 33

SadisGoldberg LLP

January 29, 2016

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

Dear Sirs:

You have requested our ("our", "we" or "Sadis & Goldberg LLP" as the context may require) opinion concerning certain U.S. federal income tax issues relating to investments made by two tax-exempt supporting organizations identified herein in variable annuity contracts issued by Crown Global Life Insurance Ltd. under the facts discussed below.

Part I of this letter describes our factual investigation. Part II of this letter sets forth a statement of the relevant facts which you have reviewed and confirmed to us to be accurate and complete in all material respects. Part III of this letter then lists certain assumptions that you have authorized us to make in rendering our opinion, and which you have confirmed are correct and reasonable, and Part IV of this letter states the opinion that is being requested. In Part V of this letter, we describe the relevant U.S. federal income tax provisions, rulings of the Internal Revenue Service and relevant tax cases relating to the opinion requested. Part VI of this letter sets forth our opinion, together with your permitted use of and reliance on this opinion letter.

I. FACTUAL INVESTIGATION

For purposes of rendering the opinions expressed below, we have been furnished and have reviewed the following documentation (the "Relevant Documents"):

1. The Okada Family Foundation, Inc. certificate of incorporation filed on February 10, 2015.

2. The Okada Family Foundation, Inc. bylaws dated March 9, 2015.

3. The Okada Family Foundation, Inc. draft IRS Form 1023 - Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

4. The Supporting Organization Operating Agreement entered into between The Okada Family Foundation, Inc. and The Dallas Foundation.

5. Empower Dallas Foundation, Inc. certificate of incorporation filed on February 10, 2015.

6. Empower Dallas Foundation, Inc. bylaws dated March 9, 2015.

7. Empower Dallas Foundation, Inc. draft IRS Form 1023 - Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

8. The Supporting Organization Operating Agreement entered into between Empower Dallas Foundation, Inc. and The Dallas Foundation.

551 Fifth Avenue, 21st Floor New York, NY 10176 (t) 212.947.3793 (f) 212.947.3796

9. Mark Okada 12/08/2015 donation of $5,345,021.50 to The Okada Family Foundation Inc. Nexbank Statement Transaction entries from 11/10/2015 to 12/10/2015

10. Mark Okada 12/22/2015 donation of $2,138,333.33 to The Okada Family Foundation Inc. Nexbank Statement Transaction entries from 11/28/2015 to 12/28/2015

11. Jim Dondero 12/08/2015 donation of $16,034.978.50 to Empower Dallas Foundation, Inc. Nexbank Statement Transaction entries from 11/10/2015 to 12/10/2015

12. Jim Dondero 12/22/2015 donation of $6,415,000 to Empower Dallas Foundation, Inc. Nexbank Statement Transaction entries from 11/28/2015 to 12/28/2015

13. The Okada Family Foundation, Inc. Unanimous Written Consent of Directors in Lieu of Special Meeting, December 9th, 2015.

14. Empower Dallas Foundation, Inc. Unanimous Written Consent of Directors in Lieu of Special Meeting, December 9th, 2015.

15. The Okada Family Foundation, Inc.: Crown Global Due Diligence Declaration Signed 12/09/2015

16. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy #30219, effective December 11, 2015

17. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy #30219, Term Sheet 12/09/2015

18. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Application Form, 12/09/2015

19. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy FATCA Waiver, 12/09/2015

20. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy Structure Chart 12/09/2015

21. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: JPM Growth Series Supplement

22. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: JPM Hedge Series Supplement

23. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: Limited Power of Attorney, 12/09/2015

24. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: Atlas IDF, LP, Private Placement Memorandum

25. The Okada Family Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: Rand PE Fund I, LP, Private Placement Memorandum

26. The Okada Family Foundation, Inc.: Nexbank Wire Transfer Department: $5,301,065.12 wire premium to Crown Global on 12/10/2015

27. The Okada Family Foundation, Inc.: Nexbank Transaction detail entries from 11/28/2015 to 12/28/2015 for additional wire premium to Crown Global of $2,117,423.00 on 12/22/2015.

28. The Empower Dallas Foundation, Inc.: Crown Global Due Diligence Declaration Signed 12/09/2015

29. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy #30218, effective December 11, 2015

30. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy #30218, Term Sheet 12/09/2015

31. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Application Form, 12/09/2015

32. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy FATCA Waiver, 12/09/2015

33. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy Structure Chart 12/09/2015

34. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: JPM Growth Series Supplement

35. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: JPM Hedge Series Supplement

36. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: Limited Power of Attorney, 12/09/2015

37. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: Atlas IDF, LP, Private Placement Memorandum

38. The Empower Dallas Foundation, Inc.: Crown Global Deferred Variable Annuity Policy: Rand PE Fund I, LP, Private Placement Memorandum

39. The Empower Dallas Foundation, Inc.: Nexbank Wire Transfer Department: $15,903,108.54 wire premium to Crown Global on 12/10/2015

40. Empower Dallas Foundation, Inc.: Nexbank Transaction Account detail from 11/28/2015 to 12/28/2015 indicating wire of $6,352,270 for additional premium to Crown Global on 12/22/2015

41. Back Office Shared Services Agreement by and among Highland Capital Management, L.P. and Rand Advisors, LLC dated October 10, 2013.

42. Amendment to Back Office Shared Services Agreement between Highland Capital Management, L.P. and Rand Advisors, LLC dated October 14, 2014.

43. Contribution Agreement between Highland Capital Management, L.P. and Hunter Mountain Investment Trust, dated December 21, 2015

44. Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated December 21st, 2015

45. Partnership Interest Purchase Agreement among The Dugaboy Investment Trust, The Mark and Pamela Okada Family Trust-Exempt Trust #1, The Mark and Pamela Okada Family Trust-Exempt Trust #2, Mark K. Okada, and Hunter Mountain Investment Trust, dated December 24, 2015

46. Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated December 24th, 2015.

We are not aware of any documents other than the Relevant Documents that would alter our conclusions. We have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals and the conformity with original documents of all documents submitted to us as copies, the fact that each party to an agreement has the power and capacity to execute, deliver and perform all obligations under such documents, the due authorization of all requisite action with respect to such documents (including the execution and delivery thereof) by each party thereto, and the validity and binding effect of such documents upon each party. We have also assumed that all factual assertions in the Relevant Documents are accurate and complete in all material respects. We have no reason to believe that any of the foregoing assumptions are unreasonable.

II. STATEMENT OF FACTS

A. The Dallas Foundation ("TDF") is a Texas non-profit corporation exempt from federal income taxation under Section 501(c)(3) of the U.S. Internal Revenue Code, as amended ("Code"), and a public charity described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

B. The principal objective of TDF is to solicit, receive and accept property to be administered, used and applied for charitable purposes, primarily, but not exclusively in or for the benefit of Dallas County, Texas. TDF is not controlled by James Dondero, Mark Okada or Highland Capital Management, L.P.

C. Empower Dallas Foundation, Inc. ("Supporting Organization #1") is a Delaware non-profit non-stock charitable corporation which has been established to operate exclusively for the benefit of, to perform the functions of, or carry out the purposes of TDF.

D. The Okada Family Foundation, Inc. ("Supporting Organization #2") is a Delaware non-profit non-stock charitable corporation which has been established to operate exclusively for the benefit of, to perform the functions of, or carry out the purposes of TDF.

E. Supporting Organization #1 and Supporting Organization #2 each expect to obtain a determination letter from the U.S. Internal Revenue Service ("IRS") that each such Supporting Organization,

respectively, is a tax-exempt organization described in Section 501(c)(3) of the Code and a "Type I" supporting organization described in Section 509(a)(3) of the Code. For the avoidance of doubt, such tax-exempt status is expected to be effective retroactively to the date of each Supporting Organization's formation, respectively.

F. As a result of qualifying as Type I supporting organizations under Section 509(a)(3) of the Code, Supporting Organization #1 and Supporting Organization #2 will each be exempted from private foundation status under Section 509(a) of the Code.

G. Mary M. Jalonick is the President and Chief Executive Officer of TDF, and is the Incorporator of both Supporting Organization #1 and Supporting Organization #2.[1]

H. Supporting Organization #1 has been formed at the request of James Dondero. On December 8, 2015, Mr. Dondero contributed $16,034,978.50 to Supporting Organization #1. On December 22, 2015, Mr. Dondero contributed $6,415,000 to Supporting Organization #1. At the present time, Mr. Dondero is the only contributor to Supporting Organization #1. Although Mr. Dondero made a recommendation to the Board as to how the Board should invest such contributions (as described below), the Board of Supporting Organization #1 is not contractually obligated to follow the investment recommendations of Mr. Dondero at the time such contributions are made or at any later date.

I. Supporting Organization #2 has been formed at the request of Mark Okada. On December 8, 2015, Mr. Okada contributed $5,345,021.50 to Supporting Organization #2. On December 22, 2015 Mr. Okada contributed $2,138,333.33 to Supporting Organization #2. Although Mr. Okada made a recommendation to the Board as to how such contributions should be invested (as described below), the Board of Supporting Organization #2 is not contractually obligated to follow the investment recommendations of Mr. Okada at the time such contributions are made or at any later date.

J. Under the relevant governing documents, TDF has total control over both Supporting Organization #1 and Supporting Organization #2, as the institutional member ("Institutional Member") of each Supporting Organization. The Institutional Member appoints the majority of each Supporting Organization's Board of Directors. The Board of Directors of each Supporting Organization appoints the officers of the Supporting Organization. The officers of each Supporting Organization can be removed with or without cause by the Board of Directors of such Supporting Organization.

K. Supporting Organization #1 currently has a three-person Board of Directors. Mary M. Jalonick and Gary W. Garcia are the institutional directors ("Institutional Directors") of the Board of Supporting Organization #1. Gary W. Garcia currently serves as Senior Director of Development of TDF. The third member of the Board is W. Grant Scott II. Mr. Scott is an attorney engaged in private practice at Myers Bigel Sibley Sajovec, P.A. in Raleigh, North Carolina and knows Mr. Dondero from college.

L. Supporting Organization #2 also currently has a three-person Board of Directors. Mary M. Jalonick and Gary W. Garcia are the Institutional Directors. Mark Okada is the third member of the Board.

M. Mr. Dondero has recommended to the Board of Supporting Organization #1 that it invest its assets

[1] See Dallas Foundation's web page for background: www.dallasfoundation.org.

in a private placement deferred variable annuity policy (referred to herein as a "Variable Contract" or "Deferred Variable Annuity Policy") to be issued by Crown Global Life Insurance Ltd., a Bermuda-based insurance company ("Crown Global") that is a life insurance company within the meaning of the Code. Mr. Okada has made the same investment recommendation to the Board of Supporting Organization #2. However, the Boards of each Supporting Organization are not bound by those recommendations, and retain the authority to reallocate premiums or assets to different IDFs or managed accounts available under the Crown Global Variable Contracts.

N. Crown Global maintains a segregated asset account ("Separate Account") pursuant to Bermuda law to hold assets that fund obligations arising under each Variable Contract issued by it. Under the terms of the Contracts and Bermuda law, assets allocated or credited to each Separate Account are the property of the insurance company and the policyholder has no direct proprietary interest in such assets. Rather, the Supporting Organizations have only a contractual claim against Crown Global to collect cash from Crown Global in the form of annuity payments or other withdrawals available under the Variable Contract. The performance of the investments held in the applicable Separate Account provide the measure for the economic return to the investor in the Variable Contract. The Crown Global Variable Contracts purchased by the Supporting Organizations provided that the investor was permitted to choose among certain "insurance dedicated funds" ("IDF" as further defined below) and managed accounts selected by Crown Global as available investments that could be held in the Separate Account identified in the Contract. One such IDF that was designated by Crown Global as an available investment option that the investors in the Variable Contract were permitted to select is Atlas IDF, LP ("Atlas IDF"), a newly formed Delaware "series" limited partnership managed by Rand Advisors, LLC ("Rand Advisors"). The Variable Contract also lists two other IDFs as investment options which the policyholder is able to select, JP Morgan Access Growth Strategies Insurance Fund, and JP Morgan Hedge Growth Strategies Insurance Fund. None of the IDFs or other managed funds available under the Variable Contracts will be funds that are offered to the general public under the IRS rulings discussed herein.

O. The Variable Contract does not immediately payout distributions in accordance with a distribution schedule. The policyholders, Supporting Organization #1 and Supporting Organization #2 have the ability to make partial(s) or a full surrender of the Variable Contract at quarterly intervals, subject to applicable surrender charges. Further, as policyholders, Supporting Organization #1 and Supporting Organization #2 can decide at quarterly intervals (but no more than twice per calendar year) to reallocate funds from one investment option provided under the Variable Contract to another investment option offered by Crown Global under the Variable Contract.

P. Crown Global, in its sole and exclusive discretion, can determine the investment offering within its offered insurance products and is under no legal requirement to make any particular offering of an investment strategy currently or in the future or to maintain an investment strategy offering. Crown Global, in its sole and absolute discretion, can terminate or remove an investment offering at any time in the future. All decisions as to the choice of IDFs or managed accounts that are made available for selection by the investor in the Variable Contract are made by Crown Global in its sole and absolute discretion. Mr. Dondero recommended to the Board of Supporting Organization #1 that it select Atlas IDF as the measuring investment under its Variable Contract. Mr. Okada made the same investment recommendations to the Board of Supporting Organization #2 as those made by Mr. Dondero to Supporting Organization #1.

Q. On December 9, 2015, the Directors of Supporting Organization #1 and Supporting Organization #2 each unanimously approved resolutions authorizing the acquisition by the Supporting Organization

of the Deferred Variable Annuity Policy from Crown Global, and authorized the officers of the Supporting Organization to take any and all further actions to carry out such acquisition.

R. On December 10, 2015, Supporting Organization #1 wired an initial premium to Crown Global of $15,903,108.54 with respect to the Variable Contract. On December 22, 2015, Supporting Organization #1 wired additional premium of $6,352,270 to Crown Global with respect to the Variable Contract.

S. Effective December 11th, 2015, Crown Global issued Deferred Variable Annuity Policy #30218 to Supporting Organization #1. Supporting Organization #1 is named the policyholder and irrevocably the sole beneficiary of the Variable Contract.

T. On December 10, 2015, Supporting Organization #2 wired an initial premium to Crown Global of $5,301,065.12 with respect to the Variable Contract. On December 22, 2015, Supporting Organization #2 wired additional premium of $2,117,423.00 to Crown Global with respect to the Variable Contract.

U. Effective December 11th, 2015, Crown Global issued Deferred Variable Annuity Policy #30219 to Supporting Organization #2. Supporting Organization #2 is named the policyholder and irrevocably the sole beneficiary of the Variable Contract.

V. Crown Global is a subsidiary of Crown Global Insurance Group and is not affiliated with or controlled by Mr. Dondero or Mr. Okada, or Highland Capital Management, L.P. ("Highland"), which is the business conducted by Messrs. Dondero and Okada. Highland is an investment manager business, with significant assets under management, located in Dallas, Texas. Crown Global has made an election under the Code to be treated as a domestic life insurance company.

W. In addition to acting as the investment manager of Atlas IDF, Rand Advisors will also act as the investment manager of Rand PE Fund I, L.P., a Delaware "series" limited partnership private investment fund ("PE Portfolio Fund"), to which Atlas IDF will initially allocate 55% of its investment portfolio and which: (x) is expected to initially invest in the Highland Transaction (as defined below), and (y) will potentially make investments in other private equity transactions. The Supporting Organizations have not been offered the opportunity to invest directly in the PE Portfolio Fund, and Crown Global has not designated the PE Fund as an available investment option for inclusion in a Separate Account with respect to the Variable Contracts purchased by the Supporting Organizations.

X. Atlas IDF has been organized by Rand Advisors as an "insurance-dedicated fund" (i.e., an investment fund that only admits institutional investors that are insurance companies and certain other eligible investors described in Treasury Regulation section 1.817(h)-5(f)(3)). The confidential private placement memorandum of Atlas IDF provides that Series 1 of Atlas IDF will invest: (x) approximately 45% of its portfolio in traded assets (including, without limitation, distressed debt instruments), to be selected and managed by Rand Advisors, and (y) approximately (but not more than) 55% of its portfolio in private equity investments, to be selected and managed by Rand Advisors. The percentage of Atlas IDF's assets invested in specific private equity investments is not fixed, and is subject to change by Rand Advisors. However, Atlas IDF is required to satisfy the portfolio diversification requirements set forth in Section 1.817-5(b)(1) of the Treasury Regulations.

Y. At the outset, Crown Global will be the only insurance company owning a limited partnership interest in Atlas IDF. However, the governing documents of Atlas IDF permit other insurance companies to invest directly in Atlas IDF on behalf of their separate accounts established in connection with variable annuities and insurance contracts. Thus, Interests in Atlas IDF are not being offered for sale to the "general public" (within the meaning of IRS Rulings and Regulations discussed below), and thus such other investors could invest in Atlas IDF only indirectly by purchasing a Variable Contract from Crown Global (if Crown Global were to make the Atlas IDF available as an eligible investment). The PE Portfolio Fund in which Atlas IDF will invest is not an IDF. PE Portfolio Fund will have other direct investors that are not affiliates of Crown Global. Rand Advisors anticipates that it will market PE Portfolio Fund, or subsequent series thereof, to other investors in the future.

Z. Rand Advisors is owned and controlled by John Honis. In addition, Mr. Honis owns and controls the general partner entities of Atlas IDF and PE Portfolio Fund. Mr. Honis has over 25 years of investment management and business experience, and is not controlled by Highland, nor by Mr. Dondero, nor Mr. Okada.

AA. Mr. Honis was previously a Partner and Head of Private Equity at Highland. Although Mr. Honis has retired from that position, he still currently serves on: (x) the Board of Trustees for each of Highland's affiliated registered investment companies, and receives compensation in connection with each of the foregoing, and (y) the Board of Directors for American HomePatient, Inc. and Turtle Bay Resort, LLC, which are portfolio companies for investment funds operated by Highland, and receives compensation in connection with each of the foregoing. Mr. Honis does not currently own any limited partnership interests in Highland and does not have any direct share in the profits or revenues of such company. However, as part of his retirement, Mr. Honis is in the process of receiving payments in the total amount of $3 million from certain affiliates of Highland.

BB. The governing documents of Atlas IDF require such fund to comply with the portfolio diversification requirements in Section 817(h) of the Code. Similarly, the Variable Contracts each require the Separate Accounts established in connection with such Contracts to satisfy such portfolio diversification requirements. Each of the Variable Contracts specifically provides that the policyholder is not permitted to have direct contact with the investment manager of any IDF or managed subaccount held in the Separate Account and may not participate in the management of the Separate Account or any IDF or managed subaccount.

CC. It was anticipated solely among Rand Advisors, Strand Advisors (the General Partner of Highland Capital Management), James Dondero, and Mark Okada that the first series of PE Portfolio Fund would acquire all or substantially all of the non-voting limited partnership interests in Highland from Highland, including newly-issued limited partnership interests, or from trusts or other affiliates of Mr. Dondero or Mr. Okada (collectively, the "Highland Transaction"). Although with respect to any trusts, the Trustees would have to evaluate and approve any transaction independently and during the time of the relevant acquisition. During this time, the PE Portfolio Fund and Highland did not negotiate documentation for the legal terms of the Highland Transaction. Further, there was no assurances that such transaction would be consummated as it was understood that it would have to be negotiated, the respective parties had not made any offer (and would not until after the PE Portfolio Fund had assets), and that all parties would be separately represented by legal counsel. It was nonetheless the intention of such parties that the

transaction should come about.

DD. At the time that the Supporting Organizations acquired their ownership interests in their Variable Contracts and had selected the Rand IDF as to investment to be held in the Separate Account, PE Portfolio Fund had not entered into a binding contract to acquire the previously described limited partnership interests in Highland, and the Institutional Members of the Boards of the Supporting Organizations did not have any knowledge of the terms of the investment subsequently made by the Rand PE Fund in Highland.

EE. On December 21, 2015, as part of the Highland Transaction, Hunter Mountain Investment Trust (a special purpose vehicle of PE Portfolio Fund) acquired through a contribution of cash and note, newly issued limited partnership interests in Highland Capital Management, L.P.

FF. On December 24, 2015, as part of the Highland Transaction, Hunter Mountain Investment Trust acquired through purchase from trusts affiliated with Mr. Dondero and Mr. Okada, and Mr. Okada individually, newly reclassified limited partnership interests in Highland Capital Management, L.P.

GG. Hunter Mountain Investment Trust's acquisition of substantially all the interests in Highland Capital Management, L.P. was at a substantial discount to book value. The substantial discount offered reflects the overall donative intent of Mr. Dondero and Mr. Okada to engage in the transaction.

HH. The Variable Contract/Separate Account structure may provide a federal income tax advantage to the Supporting Organizations if the income realized by such Supporting Organizations as a result of ownership of their Variable Contracts would not be treated as taxable unrelated business taxable income ("UBTI") under the Code. In contrast, if either Supporting Organization were to acquire a direct ownership interest in an investment partnership such as Atlas IDF, such Supporting Organization would almost certainly realize taxable UBTI if Atlas IDF owned, directly, or through other partnerships, equity interests in business partnerships (such as Highland) or debt-financed assets.

II. The Variable Contract/Separate Account structure may also provide state and local tax advantages to the Supporting Organizations since the structure enables the Supporting Organizations to avoid being treated as engaged in business in the states and localities in which the underlying portfolio companies that are partnerships are engaged in business.

JJ. Crown Global has represented that (1) it qualifies as a life insurance company under the Code; (2) it has made an effective election to be treated as a domestic corporation for U.S. federal income tax purposes; and (3) the terms of the Variable Contracts to be purchased by the Supporting Organizations would meet the requirements of Section 72 of the Code to be treated as annuity contracts under such Code Section if such Contracts were held by a "natural person" (within the meaning of Code Section 72(u)).

KK. Mr. Dondero and Mr. Okada (the "Donors") are entering into the transactions described herein based on a donative intent to provide funds to be used by TDF, a public charity.

LL. Prior to making any investments in the Variable Contracts to be issued by Crown Global, the Dallas Foundation had their independent financial consultant evaluate John Honis, as an investment

manager acting through Rand Advisors, and the proposed investment strategy offered by him through an insurance dedicated fund that combined a private equity and liquid investment strategy for the Supporting Organizations.

MM. The Dallas Foundation's independent financial consultant recommended to The Dallas Foundation that such investment strategies used by John Honis would be a prudent investment by each of the Supporting Organizations through a deferred variable contract policy issued by an insurance company.

NN. Prior to making any investments in the Variable Contracts to be issued by Crown Global, the Board of each Supporting Organization received (1) the confidential private placement memorandum prepared by Crown Global with respect to the Variable Contracts, and (2) the confidential private placement memorandum detailing the terms of the Atlas IDF.

OO. The decision made by each Board to invest in its Variable Contract and to designate the Atlas IDF as the designated investment to be made by the Separate Account of Crown Global were made on the basis of the anticipated investment returns on the underlying investments that will be made and managed by Rand Advisors.

III. ASSUMPTIONS MADE

You have authorized us to make the following assumptions for the purpose of rendering our opinion stated herein:

A. Mr. Honis will manage the investments of Rand IDF and the PE Portfolio Fund in order to provide attractive returns to the current and future investors in such funds. Mr. Honis' performance will affect his ability to attract additional investors to such funds (including separate series funds) as well as any other funds subsequently managed by Rand Advisors.

B. Atlas IDF will, at all times, comply with the applicable diversification requirements under Section 817(h) of the Code. In order to achieve such compliance, Atlas IDF will restrict the ownership of equity interests in Atlas IDF to those investors described in Treasury Regulation 1.817-5(f).

C. The Boards of the Supporting Organizations will control any decisions made to be made as the owner of the Variable Contract, including any decisions to withdraw funds from the Variable Contract, to move funds from Atlas IDF to other investments that Crown Global may offer under the Variable Contract, or to invest additional funds of the Supporting Organization in Atlas IDF through the Variable Contract.

D. Highland is a successful investment management firm and it would be able to raise additional capital from other sources if it chose to do so.

E. The intentions of the parties are that, for federal income tax purposes,: (1) Crown Global will at all times be treated as the owner of the limited partnership interests in Atlas IDF that provide an

economic return for the Variable Contracts owned by the Supporting Organizations; (2) each Supporting Organization will be treated as the owner of its Variable Contract; (3) Mr. Dondero and Mr. Okada will each be treated as having made charitable contributions in cash to their Supporting Organizations in the amounts described in the facts above; (4) any sales of partnership interests in Highland by Mr. Dondero or Mr. Okada, any trust established by M. Dondero or Mr. Okada or any related party to such Donors, to the PE Portfolio Fund will be treated as sales occurring between the applicable seller and the PE Portfolio Fund.

F. Neither Supporting Organization will incur "acquisition indebtedness" within the meaning of Section 514 of the Code with respect to its Variable Contract at any time.

IV. REQUESTED OPINIONS

You have asked us to render an opinion on the following issues:

1. Whether the Internal Revenue Service could successfully contend that, under the facts and assumptions described above, the owners of the Variable Contracts, i.e., the two Supporting Organizations, are to be treated as owners for federal income tax purposes of the underlying investments held in the Crown Global Separate Accounts established in connection with such Variable Contracts.

2. Whether the income realized by the Supporting Organizations from their investment in the Variable Contracts will be exempt from the tax imposed under Section 511 of the Code on the "unrelated business taxable income" of tax-exempt entities described in Section 511(a).

V. LEGAL ANALYSIS

Tax Benefits for Tax-Exempt Organizations Investing in Variable Annuity Contracts

U.S. tax-exempt entities described in Section 501 of the Code, such as the Supporting Organizations, are subject to federal income tax on their unrelated business taxable income (UBTI). UBTI is defined in Section 512 as income from a "trade or business" that is regularly carried on by the tax-exempt organization, or a partnership in which it a partner, and which is not substantially related to the exempt organization's exempt purpose or function. UBTI also includes income from "debt-financed property" as defined in Section 514. Debt-financed property is property held to produce income with respect to which "acquisition indebtedness" exists at any time in the taxable year (or, if the property is sold or disposed during the year, with respect to which there was any acquisition indebtedness at any time during the 12-month period ending on the date of such disposition).

Section 512(b)(1) specifically exempts "annuities" from UBTI, along with other notable categories of investment income, including interest, dividends, capital gains and rent from real property. However, the specific statutory exemptions from UBTI do not apply to the extent such income items are unrelated debt-financed income under Code Section 514. Where debt-financed property is involved, UBTI includes the income from the property multiplied by its "debt-basis percentage" (a percentage equal to "average acquisition indebtedness" divided by "average adjusted basis").

The term "annuities" is not defined in Section 512 or the Treasury regulations ("Regulations") thereunder. There is also no comprehensive definition of annuity or "annuity contract' in Section 72 (governing tax treatment of distributions from life insurance and annuity contracts) or elsewhere in the Code. The Regulations under Section 72 provide that an annuity contract that is subject to the rules of Section 72 includes a contract that is recognizable as an annuity under the "customary" practices of life insurance companies. See Treas. Reg. Section 1.72-2(a)(1). Under Section 72, if the entire value of an annuity contract is applied to a stream of periodic payments, each of these payments will be partly included in income and (because of nondeductible premium payments) partly excludible as a return of capital, pursuant to an "exclusion ratio". Under Section 72(e)(2)(A), any non-annuity amount received under an annuity contract (including withdrawals and partial surrenders) on or after the "annuity starting date" are treated as "gross income". Any non-annuity amounts received **before** the annuity starting date may be treated as gross income or a return of the policyholder's investment in the contract under rules set forth in Section 72(e)(3).

Tax Status of Separate Accounts. Life insurance companies have segregated asset accounts that are created and regulated under the laws of various states or foreign jurisdictions. These accounts are typically formed for the purpose of segregating assets attributable to variable life insurance contracts, variable annuities and group contracts from the general assets of the life insurance company. In Revenue Ruling 78-204, the IRS ruled that a segregated asset account established by a life insurance company is not an organization that can be taxed separately from the insurance company. The Ruling states that if a segregated asset account holds assets pursuant to contracts described in former Code section 801(g)(1) (which includes variable annuity contracts or contracts with reserves based on a segregated asset account), it is taxed as part of the insurance company.

Code Section 817: Statutory Diversification Requirements. To discourage consumer use of various insurance type products as investment vehicles, Congress in 1984 granted the Treasury authority to prescribe diversification standards for the investment of variable contract assets held in segregated asset accounts. The legislative history states the Congress's goal in so doing was "to deny annuity or life insurance treatment for investments that are publicly available to investors and investments which are made, in effect, at the direction of the investor." *H.R. Conf. Rep. No. 98-561, at p. 1055 (1984).*

Under the Treasury Regulations, a separate account will be considered adequately diversified if no more than 55% of the total value of the account is represented by any one investment; no more than 70% of the total value of the account is represented by any two investments; no more than 80% of the total value is represented by any three investments; and no more than 90% of the total value is represented by any four investments. Treas. Regs. Sec. 1.817-5(b)(1).

For purposes of testing diversification, Section 817(h)(4) and Section 1.817-5(f) of the Regulations provide a look through for assets held in certain investment entities, including partnerships, trusts and investment companies, provided that the beneficial interest in the investment entity are held by one or more segregated asset accounts of one or more insurance companies, and public access to such investment entity is available exclusively (except as otherwise permitted by Regs. Sec. 1.817-5(f)(3)) through the purchase of a variable contract. As previously discussed, the Separate Accounts established in connection with the Variable Contracts are expected to satisfy the diversification

requirements of Code Section 817. In order to satisfy the diversification requirements, Atlas IDF will satisfy the requirements of the Section 817 regulations to qualify for "look through" treatment.

A. INVESTOR CONTROL ISSUES.

In the 1970's the IRS grew concerned that taxpayers were avoiding federal income tax by "wrapping" their investments in "investment annuity contracts" which created the possibility of major tax shelter abuse. Such transactions were structured as follows: Each investment annuity contract paid an annuity based on the investment return and market value of the contract's segregated asset account. A third party custodian, typically a bank, held and invested the segregated account's assets according to the annuity owner's directions. In response to such transactions, the IRS issued four revenue rulings between 1977 and 1982 describing the circumstances in which owners of variable annuity contracts or variable life insurance contracts would be treated and taxed as owners of the underlying assets because of their control of the investments. The revenue rulings applied to variable annuity contracts and variable life insurance contracts the federal income tax principle that a person other than the person holding legal title to the property is treated as the owner for tax purposes if that other person possesses the "benefit and burdens" or "incidents of ownership" of such property. See generally *Commissioner v. Sunnen*, 33 U.S. (1948); *Helvering v. Clifford*, 309 U.S. 331 (1940); *Corliss v. Bowers*, 281 U.S. 376 (1930).

Revenue Ruling 77-85. This Ruling concludes that the annuity owner is, for federal income tax purposes, the owner of the separate account assets under the following conditions:

1. the annuity owner controls the investment of the separate account assets;

2. the annuity has the power to vote any securities in the account; and

3. the annuity owner can withdraw any or all of the assets at any time.

Revenue Ruling 80-274. The second Ruling similarly concludes that the investor in the annuity contract was treated as the owner of a bank certificate of deposit (CD) underlying a variable annuity contract when the contract owner transferred the CD to the life insurance company in exchange for the variable annuity contract and the insurance company is expected to hold the CD for the investor's benefit.

Revenue Ruling 81-225. This Ruling applies the investor control principle to five different situations, and thus is considered the most important ruling on the principle. In four of the fact patterns considered, the annuity owner- not the insurance company- is considered the owner of the mutual fund investments underlying the annuity contract because the mutual fund investments were available for direct purchase by the general public. In the fifth fact pattern, the insurance company, rather than the annuity owner, is considered the owner of the mutual fund investments because such shares were not available for direct purchase by the general public; they were only available through the purchase of a variable contract. The Ruling states that in factual situations one through four, the insurance company is "little more than a conduit between the policyholders and their mutual fund shares."

Revenue Ruling 82-54. In this fourth "investor control" Ruling, the annuity owners direct the insurance company to invest in shares of any or all of three mutual funds that are **not** available to the public. One mutual fund invests primarily in common stocks, another in bonds, and the third in money market

instruments. The investors chose the original allocation of the investments among the three funds and have the unlimited right reallocate before the annuity contract's maturity date. The IRS held that the annuity owners' ability to choose the contract's investments did not constitute sufficient control to cause them to be treated as owners of the mutual fund shares. In its analysis, the IRS reiterated its position in Revenue Ruling 81-225 that public availability of investments will cause annuity owners to be treated as owners of the underlying mutual fund shares.

Christoffersen v. United States. In 1984, the United States Court of Appeals for the Eighth Circuit upheld the IRS's investor control theory of Revenue Ruling 81-225 in *Christoffersen v. United States*. The taxpayers in *Christoffersen* had purchased a variable annuity contract that reflected the investment return and market value of the insurance company's separate account assets. The taxpayers had the power to direct the investment of premiums in any one or all of six publicly available mutual funds, to reallocate their investment among such funds at any time, to make withdrawals, to surrender the contract, and to apply the contract's accumulated value to provide annuity payments.

Post-Christoffersen Legislation. After the Eighth Circuit Court's decision in the *Christoffersen* case, the Congress enacted Code section 817, which aims to discourage use of variable annuities and life insurance primarily as investment vehicles. Before the issuance of further revenue rulings in 2003 (discussed below), some commentators had suggested that the enactment of the diversification requirements under Code section 817(h) (and other measures) effectively rendered *Christoffersen* (and Revenue Ruling 81-225) obsolete. This view was supported by language in the General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 ("DEFRA Blue Book") indicating that the Congress introduced the diversification requirements in Section 817(h) to address any and all concerns with respect to investor control of assets underlying insurance company variable contracts. The Joint Committee on Taxation wrote the following:

> In authorizing Treasury to prescribe diversification standards, the Congress intended that the standards be designed to deny annuity or life insurance treatment for investments that are publicly available to investors and investments which are made, in effect, at the direction of the investor.

When the Treasury issued its proposed regulations under Code section 817(h), it sidestepped the investor control issue. In its preamble to such regulations, the Treasury expressly noted that the regulations "do not provide guidance concerning the circumstances in which investor control of the investments of a segregated asset account may cause the investor, rather than the insurance company, to be treated as the owner of the asset in the account." The preamble further stated that guidance on investor control issues would be provided in separate regulations or rulings.

Revenue Rulings 2003-91 and 2003-92. The subsequent major guidance issued by the IRS on the investor control issues with respect to variable contracts was in the form of two revenue rulings issued in 2003. Revenue Ruling 2003-91 involved a life insurance company that offered variable life insurance and variable annuity contracts. The assets that funded the contracts were held in a separate account that was divided into various sub-accounts. Each sub-account offered a different strategy. Under the facts of this ruling, an individual purchased a life insurance contract and at the time of purchase, the

holder specified the allocation of premiums paid among the sub-accounts. The investments could be reallocated, at the direction of the holder, among the twelve sub-accounts, each representing a different investment strategy, at any time. Investment in the sub-accounts was available solely through the purchase of the insurance contract.

All decisions concerning the choice of the investment adviser, and any changes with respect to the sub-accounts offered, were made by the insurance company in its sole and absolute discretion. No arrangement, plan, contract, or agreement exists between the contract holder and the insurance company or between the contract holder and the investment advisor regarding the specific investments or investment objective of the sub-accounts. The contract holder could not communicate directly or indirectly with the insurance company concerning the selection or substitution of the investment advisor or other managers of the account or sub-accounts. The contract holder had no legal, equitable, direct, or indirect interest in any of the assets held by a sub-account; rather the contract holder had only a contractual claim against the insurance company to collect cash from the insurance company in the form of death benefits, or cash surrender values under the contract. Revenue Ruling 2003-91 concluded that the holder of a variable contract under such facts was not the owner of the assets that funded the variable contract for federal income tax purposes because the holder did not have direct or indirect control over the separate account.

Revenue Ruling 2003-92 clarified and amplified Revenue Ruling 81-22, by stating that a variable contract holder was the owner of interests in an unregistered partnership (e.g., a hedge fund or private equity fund) where the interests in such partnership were not available exclusively through the purchase of a life insurance policy or annuity contract. In effect this Ruling confirmed the position taken by the IRS in private letter rulings that the term "general public" included individuals purchasing partnership interests in private placement transactions. More recently, the IRS has confirmed that the fact that a similar fund is available to the public will not cause the fund held by the insurance company's separate account to be treated as being publicly available. See, e.g., Private Letter Ruling 20147007 (April 25, 2014).

Webber v. Commissioner. On June 30, 2015, the Tax Court issued a 92-page opinion in the case of *Webber v. Commissioner* affirming the enforceability of the IRS' investor control doctrine. Mr. Webber was a venture capital investor and private equity fund manager who established a grantor trust to purchase private placement variable life insurance policies insuring the lives of two elderly relatives. The policies were purchased from a Cayman life insurance company and the taxpayer and his family members were listed as the beneficiaries. The premiums paid for each policy, after deduction of a mortality risk premium and other applicable charges, were placed in a separate account underlying the policy. The Tax Court summarized the investor control doctrine[2] as follows:

> The "investor control" doctrine posits that, if a policyholder has sufficient "incidents of ownership" over the assets in a separate account underlying a variable life insurance or annuity policy, the policyholder rather than the insurance company will be considered the owner of those assets for Federal income tax purposes. The critical "incident of ownership" that emerges from these rulings is the power to decide what specific

[2] *Webber v. Com'r,* 144 T.C. No. 17 (2015), at pp. 55-56.

> investments will be held in the account. . . . Other "incidents of ownership" emerging from these rulings include the powers to vote securities in the separate account; to exercise other rights or options relative to these investments; to extract money from the account by withdrawal or otherwise; and to derive, in other ways, what the Supreme Court has termed "effective benefit" from the underlying assets.

The assets in these separate accounts purchased investments in startup companies which, as the Tax Court noted, the taxpayer was intimately familiar with, and also in which he invested personally and through the funds he managed. After examining the facts, including thousands of emails sent by Webber to parties acting as his agent with "recommendations" that were routinely followed by the "investment managers" of the accounts, the Tax Court determined that the taxpayer effectively dictated both the companies in which the separate accounts would invest and all actions taken with respect to these investments.

The IRS cited the "investor control" doctrine and other principles, and concluded that the taxpayer had retained sufficient control and incidents of ownership over the assets in the separate accounts to be treated as their owner for federal income tax purposes. The IRS thus treated the taxpayer as having received the dividends, interest, capital gains, and other income realized by the separate accounts. The IRS also assessed accuracy related penalties on the taxpayer under Code section 6662.

The Tax Court held that the IRS' pronouncements enunciating the investor control doctrine are entitled to deference and weight and that Webber "retained control and incidents of ownership over the assets" and was therefore "taxable on the income earned on those assets during the taxable years at issue." In holding that the taxpayer was the owner of investments held under the variable annuity contract , as contract owner, the taxpayer had (a) unfettered ability to select investments for the separate accounts under the contract, and neither the issuer nor the investment manager of the separate account exercised any independent investment discretion, (b) dictated all actions the separate account took with respect to ongoing investments,[3] (c) had numerous ways to extract cash from the contract without a surrender of the contract[4] and without loans against the contract, and he frequently exercised such power (e.g., by selling assets to the separate accounts, by borrowing money from the separate accounts, and by having the separate account make investments that generated liquidity for the taxpayer), and (d) derived other economic benefits, including causing the separate accounts to make investments that were used for personal pleasure by the taxpayer (including a winery, a Big Sur resort, and a Canadian hunting lodge), that discharged the contract owner's personal commitments, and that bolstered investments held by the taxpayer outside the contract.

Consequently, the Tax Court upheld the IRS' deficiency determinations for the most part but concluded that the taxpayer as not liable for the penalty assessments (even though the taxpayer was widely believed by tax advisors to have flagrantly disregarded the most minimal of standards to avoid investor control). The facts described herein concerning the investments made by the Supporting Organizations

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[3] Giving the contract owner SEC-mandated voting rights with respect to underlying investments is not sufficient to establish investor control. Rev. Rul. 81-225, 1981-2 C.B. 12.

[4] The contract owner's right to surrender the contract is not sufficient to establish investor control. Rev. Rul. 81-225, 1981-2 C.B. 12.

in the Variable Contracts issued by Crown Global in no way resemble the facts considered by the court in the *Webber* case.

Application of the Investor Control Precedents to the Variable Contracts.

Both Supporting Organizations certificates of incorporation state in the "Second" clause:

"The corporation is organized and shall be operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purposes, the corporation is organized and operated exclusively to support and benefit The Dallas Foundation, a Texas nonprofit corporation that is exempt from federal income taxation under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and a public charity described in section 509(a)(1) of the Code. In furtherance of these purposes, the corporation shall be controlled by The Dallas Foundation within the meaning of Section 509(a)(3)(B)(i) of the Code. . . . [T]he corporation shall carry on only those activities permitted to be carried on by an organization that is exempt from taxation under section 501(c)(3) of the Code and an organization that is described in section 509(a)(3) of the Code."

The "Second" paragraph quoted from each certificate of incorporation is clear that the respective Supporting Organization is formed to operate exclusively "to support and benefit" The Dallas Foundation. Further the "Eighth" paragraph of the certificate of incorporation for each Supporting Organization indicates that upon its dissolution, all of its assets are to be distributed to The Dallas Foundation.

Each Supporting Organization will be classified as a "Tier 1" supporting organization for federal income tax purposes. A "Tier 1" Supporting Organization, from time to time, will provide its supported organization, The Dallas Foundation, distributions of cash. The IRS web page describes the relationship as:

"Type I. A Type I supporting organization must be operated, supervised or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. The relationship between the supported organization(s) and the supporting organization is sometimes described as ***similar to a parent-subsidiary relationship***. (emphasis added.)"[5]

Section 2.13 "Control of Investments" within the bylaws of each Supporting Organization provide that The Dallas Foundation, as Institutional Member, "shall have the sole and exclusive power and authority to direct the management and investment of the assets" of each Supporting Organization. This power affirmatively rests exclusively in the hands of The Dallas Foundation's Institutional Members and no other officer or director of the respective Supporting Organization. This mandate is reflected in the bylaws' Section 2.13 as:

"Such power and authority shall be exercised by the Institutional Member in its sole discretion and shall be separate and independent of any power and authority of the Board of Directors and officers of the

[5]See, https://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Supporting-Organizations-Requirements-and-Types

Corporation ***which have no power or authority*** with respect to the matters delegated hereby to the Institutional Member with respect to investments" (emphasis added).

Therefore, the Supporting Organizations' Individual Directors and officers, including Grant Scott or Mark Okada, have no power or authority with respect to matters assigned to The Dallas Foundation with respect the decision to purchase the Variable Contracts.

This power within Section 2.13(d) vested with the Institutional Member includes control of decisions with respect to:

"the power to acquire life insurance policies, annuities, and/or other insurance or similar products (including the exercise or non-exercise or any rights, or the prosecution or defense of any disputes with the issuer or other parties regarding legal, regulatory, contractual, or other matters, arising under or relating to such products) ..."

Section 2.13(e) of the bylaws extends the power to the Institutional Members to include:

"the power to direct, and delegate to, the officers of the Corporation the taking of such acts and the execution of such documents as may be necessary to effectuate the decisions of the Institutional Member with respect to investments."

The Dallas Foundation holds the Institutional Member seats on the board of the Supporting Organizations per Section 2.1 of the respective bylaws. The Dallas Foundation has appointed as Directors Gary W. Garcia and Mary M. Jalonick per the respective "Statement of Incorporator."

Thus, the corporate provisions for each Supporting Organization's certificate of incorporation and bylaws is absolutely clear that The Dallas Foundation controls all of the respective Supporting Organization's activities, including investments, purchases of the Variable Contracts, grants, and operating costs and expenses, and is entitled solely and exclusively to the economic benefit of such Supporting Organization's investments, including from the Variable Contracts.

Supporting Organization #1 received a donation of cash of $16,034,978.50 on December 8, 2015 from Mr. Dondero. Supporting Organization #2 received a donation of cash of $5,345,021.50 from Mr. Okada on December 8, 2015. After the cash donation was made, the Board of Directors of each Supporting Organization authorized the purchase of a Variable Contract offered by Crown Global through a Resolution of Unanimous Consent on December 9, 2015. Effective December 11, 2015, Crown Global issued Variable Contracts #30218 and #30219 to Supporting Organization #1 and Supporting Organization #2, respectively. The Variable Contracts offered investment opportunities in three Insurance Dedicated Funds, including Atlas IDF. The Dallas Foundation, acting as the Institutional Board member of each Supporting Organization, directed the premiums to be allocated 100% to Atlas IDF.

Each Variable Contract, in the respective "Policy Data Page" to the Deferred Variable Annuity Policy, indicates under "Beneficiary" the sole beneficiary as the respective purchasing Supporting Organization #1 and Supporting Organization #2, and such designation is "irrevocable".

Therefore, it is without question that the investment decision to purchase the Variable Contract and allocate the premium to Atlas IDF was made by The Dallas Foundation. Through this decision by The Dallas Foundation, the investment performance of Atlas IDF will accrete to each respective Supporting Organization, and therefore, ultimately, to The Dallas Foundation. Ultimately, The Dallas Foundation will solely and exclusively derive any and all of the economic benefits from the Variable Contracts issued by Crown Global. Concomitantly, neither the Donors nor the Donors' agents, affiliates, related parties etc. derive any of the economic benefits from the Variable Contract's performance through the investment decisions made by Rand Advisors within Atlas IDF.

Each Variable Contract policy provides in Sections 4.5 and 5.1 the allowance that the Supporting Organization can reallocate funds, at quarterly intervals (but no more than twice per calendar year), among the available investment options provided in the Contract. Therefore, The Dallas Foundation, should it no longer want exposure to Atlas IDF, has the right to reallocate funds to another investment offering.

Crown Global, through Sections 4.7 and 4.11 of each Variable Contract policy, has the sole and absolute discretion to terminate Atlas IDF as an investment offering available to each Supporting Organization. Each Supporting Organization has the right to fully or partially surrender the Variable Contract back to Crown Global, in accordance with Sections 8.2 and 8.3 of the policies. No more than one partial surrender may be requested by the policyholder during each quarter of a policy year.

As discussed above, Atlas IDF will qualify for look through treatment for purposes of satisfying the diversification requirements of Section 817 of the Code. In order to qualify for such look through treatment, it is essential to conclude that the equity interests in the Rand IDF have not been offered to the "general public". Since the offering documents for the Rand IDF provide for such restricted access to the fund, we have assumed that the Rand IDF has satisfied, and will continue to satisfy this requirement.

The PPM for Atlas IDF provides that approximately 45 percent of its assets will be invested in a portfolio of high yield debt instruments and other securities selected by, and managed by the investment manager of the IDF, Rand Advisors. Under the governing documents of the Variable Contracts and the Atlas IDF, the Supporting Organizations are not provided with any opportunities to participate in any purchase or sale or other investment decisions made with respect to the IDF's debt portfolio, and we have been instructed to assume that the Supporting Organizations and their agents will not attempt to do so.

The PPM for Atlas IDF further provides that approximately (but no more than) 55 percent of the IDF's portfolio will be invested in private equity investments through an investment made by the IDF in the Rand PE Fund 1. Although it was anticipated that the Rand PE Fund would seek to make an investment in limited partnership interests in Highland, the terms of such investment were negotiated by Rand Advisors, as investment manager of the PE Fund, the Supporting Organizations were not provided with any opportunity to participate in such negotiations, and in fact purchased their Variable Contracts before any such investment in Highland was made by the PE Fund. There was no guarantee that the Highland investment would in fact be made and there was no provision for unwinding the investment by

Crown Global in Atlas IDF or the investments made by each Supporting Organization in its Variable Contract if such were the case.

Further, the governing documents of the Rand PE Fund provide that all investment decisions with respect to such Fund are to be made by Rand Advisors, and we have been instructed to assume that the Supporting Organizations and their agents will not attempt to participate in such decisions. The owners of the Variable Contracts will not have the ability to exercise any voting rights with respect to securities held by the Atlas IDF or Rand PE Fund, and such owners of the Variable Contracts will not have the ability to require any distributions by the insurance company pursuant to withdrawal rights in such contracts to be made in kind rather than in cash. Due to the nature of the illiquid private equity investments in the Separate Accounts, the Variable Contracts contain certain limitations on the ability of the owners of such contracts to withdraw funds.

On December 21, 2015, Rand Advisor's special purpose vehicle, Hunter Mountain Investment Trust, controlled by the Rand PE Fund, executed a Contribution Agreement with Highland Capital Management. L.P., in exchange for newly-issued limited partnership interests in Highland Capital Management, L.P. (the "Contribution Transaction"). On December 24, 2015, Rand Advisor's special purpose vehicle, Hunter Mountain Investment Trust, controlled by the Rand PE Fund, executed a Purchase and Sale Agreement to acquire interests in Highland Capital Management, L.P. from The Dugaboy Investment Trust, The Mark and Pamela Okada Family Trust-Exempt Trust #1, The Mark and Pamela Okada Family Trust-Exempt Trust #2, and Mark K. Okada (the "Purchase Transaction" and together with the Contribution Transaction, the "Highland Transaction").

The Highland Transaction was negotiated between Rand Advisors and the respective Highland counterparties and their legal representatives. Prior to consummation of the Highland Transaction, neither The Dallas Foundation nor the Supporting Organizations directed, compelled, or caused Rand Advisors to make the investment in the Highland Transaction.

The investor control doctrine was created to prevent the policyholder or beneficiary of an insurance product that qualifies under Section 72 of the Code from directly or indirectly making investment decisions with respect to the investment assets within the insurance product. The concern was that policyholders and beneficiaries should not be able to direct the investments and receive the economic benefit of those directions within an insurance product. That is the fundamental principle laid out in in the recent Tax Court case of *Webber v. Commissioner*.

Therefore, applying that *Webber* principle of the investor control doctrine to the Highland Transaction, it is not a legally significant fact that the Donors to each of the Supporting Organization are also participants in the Highland Transaction because the beneficiary of the economics from the investment performance of the Variable Contracts are not the Donors but rather are the Supporting Organizations and ultimately The Dallas Foundation.

As further support for our view, Rand Advisors made the independent investment decision to participate and negotiate the Highland Transaction. Moreover, it is clear that Rand Advisors was not taking directions nor compelled by The Dallas Foundation or the Supporting Organizations to enter into the Highland Transaction. Accordingly, there is no way the Highland Transaction can in any way be

characterized as "control" by The Dallas Foundation or the Supporting Organizations over the investment activities of Atlas IDF and its respective investment accounts.

The facts and circumstances of the purchase of the Variable Contracts by the Supporting Organizations support the conclusion that Crown Global is the owner of Atlas IDF and its investments, and that the Supporting Organizations will not be treated as the owner of the investments. The facts present none of the factors that the Tax Court found determinative in *Webber*. In particular:

- Neither The Dallas Foundation nor the Supporting Organizations have any ability to select investments in Atlas IDF held by the Variable Contracts;
- Neither The Dallas Foundation nor the Supporting Organizations have any ability to vote securities owned by Atlas IDF or the ability to exercise other options with respect to such investments;
- Other than the right to partially or fully surrender the Variable Contracts, the Supporting Organizations cannot withdraw funds indirectly out of the Variable Contracts. In particular, neither The Dallas Foundation nor the Supporting Organizations can cause Atlas IDF to purchase assets from The Dallas Foundation or the Supporting Organizations. Nor can The Dallas Foundation or the Supporting Organizations borrow funds from Atlas IDF or otherwise engage in any transaction with Atlas IDF.

In addition, the facts and circumstances closely track the facts and circumstances of Revenue Ruling 2003-91's safe harbor provisions. In addition to the facts recited above:

- There is no arrangement, plan, contract, or agreement between The Dallas Foundation or the Supporting Organizations and Crown Global or Rand Advisers as to the investments to be held in Atlas IDF.
- The Dallas Foundation and the Supporting Organizations have no right to, and will not, communicate with any investment officer of Crown Global or its affiliates or with any Investment Manager regarding the selection, quality, or rate of return of any specific investment or group of investments held in Atlas IDF.
- The Dallas Foundation and the Supporting Organizations have no legal, equitable, direct, or indirect interest in any of the assets held by Atlas IDF. Rather the Supporting Organizations only have a contractual claim against Crown Global to collect cash from the Variable Contracts.
- All decisions concerning the choice of Insurance Dedicated Fund offerings, or any of Crown Global's investment officers involved in the investment activities of any Insurance Dedicated Fund, are made by Crown Global in its sole and absolute discretion.[6]

[6] See also, P.L.R. 9752061 (Dec. 24,1997) ("Policyholder influence over the way the investments are managed will be limited to selecting an investment manager from a pool of investment managers whose credentials have been evaluated and approved by Taxpayer. These investment managers may be recommended to Taxpayer by one or more Policyholders. Taxpayer will be under no obligation to approve any such recommendations. Moreover, once Policyholder makes an initial selection, the investment manager can only be changed by Taxpayer and not by Policyholder"; Taxpayer (the issuing insurance company) was held to be the owner of the assets held under the contract).

- Neither The Dallas Foundation nor the Supporting Organizations have any right to, and will not, communicate with Crown Global concerning the selection or substitution of any investment manager or insurance dedicated fund involved in the investment activities of Atlas IDF.

In sum, based upon these facts, we believe that the Supporting Organizations will not be treated as the owners of the investments and other assets held in the Separate Accounts, since the Supporting Organizations will not have the types of control which the IRS has viewed as essential in order to apply the investor control doctrine to make another person other that the holder of the assets (i.e., the insurance company) the owner for tax purposes.

B. **UNRELATED BUSINESS TAXABLE INCOME ISSUES FOR INVESTORS IN DEFERRED VARIABLE ANNUITY CONTRACTS**.

As discussed above, we have reached the conclusion that under the facts and assumptions set forth herein, for federal income tax purposes, the insurance company should be treated as the owner of the assets in the Separate Account (i.e., the equity interests in the Rand IDF), and each of the Supporting Organizations should be treated as owners of their respective Variable Contract. We have also been instructed to assume that neither Supporting Organization has, or will ever, incur "acquisition indebtedness" with respect to its Variable Contract.

Possible Application of Section 72(u) of the Code. In 1986, Congress was concerned that employers were utilizing deferred annuity contracts to fund nonqualified deferred compensation arrangements on a tax-favored basis, and that this was acting as a disincentive to employers to fund benefits through qualified retirement plans. Section 72(u) was added to the Code to curtail such activity. The legislative history to section 72(u) states:

> The committee believes that the present-law rules relating to deferred annuity contracts present an opportunity for employers to fund, on a tax-favored basis, significant amounts of deferred compensation for employees. This favorable tax treatment may create a disincentive for employers to provide benefits to employees under qualified pension plans, which are subject to significantly greater restrictions.[7]

Section 72(u) states, in relevant part, that "any annuity contract" owned by "a person who is not a natural person" (e.g., a corporation) shall not be treated as an annuity contract for purposes of the income tax provisions of the Code (Sections 1-1563, known as Subtitle A), other than Subchapter L (i.e., Sections 801-848 relating to insurance companies). The effect of this rule was to eliminate the deferral of income tax for the corporate investor in the contract on the "inside buildup" income of the annuity contract. If a non-natural person does hold an annuity contract and no exception applies, then Section 72(u)(1)(B) provides that the "income of the contract" for any taxable year is "ordinary income" that the owner is treated as receiving or accruing during that taxable year.

[7] S. Rep. No. 99-313, at 567 (1986).

Exemptions under Section 72(u). We would also note that the drafters of Section 72(u) also inserted some specific exemptions in Section 72(u)(3). For example, Section 72(u)(3)(B) provides that Section 72(u) does not apply to any annuity contract held under a qualified plan described in Section 401(a) of the Code or an "individual retirement plan" (i.e., individual retirement accounts and individual retirement annuities described in Section 7701(a)(37)). Section 72(u) also contains an exemption for "immediate annuities" held by any non-natural person. The inclusion of these exemptions indicates that Section 72(u) is designed to eliminate the tax deferral benefit that taxable corporations could derive from investments in deferred annuity contracts. We are not aware of any policy reason why a deferred annuity contract held by a qualified plan or an IRA should be exempted from Section 72(u) but one held by a tax-exempt corporation should be covered, and we have found nothing in the brief legislative history of this Code provision that addresses this issue. Consequently, the failure of the drafters to include an exemption from Section 72(u) for other tax-exempt entities that are not qualified plans or IRAs appears to be an oversight or drafting error.

Definition of "Income on the Contract". Section 72(u) provides its own special definition of "income on the contract" in Section 72(u)(2). Such income is defined as the *excess of* (1) the sum of the "net surrender value' of the contract at the close of the taxable year plus all distributions under the contract received during the taxable year or any prior taxable year, *over* (2) the sum of premiums paid on the contract (net of dividends) plus all amounts includible in income for prior taxable years under Section 72(u). It is significant that the income to be recognized by the owner of the annuity contract is the net change in value of the contract rather than the actual net income realized by the separate account of the insurance company that has issued the annuity contract backed by the separate account. In effect, Section 72(u) does **not** provide for income taxation of the holder of the contract as if the contract owner owned the underlying assets in the insurance company's separate account.

The Supporting Organizations are corporations, and thus non-natural persons within the meaning of Section 72(u). Section 512(b), which contains a specific exclusion from UBTI for "annuities" is in Subtitle A of the Code. Thus, the Section 72(u) could be interpreted to provide that the UBTI exclusion for "annuities" would not apply to a tax-exempt corporation that owned a variable annuity contract. We have found no evidence in the legislative history that would indicate that Section 72(u) was intended to change the character of the income recognized by tax-exempt corporations that owned variable annuity contracts. Even if the specific exclusion from UBTI for "annuities" were held inapplicable to the income derived by the Supporting Organizations from the Variable Contracts, there are alternative provisions of the tax law that could be cited to support an exclusion of the income from such Contracts from UBTI.

Treasury Regulations Defining Investment Income Excluded from UBTI. Section 512(b) of the Code states that certain income items, including "annuities", interest, dividends, royalties, real property rents and gains realized on sale, exchange or disposition of property (other than inventory or property held primarily for sale to customers in the ordinary course of a trade or business) are specifically excluded from UBTI. Congress subsequently amended Section 512(b)(1) to add "payments with respect to securities loans" and "amounts received or accrued as consideration for entering into agreements to make loans" to the list of items excluded from UBTI. In the 1990's there were many new types of financial instruments, including equity swaps and total return swaps, that were made available and tax counsel sought advice from the Treasury for further clarification of the UBTI rules for investments made

by tax-exempt entities in such financial instruments. In 1992, the Treasury amended Section 1.512(b)-1 of the Regulations to provide that the specific exclusion from UBTI in Section 512(b)(1) also applies to "income from notional principal contracts" (as defined in the Regulations) and "other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner...."

Thus, it can be argued that the income required to be recognized by a Supporting Organization under Section 72(u) as a result of its investment in the Variable Contract could still qualify for exclusion under this Treasury Regulation as "substantially similar income from ordinary and routine investments". We have found no revenue ruling or case which has addressed this issue. We would note, however, that Section 72(u) by its terms is only applicable to "annuity contracts". Thus, if the Supporting Organizations had instead purchased variable life insurance policies, Section 72(u), by its terms, would not be applicable. If Congress intended to eliminate the UBTI exemptions applicable to tax-exempt corporations that invested in variable contracts, it is unclear why the Section 72(u) provision by its terms is only applicable to "annuities" and not variable life insurance policies.

Unrelated Trade or Business.

The tax on UBTI was passed into law to rectify situations where an exempt organization could engage in any trade or business, secure in the knowledge that the profits generated from such trade or businesses would not be subject to tax, assuming the funds from such trade or business were received by the exempt organization. As stated in the House Committee Report:

> The problem at which the tax on unrelated business income is directed here is primarily that of unfair competition. The tax-free status of these section 101 organizations enables them to use their profits tax-free to expand operations, while their competitors can expand only with the profits remaining after taxes. Also, a number of examples have arisen where these organizations have, in effect, used their tax exemption to buy an ordinary business.[8]

Under Section 511 of the Code, gross income of a tax-exempt organization will be treated as UBTI if:

1. It is income from a "trade or business";
2. The trade or business" is "regularly carried on" by the organization or a partnership in which it is a member; and
3. The conduct of the "trade or business" is not substantially related to the purposes of the organization.

In order for the IRS to assert that some or all of the income from Variable Contracts constitutes UBTI, the IRS will need to establish that some or all of the income from the Variable Contracts is "trade or business" income. Thus, unless the Variable Contracts were deemed to be partnership interests, or the

[8] H. Rep't No. 2319, 81st Cong., 2d Sess. 33-37 (1950).

activity of acquiring such Variable Contracts were deemed to be a business activity, the income items recognized by the Supporting Organizations would not be treated as UBTI.

In general, a trade or business for UBTI purposes is based on Section 162 principles, and is viewed as an activity that produces income from the sale of a product or performance of services. In a 1969 Revenue Ruling, the IRS held that a tax-exempt entity's investment in insurance and annuity contracts was not a business activity. See Revenue Ruling 69-74. The IRS will not be able to establish an unrelated trade or business with respect to either Supporting Organization. The Variable Contracts are contractual entitlements only, and any economics paid or accrued are paid or accrued with respect to such contract.

As discussed in detail in this letter, we do not believe that the Supporting Organizations could be treated as the tax owners of the underlying partnership investments of the Separate Accounts under the IRS's "investor control" doctrine discussed in detail above. The facts and assumptions described above do not support treating the Supporting Organizations as partners in the Atlas IDF, the Rand PE Fund or the underlying Highland limited partnership.

Code Section 514(g) Amendment. Section 72(u) was added to the Code in 1986. Two years **earlier**, Congress had amended Code Section 514 (by adding a new subsection (g)) to specifically grant regulatory authority to the Treasury to issue regulations "necessary or appropriate" to prevent the avoidance of the debt-financed income rules through the use of "segregated asset accounts". The legislative history of the 1984 legislation specifically states that such regulations, if issued, shall only apply prospectively. We have found no reference to the 1984 amendment to Section 514 in the legislative history of Section 72(u). As of the date of this letter, the Treasury has not issued any proposed regulations to implement Section 514(g). Further, there have been no regulations issued or proposed under Section 72(u).

Private Letter Rulings under Section 72(u). There are two IRS private letter rulings, published in 2002 and 1997, that appear to have addressed the tax treatment of tax-exempt corporations that have made investments in variable annuities backed by separate accounts that held UBTI generating assets. PLR 20020647 (dated Nov. 13, 2001); PLR 9708022 (dated Nov. 26, 1996). These PLRs focus on the application of Section 72(u) and the use of group annuity contracts (GACs) purchased by a foundation or endowment (i.e., a non-natural person). The underlying investment of the GAC was a real estate partnership (presumably funded with debt financing). The PLRs state that while the GAC was subject to Section 72(u) in the hands of the tax-exempt organizations, the annuity continued to be treated as a valid variable contract under Section 817(d) of the Code. As a result of Section 72(u) being applicable, the life insurer would issue a Form 1099 to the endowment or foundation for any current income required to be recognized by reason of Section 72(u).

The tax issue is the character of the income to such tax-exempt entities. The two letter rulings, state, in essence, that in the view that the contract's status as an annuity contract under Subchapter L of the Code (relating to insurance company taxation), "the tax treatment of the contract holder under Section 72(u)(1)(A) does not preclude the contract from satisfying the requirements of Section 817(d)(2)(A) for purposes of determining the taxpayer's income." As such, the rulings conclude that the contracts do provide for the "payment of annuities." This would support the conclusion that the "income on the

contract" received by the Supporting Organizations constitutes "annuity" income and therefore does not constitute UBTI. It is our understanding the counsel for insurance companies generally are of the view that such PLRs support the position that the character of the contract holder's income is "annuity" income or other investment income exempt from UBTI despite the fact that the GAC is subject to Section 72(u).

In addition, another private letter ruling, published in 1990, supports the contention that the income reportable by each Supporting Organization does not constitute UBTI. In PLR 9009047, a trust was requesting a ruling that it qualified as a charitable remainder unitrust. The trustee of the trust intended to invest all the trust's assets in a deferred annuity contract. The ruling acknowledges that the annuity contract to be acquired by the trust will be subject to Code section 72(u) because the trust is not a natural person and the trust is not holding the annuity as an agent for a natural person. The ruling concludes that the trust will qualify as a charitable remainder unitrust and therefore the trust "will be exempt from taxes imposed by subtitle A of the Code unless it has any unrelated business taxable income as defined in section 512 of the Code and the regulations applicable thereto." Immediately thereafter, the ruling states that the trust will include in its ordinary income for any tax year the "income on the [annuity] contract" in accordance with Code section 72(u). This again supports the conclusion that amounts reportable by a tax-exempt organization with respect to an annuity contract will not constitute UBTI.[9]

Private letter rulings of this type are issued to a particular taxpayer in response to a request from the taxpayer for an interpretation of the tax law to a particular set of facts. PLRs may not be cited as precedent and generally may not be relied upon by as taxpayer other than the taxpayer which applied for and received the PLR. However, PLRs are typically viewed by tax counsel as indicative of the interpretations of the tax law that IRS personnel would likely apply to other taxpayers with the same issue.

Mark to Market Taxation of an Annuity Contract under Section 72(u) Supports Exclusion from UBTI. Even if the "income on the contract" that will be reported to each Supporting Organization is not considered an amount from an annuity because of Code section 72(u), alternative arguments exist that support the contention that the "income on the contract" does not constitute UBTI.

As discussed above, the "income on the contract" that will be reportable to each Supporting Organization will represent the increase in value of the assets underlying the Variable Contracts. The manner in which the contract owner's annual income inclusion is calculated under Section 72(u) resembles a mark-to-market approach to determining the investor's gain from ownership of the contract during the applicable taxable year. Essentially, the "income on the contract" represents the amount that would be realized if all the assets underlying the Separate Accounts were sold for their fair market value at the close of each taxable year. As noted above, Section 512(b)(5) contains a broad exemption from UBTI for gains realized on sales, exchanges or "other dispositions" of property (other

[9] This conclusion is also supported by commentators. *See* Zaritsky, Lane & Danforth, Federal Income Taxation of Estates and Trusts, §14.03[6][a][iv] ("Because the income option CRUT is tax exempt, no tax is due on the current accumulations").

than inventory or dealer assets). Furthermore, gain realized by tax-exempt investors under the mark-to-market rules of Code Section 1256 are entitled to the UBTI exclusion provided by Section 512(b)(5).

The UBTI exclusion does not apply to gains or losses from the sale, exchange, or other disposition of property that is (i) stock in trade or other property of a kind which would properly be included in the inventory of the organization if on hand at the close of the taxable year, or (ii) property held primarily for sale to customers in the ordinary course of the trade or business. The investments underlying the Variable Contracts should not constitute inventory or property held primarily for sale to customers in the ordinary course of a trade or business. Accordingly, even if the "income on the contract" does not constitute annuity income, it is analogous to gains from the sale, exchange or other disposition of property that is not inventory or held for sale to customers, which is excluded from UBTI.

Notional Principal Contract or Other Ordinary or Routine Investment Income. Additionally, each Supporting Organization is an owner of an investment contract issued by Crown Global. Even if such contract is excluded from being treated as an annuity contract under the literal reading of Section 72(u), such contract more closely resembles a "notional principal contract" or "other ordinary or routine investment" referred to in the exclusions from UBTI of Section 1.512(b)-1(a) of the Regulations.

Failure to Qualify for the Section 512(b)(1) Exclusion Does Not Result in UBTI. Section 512(b) provides a special exclusion for certain types of investment income, but the failure to qualify for the specific exclusions in such Section does not automatically result in UBTI classification for the income items. Section 72(u) provides that the income to be recognized by the non-natural owner of the annuity account is treated as "ordinary income". Ordinary income is not of necessity characterized as UBTI; interest income, royalties and real property rents, for example, are also items of ordinary income that qualify for exemption from UBTI.

There is No Federal Income Tax Authority to Support an IRS Position that the Income from the Variable Contracts is UBTI.

Unable to find an unrelated trade or business upon which to base a conclusion that the Supporting Organizations receive UBTI (as discussed above), the IRS would need to develop a legal theory that the character of trade or business income that flows to Crown Global maintains its character as the income (i.e., UBTI) received by the Supporting Organizations. The IRS would encounter at least three problems with any such legal theory.

First, corporate entities similar to Crown Global are regularly used to "block" a tax-exempt organization from receiving UBTI. Under this planning technique, the corporate blocker reports any income that would have been UBTI if received directly by the tax-exempt on its own corporate tax return. Any amounts distributed by such corporation to its shareholder are generally dividend income, which is excluded from UBTI.[10] In this instance, any trade or business income will be reported by Crown Global on its own federal income tax return. Therefore, any amounts received by the Supporting Organizations should be classified as a dividend or other distribution that would not constitute UBTI.

[10] Code § 512(b)(1).

Second, the Variable Contracts are similar to a derivative contract, as both are contractual obligations between two unrelated parties who both rely on other party's credit quality and risk, which may be significantly different than the risk profile of the reference assets underlying the contract. Further, one party to the contract typically "hedges" its obligations, similar to Crown Global hedging its obligations by purchasing interests in Atlas IDF, L.P.[11] Derivative financial instruments are regularly used to convert or block certain types of income to the desired derivative income by changing the legal relationship and risks from holding the investments directly versus obtaining a counterparty's promise to return similar economics.

Similar examples are found in the context of FIRPTA assets[12] and a foreign investor investing in U.S. assets indirectly through derivative contracts. With respect to FIRPTA, foreign investors can avoid the application of FIRPTA withholding by acquiring a synthetic long position in U.S. real estate through a derivative product. The IRS has concluded that this type of position is not a U.S. real property interest that would be subject to FIRPTA withholding.[13] Another example is a foreign investor gaining exposure to U.S. investment assets by entering into a derivative contract with a foreign counterparty bank. The foreign bank will acquire the investment assets. From the foreign investor's standpoint, the derivative contract converts U.S. source income on the U.S. investment assets into foreign source income, thereby avoiding exposure to U.S. income tax or withholding tax.[14]

The above examples demonstrate that federal tax laws respect the difference between holding a certain investment asset directly and another where one has economic exposure to the investment asset indirectly through a contractual promise by a counterparty. These examples are closely analogous, if not nearly identical, to the issuance of a variable annuity contract by a life insurance company that provides the investor a return measured by a Separate Account owned by the insurance company. The only difference is that the contractual relationship is also regulated under an insurance regime.

Third, an IRS legal theory that some portion of the Variable Contract's income is UBTI would expose a significant flaw. Such a legal theory would require that the same amount of income be taxed twice, without reduction for the amount paid by the first party. Specifically, the income from the Variable Contract is reported on Crown Global's U.S. federal income tax return. To then require the Supporting Organizations to also report such income as UBTI would be axiomatic to tax law principles of not taxing different taxpayers on the same income received. Even double tax regimes, such as the corporate income and dividend tax, do not tax the same amount of income to two different taxpayers twice. Rather, first the corporate earnings are taxed at a corporate rate; then the corporation only has the after-tax dollars to distribute to shareholders in the form of a dividend.

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[11] Generally, it does not make a difference from a tax perspective if one of the parties to the derivative is fully hedged or is not, or actually owns the referenced assets. The income from the derivative contract is not treated for tax purposes as income on the underlying referenced investment assets. *See* Rubinger, Jeffrey, *IRS Rules Total Return Swap Tied to Real Estate Index Is Not Subject to FIRPTA,* Journal of Taxation (Sept. 2008).

[12] FIRPTA refers to the provisions of the Code added by the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), which impose federal income tax on foreign persons disposing of United States real property interests.

[13] Rev. Rul. 2008-31, 2008-26 I.R.B.1180.

[14] Treas. Reg. § 1.863-7(b)(1).

A Possible Legal Theory Available to Support a UBTI Position by the IRS Would Be to Disregard the Variable Contracts Issued by Crown Global as Shams

The discussion above indicates that the IRS would not have a strong legal basis to support the position that the Variable Contract income is UBTI. Therefore, the only plausible legal theory the IRS could assert to cause the underlying UBTI earned within a Variable Contract flow directly to a Supporting Organization would be to make a sham transaction (*i.e.*, economic substance) argument. Under such an argument, the IRS would treat each Supporting Organization as direct investors in Atlas IDF and ignore, for tax purposes, Crown Global and its contractual relationship with each Supporting Organization. As discussed below, the IRS will encounter substantial factual hurdles to overcome before it could successfully apply such a legal theory to the Variable Contracts in order to treat any underlying UBTI received by Crown Global as taxable to the Supporting Organizations.

The focus of the sham transaction doctrine is to determine whether a transaction has economic effects other than the creation of tax benefits.[15] Courts have stated that a multi-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, containing tax-independent considerations, and not structured solely by tax-avoidance features should be respected.[16] Furthermore, "the existence of a tax benefit resulting from a transaction does not automatically make it a sham as long as the transaction is imbued with tax-independent considerations."[17] If an investment is one for which Congress has specifically bestowed a tax incentive, the investment, if imbued with economic substance, will not be considered a sham merely because the taxpayer could not expect profits apart from tax benefits.[18]

The transactions between each Supporting Organization and Crown Global, as represented, appear to have ample economic substance and are far from empty transactions entered into solely to generate tax benefits. In fact, the following facts support the assertion that the transactions between the Supporting Organizations and Crown Global have economic substance and are not "shams":

- Crown Global is a Bermuda-based insurance company subject to the insurance laws of Bermuda;
- Crown Global was not formed solely for the purpose of entering into the transactions; rather it has been existence for many years prior to issuing the Variable Contracts;
- Crown Global has customers beyond the Supporting Organizations;
- Crown Global continues to market a variety of insurance-based products;
- Crown Global has employees who are undertaking the respective roles befitting an insurance company, according to its website;
- The Variable Contracts were negotiated between Crown Global and each Supporting Organization with specified pricing and contractual terms being agreed upon;

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[15] *Kirchman v. Com'r,* 862 F.2d 1486, 1492 (11th Cir. 1989).
[16] *Frank Lyon Co. v. United States,* 435 U.S. 561, 583-84 (1978).
[17] *Holladay v. Com'r,* 649 F.2d 1176, 1179 (5th Cir. 1981).
[18] Bittker & Lokken: Federal Taxation of Income, Estates, and Gifts, § 4.3.4A. *But see In re CM Holdings, Inc.,* 301 F.3d 96, 105 (3rd Cir. 2002) ("Choosing a tax-favored investment vehicle is fine, but engaging in an empty transaction that shuffles payments for the sole purpose of generating a deduction is not.")

- Crown Global received a premium for each Variable Contract which was deposited in accounts owned and controlled by Crown Global;
- Crown Global's fee charged within the Variable Contracts is based upon the value of the respective Variable Contracts and not upon any anticipated tax benefits;
- Crown Global's fee appears commensurate with fees charged by other insurers;
- Presumably, Crown Global will continue to operate as an insurance company after any termination of the Variable Contracts;
- Each Supporting Organization's creation and existence is not transitory;
- Crown Global negotiated and entered into a Participation Agreement with the investment manager for Atlas IDF; and
- Crown Global received the Atlas IDF Private Placement Memorandum and completed the applicable subscription documents when Crown Global received a premium that was allocated to Atlas IDF.

Based upon such facts, a court would likely determine that Crown Global (a) is a real third-party insurance company, independently owned, and not affiliated with the Supporting Organizations (or their respective principals and agents) in any form, (b) has many customers, (c) operates in a regulatory environment and that it offers a variety of insurance products, and (d) it was not formed for the specific purpose of entering into the transactions. The Variable Contracts were intended to comply with the insurance regulatory laws governing Crown Global. Any conflicts between Crown Global and each Supporting Organization would have to be resolved under the terms of the respective Variable Contracts. Each Supporting Organization has no legal rights normally associated with a subscriber to the Atlas IDF. Nor have the Supporting Organizations completed subscription documents with Atlas IDF. Rather, Crown Global invested the premium received from each Supporting Organization in Atlas IDF, and has all the rights and entitlements normally associated with an investor in entities similar to Atlas IDF.

The foregoing demonstrates that a court would likely reject the application of the sham transaction or economic substance doctrine to the Variable Contracts issued by Crown Global to each Supporting Organization, and therefore reject any assertion that any UBTI realized with respect to the assets held in the Separate Account referenced in the Variable Contract should flow to the Supporting Organization. Rather, the IRS would have to address analogous legal positions directly adverse to such an assertion.

Overall Conclusion with Respect to UBTI.

After reviewing the respective legal authorities, arguments, and positions that the IRS could attempt to assert, we believe there are at least three supportive arguments, when considered together and presented to a court, to support our opinion. These supportive arguments are as follow: (1) the Variable Contracts income would not generate UBTI to the Supporting Organizations because such income is annuity income; 2) if the "income on the contract" was not considered annuity income, but rather (a) income reported on a "mark to market" method (which represents the changes in value of the Variable Contracts on year over year basis), (b) income from a notional principal contract, or (c) income from ordinary and routine investments, such "income on the contract" would still not be UBTI; and 3) IRS

would have little, if any, legal support for its position supporting UBTI inclusion by the Supporting Organizations but rather have adverse legal authorities in other financial contexts.

Therefore, we feel that if challenged by the IRS, each of Supporting Organization #1 and Supporting Organization #2 would have a more likely than not (a greater than 50% chance of success) in a court of law, to uphold the position that any income from the Variable Contracts reported by each Supporting Organization would not be UBTI income.

Although we have reached this level of opinion, it is not to suggest that the likelihood of success is not much greater than may be indicated by our opinion level, but rather, reflects only upon the lack of direct legal precedents which we can refer for giving our opinion. If the IRS were to litigate this position, we would anticipate that the taxpayer would likely win, and that legal authority would exist, such that if at that time we would have been able to reach a higher opinion level. We reiterate that our opinion is a very strong "more likely than not" level of opinion.

VI. OPINION RENDERED

Based upon the accuracy of the statement of facts contained herein and the assumptions set forth above, and the legal analysis set forth above it is our opinion that:

1. If the Internal Revenue Service were to assert, in reliance on the "investor control doctrine", as currently interpreted, that Supporting Organization #1 and Supporting Organization #2 should be treated as the owners, for federal income tax purposes, of the investments held in the Separate Accounts of Crown Global associated with the Variable Contracts owned by Supporting Organization #1 and Supporting Organization #2, a court should conclude that such investor control doctrine should not apply to Supporting Organization #1 and Supporting Organization #2 (a confidence level that there is a greater than 50% likelihood that the position will be upheld by a court if challenged by the Internal Revenue Service), but rather, for federal income tax purposes, a court should conclude Crown Global is the owner of the investments held in such Separate Accounts, including without limitation, to those investments held in Atlas IDF (a confidence level that there is a greater than 50% likelihood that the position will be upheld by a court if challenged by the Internal Revenue Service).

2. It is more likely than not (*i.e.*, a greater than 50% likelihood) that the position that the income realized by the Supporting Organization #1 and Supporting Organization #2 from their ownership of the Variable Contracts will not be classified as unrelated business table income within the meaning of Section 511 of the Code, will be upheld by a court if challenged by the Internal Revenue Service.

****

The legal opinion expressed above is subject to the assumptions, exceptions, restrictions, and qualifications stated herein as well as the following qualifications and limitations:

1. **This letter and the legal opinion contained herein are limited to the matters expressly set forth herein, and no legal opinion shall be implied or may be inferred beyond the matters expressly so stated. As such,**

(a) The opinion is limited to the specific federal tax issues addressed herein;

(b) Additional issues may exist that could affect the federal income tax treatment of matters that are the subject of this opinion and this opinion does not provide a conclusion with respect to any additional issues; and

(c) With respect to any significant federal tax issues outside the limited scope of this opinion, this opinion was not written, and cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed by the taxpayer.

2. The legal opinion set forth herein represents our best professional judgment and is not a guarantee or warranty of any of the matters discussed herein.

3. This letter and the legal opinion expressed herein are rendered as of the date hereof, and are based upon relevant provisions of the Code and the Treasury regulations thereunder, and upon relevant judicial precedents and other authorities, as they exist as of the date of this legal opinion. These authorities are subject to change at any time, and if they do change, it may be necessary to re-examine this legal opinion. In that regard, we expressly disclaim any undertaking to advise you of any changes in applicable law, facts or any other matters that may come to our attention after the date hereof which may alter, in whole or in part, the legal opinion expressed herein. In addition, the legal opinion expressed in this letter is based solely on the accuracy of the facts and assumptions expressly stated herein, and the conclusions, statements and views expressed herein cannot be relied on, and may change, if any of the facts or assumptions described herein are, or later become, inaccurate or incomplete in any respect.

4. This letter communicates legal advice, and has been prepared in anticipation of potential litigation concerning the tax consequences described herein. It is intended that this letter be protected from discovery under the attorney-client privilege and work product doctrine to the extent provided by law. Disclosure of this letter and the information communicated in it should be carefully controlled so that disclosure is not made in a manner that will invalidate the protected status of the information.

5. We confirm that there is no limitation on the disclosure by you or any other parties to the transaction discussed of the tax treatment or tax structure as described in this letter. The implications of any such disclosure on attorney-client privilege or other applicable legal protections should be carefully considered prior to any such disclosure.

This letter may be relied upon by the addressee only and may not be relied upon by, nor may copies be delivered to, any other person without our prior written consent.

Very truly yours,

Sadis & Goldberg LLP

EXHIBIT 34

KELLY HART PITRE
Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com
Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
Telephone: (504) 522-1812
Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com

KELLY HART & HALLMAN
Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopier: (817) 878-9280

COUNSEL FOR CLO HOLDCO, LTD., CHARITABLE DAF FUND, LP AND HIGHLAND DALLAS FOUNDATION, INC.

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

In re:	§	**Case No. 19-34054-sgj11**
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	**Chapter 11**
	§	
Debtor	§	**Relates to Dkt. No. 2460**

RESPONSE AND DISCLOSURES RELATED TO THE COURT'S ORDER REQUIRING DISCLOSURES

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CLO HoldCo, Ltd. ("CLO HoldCo"), Charitable DAF Fund, LP ("DAF Fund"), Highland Dallas Foundation, Inc., ("Highland Dallas Foundation," collectively, the "Charitable Respondents"),[1] file this *Response* ("Response") and submit these *Disclosures* ("Disclosures") to comply with the Court's *sua sponte Order Requiring Disclosures* (Dkt. No. 2460) (the "Disclosures Order").

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[1] CLO Holdco and Highland Dallas Foundation have filed a *Motion to Withdraw the Reference* in Adversary Case No. 20-03195 (the "Adversary Proceeding"), at Dkt. No. 24 (in the Adversary Proceeding), and neither the fact nor content of this Response is intended to be nor shall be deemed a waiver of their right to a trial by jury on all claims asserted in the Adversary Proceeding nor consent to the entry of final orders in the Adversary Proceeding by the Bankruptcy Court. DAF Fund is also a defendant in the Adversary Proceeding but has not been served. Neither the fact nor content of this Response by DAF Fund is intended to be nor shall be deemed: a waiver of service requirements in the Adversary Proceeding; acceptance of service of citation or summons in the Adversary Proceeding; waiver of its right to a trial by jury on all claims in the Adversary Proceeding (if ever served), nor consent to the entry of final orders in the Adversary Proceeding by the Bankruptcy Court (again, if ever served). The Charitable Respondents submit this Response in the Bankruptcy Case solely because the Court has ordered them to do so, and because they have appeared before this Court previously.

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PRELIMINARY STATEMENT

1. CLO HoldCo, DAF Fund, and Highland Dallas Foundation have each previously filed pleadings in this Court and are, at least arguably, parties to the Bankruptcy Case. As set forth herein, several targets of the Court's Disclosures Order have never made an appearance before this Court including Charitable DAF Holdco, Ltd.[2] ("DAF Holdco"), Highland Santa Barbara Foundation, Inc. ("Highland Santa Barbara Foundation"), and Highland Kansas City Foundation, Inc. ("Highland Kansas City Foundation," collectively with DAF Holdco and Highland Santa Barbara Foundation, the "Non-Party Targets").[3] The Court does not have the power to order a non-party to produce documents nor undertake *sua sponte* investigations, particularly into non-parties. The fact that these entities are non-parties and at the same time targets, is telling. Further the Non-Party Targets have not been served with the Disclosures Order.

2. Neither the Charitable Respondents nor undersigned counsel are authorized to make appearances for the Non-Party Targets, and the Non-Party Targets are not by this Response submitting themselves to this Court's jurisdiction. The Charitable Respondents file this Response and submit these Disclosures solely on their own behalf and neither they nor undersigned counsel are appearing for or on behalf of the Non-Party Targets. Nonetheless, much of the Disclosures provided by the Charitable Respondents on their own behalf will be informative regarding the Non-Party Targets. Further, the Non-Party Targets have provided limited authorization for the

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[2] Undersigned counsel has been retained to represent DAF Holdco; however, DAF Holdco has never made an appearance in this bankruptcy case and has not been served in the Adversary Proceeding. Nor has DAF Holdco been served with this Disclosures Order. DAF Holdco has not authorized undersigned counsel to accept service nor to make an appearance for it in this Bankruptcy Case.

[3] The Highland Dallas Foundation, the Highland Santa Barbara Foundation, and the Highland Kansas City Foundation are sometimes also referred to as "Supporting Organizations."

Charitable Respondents, through Mr. Mark Patrick ("Patrick"), to provide the information to the Court that is submitted by the Charitable Respondents in this Response.

3. Further, the Disclosures Order does not mention the third-party foundation level entities included in the Structure Chart (*infra*) ("Foundations"); however, these Foundations have provided the Charitable Respondents with documents and important information regarding their charitable giving structures and the supporting organizations include the Highland Dallas Foundation and the supporting organizations that are Non-Party Targets. The fact and content of this Response is not intended to be nor shall be deemed to be an appearance by these Foundations in this Bankruptcy Case, nor submission by them to this Court's jurisdiction. The Charitable Respondents file this Response and submit these Disclosures solely on their own behalf and neither they nor undersigned counsel are appearing for or on behalf of the Foundations.

4. Patrick has provided a declaration regarding the information provided by and/or about the Foundations and the Supporting Organizations, and as provided herein within the Disclosures. As well, he has reviewed the Response and Disclosures. *See* **Exhibit 1** [Mark Patrick Declaration]

5. As set forth herein, contrary to the Court's unsupported and highly prejudicial *sua sponte* assertions that the Charitable Respondents and Non-Party Targets "appear to be under the *de facto* control of Mr. Dondero," the Charitable Respondents and Non-Party Targets (along with the Foundations) make up a legal and viable charitable giving structure, established through a non-byzantine set of entities that has committed over $42 million in grants, and funded $32.5 million, to nonprofits across a wide-range of issues including education, support of military, veterans, and first-responders, and victims of family violence and child abuse. With respect to Mr. Dondero, of course he is involved, personally in the capacity as the Donor personality. In addition, as disclosed

within the Disclosures, he holds positions within the Supporting Organizations, which are subject to the authority of the Foundations they support. As well, and as established by Mr. Patrick's uncontroverted testimony before this Court, Mr. Dondero currently acts as an unpaid investment advisor to CLO HoldCo and DAF Fund. However, as will be shown Mr. Dondero is not in "de facto" or legal control of the Charitable Respondents nor the Non-Party Targets (nor the Foundations).

6. The Charitable Respondents take the time to refute the Court's assertions in the Disclosures Order because not only are they factually inaccurate—which will be shown herein and through the submitted Disclosures—but worse, these *sua sponte* findings bear directly upon the causes of action asserted by Official Committee of Unsecured Creditors (the "Committee") against CLO HoldCo, DAF Holdco, DAF Fund, and Highland Dallas Foundation (the "Charitable Defendants") in Adversary Proceeding No. 20-03195 (the "Adversary Proceeding"). While there are several motions to withdraw the reference pending in the Adversary Proceeding, this Court should, at an absolute minimum, refrain from espousing, *sua sponte*, any "findings" or "conclusions" that in fact are indistinguishable from allegations made in conclusory fashion (much like the Court's expositions) by a plaintiff party in litigation currently pending in this Court. Such an "approach" to exercise of the judicial function (under the notion of maintaining the Court's docket) is, frankly, not recognizable as a constitutional approach to exercise of judicial power. This Court, it appears has become litigant, investigator and decider, far outside the scope of case or controversy. Through its assertions the Court appears to have decided integral issues in the Adversary Proceeding *sua sponte* without considering any evidence nor offering the Charitable Defendants any opportunity to present their case, and all this notwithstanding pending motions to

withdraw reference (that the Court has previously stayed over the objection of the Charitable Defendant movers).

PROCEDURAL HISTORY

7. As the Court is aware, there was a show cause hearing on June 8, 2021 (the "Show Cause Hearing") related to the lawsuit filed by CLO HoldCo and DAF Fund against the Debtor captioned *Charitable DAF Fund, L.P. et al. v. Highland Capital Management, L.P. et al.*, case no. 21-cv-00842, pending in the United States District Court for the Northern District of Texas (the "District Court Suit"). In the District Court Suit, the plaintiffs filed a motion to amend their complaint (the "Seery Motion"), and thereafter, the Court issued what it titled: *Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Dkt. No. 2255] (the "Show Cause Order") to determine if the "Violators" should be held in contempt of court for filing the Seery Motion. The Court ordered the "Violators," as defined by the Court, including CLO HoldCo and DAF Fund, those persons who authorized the filing of the Seery Motion and the District Court Suit (and the law firm representing the plaintiffs), along with Mr. Dondero, to appear at the Show Cause Hearing.

8. Patrick identified himself as the person who authorized the filing of the Seery Motion and the District Court Suit and identified that he was vested with such authority by virtue of his position as the director CLO HoldCo and control person of DAF Fund. *See* Response, Dkt. No. 2309. The Debtor undertook extensive discovery related to the Show Cause Hearing with the express purpose of attempting to prove that despite Mr. Patrick authorizing the filings and being the control person of the plaintiffs, Mr. Dondero should nonetheless be held in contempt.

9. Therefore, at the Show Cause Hearing, the respondents, including Patrick, introduced evidence reflecting the structure of the Charitable Respondents,[4] the ownership of the Charitable Respondents,[5] and the controlling entities/persons of the Charitable Respondents.[6] At the Show Cause Hearing, Patrick further provided extensive testimony regarding the creation, structure, organization, purpose, and control of the Charitable Respondents. *See* **Exhibit 2** [Transcript, June 8, 2021 Hearing, Excerpts].

10. On June 17, 2021, the Court issued its Disclosures Order *sua sponte* pursuant to Section 105 of the Bankruptcy Code and its "inherent ability to efficiently monitor its docket and evaluate standing of parties who ask for relief in the [Bankruptcy Case]." Disclosures Order, p. 1.

11. Importantly, the Disclosures Order does not relate to and was not issued in connection with any contested matter or adversary proceeding before the Bankruptcy Court. Instead, the Court states that the Disclosures Order is "in furtherance of [its] desire to be more clear about the standing of various of these entities, and to assess whether their interests may be sufficiently aligned, in some circumstances, so as to require joint pleadings." Disclosures Order, p. 12. As such, the Court appears to be attempting to ascertain some sort of generalized standing where there is no proceeding before it and contemplating the issuance of pre-filing injunctions against the Charitable Respondents and Non-Party Targets.

12. Based on the forgoing, the Disclosures Order requires numerous parties (whether before the Court or not), including the Charitable Respondents and Non-Party Targets, to file a notice in the Bankruptcy Case disclosing: (a) who owns the entity (showing percentages); (b)

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[4] Exhibit and Witness List, Dkt. No. 2411 (Exhibit 1)

[5] Exhibit and Witness List, Dkt. No. 2411 (Exhibit 9, 10, 11, 12, 15, 16, 17, 18, 19, 20)

[6] Exhibit and Witness List, Dkt. No. 2411 (Exhibit 3, 4, ,5, 6, 7, 8, 29)

whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity (this itself looks to be a determination by this Court of "relationship" with damaging consequences); and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims).

13. The Disclosures Order does not even pretend to be concerned with such mundane matters as proper service, or the right of parties not before the Court, even if creditors, to remain outside the Court. Certainly the Court does not exhibit a glimpse of concern about possible limitations upon the judicial power to compel parties to appear before it. Because of its assertions concerning Mr. Dondero's "de facto control" of third party entities (again, outside of any pending case or controversy and in fact contrary to evidence put before the Court), the Court has (i) dispensed with case or controversy boundaries, and (ii) sent its Disclosures Order into the universe as an all-powerful compulsion imposed upon entities that have never made appearance before the Court - all without service. All because this Court has concluded that these third parties are controlled by Mr. Dondero, and because this Court has power over Mr. Dondero, it need not think twice about its power over any entity it has determined (without ground) to be controlled by Mr. Dondero because such party may have some relation to Mr. Dondero.

14. As mentioned above, the Charitable Respondents are responding. But the entities outside the scope of the Court's authority are not appearing in Response. As set forth below, the Charitable Respondents believe this Response and the Disclosures provided herein are sufficient and compliant. The Charitable Respondents reserve all rights.

RESPONSE

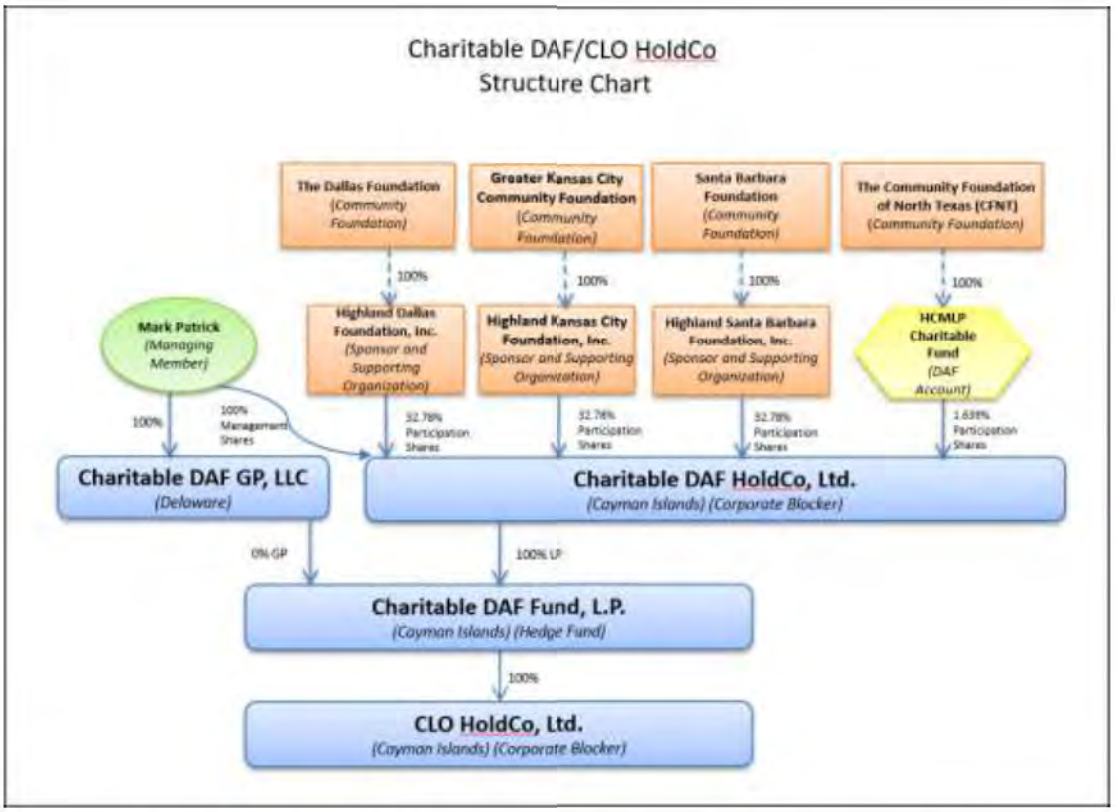
15. The Charitable Respondents file their Response to the Disclosures Order to comply with it, but with full reservations concerning the propriety of such a *sua sponte* investigation into standing where there is no proceeding before the Court and the prospective issuance of pre-filing injunctions against parties who have never participated in the Bankruptcy Case (i.e. the Non-Party Targets), or have only do so on a limited basis or were compelled to by order of the Court (i.e. the Charitable Respondents).

16. The Charitable Respondents have already provided the Debtor and the Court with much of the information ordered by the Court, and do so again and more robustly herein, to show to the Court that the Charitable Respondents are not "under the *de facto* control of Mr. Dondero" and its directors do not act "at Mr. Dondero's direction." *See* Disclosures Order, pp. 5, 11.

17. The Charitable Respondents, however, take this opportunity to correct any misunderstanding regarding their structure and control, while noting and reserving all rights regarding the impropriety of such prejudicial *sua sponte* assertions.

I. The Charitable Respondents are independently owned and controlled charitable organizations.

18. The best starting point to understand the structure of the Charitable Respondents is the Structure Chart attached hereto as **Exhibit 3** ["Structure Chart"]. For ease of reference, the Structure Chart is reproduced as follows:



19. Second, the Charitable Respondents provide the Court with a legal memorandum of Kenneth K. Bezozo, a partner with Haynes and Boone, LLP, determined by the Charitable Respondents to be a legal expert in the field of taxation and organizational structures. *See* **Exhibit 4** [Kenneth K. Bezozo Memorandum]. As the Bezozo Memorandum explains, the Structure Chart and the entity structure of which the Charitable Respondents are a part (along with the Supporting Organizations and the Foundations) is a structure including offshore entities that is a typical industry standard investment structure to facilitate tax-exempt ownership and charitable giving. Given that the structure employed is in fact, within the tax-exempt, charitable entity structures neither unusual nor exotic, the Charitable Respondents submit that contrary to the jargon appropriated by the Court from the Committee and the Debtor and its counsel, this structure is not at all "Byzantine."

The Entities

a) CLO HoldCo

20. As the Structure Chart reflects, CLO HoldCo is a company limited by shares incorporated in the Cayman Islands. *See* **Exhibit 5** [Certificate of Incorporation - CLO HoldCo, Ltd.]. CLO HoldCo was incorporated in 2010. *See* **Exhibit 6** [Memorandum of Association of CLO HoldCo, Ltd.]. CLO HoldCo is managed and controlled by directors who are appointed by resolution of shareholders of CLO HoldCo. *See* Memorandum of Association of CLO HoldCo, Ltd., p. 11-12 ("Directors"). The Directors are currently Mr. Patrick and Mr. Paul Murphy. *See* **Exhibit 36** [CLO HoldCo - Register of Directors].

21. CLO HoldCo is owned by the holder of its sole share. The sole shareholder of CLO HoldCo was previously DAF Holdco who contributed the share on November 7, 2011 to DAF Fund. *See* **Exhibit 7** [Ordinary Share Registry - CLO HoldCo]. Therefore, CLO HoldCo is wholly owned by DAF Fund.[7]

b) DAF Fund

22. DAF Fund is a limited partnership organized under the laws of the Cayman Islands. *See* **Exhibit 8** [Certificate of Registration of Exempted Limited Partnership - DAF Fund]. Pursuant to the *Amended and Restated Exempted Limited Partnership Agreement dated November 7, 2011* (the "DAF Fund LP Agreement"), DAF Holdco is the limited partner of the DAF Fund and the Charitable DAF GP, LLC ("DAF GP") is the general partner. *See* **Exhibit 9** [DAF Fund

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[7] While not appearing on the Structure Chart, nor made subject of the Disclosures Order, there are subsidiaries of CLO HoldCo as well, and these are named, with corresponding ownership and director exhibits identified as follows: (i) Liberty CLO Holdco, Ltd. (*see* **Exhibits 38 and 39** [Register of Directors and Share Register]); (ii) MGM Studios HoldCo, Ltd. (*see* **Exhibits 40 and 41** [Register of Directors and Share Register]); (iii) HCT HoldCo 2, Ltd. (*see* **Exhibits 42 and 43** [Register of Directors and Share Register]). Note, Dondero holds no directorship or ownership.

LP Agreement]. Pursuant to the terms of the DAF Fund LP Agreement, DAF Holdco contributed its equity interest in CLO HoldCo to DAF Fund pursuant to a Contribution and Transfer Agreement dated November 7, 2011. Ordinary Share Class Transfers - CLO HoldCo; DAF Fund LP Agreement, ¶3.1.

23. The express purpose of DAF Fund is and always was to invest and trade in securities of all type and other investment vehicles for the purpose of befitting, direct and indirectly, the indirect equity owners of DAF Holdco, which were required to be Section 501(c)(3) of the IRS Code entities or organizations or have sole beneficiaries which are entities or organizations exempt from taxation under Section 501(c)(3) of the IRS Code. *See* DAF Fund LP Agreement, ¶1.3.

24. Because DAF Fund is a limited partnership, the DAF GP has the exclusive and complete discretion in the management and control of the DAF Fund. DAF Fund LP Agreement, ¶1.6, **Exhibit 10** [DAF Fund General Partner Register].

c) DAF Holdco

25. DAF Holdco is a company limited by shares incorporated under the laws of the Cayman Islands. See **Exhibit 11** [Amended and Restated Memorandum of Association of DAF Holdco]. DAF Holdco's equity ownership consists of holders of Management and Participating Shares. *Id*. The Management Shares confer no right to participate in profits but rather to manage DAF Holdco, whereas Participating Shares confer the right to participate in profits or assets but not management rights. *Id*.

26. The Management Shares of DAF Holdco were allotted to Grant Scott ("Scott") in 2011 but as will be discussed herein, were transferred to Patrick in 2021. *See* **Exhibit 12** [Register of Management Shares DAF Holdco]. The Directors are currently Mr. Patrick and Mr. Paul Murphy. *See* **Exhibit 37** [DAF Holdco - Register of Directors]. The Participating Shares of DAF

Holdco are held by the "Supporting Organizations," which are Highland Kanas City Foundation [32.78%], Highland Dallas Foundation [32.78%], Highland Santa Barbara Foundation [32.78%], and Highland Community Foundation of North Texas [1.63%].[8] *See* **Exhibit 13** [Register of Participating Shares DAF Holdco].

27. As set forth in the DAF Fund LP Agreement, DAF Fund's investments are for the benefit of the equity owners of DAF Holdco which were required to be non-profit organizations. The Supporting Organizations are those non-profit organizations.

d) DAF GP

28. DAF GP is a limited liability company organized under the laws of Delaware. *See* **Exhibit 14** [Certificate of Formation of DAF GP]. Again, DAF GP is the general partner of DAF Fund who manages and controls DAF Fund. Prior to March 2021, 100% of the limited liability company interests in the DAF GP (the "DAF GP Membership Interests") were held by Mr. Scott. Mr. Scott transferred all of the DAF GP Membership Interests to Mr. Patrick. **Exhibit 15** [Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021].

29. As shown by the Exhibits hereto, Dondero holds no ownership, officer, or director status in any of: CLO HoldCo; DAF Fund; DAF HoldCo; or DAF GP.

e) The Supporting Organizations

30. As mentioned, the Supporting Organizations are Highland Dallas Foundation, Highland Kansas City Foundation, Highland Santa Barbara Foundation, and Highland Community Foundation of North Texas. These Supporting Organizations were established by the Foundations.

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[8] The Court has not included Highland Community Foundation of North Texas in its Disclosures Order.

- **Highland Dallas Foundation**

31. Highland Dallas Foundation is a corporation incorporated in 2011 under the laws of Delaware. **Exhibit 16** [HDF Certificate of Incorporation]. The Highland Dallas Foundation was and is organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the IRS Code. **Exhibit 17** [IRS Determination - HDF].

32. The Highland Dallas Foundation supports and benefits the Dallas Foundation. *See* HDF Certificate of Incorporation, **Exhibit 18** [Narrative Description of Activities]. The Dallas Foundation is a third-party and is the oldest community foundation in Texas.

33. As set forth in the attached letter from the President and Chief Executive Officer of the Dallas Foundation, the Dallas Foundation is a Texas nonprofit corporation, and is the successor in interest to Dallas Community Trust, a charitable trust which was formed in 1929. **Exhibit 19** [reserved for supplementation]. The Dallas Foundation has hundreds of donors with whom it works regularly to make charitable grants supporting numerous worthy causes and regularly utilizes donor-advised funds and supporting organizations to carry out its charitable mission. *Id.*

34. The Highland Dallas Foundation is a membership corporation, and its members have the ultimate authority to elect its Board of Directors. *Id.* **Exhibit 20** [HDF Bylaws]. The Highland Dallas Foundation has two (2) classes of members, an "Institutional Member" (the TDF), and an "Individual Member" (Mr. Dondero). *Id.*

35. The Institutional Member has two (2) votes and the Individual Member has only one (1) vote on any matter submitted to the members. *Id.* Further, the Institutional Member elects two (2) of Highland Dallas Foundation's three (3) directors, and the Individual Member elects one (1) director. *Id.* The Board of Directors of Highland Dallas Foundation consists of Mr. Dondero, Julie Diaz (Chief Philanthropic Partnerships Officer of TDF) and Matthew Randazzo (President

& Chief Executive Officer of Dallas Foundation). Mr. Dondero serves as President, Mr. Randazzo serves as Vice President and Ms. Diaz serves as Secretary and Treasurer.

36. So while Mr. Dondero is a member with some level of influence within the Highland Dallas Foundation, he has 1/3 of the voting power, where TDF employees have 2/3 of voting power.

37. The Highland Dallas Foundation is an independent supporting organization of the Dallas Foundation. While Mr. Dondero is on the Board of Directors and is President of the Highland Dallas Foundation, it cannot be said to be "under the control" (de facto or otherwise) of Mr. Dondero, because of the control of the Board of Directors held by the Dallas Foundation.

- **Highland Santa Barbara Foundation**

38. The Highland Santa Barbara Foundation was formed in November 2011 as a Delaware nonprofit nonstock corporate to operate exclusively for the benefit of, to perform the functions of, or carry out the purposes of Santa Barbara Foundation. See **Exhibit 21** [HSBF Certificate of Incorporation]; **Exhibit 22** [IRS Determination - HSBF].

39. The Santa Barbara Foundation is a third-party community foundation incorporated in 1928 as a nonprofit corporation to enrich the lives of the people of Santa Barbara County through philanthropy. **Exhibit 23** [SBF Letter Overview]. The Santa Barbara Foundation funds a wide range of initiatives, projects, and organizations and has supported nearly every Santa Barbara County nonprofit organization and essential community sproject during its 93-year history. *Id.*

40. Similarly to the Dallas Foundation, the Santa Barbara Foundation works with entities organized under Section 509(a)(3) of IRS Code as supporting organizations to Santa Barbara Foundation for the specific and primary purpose of benefiting, performing functions of,

and engaging in activities consistent with Santa Barbara Foundation's charitable purposes. *Id.* Highland Santa Barbara Foundation is one such supporting organization. *Id.*

41. Again as is common amongst supporting organizations, Highland Santa Barbara Foundation has two classes of members, institutional and individual, and one member in each class. *Id.*, *see also* Bylaws HSBF. Santa Barbara Foundation is the institutional member and Mr. Dondero is the individual member. Highland Santa Barbara Foundation has three directors, two elected by SBF and one elected by Mr. Dondero. The president, secretary, and any other officers of HSBF are elected by the three directors. *Id.* The directors are Mr. Dondero, Jacqueline M. Carrera (President & CEO of SBF), and Arnold Brier (Santa Barbara County community volunteer). Currently, Mr. Dondero serves as President, Jacqueline M. Carrera as Vice President, and the Secretary position is vacant pending board of directors election.

42. Again, while Mr. Dondero positions in the Highland Santa Barbara Foundation, it is certainly not under his "de facto" control, nor do the other directors and officers act under Mr. Dondero's direction. The Highland Santa Barbara Foundation is an independent supporting organization of the Santa Barbara Foundation, and is controlled by the Santa Barbara Foundation. Imputing a lack of independence based on what is a typical structure for supporting organization management sets a unwarrantable precedent for charitable organizations.

- **Highland Kansas City Foundation**

43. Highland Kansas City Foundation was and is organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the IRS Code, and to support and benefit the Greater Kansas City Community Foundation ("GKCCF"). *See* **Exhibit 24** [GKCCF Certificate of Formation].

44. The Greater Kansas City Community Foundation was created in 1978 and manages over $4 billion in assets, and again uses donor-advised funds and supporting organizations. *See* **Exhibit 25** [GKCCF Letter]. As explained by the President & CEO of Greater Kansas City Community Foundation, Highland Kansas City Foundation is one of 18 supporting organizations that Greater Kansas City Community Foundation works with. *Id.*

45. Highland Kansas City Foundation has two classes of members, institutional and individual, and one member in each class. *See* **Exhibit 26** [Bylaws HKCF]. Greater Kansas City Community Foundation is the institutional member and Mr. Dondero is the individual member.

46. The Directors of Highland Kansas City Foundation are: Brenda Chumley (Senior Vice President of Greater Kansas City Community Foundation), Mr. Dondero, and Deborah Wilkerson (the President & CEO of Greater Kansas City Community Foundation). The Highland Kansas City Foundation has not named officers. All three directors approve grants by unanimous consent.

f) Mr. Patrick's role

47. Prior to March 24, 2021, Mr. Scott was the holder of Management Shares in the DAF Holdco. On March 24, 2021, Mr. Scott executed the *Share Transfer Form*, in which he transferred the management shares in DAF Holdco to Mr. Patrick. **Exhibit 27** [Share Transfer Form]. Further on March 24, 2021, Mr. Scott and Mr. Patrick entered into that certain *Assignment and Assumption of Membership Interest* whereby Mr. Scott assigned and Mr. Patrick assumed one hundred percent of the limited liability company interest in the DAF GP. *See* Assignment and Assumption Agreement.

48. As the holder of the management shares in DAF Holdco, Mr. Patrick executed a resolution removing Mr. Scott as Director and appointing Mr. Patrick as Director. **Exhibit 28** [March 25 Resolution - DAF Holdco].

49. On April 2, 2021, Mr. Patrick, as holder of one hundred percent of the interest in DAF GP, executed the shareholder resolution removing Mr. Scott as Director of CLO HoldCo and appointing Mr. Patrick as director. **Exhibit 29** [April 2 Resolution - CLO HoldCo].

50. While on paper the switch from Mr. Scott to Mr. Patrick was completed, it became obvious that this switch would be practically more complicated. Therefore, there was a transitional period wherein Mr. Scott had to continue to authorize certain actions with Mr. Patrick assisting him. As of the date of filing, Mr. Scott no longer has authority/ control over the Charitable Respondents.

51. After Mr. Patrick's appointment, he determined that given the breadth of issues facing the Charitable Respondents, including but not limited to the Adversary Proceeding, it would be in the best interest of DAF Holdco, CLO HoldCo and others for another director to be appointed. As such, on April 22, 2021, Paul Murphy was appointed a director of DAF Holdco and CLO HoldCo. **Exhibit 30** [Written Resolution - Murphy].

II. The Charitable Respondents have donated tens of millions of dollars to charitable causes

52. The Court included the Charitable Respondents and Non-Party Targets as part of what it terms — borrowing from the Committee's verbiage in the Adversary Proceeding — Mr. Dondero's "byzantine" empire and made *sua sponte* assertions regarding their lack of independence and Mr. Dondero's "de facto" control. Again, as will be set forth herein, these findings are procedurally improper and highly prejudicial to the Charitable Defendants. But most importantly, they are wrong.

53. The Charitable Respondents are part of a charitable structure that donates tens of millions of dollars to charitable causes focusing on education; support for military, veterans, and

first responders; health and medical research; economic and community development initiatives; and youth and family. *See* **Exhibit 31** [Charitable Giving Overview, Grant Summary: 2012-2020].

54. Since 2012, the Supporting Organizations have committed over $42 million to nonprofit organizations, and have funded $32 million of the total commitments (with the remaining commitments being comprised of future scheduled installments). *Id.*

55. The Supporting Organizations' charitable giving has made a tangible impact on some of the most vulnerable including grants to the Dallas Children's Advocacy Center which serves over 8,000 abused children a year and The Family Place which serves more than 11,000 victims of family violence. *Id.* The CEO of The Family Place has submitted a letter in support which is attached hereto as **Exhibit 32** [The Family Place Letter]. The Family Place empowers victims of family violence by providing safe housing and counseling, and identifies its partnership with the Highland Dallas Foundation as "instrumental" in providing community exposure and awareness of domestic violence as well as providing essential services to family violence victims. *Id.* As stated by the CEO, The Family Violence Place would not be able to successfully serve its domestic violence clients without this support.

56. Cristo Rey Dallas also submitted a letter in support of the Highland Dallas Foundation which is submitted herewith as **Exhibit 33** [Cristo Rey Letter]. Cristo Rey Dallas provides college preparatory high school curriculum accessible to those of limited financial resources. Highland Dallas Foundation provided impactful donations which allow Crito Rey Dallas to provide services to its 465 students, including funding work study programs and remote work places during COVID-19 pandemic. *Id.*

57. Dallas Children's Advocacy Center submitted a letter in support of the Highland Dallas Foundation which is submitted herewith as **Exhibit 34** [DCAC Letter]. Dallas Children's

Advocacy Center's mission is to improve the lives of abused children in Dallas County and to provide national leadership on child abuse issues. *Id.* Highland Dallas Foundation has robustly supported this mission since 2016, including providing funding that has been critical to the sustainability of its programs. *Id.*

58. The Supporting Organizations' grants to the Center for BrainHealth helped provide and training other programming to members of the military, veterans, and local law enforcements to improve their congestive health. *See* Charitable Giving Overview.

59. The Friends of the Dallas Police grants show appreciation to men and women who risk their lives every day to make Dallas a safer city and the Supporting Organizations have funded awards programs and educational sponsorships for children of police officers. *Id.*

60. The Charitable Respondents invite the Court, and others who have characterized the Supporting Organizations as mere "puppets" of Mr. Dondero, to review the Charitable Giving Overview provided herewith as well as the letters in support from The Family Place, Cristo Rey Dallas, Dallas Children's Advocacy Center, the Santa Barbara Foundation, and the Highland Kansas City Foundation. The Charitable Respondents have and will continue to make meaningful impacts on the communities they serve through the tens of millions of dollars of philanthropic giving they facilitate.

III. CLO HoldCo and DAF Fund may be creditors of the Debtor

61. In the Disclosures Order, the Court requires all entities to state whether the entity is a creditor of the Debtor and explain in reasonable detail the amount and substance of its claims. Disclosures Order, p. 13.

62. All claims bar dates have long since passed [*see* General Claims Bar Date Order [Dkt. No. 498].

63. The Court states that CLO HoldCo filed two proofs of claim. Disclosures Order, p. 11. This is not correct. CLO HoldCo filed a proof of claim on April 8, 2020 [Proof of Claim No. 133] and on October 21, 2021, CLO HoldCo amended that same proof of claim [Proof of Claim No. 198] (the "Amended Proof of Claim"). In the Amended Proof of Claim, CLO HoldCo explained that as a result of certain proceedings that effectuated a termination of the Debtor's participation interests in the funds referred to in the CLO HoldCo proof of claim, such termination served to cancel the CLO HoldCo interests, as well, as the CLO HoldCo interests were in effect derivative of the Debtor's interests. Accordingly, the Amended Proof of Claim reflected that the CLO HoldCo claim was reduced to $0.00, and therefore resolved.

64. The Court stated in the Disclosures Order that it was unaware of whether DAF Holdco, DAF Fund, Highland Dallas Foundation, Highland Santa Barbara Foundation, or Highland Kansas City Foundation filed proofs of claims (notwithstanding this "uncertainty" the Court deemed it appropriate nevertheless to try to compel appearance). Disclosures Order, p. 11. A review of the Court's Claims Register and that of the Debtor's claims and noticing agent reflects that none of these entities filed proofs of claim against the Debtor.

65. Therefore, none of the Charitable Respondents are pre-petition creditors of the Debtor, as the claims bar date has long since passed and no claims were filed which have not been fully resolved.

66. It is unclear from the Disclosures Order whether the Court is referring to the term "creditor" as defined in section 101(10) of the Bankruptcy Code or using creditor as a lay term. If it is the former, the Charitable Respondents are not creditors of the Debtor. *See* 11 U.S.C. § 101(10) (defining a "creditor" an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor).

67. As the Court is aware from the Show Cause Hearing, CLO HoldCo and DAF Fund filed the District Court Suit against the Debtor. The causes of action asserted by CLO HoldCo and DAF Fund arose after the order for relief. **Exhibit 35** [Complaint]. The substance of these claims is set forth in the Complaint.

IV. The Disclosures Order is procedurally improper and the Court has no power to institute *sua sponte* investigations into hypothetical standing.

68. The Charitable Defendants have fully complied with the Court's Disclosures Order and provided the Court with complete information regarding: (a) who owns each entity, (b) whether Mr. Donerdo or his family trusts have direct or indirect ownership, (c) who the officers, directors, and managers are, and (d) whether the entity is a creditor of the Debtor. The Charitable Defendants have done so because they were expressly ordered by the Court do; however, the Disclosures Order is procedurally improper and highly prejudicial.

a) The Court does not have the power to require non-parties to provide it with disclosures.

69. The Charitable Defendants are those named entities who have made appearances before this Court. The Court does not have the power to order production or disclosures from non-parties including the Non-Party Targets.

70. In the Disclosures Order, the Court states that the order is issued "*sua sponte* pursuant to Section 105 of the Bankruptcy Code and the court's inherent ability to efficiently monitor its docket and evaluate the standing of parties who ask for relief in the above-referenced case." Disclosures Order, p. 1. But yet, the Disclosures Order goes on to target entities who have never asked for the relief in the Bankruptcy Case.

71. Of course, it is undisputed that the Court has the inherent power to manage its own docket "to ensure the orderly and expeditious disposition of cases." *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31

(1962)). But this inherent authority is limited, as is the Court's authority pursuant to section 105 of the Bankruptcy Code. *Matter of Ward*, 978 F.3d 298, 303 (5th Cir. 2020) (noting that "the powers afforded to bankruptcy courts pursuant to § 105, however, are not unlimited").

72. In *Energy Gathering*, the Fifth Circuit considered whether the district court could *sua sponte* order a party's attorney, a non-party to the case, to produce documents. *See Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1412 (5th Cir. 1993). In that case, the district court found that the attorney had purposefully withheld documents from the court, and "ordered [him] to produce every document in his possession relating to [his client] or business he had done with [his client]." *Id.* at 1404. The district court did not explain the source of its perceived authority to do so. *See id.* at 1405.

73. On appeal by the attorney, the plaintiffs asserted that the district court had the inherent authority to order him to produce documents. *Id.* at 1406. The Fifth Circuit disagreed with the plaintiffs. *See id.* at 1408-09. Specifically addressing whether the district court had the inherent authority to issue its order, the Fifth Circuit acknowledged that the district court had certain limited power "to conduct discovery not recognized by rule or statute," observing that federal courts "possess[ ] all of the common law equity tools of a Chancery Court (subject, of course, to congressional limitation) to process litigation to a just and equitable conclusion." *Id.* at 1409. The Fifth Circuit suggested that the district court had the inherent authority to order the attorney to produce documents—if at all—under its power to issue a "bill of discovery," a common law "chancery tool" that the Supreme Court has described as "the forerunner of all modern discovery procedures." *Id.* at 1409. But recognizing that bills of discovery "could not be used to obtain documents (or other discovery) from someone who was not a party," the Fifth Circuit

therefore concluded that district courts do not have the inherent authority to order non-parties to produce discovery. *Id.*

74. Important here, the Fifth Circuit noted the impropriety of the *sua sponte* investigation by the district court. *Id.* at 1411 (noting "factors [that] contribute to the order's unreasonableness" as being the *sua sponte* nature of the order and that the "court engaged in a fishing expedition"). Expressly relying upon the *Energy Gathering* opinion, the court in *Thompson v. Gonzales* determined that the court lacked inherent authority to order disclosures from non-parties. *Thompson v. Gonzales*, No. 1:15-CV-301-LJO-EPG, 2016 WL 5404436, at *8 (E.D. Cal. Sept. 27, 2016).

b) The Court's *sua sponte* investigation into hypothetical standing is improper.

75. As the Fifth Circuit noted in *Energy Gatherings* and this Court and others numerous have many times since, inherent authority "is not a broad reservoir of power, ready at an imperial hand, but a limited source; an implied power squeezed from the need to make the court function." *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 702 (5th Cir.1990); *In re Saldana,* 531 B.R. 141, 166 (Bankr. N.D. Tex.), *aff'd in part, remanded in part*, 534 B.R. 678 (N.D. Tex. 2015).

76. Here, the Court has launched a *sua sponte* investigation into parties under the stated purpose of evaluating their hypothetical standing.

77. The American adversarial system differs from its European (and other) inquisitorial counterparts in that its central features are "party presentation of evidence and arguments" for resolution before a "neutral and passive decision maker[]." Adam Milani & Michael Smith, *Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts*, 69 TENN. L. REV. 245, 272 & n.143 (2002); *see also United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020); *Greenlaw v. United States*, 554 U.S. 237, 243 (2008); *Wood v. Milyard*, 566 U.S. 463, 472 (2012).

78. The judge "does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties." *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356 (2006) (quotation omitted). Thus,"[i]t is normally incumbent on each party to prove its claims," and a *sua sponte* investigation upsets the normal burden of persuasion between the parties." Domitille Baizeau and Tessa Hayes, *The Arbitral Tribunal's Duty and Power to Address Corruption Sua Sponte*, in Andrea Menaker (ed), International Arbitration and the Rule of Law: Contribution and Conformity, ICCA Congress Series, Volume 19, pp. 225 -265.

79. Thus, federal courts have been instructed to restrain from conducting such an inquest which is antithetical to the American adversarial system. *Simon v. Taylor*, 794 F. App'x 703, 718 (10th Cir. 2019) (noting that scientific evidence involving environmental contamination from the district court's own *sua sponte* investigation cannot be considered); *Wood*, 566 U.S. at 472 ("federal court does not have carte blanche to depart from the principle of party presentation basic to our adversary system"); *Castro v. United States*, 540 U.S. 375, 381–383, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003).

80. The Court asserts that it launched its investigation because standing is an issue of subject matter jurisdiction and that it must gain "clarity" with regard to standing. Disclosures Order, p. 2. But what the Court proposes to do is render an impermissible advisory opinion on the hypothetical standing of the various entities, including some of have never filed a pleading in the Bankruptcy Case. How can this Court have blanket power to compel investigation of entities that have never made appearances before the Court, or that have only been made parties because they have been sued, on the purported ground it needs to investigate standing? As shown here, it cannot.

81. A bankruptcy case itself is not a justiciable controversy; rather, it is the individual proceedings (contested matters or adversary proceedings) which create a justiciable case or controversy.[9] Here, there is no proceeding, and instead, the Court expressly stated that it will determine standing *sua sponte* pursuant to section 105 of the Bankruptcy Code. While this general rule of justiciablity standing alone would prohibit such a determination, evaluating a party's hypothetical standing absent a justiciable controversy is acutely problematic. *See Uberoi v. Labarga*, 769 F. App'x 692, 697 (11th Cir. 2019) ("The Court should not speculate concerning the existence of standing."); *Navtech US Surveyors USSA Inc. v. Boat/Us Inc.*, No. 219CV184FTM99MRM, 2019 WL 3219667, at *2 (M.D. Fla. July 17, 2019) (noting that advisory opinions on standing are improper).

82. This is because "standing is not dispensed in gross," rather, standing must be established for each claim a party seeks to press and for each form of relief that is sought. *Brackeen v. Haaland*, 994 F.3d 249, 291 (5th Cir. 2021) (quoting *Town of Chester v. Laroe Estates, Inc.*, – — U.S. ——, 137 S. Ct. 1645, 1650, 198 L.Ed.2d 64 (2017) and *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734, 128 S.Ct. 2759, 171 L.Ed.2d 737 (2008)).

83. This is rule is no less applicable in a bankruptcy case. The Bankruptcy Code does not define "party in interest," offering instead a non-exclusive list of who "may raise and may appear and be heard on any issue" in cases under chapter 11. *In re Friede Goldman Halter Inc.*,

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[9] Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 WM. & MARY L. REV. 743, 832 (2000); Ralph Brubaker, *Of State Sovereign Immunity and Prospective Remedies: The Bankruptcy Discharge As Statutory Ex Parte Young Relief*, 76 AM. BANKR. L.J. 461, 563 (2002) (explaining that: "the appropriate constitutional explanation for the entirety of federal bankruptcy jurisdiction materializes only when one recognizes that the fundamental jurisdictional unit in bankruptcy is an individual bankruptcy 'proceeding' raising a justiciable controversy between adverse parties.").

600 B.R. 526, 530–31 (Bankr. S.D. Miss. 2019). "The lack of definition was intentional." *In re Delta Underground Storage Co., Inc.*, 165 B.R. 596, 598 (Bankr. S.D. Miss. 1994).

84. Congress' failure to define a party in interest specifically was discussed by both Senator DeConcini and Representative Edwards during the proceedings preceding the enactment of the Code. Senator DeConcini stated:

> Rules of bankruptcy procedure or court decisions will determine who is a party in interest **for the particular purposes of the provision in question.**' 124 Cong.Rec. § 12407 (daily ed. Oct. 6, 1978).... Party in interest is an expandable concept **depending on the particular factual context in which it is applied**.

Id. (citing *In re North American Oil & Gas, Inc.*, 130 B.R. 473, 479 (Bankr.W.D.Tex.1990)) (emphasis added). Congress has thus expressly directed that standing in a bankruptcy case must be determined in the particular proceeding before the bankruptcy court.

85. But here, there is no "particular purpose" or "particular factual context" in which this Court can properly evaluate party in interest standing. Instead, it appears that the Court proposes to render an advisory opinion on the named entities' standing to file pleadings without any requisite justiciable controversy before it. But none of this makes sense, with respect to entities not before the Court or only before the Court in capacity as defendants. In fact the Disclosures Order appears to be more of an investigation to find evidence that the Court could point to as supporting its assertions about Dondero's *de facto* control.

86. Additionally, the Court further states that beyond determining the hypothetical standing of such parties, it also must "ascertain whether their interests are sufficiently aligned such that the parties might be required to file joint pleadings hence forth, rather than each file pleadings that are similar in content." Disclosures Order, p. 1. What the Court is describing are pre-filing injunctions, which "are an extreme remedy" that courts should not issue "with undue haste because such sanctions can tread on a litigant's due process right of access to the courts." *Franklin v.*

Laughlin, No. SA-10-CV-1027 XR, 2011 WL 598489, at *7 (W.D. Tex. Jan. 13, 2011), *report and recommendation adopted*, No. SA-10-CV-1027-XR, 2011 WL 672328 (W.D. Tex. Feb. 15, 2011).

87. Specifically, the Fifth Circuit has explained that:

> "In determining whether it should impose a pre-filing injunction or should modify an existing injunction to deter vexatious filings, a court must weigh all the relevant circumstances. Four factors must be specifically considered: (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.

Baum v. Blue Moon Ventures, LLC, 513 F.3d 181, 189 (5th Cir. 2008).

88. What is more, this purported reason makes no sense, as multiple entities the Court seeks to compel have never made an appearance and the Court has no basis to even suspect that they might make an appearance. With respect to parties who have filed pleadings, for example the Charitable Defendants, the Court already knows that Highland Dallas Foundation and CLO HoldCo have filed joint pleadings within the Adversary Proceeding (a single motion to dismiss for failure to state claims and a single motion to withdraw reference). The Non-Party Targets are nowhere to be found within the Bankruptcy Case or any proceedings before the Court; yet the Court must conduct an investigation into these entities to see whether to compel the filing of joint pleadings? Cannot be.

c) The Disclosures Order is not just improper, it is prejudicial.

89. As this Court is aware, the Charitable Defendants are defendants in the Adversary Proceeding instituted by the Committee (DAF Fund and DAF Holdco are also defendants, though yet unserved—despite the Adversary Proceeding being pending for over 6 months). Central to the Committee's claims against the Charitable Defendants are the conclusions posing as allegation(s)

that the Charitable Defendants are part of civil conspiracy to fraudulently transaction assets out of the estate orchestrated by Mr. Dondero whom the Committee characterized as: standing on top of byzantine empire, moving assets and funds from one entity to another to meet various needs. *See* Adversary Proceeding, Dkt. No. 6, ¶2. (Sounds familiar).

90. In the Disclosures Order, the Court, seemingly already deciding this highly disputed issue in the Adversary Proceeding (which is not even a dispute—CLO HoldCo and Highland Dallas Foundation have filed a (joint) motion to dismiss under Rule 7012 for failure to state a claim), as it borrows the Committee's "byzantine" characterization and states that the targets of its Disclosures Order "appear to be under the *de facto* control of Mr. Dondero" and that the DAF Fund's decisions are "presumably at Mr. Dondero's direction." (the word "byzantine" is a much overworked word within this Bankruptcy Case, and its proceedings, pleadings, and orders of this Court). Disclosures Order, pp. 5, 11. This constitutes direct, specific, and express pre-judgment by this Court, and, of course, has tainted the Adversary Proceeding.

91. First and foremost, as shown herein, these assertions/findings are wrong. The Charitable Respondents and Non-Party Targets comprise an independent charitable giving structure that has facilitated the donation of tens of millions of dollars to important philanthropic causes. They are not under the *de facto* control of Mr. Dondero nor does Mr. Dondero direct their decisions—though like any donor would expect, Mr. Dondero has some say in the causes which the Supporting Organizations donate to.

92. But the fact that the Court has made these assertions/findings *sua sponte* outside of the Adversary Proceeding (or any case or controversy), when it has no authority to adjudicate the Adversary Proceeding (that is the subject of a motion to withdraw reference), is highly prejudicial to the Charitable Defendants. This Court, in its assumed posture as investigative body as well as

prosecutor and decider, has given cover to the utterly conclusory assertions of the Committee, and has, practically, joined the Committee as a plaintiff.

93. At an absolute minimum, the Court should refrain from deciding or even commenting upon contested issues of law and fact *sua sponte* outside of the Adversary Proceeding, and should retract its supposed findings (issued under the transparently incorrect suggestion of its power to manage its own docket [by pre-screening parties for standing????? - again, the case law cited above shows this is not proper]). The Charitable Respondents urge the Court, particularly after reviewing the information and documents provided in this Response and Disclosures, to reconsider such findings, and respectfully request that this Court retract its Disclosure Order or at least the problematic content therein.

CONCLUSION

By this Response and the Disclosures, the Charitable Respondents have fully complied with this Court's Disclosures Order, but have done so with the express reservations concerning the impropriety of the Disclosures Order and the non-appearance or submission by the Non-Party Targets. But most important to the Charitable Respondents is that the Court closely review this Response and Disclosures and reconsider its assumptions/assertions/findings/conclusion that the Charitable Respondents are under the *de facto* control of or act at the direction of Mr. Dondero. The Charitable Respondents are real, independent charitable giving vehicles that have affected, very positively, the lives of countless people through the tens of millions of dollars donated to important philanthropic causes.

[***signature block on following page***]

Respectfully submitted:

KELLY HART PITRE

/s/ Louis M. Phillips
Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com

Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
Telephone: (504) 522-1812
Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com

and

KELLY HART & HALLMAN
Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this July 9, 2021.

/s/ Louis M. Phillips
Louis M. Phillips

EXHIBIT 1

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

In re:	§	**Case No. 19-34054-sgj11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor	§	**Relates to Dkt. No. 2460**

Declaration of Mark Patrick

I, Mark Patrick, hereby declare as follows:

1. My name is Mark Patrick, and I am over the age of 21. I have personal knowledge of the facts set forth herein, and make this declaration pursuant to 28 U.S.C. § 1746.

2. I am a Director of Charitable DAF Holdco, Ltd. and the managing member of the sole general partner of Charitable DAF Fund, L.P. (Charitable DAF Holdco, Ltd. and Charitable DAF Fund, L.P., and their direct and indirect subsidiaries will be referred to herein as the "DAF"). A more robust discussion of these entities and their interrelation is set forth in the Response and Disclosures (defined herein).

3. I appreciate the opportunity to describe the important charitable work the DAF is doing through its charitable beneficiaries.

4. Since its inception in 2012, the DAF has had a significant impact in the communities where the supporting organizations that are the DAF's beneficiaries deploy their capital. In fact, such supporting organizations have funded more than $32 million in charitable contributions to numerous non-profit organizations. The DAF's charitable commitments are in excess of $42 million. The non-profit organizations that have received support from the DAF include The Family Place, which provides emergency shelter to those in need, and the Dallas Children's Advocacy Center, which serves the needs of abused and neglected children. A more

detailed summary of the DAF's charitable impact is an exhibit filed with the Response and Disclosures referenced herein.

5. I ultimately agreed to take on the roles I currently hold with the DAF because I believe in the causes the DAF is supporting. In college, I was a guardian ad litem for abused and neglected children. I have seen firsthand how the DAF is helping people every day who are struggling with abuse or difficult life situations. I have visited the Cristo Rey Dallas school campus, where low income and disadvantaged children are receiving a high-quality education that they otherwise would likely not receive.

6. The actions taken by me on behalf of the DAF in connection with the bankruptcy case of Highland Capital Management, L.P., and the lawsuit I authorized to be filed on behalf of CLO Holdco, Ltd. and DAF Fund against Highland Capital Management, L.P., were done so the DAF can continue to support these worthy causes. I am only trying to protect the DAF's investments, which are the source of the millions in charitable contributions the DAF has made over the past decade.

7. My actions aren't taken under the direction of James Dondero, or to somehow protect a direct or indirect economic benefit Mr. Dondero receives from the DAF. As the Response and Disclosures set forth in greater detail, Mr. Dondero has no direct or indirect economic ownership in the DAF.

8. My concern in vigorously pursuing claims for the DAF, or defending claims against the DAF, is to protect the DAF's investments from being taken by creditors who have no credible basis to obtain such investments.

9. I have been provided with and reviewed this Court's Order Requiring Disclosures (the "Disclosures Order").

10. In my capacity with the DAF, I assisted counsel in preparing the Response and Disclosures related to the Disclosures Order on behalf of CLO Holdco, Ltd., Charitable DAF Fund, L.P., and Highland Dallas Foundation, Inc. (the "Response and Disclosures," and capitalized terms used herein which are not otherwise defined are as defined in the Response and Disclosures).

11. With respect to the documents and Exhibits provided by the Foundations about the Supporting Organizations and Non-Party Targets I or those acting under my direction dealt with the Foundations to obtain such information. Multiple Exhibits have already been provided as evidence to the Bankruptcy Court at the Show Cause Hearing. I have reviewed the exhibits to the Response and Disclosures and affirm that the Exhibits provided about the Charitable Respondents are true and correct copies of what each document is identified as in the Response and Disclosures. With respect to the documents and Exhibits provided by the Foundations, I affirm, upon information and belief that these Exhibits are true and correct copies of what each document is identified as in the Response and Disclosures. As I am not a person with authority over the Supporting Organizations I cannot identify such documents and Exhibits of my own personal knowledge, but am satisfied that I can upon information and belief.

12. I have reviewed the Response and Disclosures and certify that the factual recitations therein are accurate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on July 9, 2021



Mark Patrick

EXHIBIT 2

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, June 8, 2021
	9:30 a.m. Docket
Debtor.	
	- SHOW CAUSE HEARING (2255)
	- MOTION TO MODIFY ORDER AUTHORIZING RETENTION OF JAMES SEERY (2248)
	- MOTION FOR ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH DEBTOR MAY REMOVE ACTIONS (2304)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor:
Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor:
John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor:
Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

APPEARANCES, cont'd.:

For the Charitable DAF, CLO Holdco, Show Cause Respondents, Movants, and Sbaiti & Company:	Mazin A. Sbaiti Jonathan E. Bridges SBAITI & COMPANY, PLLC Chase Tower 2200 Ross Avenue, Suite 4900W Dallas, TX 75201 (214) 432-2899
For Mark Patrick:	Louis M. Phillips KELLY, HART & HALLMAN, LLP 301 Main Street, Suite 1600 Baton Rouge, LA 70801 (225) 338-5308
For Mark Patrick:	Michael D. Anderson KELLY, HART & HALLMAN, LLP 201 Main Street, Suite 2500 Fort Worth, TX 76102 (817) 332-2500
For James Dondero:	Clay M. Taylor Will Howell BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For the Official Committee of Unsecured Creditors:	Paige Holden Montgomery SIDLEY AUSTIN, LLP 2021 McKinney Avenue, Suite 2000 Dallas, TX 75201 (214) 981-3300
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Q Was there any effort whatsoever to hide the prior order of the Bankruptcy Court?
A No.
MR. ANDERSON: Pass the witness.
THE COURT: Okay. Other examination?
MR. SBAITI: Yes, Your Honor. Just a couple of questions.

CROSS-EXAMINATION

BY MR. SBAITI:
Q Do you mind flipping to Exhibit 25, which I believe is the org chart, the one that you were looking at before?
A Okay.
Q It'll still be in --
A Okay. Yeah.
Q -- the defense binder. No reason to swap out right now.
A I've got the right binders. Some of them are repeatable exhibits, so --
Q Yeah.
A -- I have to grab the right binder. Yes.
Q As this org chart would sit today, is the only difference that Grant Scott's name would instead be Mark Patrick?
A Yes.
Q Was there ever a period of time where Jim Dondero's name would sit instead of Grant Scott's name prior?
A Yes, originally, when this -- yes.

Q So did Mr. Dondero both have the control shares of the GP, LLC and DAF Holdco Limited?
A No, I believe not. I believe he only held the Charitable DAF GP interest and that Mr. Scott at all times held the Charitable DAF Holdco, LTD interest, until he decided to transfer it to me.
Q Can you just tell us how Mr. Scott came to hold the control shares of the Charitable DAF Holdco, LTD?
A When he was the independent trustee of the Charitable Remainder Trust, he caused that -- the creation of that entity, and that's how he became in receipt of those management shares.
Q And does the Charitable DAF GP, LLC have any control over Charitable DAF Fund, LP's actions or activities?
A Yes, it does.
Q What kind of control is that?
A I would describe complete control. It's the managing member of that entity and can -- and effectively owns, you know, the hundred percent interest in the respective subsidiaries, and so the control follows down.
Q And when did Mr. Scott replace Mr. Dondero as the GP -- managing member of the GP?
A Well, I think as the -- and Mr. Morris had shown me with respect to that transfer occurring on March 2012.
Q So nine years ago?

A Yes.
Q Does Mr. Dondero today exercise any control over the activities of the DAF Charitable -- the Charitable DAF, GP or the Charitable DAF Holdco, LTD?
A No.
Q Is he a board member of sorts for either of those entities?
A No.
Q Is he a board members of CLO Holdco?
A No.
Q Does he have any decision-making authority at CLO Holdco?
A None.
Q The decision to authorize the lawsuit and the decision to authorize the motion that you've been asked about, who made that authorization?
A I did.
Q Did you have to ask for anyone's permission?
A No.

MR. SBAITI: No more questions, Your Honor.

THE COURT: Okay. Any -- I guess Mr. Taylor, no. All right. Any redirect?

REDIRECT EXAMINATION

BY MR. MORRIS:
Q Since becoming the authorized representative of the Plaintiffs, have you ever made a decision on behalf of those

entities that Mr. Dondero disagreed with?
A I have made decisions that were adverse to Mr. Dondero's financial -- financial decision. I mean, financial interests. Whether he disagreed with them or not, I don't -- he has not communicated them to me. But they have been adverse, at least two very strong instances.
Q Have you ever -- have you ever talked to him about making a decision that would be adverse to his interests? Did he tell -- did --
A I didn't -- I don't -- I did not discuss with him prior to making the decisions that I made that were adverse to his economic interests.
MR. MORRIS: Okay. No further questions, Your Honor.
THE COURT: Any further examination? Recross on that redirect?
MR. ANDERSON: No further questions.
MR. SBAITI: No further questions, Your Honor.
MR. ANDERSON: Sorry.
THE COURT: Nothing?
MR. ANDERSON: I think we're good.
THE COURT: Okay. I have one question, Mr. Patrick. My brain sometimes goes in weird directions.

EXAMINATION BY THE COURT

THE COURT: I'm just curious. What are these Cayman Island entities, charitable organizations formed in the Cayman

THE COURT: Uh-huh.

THE WITNESS: The offshore master fund structure typically will have two different types of -- they call it foreign feeder funds. One foreign feeder fund is meant to accommodate foreign investors; the other foreign feeder fund is meant to accommodate U.S. tax-exempt investors.

Why, why is it structured that way? In order to avoid something called -- I was trying not to be wonkish -- UBTI. That's, let's see, Un -- Unrelated Trader Business Income. I probably have that slightly wrong. But it's essentially, it's a means to avoid active business income, which includes debt finance income, which is what these CLOs tend to be, that would throw off income that would be taxable normally if the exempts did not go through this foreign blocker, and it converts that UBTI income -- it's called (inaudible) income -- into passive income that flows -- that flows up to the charities.

And so it's very typical that you'll have a U.S. tax-exempt investor, when they make an investment in a fund, prefer to go through an offshore feeder fund, which is actually Charitable DAF Holdco, LTD. That's essentially what, from a tax perspective, represents as a UBTI blocker entity. And then you have the offshore investments being held offshore because there's a variety of safe harbors where the receipt of interest, the portfolio interest exception, is not taxable.

The creation of capital gains or losses under the -- they call it the trading, 864(b) trading safe harbor, is not taxable. So that's why you'll find these structures operating offshore to rely on those safe harbor provisions as well as -- as well as what I indicated with respect to the two type blocker entities. It's very typical and industry practice to organize these way. And so when this was set --

THE COURT: It's very typical in the charitable world to --

THE WITNESS: In the investment management --

THE COURT: -- form this way?

THE WITNESS: In the investment management world, when you have charitable entities that are taking some exposure to assets that are levered, to set this structure up in this way. It was modeled after -- they just call them offshore master fund structures. They're known as Mickey Mouse structures, where you'll have U.S. investors --

THE COURT: Yes. I -- yes, I --

THE WITNESS: -- enter through a U.S. partnership, and the foreign investors enter through a blocker.

THE COURT: It was really just the charitable aspect of this that I was --

THE WITNESS: Yeah. Yeah.

THE COURT: -- getting at.

THE WITNESS: Yeah. No, but I'm just trying to

emphasize if --

THE COURT: All right. It's --

THE WITNESS: Yeah.

THE COURT: -- neither here nor there. All right.

MR. SBAITI: Your Honor, may I ask a slightly clarifying leading question on that, because I think I understand what he was trying to say, just for the record?

THE COURT: Well, --

MR. MORRIS: I object.

THE COURT: -- I tell you what. Anyone who wants to ask one follow-up question on the judge's question can do so. Okay? You can go first.

MR. SBAITI: I'll approach, Your Honor.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. SBAITI:

Q Would it be a fair summary of what you were saying a minute ago that the reason the bottom end of that structure is offshore is so that it doesn't get taxed before the money reaches the charities on the U.S. side?

A Tax -- it converts the nature of the income that is being thrown off by the investments so that it becomes a tax friendly income to the tax-exempt entity. Passive income. That's --

Q So, essentially, --

THE COURT: Okay. Okay.

MR. SBAITI: -- so it doesn't get taxed before it hits the --

THE COURT: I said one question.

MR. SBAITI: Sorry, Your Honor.

THE COURT: Okay. He answered it.

MR. PHILLIPS: And I have one question, Your Honor

THE COURT: Okay.

MR. PHILLIPS: I don't know if I need to ask this question, but I'd rather not ask you if I need to ask it.

THE COURT: Go ahead.

MR. PHILLIPS: But if I do, you know, I could --

THE COURT: Go ahead.

MR. PHILLIPS: Well, okay.

RECROSS-EXAMINATION

BY MR. PHILLIPS:

Q We've talked about the offshore structure. Are the foundations in the top two tiers of the organizational chart offshore entities?

A No.

Q They're --

A They're onshore entities. They're tax-exempt entities.

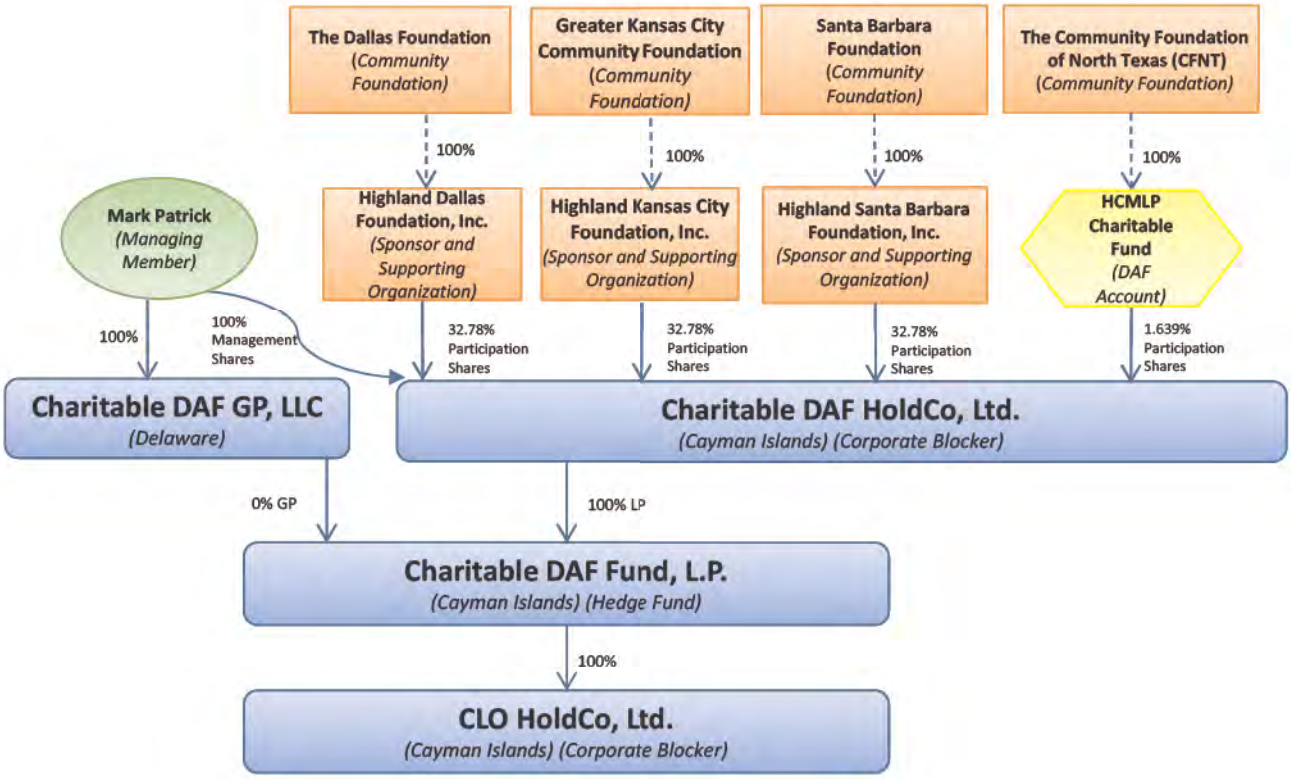
Q Thank you.

A The investments are offshore.

Q Thank you.

EXHIBIT 3

Charitable DAF/CLO HoldCo Structure Chart



4816-2089-1377

EXHIBIT 4

MEMORANDUM

Date: July 9, 2021

To: Mark Patrick

Company: Charitable DAF Holdco, Ltd. and CLO Holdco, Ltd.

From: Haynes and Boone, LLP, by Kenneth Bezozo

Subject: Donor Advised Funds ("*DAFs*"), Sponsoring Organizations and Supporting Organizations -- The Reasons for Making Investments in Offshore Jurisdictions

---

1. ***What are Donor Advised Funds, Sponsoring Organizations and Supporting Organizations?***

A donor advised fund, or DAF, is a separately managed charitable investment account established by a donor within a public charity (a section 501(c)(3) organization), which is generally referred to as a sponsor. Sponsors may include a community foundation, university, religious organization, or financial institution. The donor (or the donor's designee) typically maintains certain advisory privileges over the DAF funds or account – specifically with respect to charities that should receive donations, although the DAF account is fully and completely owned and controlled by the sponsor.

In some cases, a sponsor can create as a subsidiary a "supporting organization" which also is a Section 501(c)(3) public charity. A supporting organization is a separate entity controlled by the sponsor through its ability to elect a majority of the supporting organization's governing board. Because of this control, a supporting organization is treated financially as part of a consolidated unit with the sponsor.

Here, for example, The Dallas Foundation formed, and owns and controls, a supporting organization named Highland Dallas Foundation, Inc. ("***Highland Dallas Foundation***") to assist The Dallas Foundation in carrying out its charitable mission in helping support a wide variety of community affairs. Donations were made to the Highland Dallas Foundation as both the sponsor and the supporting organization. The Highland Dallas Foundation from time to time makes distributions of funds to The Dallas Foundation which in turn makes further distributions to local public charities. ***Exhibit 1*** attached shows these above-described entities, as well as other entities referenced herein that are pertinent to this donor advised fund.

2. ***How Does a Donor Establish a DAF Account?***

To establish a DAF fund or account, a donor must make an irrevocable contribution of assets, such as cash, stock or securities or other business or financial assets, to a sponsoring public charity. The donor's contribution is recorded and recognized as a donation to the sponsoring

public charity of the DAF. A donor can make additional contributions to the sponsoring organization whenever they choose.

Because a contribution to a sponsoring organization is, for tax purposes, the equivalent of a contribution to a public charity and because the donor gets an immediate tax benefit for the contribution, the contribution, when made, is permanent and irrevocable. This is true even though the donor contribution to the sponsoring organization is in an account that grows tax-free and the donor has advisory rights as to where to invest the assets and donations made from these assets.

Here, the Highland Dallas Foundation is the sponsor of the DAF account which it fully owns and controls. Although the donor has advisory rights regarding investments and donations to charities (by way of a board seat he fills in the supporting organization), the Highland Dallas Foundation has full authority and control over all such decision-making.

3. ***What Type of Investments Can be Made by a Sponsor/Supporting Organization?***

A sponsor and its supporting organization, such as The Dallas Foundation and Highland Dallas Foundation, are able to invest in a wide variety of assets including, but not limited to, marketable securities, financial assets, businesses, real estate, private equity and hedge funds. But because the sponsor and supporting organization are both public charities that are tax-exempt organizations, their investments must take into account all laws that could possibly effect their tax-exempt status.

a. ***Can a Sponsor and its Supporting Organization Invest in a Hedge Fund, Private Equity Fund or Similar Investment Vehicle?***

The short answer is yes, but as stated above, a sponsor and its supporting organization, such as The Dallas Foundation and Highland Dallas Foundation, are both public charities that are tax-exempt organizations. As a strong general rule, a tax-exempt organization will avoid any investments that will subject it to federal or state taxes. A tax-exempt organization is generally exempt from all federal and state taxes except to the extent it receives income classified as unrelated business taxable income (UBTI), which would be taxed at a 21% rate. The term "unrelated business taxable income" generally means the income derived from an unrelated trade or business regularly conducted by the tax-exempt organization. UBTI also can arise from the receipt of income from debt-financed investments, which is why hedge and private equity funds generally utilize a special investment structure to ensure tax-exempt investors do not have UBTI.

To prevent UBTI from flowing through to a tax-exempt organization, a corporation can be utilized to "block" this income at the corporate level, which is accomplished by having a corporation interposed between the tax-exempt organization and the hedge fund, such as The Charitable DAF Holdco, Ltd. (a corporate blocker) from the Charitable DAF Fund, L.P. Using a structure in this manner is often described as using a "blocker" because the UBTI is blocked out and does not flow through to the tax-exempt investor. Instead, the UBTI is included in the income of, and subject to tax in, the blocker corporation. The blocker corporation thereafter distributes the income to the tax-exempt

investor through the payment of dividends which are not UBTI and therefore not taxable to a tax-exempt organization.

Although using a domestic corporate blocker can avoid the problem of having UBTI passed through to a tax-exempt sponsor or its supporting organization, a U.S.-based blocker corporation will be required to pay corporate and state-level income tax on the income they receive from an investment fund.

b. ***Are There Particular Jurisdictions in Which Hedge and Private Equity Funds form Investment Partnerships and Blocker Corporations for their tax-exempt investors?***

It is common for hedge and private equity funds that have tax-exempt investors such as The Dallas Foundation and Highland Dallas Foundation to utilize an offshore structure to form its investment partnership. In addition, these funds may form offshore blocker corporations as well as for other reasons including the ability to make non-U.S. investments or U.S. investments that do not give rise to U.S. tax for foreign investors (i.e., U.S. investments that do not cause the investor to be "engaged in a U.S. trade or business.") Jurisdictions such as Bermuda and the Cayman Islands are typically used because those countries do not have an income tax regime.

By utilizing an offshore structure with corporate blockers, hedge and private equity funds can ensure their tax-exempt investors will not receive any UBTI from investments held by The Dallas Foundation or Highland Dallas Foundation. In addition, to the extent the sole source of UBTI is through debt financing (which is often the case in a hedge fund), then using an offshore corporate blocker can eliminate this type of UBTI (because the debt financing will not flow through the corporate blocker to taint the income received by the tax-exempt investor). This allows the sponsor (i.e., Highland Dallas Foundation), as well as any other charities that receive distributions from Highland Dallas Foundation or The Dallas Foundation, to receive the largest possible distributions.

Utilizing an offshore structure for hedge and private equity funds in the manner described above for tax-exempt investors is a best practice used by many U.S. law firms representing U.S. hedge and private equity funds. In fact, if a U.S. law firm didn't use offshore blockers in the manner described above, it could be considered a poor practice.

In summary, using an offshore blocker corporation, such as Charitable DAF Holdco, Ltd. and CLO Holdco, Ltd., for many hedge funds minimizes taxes and increases the net after-tax cash flow to the tax-exempt investors because investments grow tax-free, giving a sponsor, such as Highland Dallas Foundation, the potential to create even more capital for philanthropic giving.

4. ***Who Has Control and Authority over the Assets Held by the Sponsor?***

Because a DAF is an account within a sponsor organization, the sponsoring organization has full, complete and final control over the funds in the DAF, which is the case here with the sponsor, the Highland Dallas Foundation. Although the supporting organization permits the donor or the donor's designee to recommend how funds should be invested and how funds should be

distributed to other public charities, Highland Dallas Foundation must approve any investments and all distributions to charities.

In this case, the donor of the charitable DAF, or his designee, is able to appoint a representative to the board of the Highland Dallas Foundation, which allows the donor to recommend investments or distributions to charitable organizations, i.e., organizations that are tax-exempt under Internal Revenue Code section 501(c)(3) and classified as public charities under Internal Revenue Code section 509(a). But the donor (or the donor's designee) only has advisory privileges over making investments and the distribution of funds.

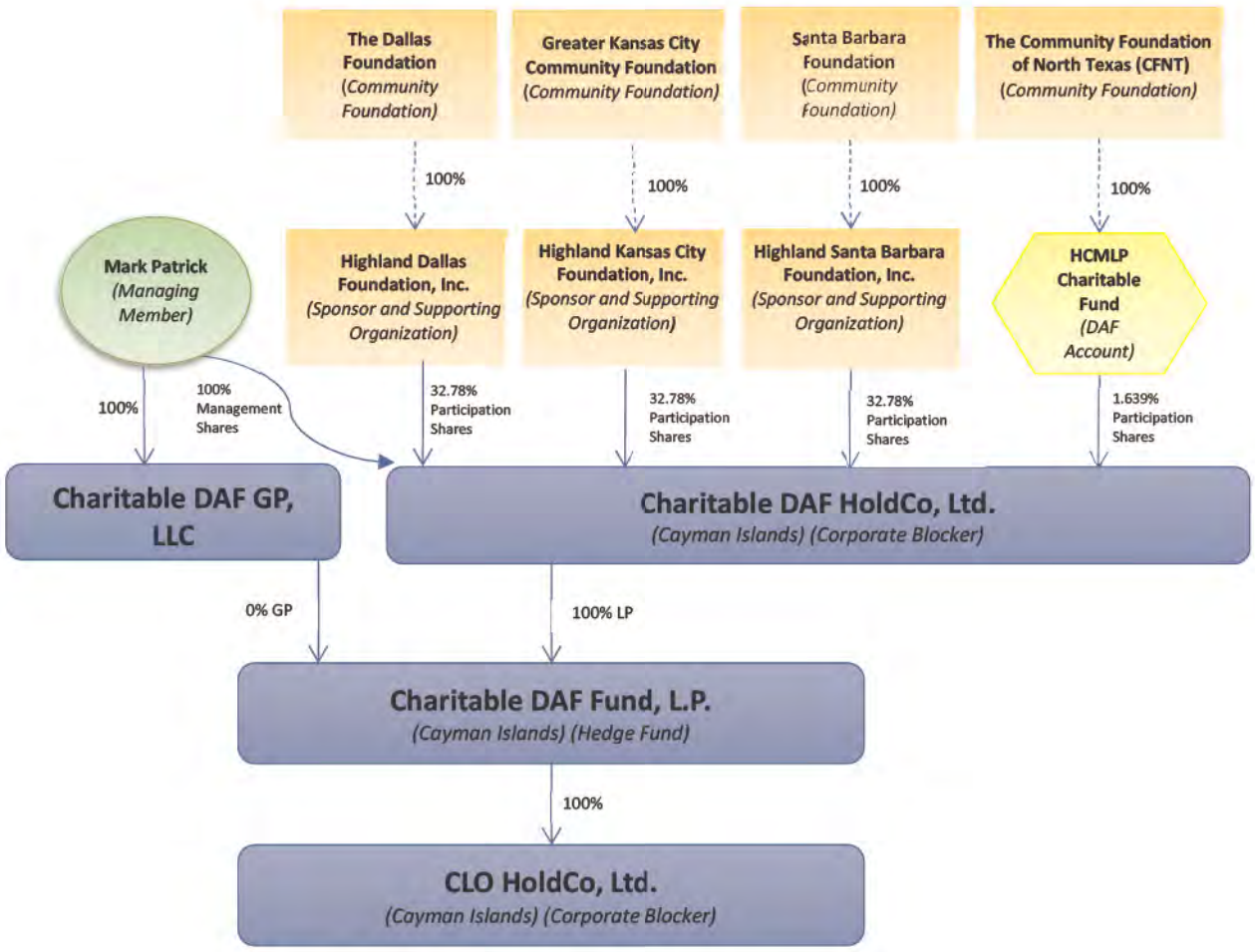
5. ***What Are the Benefits to a Donor of a Contribution to a DAF account?***

A DAF account allows a donor who makes an irrevocable charitable contribution to the DAF account to receive an immediate tax deduction, and with the ability to recommend distributions be made by the sponsor to specific charities either presently or in the future. Also, if the donor contributes certain appreciated assets to the DAF account, such as stock or securities, the donor avoids the recognition of any gain in these appreciated assets. This is a significant additional benefit to donors made available in the Internal Revenue Code.

The DAF assets that are not immediately distributed to charities are then invested and depending on the type of investments and the jurisdiction in what the investments are made, the assets may grow tax-free.

Exhibit 1

Charitable DAF/CLO Holdco Structure Chart



4822-2891-9537 v.7

EXHIBIT 5

WK–249232

Certificate Of Incorporation

*I, **V. DAPHENE WHITELOCKE** Assistant Registrar of Companies of the Cayman Islands DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said Law in respect of registration were complied with by*

CLO HoldCo, Ltd.

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the 13th day of December Two Thousand Ten

Given under my hand and Seal at George Town in the Island of Grand Cayman this 13th day of December Two Thousand Ten

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

Assistant Registrar of Companies, Cayman Islands.

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EXHIBIT 6

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

CLO HOLDCO, LTD.

WALKERS

Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: VC/CM/99957

REGISTERED AND FILED AS NO: 249232 THIS 13th DAY OF December, 2010
Asst. Registrar of Companies
Cayman Islands

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

CLO HOLDCO, LTD.

1. The name of the company is CLO HoldCo, Ltd. (the "**Company**").

2. The registered office of the Company will be situated at the offices of **Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands** or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is **US$50,000.00** divided into **50,000** shares of a nominal or par value of **US$1.00 each** provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER
Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands	ONE SHARE

(Sgd) Virginia Czarnocki

Virginia Czarnocki
as Authorised Signatory of Walkers Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald
Signature of Witness

Name: Carol MacDonald

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
V. Daphene Whitelocke
Assistant Registrar
Date. 13th December, 2010

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

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COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

CLO HOLDCO, LTD.

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to CLO HoldCo, Ltd. (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time;

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company;

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof;

"**Law**" means the Companies Law (as amended) of the Cayman Islands;

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time;

"**Office**" means the registered office of the Company as required by the Law;

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and



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where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed;

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up;

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires;

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law;

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof;

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company;

"**Share**" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share;

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber;

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law;

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means; and

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

2. In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

3. Subject to the last two preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

4. The business of the Company may be commenced at any time after incorporation.

5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

7. The Directors shall keep, or cause to be kept, the Register at such place as the Directors may from time to time determine and, in the absence of any such determination, the Register shall be kept at the Office.

SHARES

8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

(a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

(b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors.

10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.

13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Shares of any Class by the Company.

CERTIFICATES

14. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

15. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or

par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

LIEN

16. The Company has a first and paramount lien on every Share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that Share. The Company also has a first and paramount lien on every Share registered in the name of a Person indebted or under liability to the Company (whether he is the sole registered holder of a Share or one of two or more joint holders) for all amounts owing by him or his estate to the Company (whether or not presently payable). The Directors may at any time declare a Share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a Share extends to any amount payable in respect of it.

17. The Company may sell, in such manner as the Directors in their absolute discretion think fit, any Share on which the Company has a lien, but no sale shall be made unless an amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Persons entitled thereto by reason of his death or bankruptcy.

18. For giving effect to any such sale the Directors may authorise some Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

19. The proceeds of the sale after deduction of expenses, fees and commission incurred by the Company shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the Person entitled to the Shares immediately prior to the sale.

CALLS ON SHARES

20. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares, and each Shareholder shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on such Shares.

21. The joint holders of a Share shall be jointly and severally liable to pay calls in respect thereof.

22. If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the Person from whom the sum is due shall pay interest upon the sum at the rate of eight percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

23. The provisions of these Articles as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a Share,

becomes payable at a fixed time, whether on account of the amount of the Share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of partly paid Shares for a difference between the Shareholders, or the particular Shares, in the amount of calls to be paid and in the times of payment.

25. The Directors may, if they think fit, receive from any Shareholder willing to advance the same all or any part of the moneys uncalled and unpaid upon any partly paid Shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding without the sanction of an Ordinary Resolution, eight percent per annum) as may be agreed upon between the Shareholder paying the sum in advance and the Directors.

FORFEITURE OF SHARES

26. If a Shareholder fails to pay any call or instalment of a call in respect of partly paid Shares on the day appointed for payment, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

27. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.

28. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Directors to that effect.

29. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

30. A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the Shares forfeited, but his liability shall cease if and when the Company receives payment in full of the amount unpaid on the Shares forfeited.

31. A statutory declaration in writing that the declarant is a Director, and that a Share has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts in the declaration as against all Persons claiming to be entitled to the Share.

32. The Company may receive the consideration, if any, given for a Share on any sale or disposition thereof pursuant to the provisions of these Articles as to forfeiture and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of and that Person shall be registered as the holder of the Share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the disposition or sale.

33. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes due and payable, whether on account of the

amount of the Share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

34. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

35. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor.

36. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

37. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

TRANSMISSION OF SHARES

38. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only Person recognised by the Company as having any title to the Share.

39. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

40. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

41. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

42. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

43. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION AND PURCHASE OF SHARES

44. Subject to the Law, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may, before the issue of such Shares, determine;

(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder; and

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law, including out of its capital, profits or the proceeds of a fresh issue of Shares.

45. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

46. The redemption or purchase of any Share shall not be deemed to give rise to the redemption or purchase of any other Share.

47. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

GENERAL MEETINGS

48. The Directors may, whenever they think fit, convene a general meeting of the Company.

49. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later

than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

50. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

51. At least seven days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

52. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

53. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, the appointment and removal of Directors and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

54. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

55. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

56. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

57. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

58. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

59. The chairman may with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

60. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason, upon notice in writing to Shareholders. A postponement may be for a stated period of any length or indefinitely as the Directors may determine.

61. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

62. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

63. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

64. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

65. Subject to any rights and restrictions for the time being attached to any Share, on a show of hands every Shareholder present in person and every Person representing a Shareholder by proxy shall, at a general meeting of the Company, each have one vote and on a poll every Shareholder and every Person representing a Shareholder by proxy shall have one vote for each Share of which he or the Person represented by proxy is the holder.

66. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

67. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

68. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

69. On a poll votes may be given either personally or by proxy.

70. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

71. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

72. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

73. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

74. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

75. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

76. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

77. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

78. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

79. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

80. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

81. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

82. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR OR PROXY

83. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be an officer of the Company. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.

84. Any Director may appoint any Person , whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

85. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

86. The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their

number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

87. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

88. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

89. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

90. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article .

91. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

92. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

93. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

94. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

95. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

96. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

97. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

98. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or

(f) is removed from office pursuant to any other provision of these Articles.

PROCEEDINGS OF DIRECTORS

99. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit . Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

100. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication

equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

101. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.

102. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

103. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

104. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

105. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

106. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

107. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.

108. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

109. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

110. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

111. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

112. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

DIVIDENDS

113. Subject to any rights and restrictions for the time being attached to any Shares, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

114. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

115. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

116. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

117. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

118. Subject to any rights and restrictions for the time being attached to any Shares, all dividends shall be declared and paid according to the amounts paid up on the Shares, but if and for so long as nothing is paid up on any of the Shares dividends may be declared and paid according to the par value of the Shares.

119. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

120. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

121. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

122. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

123. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

124. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

125. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

126. Subject to the Law, the Directors may, with the authority of an Ordinary Resolution:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Shares held by them respectively, or

(ii) paying up in full unissued Shares or debentures of a nominal amount equal to that sum,

and allot the Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Shares,

and any such agreement made under this authority being effective and binding on all those Shareholders; and

(e) generally do all acts and things required to give effect to the resolution.

SHARE PREMIUM ACCOUNT

127. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share .

128. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

129. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the

purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

130. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

131. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

132. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

133. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

INDEMNITY

134. Every Director (including for the purposes of this Article any alternate Director appointed pursuant to the provisions of these Articles), Secretary, assistant Secretary, or other officer for the time being and from time to time of the Company (but not including the Company's auditors) and the personal representatives of the same (each an "**Indemnified Person**") shall be indemnified and

secured harmless against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such Indemnified Person, other than by reason of such Indemnified Person's own dishonesty, wilful default or fraud, in or about the conduct of the Company's business or affairs (including as a result of any mistake of judgment) or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by such Indemnified Person in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Cayman Islands or elsewhere.

135. No Indemnified Person shall be liable:

(a) for the acts, receipts, neglects, defaults or omissions of any other Director or officer or agent of the Company; or

(b) for any loss on account of defect of title to any property of the Company; or

(c) on account of the insufficiency of any security in or upon which any money of the Company shall be invested; or

(d) for any loss incurred through any bank, broker or other similar Person; or

(e) for any loss occasioned by any negligence, default, breach of duty, breach of trust, error of judgement or oversight on such Indemnified Person's part; or

(f) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities, or discretions of such Indemnified Person's office or in relation thereto;

unless the same shall happen through such Indemnified Person's own dishonesty, wilful default or fraud.

NON-RECOGNITION OF TRUSTS

136. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

137. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

138. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in

trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

139. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

140. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

141. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

142. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

143. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

DISCLOSURE

144. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial

authority, or to any stock exchange on which the Shares may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER

Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

(Sgd) Virginia Czarnocki
Virginia Czarnocki
as Authorised Signatory for and on behalf of Walkers Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald
Signature of Witness

Name: Carol MacDonald

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
V. Daphene Whitelocke
Assistant Registrar
Date. 13th December, 2010

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

EXHIBIT 7

intertrust GROUP

Registration No.: **249232**
Date of Incorporation: **13 December 2010**
Client No.: **KY057017**

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

Share Class: **Ordinary**
Nominal Value: **USD 1.00**
Voting Rights: Yes
Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	13 Dec 2010	Allotment	1.00	13 Dec 2010 : Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010				
						Nil	**Nil**	17 Dec 2010
Highland Capital Management Partners, Charitable Trust #2 13455 Noel Road Suite 800 Dallas TX 75240 USA	17 Dec 2010	Transfer	1.00	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010	No Cert			
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD				

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

[1 / 3]

PATRICK_000022

HCMLPHMIT00003613

intertrust GROUP

Registration No.: **249232**
Date of Incorporation: **13 December 2010**
Client No.: **KY057017**

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
				pursuant to Contribution and Tranfser Agreement dated 7 Nov 2011				
						Nil	**Nil**	7 Nov 2011
CHARITABLE DAF FUND, LP Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011	No Cert			
						100	**1.00**	
CHARITABLE DAF HOLDCO, LTD Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD pursuant to Contribution and Tranfser Agreement dated 7 Nov 2011	No Cert			
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011				
						Nil	**Nil**	7 Nov 2011

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

[2 / 3]

PATRICK_000023

HCMLPHMIT00003614

intertrust GROUP

Registration No.: **249232**
Date of Incorporation: **13 December 2010**
Client No.: **KY057017**

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

Notes:

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

[3 / 3]

EXHIBIT 8

WK–53083

Certificate of Registration of Exempted Limited Partnership

I, ***JOY A. RANKINE*** *Assistant Registrar of Exempted Limited Partnership in the Cayman Islands DO HEREBY CERTIFY, pursuant to the Exempted Limited Partnership Law, 1991 that all the requisitions of the said Law in respect of registration were complied with by*

Charitable DAF Fund, LP

an Exempted Limited Partnership registered in the Cayman Islands on the 28th day of October Two Thousand Eleven

Given under my hand and Seal at George Town in the Island of Grand Cayman this 28th day of October Two Thousand Eleven

REGISTRAR OF LIMITED PARTNERSHIPS
EXEMPTED
CAYMAN ISLANDS

Assistant Registrar of Exempted Limited Partnership
Cayman Islands.

EXHIBIT 9

DATED NOVEMBER 7, 2011

AMENDED AND RESTATED

EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF

CHARITABLE DAF FUND, LP

WARNING

THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS DOCUMENT INTO THE CAYMAN ISLANDS MAY GIVE RISE TO THE IMPOSITION OF CAYMAN ISLANDS STAMP DUTY

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AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the "**Agreement**") is made on November 7, 2011

BETWEEN

(1) Charitable DAF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands and having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as general partner (the "**General Partner**"); and

(2) Charitable DAF HoldCo, Ltd, a Cayman Islands exempted Company having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as limited partner (the "**Limited Partner**"); and

(3) Each individual, partnership, corporation, limited liability company, trust or other entity (each, a "**Person**") admitted as a limited partner or general partner (collectively, the "**Partners**") of the Partnership (as defined below) in accordance with this Agreement, including any Persons hereafter admitted as Partners in accordance with this Agreement and excluding any Persons who cease to be Partners in accordance with this Agreement; and

(4) Walkers Nominees Limited having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9005, Cayman Islands as the initial limited partner (the "**Initial Limited Partner**") solely for the purposes of withdrawing as such.

WHEREAS, Charitable DAF Fund, LP (the "**Partnership**") was formed and registered as an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Law (as amended) of the Cayman Islands (the "**Law**"), and since its formation has been governed by the Initial Limited Partnership Agreement of the Partnership, dated October 25, 2011 (the "**Initial Agreement**"); and

WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**") and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein; and

WHEREAS, the parties hereto wish to amend and restate the Initial Agreement in its entirety and enter into this Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby adopt this Agreement to be their Limited Partnership Agreement, as follows:

IT IS AGREED:

ARTICLE I
GENERAL PROVISIONS; COMPENSATION AND EXPENSES

1.1 Continuation. The parties hereto continue the Partnership as an exempted limited partnership formed on October 25, 2011 pursuant to the Law.

1.2 Name. The business of the Partnership shall be carried on under the name of Charitable DAF Fund, LP.

1.3 Purpose and Powers. The purpose of the Partnership shall be to invest and trade, directly or indirectly, in securities of all types and other investment vehicles and instruments. At least initially, a majority of the Partnership's assets shall be invested in shares of CLO HoldCo, Ltd., a Cayman Islands exempted company ("**CLO HoldCo**"), but the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners.

1.4 Registered Office. The registered office of the Partnership is c/o Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands.

1.5 Partners. The name and addresses of the Partners are as follows:

Name	**Address**
Charitable DAF GP, LLC	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands
Charitable DAF HoldCo Ltd (Limited Partner)	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands

1.6 Powers.

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and

obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

1.7 Term. The Partnership was established on October 25, 2011 and shall continue until terminated in accordance with this Agreement or any amendment or modification thereof.

1.8 Admission of New Partners. The General Partner may at any time admit one or more new Partners on such terms as it may determine in its sole discretion; provided that any such new Limited Partner shall have as its equity owners solely Indirect Charitable Owners.

1.9 Taxable Year. The Taxable Year of the Partnership shall be a calendar fiscal year, or such other fiscal year as the General Partner shall determine in their sole discretion from time to time.

1.10 Liability of Partners.

(a) The General Partner shall be liable for all of the debts, liabilities and obligations of the Partnership.

(b) Except to the extent otherwise required by law or this Agreement, a Limited Partner shall not be personally liable for any obligations of the Partnership to third parties nor for the return of any distributions from the Partnership to the Limited Partner. A Limited Partner may be liable for the tax audit and related expenses referred to in Section 6.1.

1.11 Limitation on Assignability of Partners' Interests.

(a) A Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner. Any attempted assignment or substitution not made in accordance with this section shall be void *ab initio*.

(b) The General Partner may not assign their interests in the Partnership to any entity that is not under common control with the General Partner without the consent of a majority-in-interest of the Limited Partners. Notwithstanding the foregoing, the General Partner may freely assign their economic interest in the Partnership in whole or in part.

1.12 Definitions. For the purpose of this Agreement, unless the context otherwise requires:

(a) General Partner. The term "**General Partner**" shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

(b) Indirect Charitable Owners. The term "**Indirect Charitable Owner**" shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.

(c) Limited Partner. The term "**Limited Partner**" shall refer to Charitable DAF HoldCo Ltd (and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of this Agreement).

(d) Partner. The term "**Partner**" shall refer to the General Partner or the Limited Partner.

1.13 Service Providers. The General Partner may engage one or more Persons to act, or remove any one or more Persons from so acting, as service providers to the Company (including, without limitation, as manager, administrator, custodian, registrar and transfer agent, investment manager, investment adviser, sponsor and/or prime broker, auditors and legal counsel to the Partnership) in its sole discretion; provided, that any compensation paid to any such service provider that is affiliated with the General Partner shall be in an amount customary for services of a similar nature.

1.14 Partnership Expenses. The Partnership will bear its own operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees (if any), taxes, research costs, legal and accounting expenses and other operating expenses. In addition, the Partnership will bear its pro rata share of CLO HoldCo's operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees, taxes, research costs, legal and accounting expenses and other operating expenses. The Partnership will also bear (or reimburse the General Partner for) its organizational fees and expenses. To the extent the Partnership shares trading expenses with other accounts that may be managed by the General Partner or any affiliates, it will bear a proportionate share of the associated costs. In no event shall the General Partner receive any compensation from the Partnership.

1.15 Withdrawal of Initial Limited Partner. The Initial Limited Partner hereby withdraws as a limited partner immediately following the admission of the Limited Partners and thereafter shall have no further rights, liabilities or obligations under or in respect of this Agreement in its capacity as Initial Limited Partner.

ARTICLE II
POWERS

2.1 Partnership Powers. The Partnership shall have the following powers:

(a) To purchase, sell, invest and trade, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, syndicated debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; statutory claims; royalty claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (all such items being called herein a "**Financial Instruments**"), and to sell Financial Instruments short and cover such sales;

(b) To possess, transfer, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Financial Interests held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such Financial Interests in the name of the Partnership, in the name of any securities broker or firm, in the name of any nominee of such firm, or in the name of any other nominee or any other street name, or any combination thereof;

(c) To lend, either with or without security, any Financial Instruments, funds or other properties of the Partnership, including by entering into reverse repurchase agreements, and, from time to time, undertake leverage on behalf of the Partnership;

(d) To borrow or raise moneys and, from time to time, without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any of the foregoing instruments and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Partnership, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the Partnership for its purposes;

(e) To have and maintain one or more offices within or without the Cayman Islands and in connection therewith to rent or acquire office space, engage personnel and do such other acts and things as may be necessary or advisable in connection with the maintenance of such office or offices;

(f) To open, maintain and close bank accounts and brokerage accounts, including the power to draw checks or other orders for the payment of monies; and

(g) To enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of the foregoing objects and purposes.

2.2 Rights, Powers, Limitations on Liability and Indemnification of General Partner.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the General Partner, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including members of any committee and parties acting as agents for the execution of transactions) (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the Partnership or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the

business of the Partnership, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Partnership, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Partnership whom such Covered Person believes is authorized to make such suggestions on behalf of the Partnership, (iii) any act or omission by the Partnership, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Partnership selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Partnership or in furtherance of the business of the Partnership in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the Partnership shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Partnership, any investment made under or in connection with this Agreement, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Partnership, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

(f) The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may

otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) **Notwithstanding anything in this Agreement to the contrary, the aggregate maximum amount that a Covered Person may be liable to the Partnership and/or any of the Partners pursuant to this Agreement shall, to the extent not prohibited by law, never exceed the amount of management and incentive fees received by such Covered Person from the Partnership under this Agreement prior to the date that the acts or omissions giving rise to a claim for indemnification or liability shall have occurred. In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits. No Covered Person shall incur any liability for interest on any monies at any time received by such Covered Person or any investment loss or other charge resulting therefrom with respect to amounts invested hereunder.**

(i) **WAIVER OF CONSUMER RIGHTS: The Partnership and each of the Limited Partners waive all of their respective rights, if any, under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code ("DTPA"), a law that gives consumers special rights and protections. After consultation with an attorney of Partnership's own selection, Partnership voluntarily consents to this waiver. This waiver includes any right to recover attorneys' fees under the DTPA. Further, Partnership waives all of its rights to any and all protections afforded by any other state or federal Consumer Protection Acts, including the recovery of attorneys' fees.**

(j) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Covered Person, the Partnership (and not the applicable Covered Person) shall be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence or reckless or intentional misconduct of any Covered Person. Given the volume of transactions executed on behalf of the Partnership, Limited Partners acknowledge that trading errors (and similar errors) will occur and that the Partnership shall be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Covered Person.

(k) This Section 2.2 shall survive a Limited Partner's withdrawal as a limited partner of the Partnership and any termination of this Agreement.

ARTICLE III
CAPITAL ACCOUNTS AND DIVISION OF PROFITS AND LOSSES

3.1 Capital Contributions.

(a) Each Partner has made the capital contributions to the Partnership in the amount set forth in the records of the Partnership. The Limited Partner has contributed to the Partnership all of the outstanding equity interests of CLO HoldCo.

3.2 Capital Account; Allocation of Profits and Losses.

(a) There shall be established for each Partner on the books of the Partnership as of the first day of the fiscal period during which such Partner was admitted to the Partnership a capital account for such Partner in an amount equal to his capital contribution to the Partnership.

(b) Since the General Partner's capital account and contributions shall be the minimum required by Law, all income, deductions, gains, losses and credits of the Partnership shall be allocated shall be for the benefit of the Limited Partner, except as may otherwise be required by law. In the event any valuation of assets is necessary or appropriate, the General Partner shall determine such value in any reasonable manner determined by the General Partner in its sole discretion consistent with relevant accounting principles and applicable law.

(c) For purposes of determining the share of any items allocated to any period during the relevant Taxable Year of the Partnership, such shares shall be determined by the General Partner using any method permitted by the Code and the regulations thereunder. All allocations to be made by the General Partner may be overridden if necessary to comply with the Code, the regulations thereunder or other applicable law.

(d) To the extent that the Partnership pays withholding taxes as to a Partner, such amounts shall be charged to the applicable Partner's capital account; provided, however, that any such amounts may be treated as an advance to the Partner with interest to be charged to that Partner's capital account at a rate determined by the General Partner.

(e) Each Partner agrees not to treat, on any tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with treatment of such item by the Partnership.

ARTICLE IV
LEGAL INTERESTS, DISTRIBUTIONS AND PARTIAL WITHDRAWALS FROM CAPITAL ACCOUNT

4.1 Legal Interest. Each Partner shall have and own during any Taxable Year an undivided interest in the Partnership equal to his opening capital account for such period.

4.2 Distributions.

(a) Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses. In determining the amount of cash or securities available for distribution, the General Partner may retain reasonable reserves in such amounts as it determines may be necessary to cover expenses, contingencies and losses. Notwithstanding the foregoing, distributions made in connection with a sale of all or substantially all of the Partnership's assets or a liquidation of the Partnership shall be made in accordance with the capital account balances of the Partners within the time period set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(3).

(b) The General Partner may withhold and pay over to the U.S. Internal Revenue Service (or any other relevant taxing authority) such amounts as the Partnership is required to withhold or pay over, pursuant to the Code or any other applicable law, on account of a Partner's distributive share of the Partnership's items of gross income, income or gain.

For purposes of this Agreement, any taxes so withheld or paid over by the Partnership with respect to a Partner's distributive share of the Partnership's gross income, income or gain shall be deemed to be a distribution or payment to such Partner, reducing the amount otherwise distributable to such Partner pursuant to this Agreement and reducing the capital account of such Partner. If the amount of such taxes is greater than any such distributable amounts, then such Partner and any successor to such Partner's interest shall pay the amount of such excess to the Partnership, as a contribution to the capital of the Partnership.

4.3 Withdrawal. Without the consent of the General Partner, no Partner may withdraw as a Partner or make withdrawals from such Partner's capital account. In the event the General Partner permits any such withdrawal, the withdrawal shall be on such terms and conditions as the General Partner shall determine in its sole discretion. The General Partner may terminate all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.

ARTICLE V
DURATION OF PARTNERSHIP

5.1 Termination. The Partnership shall be required to be wound up and dissolved upon:

(a) the service of a notice by the General Partner on the other Partners requiring that the Partnership be wound up and dissolved; or

(b) the withdrawal by or resignation of the General Partner as general partner of the Partnership; or

(c) the withdrawal of all Limited Partners.

Upon the occurrence of any such event, the Partnership's affairs shall be wound up by the General Partner or such other Person as the General Partner shall appoint.

5.2 Winding Up. Upon the Partnership being required to be wound up and dissolved, the General Partner shall proceed with the liquidation and distribution of the assets of the Partnership, and upon completion of the winding up of the Partnership, shall have the authority to and shall execute and file a dissolution notice and such other documents required to effect the dissolution and termination of the Partnership in accordance with the Law. Before the distribution of all the assets of the Partnership, the business of the Partnership and the affairs of the Partners, as such, shall continue to be governed by this Agreement. The winding up of the Partnership and payment of creditors shall be effected in accordance with the Law.

ARTICLE VI
MISCELLANEOUS

6.1 Tax Matters Partner. The General Partner shall at all times constitute, and have full powers and responsibilities, as the Tax Matters Partner of the Partnership. In the event the Partnership shall be the subject of an income tax audit by any Federal, state or local authority, to the extent the Partnership is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and his decision shall be final and binding upon, the Partnership and each Partner thereof, and the Tax Matters Partner shall be indemnified and held harmless by the Partnership and each Partner for any action so taken by him in good faith. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Partnership to the extent of available Partnership funds, and any excess shall be paid by the Partners individually in proportion to their percentage interests in the Partnership.

6.2 Right to Hire.

(a) Nothing herein shall preclude the General Partner from engaging on behalf of the Partnership the services of any person or firm, whether or not affiliated with the General Partner, including the General Partner, to render for compensation such services to the Partnership as may be necessary to implement the business purposes of the Partnership.

(b) Each of the Partners consents that the General Partner, the Investment Manager or any Limited Partner or any affiliate (as defined in the Securities Act of 1933, as amended, and the regulations thereunder) of any of them, including without limitation the investment manager of the CLO HoldCo, may engage in or possess an interest in directly or indirectly, any other present or future business venture of any nature or description for his own account, independently or with others,

including but not limited to, any aspect of the securities business or any other business engaged in by the Partnership, and may become the general partner in other partnerships; and neither the Partnership nor any Partner shall have any rights in or to such independent venture or the income or profits derived therefrom.

(c) The General Partner, the Investment Manager and any affiliate or employee of such General Partner or Investment Manager, may hereafter render investment advisory services to other investors with respect to, and/or may own, purchase or sell, securities or other interests in property the same as or similar to those which the General Partner may purchase, hold or sell on behalf of the Partnership.

6.3 Applicable Law, etc. This Limited Partnership Agreement: (i) shall be binding on the executors, administrators, estates, heirs and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the Cayman Islands; and (iii) may be executed in more than one counterpart with the same effect as if the parties executing the several counterparts had all executed one counterpart as of the day and year first above written; provided, however, that in the aggregate, they shall have been signed by all of the Partners. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural as the identity of the person may require. The term "gross negligence" and its cognates shall be interpreted in accordance with the laws of the State of Delaware.

6.4 Power of Attorney. Each of the undersigned does hereby constitute and appoint the General Partner, with full power of substitution, his true and lawful representative and attorney in-fact, in his name, place and stead to make, execute, sign and file this Agreement and any amendment to this Agreement authorized by the terms of this Agreement, and all such other instruments, documents and certificates (and any amendments thereto) which may from time to time be required by the laws of the Cayman Islands, the United States of America, or any state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership and to take any further action that the General Partner considers advisable in its sole discretion in connection with the exercise of its authority pursuant to this Agreement. This power of attorney is intended to secure an interest in property and, in addition, the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable.

6.5 Tax Elections Under the Internal Revenue Code. The General Partner shall have the authority to make all tax elections and determinations on behalf of the Partnership under the Internal Revenue Code, the regulations promulgated thereunder or other applicable law to effect any elections, determinations or capital allocations.

6.6 Amendments to Partnership Agreement. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the consent of the General Partner together with the consent of a majority in interest of the Limited Partners, insofar as is consistent with the laws governing this Agreement. Notwithstanding the foregoing, the General Partner shall have the right to effect

amendments to this Agreement without the consent of any Limited Partner, including without limitation, to reflect: a change in the location of the Partnership's principal place of business; a change in the registered office or registered agent; a change in the name of the Partnership; admission of Partners in accordance with this Agreement; a change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the Tax Matters Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for Federal income tax purposes; a change of the provisions relating to the management fee or other compensation to the Investment Manager or the General Partner so that such provisions conform to any applicable requirements of the U.S. Securities and Exchange Commission and other regulatory authorities; a change (i) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any Federal or state agency or contained in any Federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, (ii) that is required or contemplated by this Agreement, or (iii) that is necessary or desirable to implement new regulations published by the Internal Revenue Service with respect to partnership allocations of income, gain, loss, deduction and credit; a change to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to the matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof; or a change that does not adversely affect the Limited Partners in any material respect; *provided, that* in no event shall the General Partner effect any amendment to this Agreement that has the effect of giving the General Partner any economic benefits in the assets of the Partnership; *provided further, that* the General Partner shall give notice to the Limited Partners of any such amendment.

6.7 Investment Representation. Each Partner hereby acknowledges and represents that it acquired its interest in the Partnership for investment purposes only and not with a view to its resale or distribution.

6.8 Notices. All notices, requests or approvals that any party hereto is required or desires to give to any Partner or to the Partnership shall be in writing signed by or on behalf of the party giving the same and delivered personally or sent overnight express mail by a reputable private carrier or by prepaid registered or certified mail, return receipt requested, addressed (i) to the Limited Partner at the addresses set forth beneath his signature to this Agreement; (ii) to the Partnership at the principal place of business of the Partnership with a copy of each such notice sent simultaneously to the General Partner and the Investment Manager at Nextbank Tower, 13455 Noel Road, 8th Floor, Dallas, Texas 75240; or (iii) to the respective party at such other address or addresses as the party may specify from time to time in a writing given to the Partnership in the manner provided in this Section 6.8 of ARTICLE VI. Notice shall be deemed to have been duly given and received (i) on the date of delivery, if personally delivered, (ii) on the next business day subsequent to sending by overnight express mail as aforesaid, or (iii) on the third day subsequent to mailing if mailed as aforesaid; provided that any withdrawal notices shall not be deemed to have been given until actually received by the Partnership.

6.9 General Partner Determinations. Any determinations or calculations made by the General Partner shall, if made in good faith and in the absence of manifest error, be binding upon the Partnership and its Limited Partners.

6.10 Dispute Resolution. The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation.

(1) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(2) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(3) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(4) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration. If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of this document will control.

(1) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the

Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

(2) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.

(3) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive.

(4) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The

total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

(5) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.

(6) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

6.11 Successors and Assigns. Subject to the limitations set forth in Section 1.11, this Agreement shall inure to the benefit of and be binding upon the parties and to their respective heirs, executors, administrators, successors and permitted assigns. For the avoidance of doubt, any Limited Partner who becomes a former Limited Partner shall remain bound to all terms and conditions of this Agreement.

6.12 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

6.13 No Third Party Rights. Except for rights expressly granted hereunder to the Covered Persons, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.

6.14 No Right to Partition. Each of the Partners, on behalf of themselves and their shareholders, partners, principals, members, successors and assigns, if any and as permitted hereunder, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

SIGNATURE PAGE FOR AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: _____

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name:
Title:

Witnessed by: _____

SIGNATURE PAGE FOR AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: Candi L Rijos
Candi L. Rijos

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name: ROD PALMER
Title:

Witnessed by: Gráinne O'Gay

EXHIBIT 10

intertrust GROUP

Registration No.: **53083**
Date of Incorporation: **28 October 2011**
Client No.: **KY059900**

REGISTER OF MEMBERS
FOR:
CHARITABLE DAF FUND, LP

Share Class: **General Partner**
Nominal Value: **USD 0.00**
Voting Rights: Yes
Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CHARITABLE DAF GP, LLC The Corporation Trust Company Corporation Trust Center 1209 Orange St New Castle 19801 Wilmington DE USA	25 Oct 2011	New Partner	1.00	25 Oct 2011 : Initial Exempted Limited Partnership Agreement dated 25 Oct 2011	No Cert			
						Nil	**1.00**	

Notes:

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 11

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

WALKERS

190 Elgin Avenue, George Town
Grand Cayman KY1-9001, Cayman Islands
T +1 345 949 0100 F +1 345 949 7886 www.walkersglobal.com

REF: SSJ/VT/H0851-120776

GENERAL REGISTRY CAYMAN ISLANDS
Uploaded: 27-Jan-2015 16:49 EST
Filed: 04-Feb-2015 09:13 EST

AMER_Docs 11255406.3 H0851.120776

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

1. The name of the company is Charitable DAF HoldCo, Ltd (the "**Company**").

2. The registered office of the Company will be situated at the offices of Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is US$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US$0.01 each 100 Management Shares of a nominal or par value of US$0.01 each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

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THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

ARTICLES OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Gross Negligence**" has the meaning ascribed under the laws of the State of Delaware in the United States.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Management Share**" means a voting non-participating share in the capital of the Company of $0.01 nominal or par value, that shall be non-redeemable at the option of the holder but redeemable by the Company in accordance with these Articles, and issued subject to and in accordance with the provisions of the Law and these Articles and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Shares.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.

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"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Participating Share**" means a non-voting, participating, non-redeemable share in the capital of the Company of $0.01 nominal or par value issued subject to and in accordance with the provisions of the Law and these Articles, and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Share. All references to "**Participating Shares**" herein shall be deemed to be Participating Shares of any or all Classes or Series as the context may require. For the avoidance of doubt, in these Articles the expression "Participating Share" shall include a fraction of a Participating Share.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Restricted Person**" means any Person holding Participating Shares:

(a) in breach of the law or requirements of any country or governmental authority;

(b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the US Internal Revenue Code of 1986, as amended (the "**Code**") or an entity or organisation all of whose beneficiaries are exempt under Section 501(c)(3) of the Code; or

(c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

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"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a Management Share or Participating Share or both as the context so requires.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

"**United States**" means the United States of America (including the District of Columbia), its states, territories and possessions.

In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

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(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

2. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

3. The business of the Company may be commenced at any time after incorporation.

4. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

5. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Participating Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

6. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

7. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

(a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

(b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

8. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Participating Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions,

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preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

9. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

10. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MANAGEMENT SHARES

11. The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganisation or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.

12. Any Management Shares held by Grant Scott will be automatically redeemed by the Company upon his death or upon the Company receiving written notice from two board certified physicians confirming that he is of unsound mind or otherwise incapacitated ("**Automatic Redemption**").

13. If at the time of an Automatic Redemption, Grant Scott is the sole Director of the Company, such office will be automatically vacated by Grant Scott.

14. Upon an Automatic Redemption, the Company shall issue 100 Management Shares to a successor management shareholder ("**Successor Management Shareholder**") designated by James Dondero ("**Designator**"), or, if he is unable or declines to act, by an individual or individuals designated by James Dondero ("**Successor Designator**"), in either case within 15 days of the Automatic Redemption. If the Designator is:

(a) deceased and has not named a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made in accordance with the provisions of the Designator's will, or if his will contains no such provisions, by the qualified personal representative of his estate (the "**Designator's Personal Representative**"); or

(b) otherwise incapacitated and has not previously designated a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made by the Designator's attorney-in-fact appointed for such purpose, under a valid, effective power of attorney instrument (the "**Designator's Attorney**").

15. Any designation of a Successor Management Shareholder must be notified to the Company in writing and signed by either the Designator, the Successor Designator, the Designator's Personal Representative, or the Designator's Attorney, as appropriate, and accompanied by a consent to become a Shareholder signed by the Successor Management Shareholder ("**Issue Notice**"). The issue of the 100 Management Shares to the Successor Management Shareholder shall take effect upon receipt by the Company of the Issue Notice and the Register will be updated accordingly.

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16. The Designator may name a Successor Designator (including an individual, or a series of individuals) at any time pursuant to a written notice delivered to the Company during his lifetime or by a provision in his will. Each Successor Designator upon succeeding and replacing the Designator or a prior Successor Designator, may in the same manner as set out above, designate an individual, or a series of individuals, to succeed him as Successor Designator. In the event of a conflict between such instruments, the one bearing the latest date shall control. A Successor Designator will assume such office upon consenting to so act.

17. The Successor Management Shareholder may not be a "disqualified person" (as that term is defined in Section 4946 of the United States Internal Revenue Code of 1986, as amended), other than a foundation manager, with respect to Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., or Highland Kansas City Foundation, Inc.

18. In connection with the appointment of the Successor Management Shareholder, the Company and its registered office service provider will be entitled to rely on the advice of counsel confirming that the designation of the Successor Management Shareholder has been made in accordance with the procedures set out in these Articles.

PARTICIPATING SHARES

19. Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

MODIFICATION OF RIGHTS

20. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Participating Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that the variation or abrogation of the rights attached to such Classes proposed for consideration is the same variation or abrogation for all such relevant Classes, but in any other case shall treat them as separate Classes.

21. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company.

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CERTIFICATES

22. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

23. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

TRANSFER OF SHARES

24. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

25. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor including any purported transfer that does not comply with applicable securities or tax laws.

26. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

27. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

28. If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles.

TRANSMISSION OF SHARES

29. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.

30. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person

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could have made, but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

31. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

32. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

33. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

34. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

35. Subject to the Law, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;

(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law; and

(d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.

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36. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

37. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.

38. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

39. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Law. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.

40. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.

41. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:

(a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;

(b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Law, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.

42. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

43. The Directors may, whenever they think fit, convene a general meeting of the Company.

44. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.

45. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the

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objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

46. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

47. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

48. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

49. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

50. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

51. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

52. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

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53. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

54. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

55. The chairman may adjourn a meeting from time to time and from place to place either:

(a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting); or

(b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:

(i) secure the orderly conduct or proceedings of the meeting; or

(ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

60. On a show of hands every holder of Management Shares present in person and every Person representing such a Shareholder by proxy shall have one vote, and on a poll every holder of

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Management Shares present in person and every Person representing such Shareholder by proxy shall be entitled to one vote in respect of each of the Management Shares held by them.

61. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

62. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

63. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

66. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

67. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

68. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

69. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

70. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

71. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

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72. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

73. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

74. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

75. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

76. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

77. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR

78. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be deemed to be an officer of the Company solely as a result of his appointment as an alternate. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.

79. Any Director may appoint any Person , whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

80. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

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81 The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

82. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

83. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

84. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

85. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.

86. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

87. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

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88. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

89. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

90. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

91. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

92. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

93. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or

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(f) is removed from office pursuant to any other provision of these Articles, including without limitation, in the circumstance set out in Article 13.

PROCEEDINGS OF DIRECTORS

94. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

95. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

96. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.

97. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

98. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

99. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

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100. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

101. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

102. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.

103. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

104. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

105. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

106. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

107. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

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DIVIDENDS

108. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Law and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

109. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

110. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

111. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

112. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

113. Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.

114. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

115. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

116. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

117. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

118. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not

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being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

119. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

120. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

121. Subject to the Law and these Articles, the Directors may:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Participating Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Participating Shares held by them respectively; or

(ii) paying up in full unissued Participating Shares or debentures of a nominal amount equal to that sum,

and allot the Participating Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Participating Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Participating Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Participating Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Participating Shares,

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and any such agreement made under this authority being effective and binding on all those Shareholders; and

(e) generally do all acts and things required to give effect to any of the actions contemplated by this Article.

SHARE PREMIUM ACCOUNT

122. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.

123. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

124. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

125. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

126. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

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127. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

128. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

NON-RECOGNITION OF TRUSTS

129. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

130. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

131. Subject to any rights and restrictions for the time being attributed to any Class or Series, the assets available for distribution among the Shareholders shall then be applied in the following priority:

(a) first, in the payment to the holders of Participating Shares and Management Shares, *pari passu*, of a sum equal to the par value of the Participating Shares or Management Shares held by them; and

(b) second, in the payment of any balance to holders of Participating Shares, such payment being made in proportion to the number Participating Shares of the relevant Class and Series held.

132. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Participating Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such

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assets in trustees upon such trusts for the benefit of the Participating Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

133. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

134. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

135. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

136. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

137. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

138. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Law.

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DISCLOSURE

139. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares or any Class or Series may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

INDEMNITY

140. To the fullest extent permitted by law, no Director, Secretary, Assistant Secretary, committee member or other officer for the time being and from time to time of the Company (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be liable to the Company or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or Gross Negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

141. Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

142. To the fullest extent permitted by law, the Company shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Company, any investment made, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Company, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or Gross Negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or Gross Negligence.

143. Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

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144. The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

DISPUTE RESOLUTION

145. The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with these Articles or otherwise involving the Company, its Shareholders and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation:

(i) any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect;

(ii) the mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute;

(iii) the mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings; and

(iv) each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties,

(b) Arbitration:

if a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in these Articles and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of these Articles will control:

(i) the arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any

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issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the United States Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, *provided, however*, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a State arbitration act of the United States preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures;

(ii) the arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law;

(iii) the party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive;

(iv) no discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted;

(v) all aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a

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reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term; and

(vi) the result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

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EXHIBIT 12



Registration No.: **263805**
Date of Incorporation: **27 October 2011**
Client No.: **KY059904**

PATRICK_000017

REGISTER OF MEMBERS
FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: **Management**
Nominal Value: **USD 0.01**
Voting Rights: Yes
Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Managment, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
						Nil	**Nil**	25 Mar 2021
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: **263805**
Date of Incorporation: **27 October 2011**
Client No.: **KY059904**

PATRICK_000018

REGISTER OF MEMBERS
FOR:
CHARITABLE DAF HOLDCO, LTD

				dated 07 Nov 2011.				
						Nil	**Nil**	7 Nov 2011
Mark E. Patrick	25 Mar 2021	Transfer	100.00	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021	No Cert			
						100	**100.00**	

Notes:

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 13

PATRICK_000019

intertrust GROUP

Registration No.: **263805**
Date of Incorporation: **27 October 2011**
Client No.: **KY059904**

REGISTER OF MEMBERS
FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: **Participating**
Nominal Value: **USD 0.01**
Voting Rights: Yes
Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
The Highland Capital Management Partners Charitable Trust #2 Highland Capital Management, L.P. 13455 Noel Rd, Suite 800 Dallas TX 75240 USA	7 Nov 2011	Allotment	300.00	7 Nov 2011 : Allotment of 300.0 Participating share(s) for USD0.01 / share to The Highland Capital Management Partners Charitable Trust #2 pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Kansas City Foundation, Inc pursuant to resolutions dated 30 Nov 2011				
		New Certificate	200.00	30 Nov 2011 : New certificate No. 0 issued for remaining balance of 200.0 Participating share(s)	No Cert			
		Transfer	(100.00)	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Dallas Foundation, Inc				

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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PATRICK_000020

intertrust GROUP

Registration No.: **263805**
Date of Incorporation: **27 October 2011**
Client No.: **KY059904**

REGISTER OF MEMBERS
FOR:
CHARITABLE DAF HOLDCO, LTD

				pursuant to resolutions dated 30 Nov 2011				
		New Certificate	100.00	30 Nov 2011 : New certificate No. 0 issued for remaining balance of 100.0 Participating share(s)	No Cert			
		Transfer	(100.00)	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Santa Barbara Foundation, Inc pursuant to resolutions dated 30 Nov 2011				
						Nil	**Nil**	30 Nov 2011
Highland Kansas City Foundation, Inc	30 Nov 2011	Transfer	100.00	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Kansas City Foundation, Inc pursuant to resolutions dated 30 Nov 2011	No Cert			
						100	**100.00**	
Highland Dallas Foundation, Inc	30 Nov 2011	Transfer	100.00	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Dallas Foundation, Inc pursuant to resolutions dated 30 Nov 2011	No Cert			
						100	**100.00**	
Highland Santa Barbara Foundation, Inc	30 Nov 2011	Transfer	100.00	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management	No Cert			

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

PATRICK_000021

intertrust GROUP

Registration No.: **263805**
Date of Incorporation: **27 October 2011**
Client No.: **KY059904**

REGISTER OF MEMBERS
FOR:
CHARITABLE DAF HOLDCO, LTD

				Partners Charitable Trust #2 to Highland Santa Barbara Foundation, Inc pursuant to resolutions dated 30 Nov 2011				
						100	**100.00**	
Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT 306 W. 7th St., Suite 1045 Fort Worth TX 76102 USA	13 Aug 2015	Allotment	5.00	13 Aug 2015 : Allotment of 5.0 Participating share(s) for USD0.01 / share to Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT pursuant to minutes/resolutions dated 12 Aug 2015	No Cert			
						100	**5.00**	

Notes:

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 14

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "CHARITABLE DAF GP, LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF OCTOBER, A.D. 2011, AT 11:23 O'CLOCK A.M.

5056341 8100

111131792

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

Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 9113377

DATE: 10-25-11

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:26 AM 10/25/2011
FILED 11:23 AM 10/25/2011
SRV 111131792 - 5056341 FILE

CERTIFICATE OF FORMATION

OF

CHARITABLE DAF GP, LLC

The undersigned hereby executes this Certificate of Formation of Charitable DAF GP, LLC (the "**Company**"), for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act.

1. The name of the Company is **Charitable DAF GP, LLC.**

2. The address of the registered office of the Company in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. Its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned, an authorized person of the Company, has caused this Certificate of Formation to be duly executed as of the 24th day of October, 2011.

By: _____
James S. Seevers, Jr.
Authorized Person

EXHIBIT 15

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT (this "Agreement") is made and entered into as of the 24 day of March, 2021, by and between Grant J. Scott (the "Assignor") and Mark E. Patrick.

WHEREAS, Assignor is the legal and beneficial owner of one hundred percent (100%) of the limited liability company interest (the "Membership Interest") in Charitable DAF GP, LLC, a Delaware limited liability company (the "Company"), and Assignor desires to assign the Membership Interest to Assignee, upon the terms and conditions set forth herein; and

WHEREAS, Assignee desires to accept an assignment of the Membership Interest (such right, title and interest in and to the Membership Interest, together with, if any: (i) Assignor's capital account, (ii) the Assignor's rights in and to specific Company property, (iii) Assignor's rights to participate in the management of the Company, (iv) Assignor's rights to distributions, reimbursements or other payments (including any distributions of cash flow which have not been distributed), (v) rights to profits, losses and other allocations, and (vi) all other rights and benefits of Assignor in the Company with respect to the Membership Interest assigned hereby to Assignee being herein sometimes collectively referred to as the "Assigned Interest").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignment and Assumption of Assigned Interest. Assignor does hereby unconditionally and irrevocably assign, transfer, set over and deliver unto the Assignee, its successors and assigns, the Assigned Interest, including, but not limited to the profits, losses, capital and cash flow, if any, allocable to the Assigned Interest, free and clear of any and all liens, security interests, encumbrances, claims, rights of another, rights of first refusal, covenants, conditions, reservations and any and all other restrictions. Assignee does hereby accept the Assigned Interest and agrees to be bound by and assume all obligations under the limited liability company agreement of the Company.

2. Substitute Member. Assignor hereby acknowledges that Assignee is hereby admitted as a substitute member of the Company with respect to the Membership Interest from and after the date hereof as a result of this Agreement.

3. Effective Date. This Agreement is effective as of the date first above mentioned.

4. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Agreement. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, PDF or other electronic means, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ASSIGNOR:

Name: **Grant J. Scott**

ASSIGNEE:

Name: **Mark E. Patrick**

[Signature Page for Assignment of Membership Interest Agreement]

EXHIBIT 16

Attachment 2

Part II, Line 1 Certificate of Incorporation

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "HIGHLAND DALLAS FOUNDATION, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF NOVEMBER, A.D. 2011, AT 7:34 O'CLOCK P.M.

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

Jeffrey W. Bullock, Secretary of State

5069985 8100

AUTHENTICATION: 9177054

111224468

DATE: 11-23-11

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

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:17 PM 11/22/2011
FILED 07:34 PM 11/22/2011
SRV 111224468 - 5069985 FILE

CERTIFICATE OF INCORPORATION

OF

HIGHLAND DALLAS FOUNDATION, INC.

FIRST: The name of the corporation is Highland Dallas Foundation, Inc. (sometimes hereinafter referred to as the "corporation").

SECOND: The corporation is organized and shall be operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purposes, the corporation is organized and operated exclusively to support and benefit The Dallas Foundation, a Texas nonprofit corporation that is exempt from federal income taxation under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and a public charity described in section 509(a)(1) of the Code. In furtherance of these purposes, the corporation shall be controlled by The Dallas Foundation within the meaning of Section 509(a)(3)(B)(i) of the Code. The corporation shall possess and exercise all the powers and privileges granted by the Delaware General Corporation Law (the "Law") or by any other law of the State of Delaware or by this Certificate of Incorporation together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the corporation. Notwithstanding the foregoing, the corporation shall carry on only those activities permitted to be carried on by an organization that is exempt from taxation under section 501(c)(3) of the Code and an organization that is described in section 509(a)(3) of the Code.

THIRD: The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

FOURTH: The corporation shall be a nonprofit nonstock corporation, and it is not authorized to issue any capital stock. The directors of the corporation shall be elected in the manner and for the terms provided in the corporation's bylaws; provided, however, that the number of directors shall not be fewer than three (3). Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

FIFTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, the corporation's directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make grants, loans and similar payments in furtherance of the purposes set forth in Article SECOND hereof unless such compensation, grant, loan or similar payment would constitute an excess benefit transaction as that term is defined in either section 4958(c)(1) or section 4958(c)(3) of the Code. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any activities not permitted to be carried on by (i) a corporation exempt from federal income tax under section 501(c)(3) of the Code, (ii) a corporation contributions

to which are deductible under section 170 of the Code, or (iii) a supporting organization described in section 509(a)(3) of the Code.

SIXTH: The corporation shall have perpetual existence.

SEVENTH: To the fullest extent permitted by Law, no director of the corporation shall be liable to the corporation or any member for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to the corporation or its members, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, including but not limited to section 4958 of the Code, or (iii) any transaction from which the director derived an improper personal benefit. If the Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Law, as so amended. To the fullest extent permitted by Law, the corporation shall indemnify and may purchase and maintain insurance or other arrangements on behalf of any and all of the directors and officers of the corporation whom it may lawfully indemnify and insure to the maximum extent permitted by the Law, as amended from time to time, or by the laws of the State of Delaware, as in effect from time to time, in each case subject to the requirements of section 4958 of the Code. Any repeal or modification of this Article SEVENTH shall not adversely affect any right or protection of a director or officer of the corporation existing at the time of such repeal or modification.

EIGHTH: Upon the dissolution of the corporation, the corporation's assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code to The Dallas Foundation. If The Dallas Foundation is no longer described in section 501(c)(3) of the Code at the time of the distribution or is then no longer in existence, the corporation's assets shall be distributed to one or more organizations organized exclusively for charitable, educational, scientific or other exempt purposes and qualified as exempt under section 501(c)(3) of the Code, as shall be determined by the members of the corporation.

NINTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the members of the corporation are expressly authorized to make, alter and repeal the bylaws of the corporation.

TENTH: The incorporator is James Dondero whose mailing address is Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240.

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file and record this Certificate of Incorporation, and, accordingly, have hereto set my hand this 22nd day of November, 2011.

James Dondero

EXHIBIT 17

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JAN 19 2013

HIGHLAND DALLAS FOUNDATION INC
C/O HUNTON & WILLIAMS LLP
MARGARET S ALFORD
1445 ROSS AVE STE 3700
DALLAS, TX 75202

Employer Identification Number:
[redacted]1755
DLN:
[redacted]8022
Contact Person:
SHEILA M ROBINSON ID# [redacted]1220
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(3)
Form 990 Required:
Yes
Effective Date of Exemption:
November 22, 2011
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Specifically, we have determined that you are a Type I supporting organization under section 509(a)(3). A Type I supporting organization is operated, supervised, or controlled by one or more publicly supported organizations.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Letter 947 (DO/CG)

HIGHLAND DALLAS FOUNDATION INC

Sincerely,

Holly O. Paz

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 4221-PC

Letter 947 (DO/CG)

EXHIBIT 18

Attachment 4

Part IV Narrative Description of Activities

The Applicant is organized and will be operated exclusively as a supporting organization within the meaning of section 509(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), to support and benefit The Dallas Foundation ("TDF"), a Texas nonprofit corporation. TDF is exempt from federal income taxation under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code and a public charity described in section 509(a)(1) of the Code.

The Applicant received its funding as one of three charitable remainder beneficiaries of a charitable remainder trust created by James Dondero, which terminated on November 30, 2011. As the attached Schedule D reflects, the Applicant qualifies as a Type I supporting organization within the meaning of section 509(a)(3)(B)(i) because a majority of its board is elected by TDF.

The Applicant's supported organization, TDF, is the oldest community foundation in Texas and serves donors and nonprofit agencies throughout North Texas. As a community foundation, TDF offers a range of ways for local philanthropists to assist the community, including donor advised funds, designated and agency endowment funds, field of interest funds, scholarship funds, and unrestricted funds. TDF focuses on challenges facing North Texas and searches for nonprofit agencies that address these issues most efficiently and effectively, and it assists in connecting donors to causes they care about. In 2010, TDF paid out $31,408,988 in grants to charitable organizations in North Texas. The Applicant will support and benefit TDF by making grants directly to TDF in support of its charitable purposes. In addition, upon the direction and on behalf of TDF, the Applicant may make grants to such other public charities that TDF wishes to benefit in furtherance of TDF's exempt purposes. The total annual grants from the Applicant to or on behalf of TDF are expected to average approximately $1,000,000 per year.

EXHIBIT 19

Reserved for Possible Supplementation

EXHIBIT 20

Attachment 3

Part II, Line 5 Bylaws

BYLAWS
OF

HIGHLAND DALLAS FOUNDATION, INC.

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BYLAWS

OF

HIGHLAND DALLAS FOUNDATION, INC.

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of Highland Dallas Foundation, Inc. (the "Corporation") shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is The Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have an office in the City of Dallas, State of Texas, and also offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEMBERSHIP

Section 2.1 Classes and Number. The Corporation shall have two classes of members and one member in each such class: the Institutional Member, which shall be The Dallas Foundation, and the Individual Member, which shall be James Dondero or an individual designated as the Individual Member in accordance with these Bylaws.

Section 2.2 Voting. Except as otherwise provided in these Bylaws, the Institutional Member shall be entitled to two (2) votes upon each matter submitted to a vote of the members, and the Individual Member shall be entitled to one (1) vote upon each matter submitted to a vote of the members. In addition to any voting rights provided in these Bylaws, members shall be entitled to vote upon any matter with respect to which the General Corporation Law of the State of Delaware, or its successor statute, as amended (the "Law"), requires a vote of the members.

Section 2.3 Transfer of Membership. Institutional Membership in the Corporation is not transferable or assignable. The Individual Membership is transferable or assignable as provided herein only upon the approval of the Institutional Member, with such approval not to be unreasonably withheld by the Institutional Member. Subject to the approval of the Institutional Member, Mr. Dondero, as the initial Individual Member, may at any time pursuant to a written notice delivered to the Institutional Member during his lifetime or by a provision in his Will or other testamentary document, transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. Each successor Individual Member shall succeed to the rights of the initial Individual Member. Subject to the approval of the Institutional Member, each successor Individual Member may in the same manner transfer his Individual Member

interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. In the event of a conflict between such transfer documents, the one bearing the latest date shall control. Each Individual Member may at any time revoke his transfer document that is to be effective in the future, in whole or in part, by written notice delivered to the Institutional Member. If at any time an Individual Member shall be disabled and no transfer of such member's interest is to occur as a result of such disability in accordance with the foregoing provisions of this Section, then such member's attorney-in-fact under a valid, effective power of attorney instrument may act for such member hereunder. In the event of the death of an Individual Member, such member's personal representative of his estate, or trustee of a trust to which the Individual Member transferred his interest, may, if necessary, act as the Individual Member hereunder until such time as the Individual Member interest is transferred from the estate or trust.

Section 2.4 Resignation of Member. A member may resign at any time upon written notice to the Secretary.

Section 2.5 Place of Meetings. All meetings of the members be held shall by means of remote communication as authorized by the Law, unless the Board of Directors decides to hold such a meeting by another permitted means.

Section 2.6 Annual Meetings. Except as otherwise provided by these Bylaws, annual meeting of the members, commencing with the year 2012, shall be held at such date and time in the month of December as shall be provided by resolution of the Board of Directors, at which the members shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.7 Special Meetings. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by the Law or by the Certificate of Incorporation, may be called by the President and shall be called by the Secretary at the request of a majority of the Board of Directors, or at the request in writing of a member entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.8 Notice of Meetings of Members. When notice is required to be given for a meeting of the members, such notice shall specify the date, time, and location of the meeting and shall be given to each member at least ten (10) days prior to the meeting (at least three (3) days in the case of a special meeting). Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the member's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the

facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a member's residence or place of business.

Section 2.9 Quorum. Both the Institutional Member and the Individual Member must be present in person or represented by proxy in order to constitute a quorum at all meetings of the members for the transaction of business, except as otherwise required by Law, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the members, the member entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 2.10 Voting. When a quorum is present at any meeting, the vote of a majority of the number of votes held by the members, present in person or represented by proxy, shall be the act of the members, unless the act of a greater number is required by Law or expressly by these Bylaws.

Section 2.11 Proxies. At any meeting of the members, any member entitled to vote, consent or approve any action or matter may do so in person or by proxy authorized by an instrument in writing or by a transmission permitted by law. Any member represented by proxy shall be counted as present at such meeting for all purposes. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to these Bylaws may be substituted or used in lieu of the original writing or transmission that could be used, provided that the copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.12 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the members may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by the member(s) holding the number of votes necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 2.12. Prompt notice of the taking of an action by the members without a meeting by less than unanimous written consent shall be given to each member who did not consent in writing to the action. Each such consent must state the date of each member's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the members at an actual meeting.

ARTICLE III

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such acts and things as are not by the Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the members, so long as the exercise of such powers and doing of such acts are consistent with the Corporation's prescribed purposes.

Section 3.2 Number of Directors. The number of Directors that shall constitute the Board of Directors shall be three (3). Two (2) Directors (the "Institutional Directors") shall be elected annually by the Institutional Member and one (1) Director (the "Individual Director") shall be elected annually by the Individual Member. Each Director shall hold office until such Director's successor is elected and qualified or until such Director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3 Vacancies. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, then (i) with respect to a vacancy of an Institutional Director seat, the Institutional Member shall elect a person to fill such vacancy, and (ii) with respect to a vacancy of an Individual Director seat, the Individual Member shall elect a person to fill such vacancy. If at any time there is no Individual Member who is able to fill a vacancy of an Individual Director seat, then the Institutional Member shall elect a successor Individual Director. Each Director elected to fill a vacancy shall hold office for the unexpired term of such Director's predecessor in office.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Committees of Directors. The Corporation shall have no committees unless the Board of Directors, by resolution or resolutions passed by the unanimous vote of the Board, designates one or more committees.

Section 3.6 Compensation of Directors. Except to the extent prohibited by section 4958(c)(3) of the Internal Revenue Code of 1986 (the "Code"), Directors, as such, may receive such stated salary for their services and/or such fixed sums and expenses for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Annual Meeting. The annual meeting of the Board of Directors shall be held at such place and at such time as may be determined by the Board of Directors. If the date, time and location of the annual meeting are specified by a resolution adopted by the Board of

Directors, no further notice of such annual meeting shall be required. If the date, time and location of an annual meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.8 Additional Regular Meetings. The Board of Directors may hold additional regular meetings for the purpose of taking any action and conducting any business that may properly come before the Board of Directors. If the date, time and location of the regular meeting are specified by a resolution adopted by the Board of Directors, no further notice of such regular meeting shall be required. If the date, time and location of a regular meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.9 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of any one or more Directors upon not less than three (3) days notice to each director. The person or persons calling a special meeting of the Board of Directors shall fix a date, time and location for holding such special meeting, which shall be specified in a notice provided for such special meeting consistent with the requirements of Section 3.10 below.

Section 3.10 Method and Timing of Notice. Unless otherwise provided herein, when notice is required to be given for a meeting of the Board of Directors, such notice shall be given to each Director at least ten (10) days prior to the meeting. Any notice given herein shall specify the date, time, and location of the meeting. Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the Director's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a Director's residence or place of business.

Section 3.11 Purpose not Required in Notice. Unless specifically required by the Law or these Bylaws for a particular action, the purpose of and business to be transacted at a meeting need not be specified in the notice of such meeting or in a waiver of notice of such meeting.

Section 3.12 Waiver of Notice. Any Director may waive notice of any meeting by a writing signed by the Director, whether signed before or after the holding of such meeting, and such signed written waiver shall be deemed the equivalent of the Director having received notice. A Director's attendance at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business of such meeting on the ground that the meeting is not lawfully called or convened.

Section 3.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the Board of Directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, are signed by all of the then-serving Directors. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 3.13. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the Board of Directors at an actual meeting.

Section 3.14 Validation of Action by Consent. All actions taken at a meeting of the Board of Directors which is not regularly called or noticed shall be valid as if taken at a meeting regularly called and noticed if each Director either consents in writing or is present at such meeting and does not object to the meeting being held. At such meeting any business may be transacted which is not excepted from the written consent or which is not objected to at such meeting for want of notice. If any meeting of the Board of Directors is irregular for want of notice, the proceedings of such meeting may be ratified, approved and rendered valid, and the irregularity or defect therein waived, by a writing signed by all Directors, provided a quorum was present at such meeting.

Section 3.15 Quorum and Manner of Acting. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. Except as otherwise provided by the Law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any Director may participate in a meeting of the Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at the meeting. In the absence of a quorum, a majority of the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given, except that notice shall be given to all Directors if the adjournment is for more than thirty days.

Section 3.16 Resignation and Removal of Directors. Each Director may resign at any time by written notice delivered to the member that appointed such Director and to the President and Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. The Institutional Member may remove an Institutional Director at any time, with or without cause. The Individual Member may remove an Individual Director at any time, with or without cause.

ARTICLE IV

OFFICERS

Section 4.1 Officers. The officers of the Corporation shall include a President and a Secretary, and may include a Chairman and a Chief Financial Officer. A person may hold multiple offices.

Section 4.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting or at a special meeting held in lieu thereof. Each officer, except such officers as may be appointed in accordance with the provisions of Section 4.3, shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal. None of the officers other than the Chairman need be members of the Board of Directors.

Section 4.3 Subordinate Officers. The Board of Directors may appoint such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers, Controller and other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board of Directors may from time to time determine. The Board of Directors may, by specific resolution, empower the President or another officer of the Corporation to appoint any such subordinate officers or agents.

Section 4.4 Removal. The President, the Secretary, the Chairman and/or the Chief Financial Officer may be removed at any time by the Board of Directors with or without cause. Any subordinate officer appointed pursuant to Section 4.3 may be removed at any time, with or without cause, by the Board of Directors or by the person holding the officer position by which the subordinate officer was appointed.

Section 4.5 The President. The President shall be the chief executive officer of the Corporation. He or she shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by the Law, the Certificate of Incorporation, or these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. In general the President shall perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.6 The Secretary. The Secretary shall:

(a) keep the minutes of the meetings of the members and of the Board of Directors;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; and

(d) in general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him or her by the Board of Directors or by the President of the Corporation.

Section 4.7 The Assistant Secretaries. If one or more Assistant Secretaries shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Secretary, or in his or her absence or disability, the Assistant Secretary designated by the Secretary (or in the absence of such designations, then any one of such Assistant

Secretaries) shall perform the duties of the Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

Section 4.8 Chairman. The Chairman, if any, shall preside when present at meetings of the Board of Directors; advise and counsel the other officers of the Corporation; and shall perform such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.9 The Chief Financial Officer. The Chief Financial Officer, if any, shall:

(a) receive and be responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depository as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized;

(b) render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation; and

(c) in general, perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to the Chief Financial Officer by the Board of Directors or by the chief executive officer of the Corporation.

Section 4.10 The Assistant Chief Financial Officers. If one or more Assistant Chief Financial Officers shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Chief Financial Officer, or in the Chief Financial Officer's absence or disability, the Assistant Chief Financial Officer designated by the Chief Financial Officer (or in the absence of such designation, then any one of such Assistant Chief Financial Officers) shall perform all the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon, the Chief Financial Officer.

Section 4.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE V

BOOKS AND RECORDS

Section 5.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 5.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection at all times by any member and by any member of the Board of Directors.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless changed by the Board of Directors.

Section 6.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 6.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board of Directors.

Section 6.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 6.5 Conflicts of Interest. No contract or agreement may be entered into by and between the corporation and any of the following: (a) a Director, officer, or employee of the corporation (hereinafter an "Insider"); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an "Entity") in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 144 of the Delaware General Corporation Law to the extent such provision is applicable to the transaction; and (ii) if one or more of the parties to the contract or transaction is a "disqualified person" with respect to the corporation within the meaning of Section 4958 of the Code, either (x) such transaction is reviewed and approved in accordance with the "rebuttable presumption safe harbor" provisions set forth in the regulations promulgated under Section 4958 of the Code or (y) the Board of Directors determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a gratuitous transfer of assets or promise to transfer assets to the corporation of any kind, including but not limited to, (i) a gift annuity, charitable remainder trust, charitable lead trust or similar split-interest arrangement which benefits both the Insider and the corporation; or (ii) a loan, lease, agreement of sale or purchase, pledge, guarantee, assumption of liability, bailment, or consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a Director, officer, and/or employee of the corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

Section 6.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the Law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, Directors or members of a committee of directors need be specified in any written waiver of notice.

Section 6.7 Ownership Interests in Other Entities. Any ownership interests (e.g., shares of stock in any other corporation which may from time to time be held by this Corporation) may be represented and voted at any meeting of owners of such entity by the President, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President.

Section 6.8 Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that the person is or was a Director or officer of the Corporation or is or was a Director or officer of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the laws of Delaware as the same now or may hereafter exist (but, in the case of any change, only to the extent that such change authorizes the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such change) against all costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the person's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that the director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors and officers.

(b) If a claim under subsection (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the

unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of members or disinterested Directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any Director, member, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) To the extent that any Director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, such person shall be indemnified against all costs and expenses actually and reasonably incurred by such person or on such person's behalf in connection therewith.

(f) Any amendment, repeal or modification of any provision of this Section by the members or the Directors of the Corporation shall not adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such amendment, repeal or modification.

(g) The provisions of this Section 6.7, and the limitations on liability and indemnification provided in such Section, shall survive the winding up and termination of the Corporation to the extent permitted by applicable law.

Section 6.9 Amendment of Bylaws. Only the members, by the affirmative unanimous vote of the members entitled to vote, may adopt, amend, or repeal these Bylaws, and alterations or amendments of these Bylaws made by the members shall not be altered or amended by the

Board of Directors to the extent such alteration or amendment expressly states that it can only be altered or amended by the members.

EXHIBIT 21

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "HIGHLAND SANTA BARBARA FOUNDATION, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF NOVEMBER, A.D. 2011, AT 7:36 O'CLOCK P.M.

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

Jeffrey W. Bullock, Secretary of State

5069989 8100

AUTHENTICATION: 9177064

111224480

DATE: 11-23-11

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

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:17 PM 11/22/2011
FILED 07:36 PM 11/22/2011
SRV 111224480 - 5069989 FILE

CERTIFICATE OF INCORPORATION

OF

HIGHLAND SANTA BARBARA FOUNDATION, INC.

FIRST: The name of the corporation is Highland Santa Barbara Foundation, Inc. (sometimes hereinafter referred to as the "corporation").

SECOND: The corporation is organized and shall be operated, exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purposes, the corporation is organized and operated exclusively to support and benefit Santa Barbara Foundation, a California nonprofit corporation that is exempt from federal income taxation under section 501(a) of the Code of 1986 as an organization described in section 501(c)(3) of the Code, and a public charity described in section 509(a)(1) of the Code. In furtherance of these purposes, the corporation shall be controlled by Santa Barbara Foundation within the meaning of Section 509(a)(3)(B)(i) of the Code. The corporation shall possess and exercise all the powers and privileges granted by the Delaware General Corporation Law (the "Law") or by any other law of the State of Delaware or by this Certificate of Incorporation together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the corporation. Notwithstanding the foregoing, the corporation shall carry on only those activities permitted to be carried on by an organization that is exempt from taxation under section 501(c)(3) of the Code and an organization that is described in section 509(a)(3) of the Code.

THIRD: The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

FOURTH: The corporation shall be a nonprofit nonstock corporation, and it is not authorized to issue any capital stock. The directors of the corporation shall be elected in the manner and for the terms provided in the corporation's bylaws; provided, however, that the number of directors shall not be fewer than three (3). Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

FIFTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, the corporation's directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make grants, loans and similar payments in furtherance of the purposes set forth in Article SECOND hereof unless such compensation, grant, loan or similar payment would constitute an excess benefit transaction as that term is defined in either section 4958(c)(1) or section 4958(c)(3) of the Code. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any activities not permitted to be carried on by (i) a corporation exempt from federal income tax under section 501(c)(3) of the Code, (ii) a corporation contributions

to which are deductible under section 170 of the Code, or (iii) a supporting organization described in section 509(a)(3) of the Code.

SIXTH: The corporation shall have perpetual existence.

SEVENTH: To the fullest extent permitted by Law, no director of the corporation shall be liable to the corporation or any member for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to the corporation or its members, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, including but not limited to section 4958 of the Code, or (iii) any transaction from which the director derived an improper personal benefit. If the Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Law, as so amended. To the fullest extent permitted by Law, the corporation shall indemnify and may purchase and maintain insurance or other arrangements on behalf of any and all of the directors and officers of the corporation whom it may lawfully indemnify and insure to the maximum extent permitted by the Law, as amended from time to time, or by the laws of the State of Delaware, as in effect from time to time, in each case subject to the requirements of section 4958 of the Code. Any repeal or modification of this Article SEVENTH shall not adversely affect any right or protection of a director or officer of the corporation existing at the time of such repeal or modification.

EIGHTH: Upon the dissolution of the corporation, the corporation's assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code to Santa Barbara Foundation. If Santa Barbara Foundation is no longer described in section 501(c)(3) of the Code at the time of the distribution or is then no longer in existence, the corporation's assets shall be distributed to one or more organizations organized exclusively for charitable, educational, scientific or other exempt purposes and qualified as exempt under section 501(c)(3) of the Code, as shall be determined by the members of the corporation.

NINTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the members of the corporation are expressly authorized to make, alter and repeal the bylaws of the corporation.

TENTH: The incorporator is James Dondero whose mailing address is Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240.

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file and record this Certificate of Incorporation, and, accordingly, have hereto set my hand this 21st day of November, 2011.

James Dondero

EXHIBIT 22

IRS DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

Date of this notice: 12-02-2011

Employer Identification Number:
[redacted]2008

Form: SS-4

Number of this notice: CP 575 E

HIGHLAND SANTA BARBARA FOUNDATION
INC
13455 NOEL RD STE 800
DALLAS, TX 75240

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN [redacted]2008. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Assigning an EIN does not grant tax-exempt status to non-profit organizations. Publication 557, *Tax Exempt Status for Your Organization*, has details on the application process, as well as information on returns you may need to file. To apply for formal recognition of tax-exempt status, most organizations will need to complete either Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. Submit the completed form, all applicable attachments, and the required user fee to:

Internal Revenue Service
PO Box 12192
Covington, KY 41012-0192

The Pension Protection Act of 2006 contains numerous changes to the tax law provisions affecting tax-exempt organizations, including an annual electronic notification requirement (Form 990-N) for organizations not required to file an annual information return (Form 990 or Form 990-EZ). Additionally, if you are required to file an annual information return, you may be required to file it electronically. Please refer to the Charities & Non-Profits page at www.irs.gov for the most current information on your filing requirements and on provisions of the Pension Protection Act of 2006 that may affect you.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at www.irs.gov. If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

(IRS USE ONLY) 575E 12-02-2011 HIGH O 9999999999 SS-4

IMPORTANT REMINDERS:

* Keep a copy of this notice in your permanent records. **This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you.**
* Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
* Refer to this EIN on your tax-related correspondence and documents.
* Provide future officers of your organization with a copy of this notice.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub. Thank you for your cooperation.

Keep this part for your records. CP 575 E (Rev. 7-2007)

Return this part with any correspondence so we may identify your account. Please correct any errors in your name or address.

CP 575 E

9999999999

Your Telephone Number
( ) -
_____

Best Time to Call
_____

DATE OF THIS NOTICE: 12-02-2011
EMPLOYER IDENTIFICATION NUMBER: [redacted]2008
FORM: SS-4 NOBOD

INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

HIGHLAND SANTA BARBARA FOUNDATION INC
13455 NOEL RD STE 800
DALLAS, TX 75240

EXHIBIT 23

SANTA BARBARA FOUNDATION

BOARD OF TRUSTEES

Pamela Gann
Chair

Stephen Hicks
Vice Chair

Susan T. Richards
Treasurer

Nicolasa Sandoval, Ph.D.
Secretary

Diane Adam
Phil Alvarado
Randall Day
Donna France
Angel Iscovich, M.D.
Danna McGrew
Robert C. Nakasone
Ernesto Paredes
Cathy Pepe
James Rogers
Matt Rowe
Ginger Salazar
Tracy Stouffer
Michael D. Young, Ph.D.

President & CEO
Jacqueline M. Carrera

South County Headquarters
1111 Chapala Street, Suite 200
Santa Barbara, CA 93101-3100
Phone: (805) 963-1873
Fax: (805) 966-2345

North County Headquarters
2625 S. Miller Street, Suite 101
Santa Maria, CA 93455-1777
Phone: (805) 346-6123
Fax: (805) 346-6125

SBFoundation.org

@sbfoundation
@sbfoundation
/santa-barbara-foundation
@santabarbarafoundation

July 9, 2021

Honorable Stacy G. C. Jernigan
United States Bankruptcy Judge
Northern District of Texas

Re: Highland Dallas Foundation, Inc.

Dear Judge Jernigan:

The Santa Barbara Foundation ("SBF") is a community foundation incorporated in 1928 under the laws of the state of California as a nonprofit corporation to enrich the lives of the people of Santa Barbara County through philanthropy. The mission of SBF is to mobilize collective wisdom and philanthropic capital to build empathetic, inclusive, and resilient communities. Working in partnership with individuals, families, community organizations, nonprofits, businesses, and government, SBF funds a wide range of initiatives, projects, and organizations. SBF has supported nearly every Santa Barbara County nonprofit organization and essential community project during its 93-year history and continues to serve as one of the largest private funding sources for area nonprofits, agencies, and college-bound students.

In 2020, SBF awarded $31 million in grants, received $36 million in contributions, and had $514 million in assets. Nonprofit support included annual grant programs (behavioral health, health care, food, shelter & safety, and child care), laying the groundwork for workforce development strategies, and creating the Collaboration for Social Impact to help nonprofits with capacity building and leadership development. Additionally, SBF co-organized and co-led the countywide COVID-19 Joint Response Effort, broadened its grantmaking to include small businesses through the Santa Barbara Better Together Fund, co-led the 2020 census efforts with the County of Santa Barbara, sponsored and produced educational events to promote diversity, equity, inclusion and access, and continued its annual funding of the Scholarship Foundation of Santa Barbara. Grants are made through SBF from various types of funds, including donor advised, donor designated, and field of interest. Discretionary grants, totaling over $7 million in 2020, are also supported by SBF's unrestricted contributions and investment income.

<u>Supporting Organizations</u>

SBF works with entities organized under Section 509(a)(3) of the Internal Revenue Code as supporting organizations to SBF for the specific and primary purpose of benefiting, performing functions of, and engaging in activities consistent with SBF's charitable purposes. SBF appoints a majority of the members of the governing boards of the supporting organizations. Each governing board may create its own investment policy and grant guidelines. Each organization is a separate legal entity required to file

its own IRS Form 990, "Return of Organization Exempt from Income Tax". SBF and its supporting organizations are considered under SBF's control and thus consolidated in SBF's audited financial statements.

Overview of Highland Santa Barbara Foundation, Inc.

Highland Santa Barbara Foundation, Inc. (HSBF) was formed in November 2011 as a Delaware nonprofit nonstock corporation to operate exclusively for the benefit of, to perform the functions of, or carry out the purposes of SBF. HSBF is a Type I supporting organization under Section 509(a)(3) of the Internal Revenue Code. SBF is a supported organization under Section 509(a)(1) of the Internal Revenue Code.

The Bylaws of HSBF describe the governance of HSBF by its members, directors, and officers. HSBF has two classes of members, institutional and individual, and one member in each class. SBF is the institutional member. James Dondero is the individual member. HSBF has three directors, two elected by SBF and one elected by James Dondero. The president, secretary, and any other officers of HSBF are elected by the three directors.

SBF and HSBF have an operating agreement whereby SBF provides grant administration and other services to HSBF and HSBF pays support fees to SBF. The fees are calculated using a tiered schedule based on the fair market value of 100 participation shares of Charitable DAF HoldCo, Ltd., which is the primary asset of HSBF. The fair market value is determined by an independent valuation firm at least annually.

Relationship and Mission Advancement

SBF meets annually with HSBF to discuss SBF activities, alignment of SBF priorities and focus areas with HSBF philanthropic objectives, and proposed HSBF funding for the upcoming year. Since its inception, HSBF has funded over $5 million of the grants awarded by SBF, including nearly $3 million in Santa Barbara County. See HSBF, Inc. History, attached.

HSBF has augmented SBF's discretionary grants in the areas of: early childhood, youth, and workforce development and education; scholarships; veterans and military education and job training; Community Caregiving Initiative; and Food Action Plan. HSBF has also funded grants to specific organizations, including: $400,000 to Children's Museum of Santa Barbara d.b.a. MOXI - The Wolf Museum of Exploration and Innovation; $90,000 to Reasoning Mind, Inc. for identified local schools to participate in a math literacy program; and $30,000 to Boy Scouts of America - Los Padres Council for rebuilding of Camp Rancho Alegre following the Whittier Fire.

Thank you.

Sincerely,

Jacqueline M Carrera

Jacqueline M. Carrera
President & Chief Executive Officer

EXHIBIT 24

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "HIGHLAND KANSAS CITY FOUNDATION, INC.", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF NOVEMBER, A.D. 2011, AT 4:23 O'CLOCK P.M.

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

Jeffrey W. Bullock, Secretary of State

5070449 8100

111227849

AUTHENTICATION: 9179752

DATE: 11-28-11

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

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:03 PM 11/23/2011
FILED 04:23 PM 11/23/2011
SRV 111227849 - 5070449 FILE

CERTIFICATE OF INCORPORATION

OF

HIGHLAND KANSAS CITY FOUNDATION, INC.

FIRST: The name of the corporation is Highland Kansas City Foundation, Inc. (sometimes hereinafter referred to as the "corporation").

SECOND: The corporation is organized and shall be operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purposes, the corporation is organized and operated exclusively to support and benefit the Greater Kansas City Community Foundation, a Missouri nonprofit corporation that is exempt from federal income taxation under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and a public charity described in section 509(a)(1) of the Code. In furtherance of these purposes, the corporation shall be controlled by the Greater Kansas City Community Foundation within the meaning of Section 509(a)(3)(B)(i) of the Code. The corporation shall possess and exercise all the powers and privileges granted by the Delaware General Corporation Law (the "Law") or by any other law of the State of Delaware or by this Certificate of Incorporation together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the corporation. Notwithstanding the foregoing, the corporation shall carry on only those activities permitted to be carried on by an organization that is exempt from taxation under section 501(c)(3) of the Code and an organization that is described in section 509(a)(3) of the Code.

THIRD: The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

FOURTH: The corporation shall be a nonprofit nonstock corporation, and it is not authorized to issue any capital stock. The directors of the corporation shall be elected in the manner and for the terms provided in the corporation's bylaws; provided, however, that the number of directors shall not be fewer than three (3). Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

FIFTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, the corporation's directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make grants, loans and similar payments in furtherance of the purposes set forth in Article SECOND hereof unless such compensation, grant, loan or similar payment would constitute an excess benefit transaction as that term is defined in either section 4958(c)(1) or section 4958(c)(3) of the Code. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any activities not permitted to be carried on by (i) a corporation

exempt from federal income tax under section 501(c)(3) of the Code, (ii) a corporation contributions to which are deductible under section 170 of the Code, or (iii) a supporting organization described in section 509(a)(3) of the Code.

SIXTH: The corporation shall have perpetual existence.

SEVENTH: To the fullest extent permitted by Law, no director of the corporation shall be liable to the corporation or any member for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to the corporation or its members, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, including but not limited to section 4958 of the Code, or (iii) any transaction from which the director derived an improper personal benefit. If the Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Law, as so amended. To the fullest extent permitted by Law, the corporation shall indemnify and may purchase and maintain insurance or other arrangements on behalf of any and all of the directors and officers of the corporation whom it may lawfully indemnify and insure to the maximum extent permitted by the Law, as amended from time to time, or by the laws of the State of Delaware, as in effect from time to time, in each case subject to the requirements of section 4958 of the Code. Any repeal or modification of this Article SEVENTH shall not adversely affect any right or protection of a director or officer of the corporation existing at the time of such repeal or modification.

EIGHTH: Upon the dissolution of the corporation, the corporation's assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code to the Greater Kansas City Community Foundation. If the Greater Kansas City Community Foundation is no longer described in section 501(c)(3) of the Code at the time of the distribution or is then no longer in existence, the corporation's assets shall be distributed to one or more organizations organized exclusively for charitable, educational, scientific or other exempt purposes and qualified as exempt under section 501(c)(3) of the Code, as shall be determined by the members of the corporation.

NINTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the members of the corporation are expressly authorized to make, alter and repeal the bylaws of the corporation.

TENTH: The incorporator is James Dondero whose mailing address is Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240.

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file and record this Certificate of Incorporation, and, accordingly, have hereto set my hand this 22nd day of November, 2011.

James Dondero

EXHIBIT 25

GREATER KANSAS CITY
COMMUNITY FOUNDATION℠

July 7, 2021

To Whom It May Concern:

Thank you for this opportunity to share our experience working with the Highland Kansas City Foundation, Inc.

I represent the Greater Kansas City Community Foundation, which exists to serve philanthropic donors by providing vehicles for their charitable giving. The Community Foundation was founded in 1978, and now has an asset base of more than $4 billion, housing thousands of donor-advised funds, scholarship funds, supporting organizations and other charitable funds and accounts established by individuals, families and businesses. In 2020, the Community Foundation's donors used their charitable dollars to grant over $550 million to their favorite causes across the country.

The Community Foundation currently works with 18 supporting organizations, one of which is the Highland Kansas City Foundation, established in 2011. Supporting organizations operate under their own legal entities but require the Community Foundation's active oversight and involvement. The Community Foundation's Board of Directors controls the Board of the Highland Kansas City Foundation. The Community Foundation oversees all of the Highland Kansas City Foundation's grants, ensuring every dollar is distributed for charitable purposes.

Since 2011, the Highland Kansas City Foundation has granted more than $9 million to support education and college preparation, historical preservation, medical research, veterans, the arts, the environment and more.

The Community Foundation's mission is to increase philanthropy and connect donors to the causes they care about, and we are honored to further the Highland Kansas City Foundation's generosity through significant annual distributions to important causes in our country.

Sincerely,

Deborah L. Wilkerson

Deborah L. Wilkerson
President & CEO

EXHIBIT 26

BYLAWS

OF

HIGHLAND KANSAS CITY FOUNDATION, INC.

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BYLAWS

OF

HIGHLAND KANSAS CITY FOUNDATION, INC.

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of Highland Kansas City Foundation, Inc. (the "Corporation") shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is The Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have an office in the City of Dallas, State of Texas, and also offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEMBERSHIP

Section 2.1 Classes. The Corporation shall have two classes of members, the Institutional Member, which shall be the Greater Kansas City Community Foundation, and the Individual Member, which shall be James Dondero or an individual designated as the Individual Member in accordance with these Bylaws.

Section 2.2 Voting. Except as otherwise provided in these Bylaws, each member shall be entitled to one vote upon each matter submitted to a vote of the members. In addition to any voting rights provided in these Bylaws, members shall be entitled to vote upon any matter with respect to which the General Corporation Law of the State of Delaware, or its successor statute, as amended (the "Law"), requires a vote of the members.

Section 2.3 Transfer of Membership. Institutional Membership in the Corporation is not transferable or assignable. Mr. Dondero, as the initial Individual Member, may at any time pursuant to a written notice delivered to the Institutional Member during his lifetime or by a provision in his Will or other testamentary document designate an individual, or series of individuals, to serve as a successor Individual Member, and such designation may be a current appointment or an appointment to take effect upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. Each successor Individual Member shall succeed to the rights of the initial Individual Member. Each successor Individual Member may in the same manner designate an individual, or

series of individuals, to serve as successor Individual Member, and such designation may be a current appointment or an appointment to take effect upon the occurrence of a future contingency such as the death or failure to act of a current or future Individual Member. In the event of a conflict between such appointments, the one bearing the earliest date shall control. Each Individual Member may at any time revoke his or her appointment notice or other document in whole or in part by written notice delivered to the Institutional Member. If at any time there is no Individual Member and no individual has been designated in accordance with the foregoing provisions of this Section to act as such, then the Individual Member shall be the individual designated by a majority of the eldest generation of then living descendants of James Dondero that has at least one descendant then living.

Section 2.4 Resignation of Member. A member may resign at any time upon written notice to the Secretary.

Section 2.5 Place of Meetings. All meetings of the members shall by means of remote communication as authorized by the Law, unless the Board of Directors decides to hold such a meeting by another permitted means.

Section 2.6 Annual Meetings. An annual meeting of the members, commencing with the year 2012, shall be held at such date and time in the month of December as shall be provided by resolution of the Board of Directors, at which the members shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.9 below.

Section 2.7 Special Meetings. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by the Law or by the Certificate of Incorporation, may be called by the President and shall be called by the Secretary at the request of a majority of the Board of Directors, or at the request in writing of a member entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.9 below.

Section 2.8 Members' List. At least ten days before every meeting of members, a complete list of the members entitled to vote at said meeting, arranged in alphabetical order, shall be prepared by the Secretary. Such list shall be open to the examination of any member, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any member who is present.

Section 2.9 Notice of Meetings of Members. When notice is required to be given for a meeting of the members, such notice shall specify the date, time, and location of the meeting and shall be given to each member at least ten (10) days prior to the meeting. Notice shall be given (a) by written notice delivered personally,

(b) by written notice sent by mail, email, or facsimile to the member's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a member's residence or place of business.

Section 2.10 Quorum. Both the Institutional Member and the Individual Member must be present in person or represented by proxy in order to constitute a quorum at all meetings of the members for the transaction of business except as otherwise provided by Law, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the members, the member entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall again be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 2.11 Voting. When a quorum is present at any meeting, the vote of a majority of the members, present in person or represented by proxy, shall be the act of the members, unless the act of a greater number is required by Law or expressly by these Bylaws.

Section 2.12 Proxies. At any meeting of the members, a member is entitled to be counted as present and to vote by written proxy executed by that member or his or her duly authorized attorney-in-fact. No proxy shall be valid after three (3) months from the date of its execution.

Section 2.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the members may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by that number of members necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 2.13. Prompt notice of the taking of an action by the members without a

meeting by less than unanimous written consent shall be given to each member who did not consent in writing to the action. Each such consent must state the date of each member's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the members at an actual meeting.

ARTICLE III

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such acts and things as are not by the Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the members, so long as the exercise of such powers and doing of such acts are consistent with the Corporation's prescribed purposes.

Section 3.2 Number of Directors. The number of Directors that shall constitute the Board of Directors shall be three (3). Two (2) Directors (the "Institutional Directors") shall be elected annually by the Institutional Member and one (1) Director (the "Individual Director") shall be elected annually by the Individual Member. Each Director shall hold office until such Director's successor is elected and qualified or until such Director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3 Vacancies. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, then (i) with respect to a vacancy of an Institutional Director seat, the Institutional Member shall elect a person to fill such vacancy, and (ii) with respect to a vacancy of an Individual Director seat, the Individual Member shall elect a person to fill such vacancy. If at any time there is no Individual Member who is able to fill a vacancy of an Individual Director seat, then the Institutional Member shall elect a successor Individual Director. Each Director elected to fill a vacancy shall hold office for the unexpired term of such Director's predecessor in office.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Committees of Directors. The Corporation shall have no committees unless the Board of Directors, by resolution or resolutions passed by the unanimous vote of the Board, designates one or more committees.

Section 3.6 Compensation of Directors. Except to the extent prohibited by section 4958(c)(3) of the Internal Revenue Code of 1986 (the "Code"), Directors, as such, may receive such stated salary for their services and/or such fixed sums and

expenses for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Annual Meeting. The annual meeting of the Board of Directors shall be held at such place and at such time as may be determined by the Board of Directors. If the date, time and location of the annual meeting are specified by a resolution adopted by the Board of Directors, no further notice of such annual meeting shall be required. If the date, time and location of an annual meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.8 Additional Regular Meetings. The Board of Directors may hold additional regular meetings for the purpose of taking any action and conducting any business that may properly come before the Board of Directors. If the date, time and location of the regular meeting are specified by a resolution adopted by the Board of Directors, no further notice of such regular meeting shall be required. If the date, time and location of a regular meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.9 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of any one or more Directors. The person or persons calling a special meeting of the Board of Directors shall fix a date, time and location for holding such special meeting, which shall be specified in a notice provided for such special meeting consistent with the requirements of Section 3.10 below.

Section 3.10 Method and Timing of Notice. When notice is required to be given for a meeting of the Board of Directors, such notice shall specify the date, time, and location of the meeting and shall be given to each Director at least ten (10) days prior to the meeting. Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the Director's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a Director's residence or place of business.

Section 3.11 Purpose not Required in Notice. Unless specifically required by the Law or these Bylaws for a particular action, the purpose of and business to be transacted at a meeting need not be specified in the notice of such meeting or in a waiver of notice of such meeting.

Section 3.12 Waiver of Notice. Any Director may waive notice of any meeting by a writing signed by the Director, whether signed before or after the holding of such meeting, and such signed written waiver shall be deemed the equivalent of the Director having received notice. A Director's attendance at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business of such meeting on the ground that the meeting is not lawfully called or convened.

Section 3.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the Board of Directors may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by that number of Directors necessary to authorize or take such action at a meeting at which all Directors entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 3.13. Prompt notice of the taking of an action by the Board of Directors without a meeting by less than unanimous written consent shall be given to each Director who did not consent in writing to the action. Each such consent must state the date of each Director's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the Board of Directors at an actual meeting.

Section 3.14 Validation of Action by Consent. All actions taken at a meeting of the Board of Directors which is not regularly called or noticed shall be valid as if taken at a meeting regularly called and noticed if each Director either consents in writing or is present at such meeting and does not object to the meeting being held. At such meeting any business may be transacted which is not excepted from the written consent or which is not objected to at such meeting for want of notice. If any meeting of the Board of Directors is irregular for want of notice, the proceedings of such meeting may be ratified, approved and rendered valid, and the irregularity or defect therein waived, by a writing signed by all Directors, provided a quorum was present at such meeting.

Section 3.15 Quorum and Manner of Acting. Except as otherwise provided in these Bylaws, a quorum for the transaction of business at any meeting of the Board of Directors shall consist of all three of the then serving Directors. Except as otherwise provided by the Law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. A Director shall be considered present at any meeting of the Board of Directors if the Director participates in person or by proxy or if during the meeting he or she can communicate with all other persons

participating in the meeting by using conference telephone or another suitable electronic communications system. In the absence of a quorum, a majority of the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given, except that notice shall be given to all Directors if the adjournment is for more than thirty days.

Section 3.16 Resignation and Removal of Directors. Each Director may resign at any time by written notice delivered to the member that appointed such Director and to the President and Secretary of the Corporation. The Institutional Member may remove an Institutional Director at any time, with or without cause. The Individual Member may remove an Individual Director at any time, with or without cause.

Section 3.17 Chairman Presiding. If a Chairman is appointed by the Board of Directors, the Chairman shall preside at all meetings of the Board of Directors and in general shall perform all duties incident to a nonexecutive chairman of a board of directors.

ARTICLE IV

OFFICERS

Section 4.1 Officers. The officers of the Corporation shall be a President, a Secretary and a Chief Financial Officer. One person may hold any number of said offices.

Section 4.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting or at a special meeting held in lieu thereof. Each officer, except such officers as may be appointed in accordance with the provisions of Section 4.3, shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal. None of the officers need be members of the Board of Directors.

Section 4.3 Subordinate Officers. The Board of Directors may appoint such Assistant Secretaries, Assistant Chief Financial Officers, Controller and other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board of Directors may from time to time determine. The Board of Directors may, by specific resolution, empower the President or another officer of the Corporation to appoint any such subordinate officers or agents.

Section 4.4 Removal. The President, the Secretary and/or the Chief Financial Officer may be removed at any time by the Board of Directors with or without cause. Any subordinate officer appointed pursuant to Section 4.3 may be removed at any time, with or without cause, by the Board of Directors or by the person holding the officer position by which the subordinate officer was appointed.

Section 4.5 The President. The President shall be the chief executive officer of the Corporation. He or she shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by the Law, the Certificate of Incorporation, or these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. In general the President shall perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.6 The Secretary. The Secretary shall:

(a) Keep the minutes of the meetings of the members and of the Board of Directors;

(b) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) Be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized;

(d) In general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him or her by the Board of Directors or by the President of the Corporation.

Section 4.7 The Assistant Secretaries. If one or more Assistant Secretaries shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Secretary, or in his or her absence or disability, the Assistant Secretary designated by the Secretary (or in the absence of such designations, then any one of such Assistant Secretaries) shall perform the duties of the Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

Section 4.8 The Chief Financial Officer. The Chief Financial Officer shall:

(a) Receive and be responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depository as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized;

(b) Render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation;

(c) In general, perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to the Chief Financial Officer by the Board of Directors or by the chief executive officer of the Corporation.

Section 4.9 The Assistant Chief Financial Officers. If one or more Assistant Chief Financial Officers shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Chief Financial Officer, or in the Chief Financial Officer's absence or disability, the Assistant Chief Financial Officer designated by the Chief Financial Officer (or in the absence of such designation, then any one of such Assistant Chief Financial Officers) shall perform all the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon, the Chief Financial Officer.

Section 4.10 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE V

BOOKS AND RECORDS

Section 5.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 5.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection by any member of the Board of Directors at all times; and open to inspection by the members at such times, and subject to such regulations as the Board of Directors may prescribe, except as otherwise provided by statute.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless changed by the Board of Directors.

Section 6.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 6.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or

agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board of Directors.

Section 6.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 6.5 Waivers of Notice. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, Directors or members of a committee of directors need be specified in any written waiver of notice.

Section 6.6 Ownership Interests in Other Entities. Any ownership interests (e.g., shares of stock in any other corporation which may from time to time be held by this Corporation) may be represented and voted at any meeting of owners of such entity by the President, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President.

Section 6.7 Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that the person is or was a Director or officer of the Corporation or is or was a Director or officer of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the laws of Delaware as the same now or may hereafter exist (but, in the case of any change, only to the extent that such change authorizes the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such change) against all costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the person's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any

such proceeding in advance of its final disposition upon receipt by the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that the director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors and officers.

(b) If a claim under subsection (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of members or disinterested Directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) To the extent that any Director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, such person shall be indemnified against all costs and expenses actually and reasonably incurred by such person or on such person's behalf in connection therewith.

(f) Any amendment, repeal or modification of any provision of this Section by the members or the Directors of the Corporation shall not adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such amendment, repeal or modification.

(g) The provisions of this Section 6.7, and the limitations on liability and indemnification provided in such Section, shall survive the winding up and termination of the Corporation to the extent permitted by applicable law.

Section 6.8 Amendment of Bylaws.

(a) The members, by the affirmative unanimous vote of the members entitled to vote, may, at any annual or special meeting if notice of such alteration or amendment of the Bylaws is contained in the notice of such meeting, adopt, amend, or repeal these Bylaws, and alterations or amendments of these Bylaws made by the members shall not be altered or amended by the Board of Directors.

(b) The Board of Directors, by unanimous vote, may adopt, amend, or repeal these Bylaws at any meeting, except as provided in Section 6.8(a), above. Any alterations or amendments to these Bylaws made by the Board of Directors may be altered or repealed by the members.

HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
FOUNTAIN PLACE
1445 ROSS AVENUE
SUITE 3700
DALLAS, TEXAS 75202-2799

TEL 214 • 979 • 3000
FAX 214 • 880 • 0011

ANDREW W. LAWRENCE
DIRECT DIAL: 214 • 979 • 3052
EMAIL: alawrence@hunton.com

FILE NO: 78673.000002

November 9, 2011

Deborah L. Wilkerson
General Counsel
Greater Kansas City Community Foundation
9001 W. 110th Street, Suite 220
Overland Park, KS 66210

Via E-Mail

Re: Highland Capital Management Partners Charitable Trust #2

Dear Debbie:

In accordance with your request during our telephone conversation last week, the paragraphs below describe briefly the proposed distribution of assets from Highland Capital Management Partners Charitable Trust #2 (the "Trust") to a to-be-formed supporting organization (i.e., Highland Kansas City Foundation, Inc.) with respect to which the Greater Kansas City Community Foundation ("GKCCF") is the supported organization.

1. The Trust. As you know, James Dondero, as the Settlor, and Grant Scott, as the Trustee, established the Trust by a trust agreement dated December 1, 2006 (the "Trust Agreement"). Under the terms of the Trust Agreement, Mr. Dondero, as Settlor, is entitled to name remainder beneficiaries and substitute new remainder beneficiaries from time to time until the remainder interest is ultimately distributed.

2. Assets of the Trust/Cayman Islands Company. The remainder interest will be comprised solely of one hundred percent (100%) of the non-voting shares (the "Shares") of Charitable DAF HoldCo, Ltd., a Cayman Islands corporation ("HoldCo"). Highland Kansas City Foundation, Inc. will receive one-third (1/3) of the Shares. HoldCo will own one hundred percent (100%) of the limited partner interests in Charitable DAF Fund, LP, a Cayman Island limited partnership, which, in turn, will own one hundred percent (100%) of the shares of CLO Holdco, Ltd., a Cayman Islands exempted company, which, in turn, owns minority equity interests in Cayman Islands investment companies that own portfolios of debt instruments issued by various public companies.

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3. The Supporting Organizations. Mr. Dondero intends to name as the remainder beneficiaries of the Trust three supporting organizations (each an "SO", collectively, the "SOs"), each of which will support one of three separate community foundations. Each SO will receive an equal number of HoldCo Shares. Highland Capital Management, L.P. currently receives management fees from the companies that own the corporate debt portfolios and will continue to receive those fees under existing agreements with those companies after the Holdco Shares are transferred to the SOs.

4. Use of Multiple Supporting Organizations. Rather than the remainder interest being distributed in its entirety to just one or two SOs, the remainder interest is being distributed in equal shares to the three SOs out of an abundance of caution in light of the excess benefit transaction rules under Section 4958(c)(3) of the Code, such that no SO will own more than fifty percent (50%) of the stock of HoldCo.

Please let me know if you have additional questions regarding this matter.

Very truly yours,

Andrew W. Lawrence

AWL/bt

cc: Alexander G. McGeoch, Esq.
Douglas M. Mancino, Esq.

EXHIBIT 27

CHARITABLE DAF HOLDCO, LTD

(the "Company")

SHARE TRANSFER FORM

Dated 29 March 2021

I, **Grant James Scott** (the "**Transferor**"), for good and valuable consideration received by me from **Mark E. Patrick** (the "**Transferee**"), do hereby:

1. transfer to the Transferee 100 Management Shares (the "**Shares**") for the par value of $0.01 each standing in my name in the register of members of the Company to hold unto the Transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of execution of this Share Transfer Form; and

2. consent that my name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.

SIGNED by **TRANSFEROR**:)
)
Name: Grant J. Scott

And the Transferee does hereby agree to take the Shares subject to the same conditions.

SIGNED by **TRANSFEREE**:)
)
Name: Mark E. Patrick

EXHIBIT 28

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED March 25 **2021**

---

1. SHARE TRANSFER

1.1 **IT IS NOTED** that the Director has received a duly executed share transfer form relating to the transfer by Grant James Scott of 100 Management Shares to Mark E. Patrick.

1.2 **IT IS RESOLVED** that:

(a) the following share transfer (the "**Transfer**") be and is hereby ratified, confirmed and approved:

TRANSFEROR	TRANSFEREE	NO OF SHARES	DATE OF TRANSFER
Grant James Scott	Mark E. Patrick	100 Management Shares	24 March 2021

(b) the Company's registered office provider be instructed to update the Register of Members of the Company to reflect the Transfer.

2. GENERAL AUTHORISATION

2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

These written resolutions are signed by the sole Director of the Company.

Mark E. Patrick

EXHIBIT 29

CLO HOLDCO, LTD.
(THE "COMPANY")

WRITTEN SHAREHOLDER RESOLUTIONS OF THE SOLE SHAREHOLDER OF THE COMPANY
MADE ON April 2 **2021**

The undersigned, being the sole holder of Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR

1.1 **IT IS RESOLVED** by ordinary resolutions that:

(a) Grant James Scott be and is hereby removed as a Director of the Company with effect from the date of these resolutions;

(b) Mark E. Patrick be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;

(c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and

(d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Mark E. Patrick as a Director of the Company and the appointment of Grant James Scott as a Director of the Company.

BY Mark Patrick
Mark E. Patrick for and on behalf of

Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.

EXHIBIT 30

THE COMPANIES LISTED IN THE ATTACHED SCHEDULE
(EACH A "COMPANY" AND TOGETHER THE "COMPANIES")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF EACH COMPANY DATED April 22, **2021**

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1. APPOINTMENT OF DIRECTOR

1.1 **IT IS NOTED** that the Directors wish to appoint Paul Murphy as a Director of each Company with effect from the date of these resolutions and that such proposed Director has indicated a willingness to hold such office and has executed a letter of consent and/or a services agreement in relation thereto (such appointment, the "**Director's Appointment**").

1.2 **IT IS RESOLVED** that:

(a) the Director's Appointment be and is hereby approved with effect from the date of these resolutions until such time as the Director resigns or is removed from office in accordance with the Articles of Association of each Company; and

(b) the registered office service provider be and is hereby instructed to update the Register of Directors of each Company and to make the necessary filings with the Registrar of Companies to reflect the Director's Appointment.

2. GENERAL AUTHORISATION

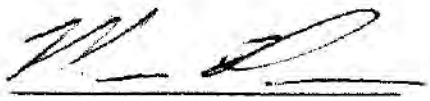
2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director or any officer or (if applicable) any attorney or duly authorised signatory of each Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of each Company, to do such further acts and things as the Director or any officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of each Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of each Company, or of the Director or any officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

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These written resolutions are signed by the sole Director of the Company.



Mark E. Patrick

Schedule
(*List of Companies*)

Charitable DAF HoldCo, Ltd.

CLO HoldCo, Ltd.

Liberty CLO Holdco, Ltd.

Liberty Sub, Ltd.

HCT Holdco 2, Ltd.

MGM Studios Holdco, Ltd.

EXHIBIT 31

Charitable Giving Overview

GRANT SUMMARY : 2012-2020

Highlights

The following provides an overview of philanthropic activities across the group of charitable entities that operate as supporting organizations to community foundation: the Highland Dallas Foundation, Inc., the Highland Santa Barbara Foundation, Inc., and the Highland Kansas City Foundation, Inc. (together the "Supporting Organizations" or "we").

Each of the entities within the Supporting Organizations has its own independent board, which provides oversight for the organization's grantmaking activity.

Data represents activity between January 1, 2012, and December 31, 2020 unless otherwise noted.

$42M+ Since 2012, the Supporting Organizations have committed over $42 million to nonprofit organizations operating across a range of issue areas.

$32M+ We have funded over $32 million of our total commitments; remaining commitments are comprised of future scheduled installments of multiyear grants.

$3.7M Average annual grant payments total $3.7 million.

275+ The Supporting Organizations have made donations to more than 275 individual organizations.

2029 Through our multiyear grants we have over $10 million in funds committed through 2029.

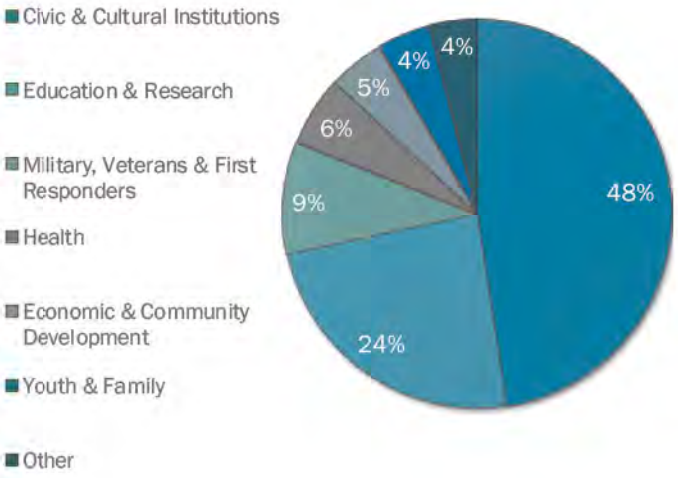
GRANTS OVERVIEW

Total committed: $42.7 million[1]

The Supporting Organizations have committed **$42,688,403** in grants to nonprofits across a range of issue areas, with a focus on:

- civic and cultural institutions in the Dallas-Ft. Worth area;
- education;
- support for military, veterans, and first responders;
- health and medical research;
- economic and community development initiatives; and
- youth and family.

GRANT COMMITMENTS BY ISSUE AREA[2]



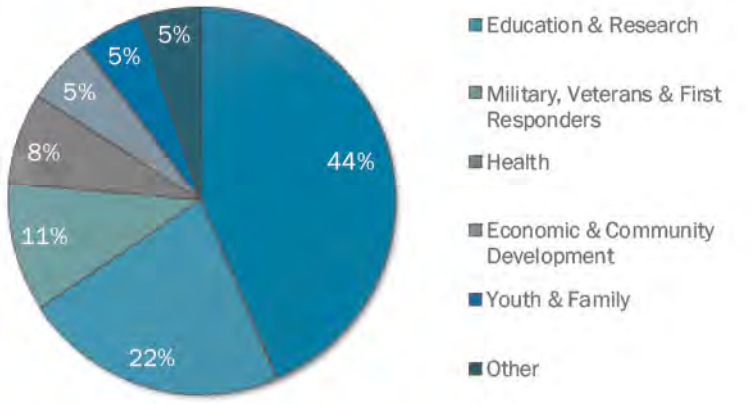
1. As of 12/31/2020. Figures rounded to the nearest hundred thousand. 2. Represents amount committed in grants since 2012 (inclusive of funded and unfunded commitments). Unfunded commitments represent installment payments for multiyear grants to be paid at future dates following a schedule included in the grant agreement. Issue areas defined by HCP. Grants categorized by purpose and/or use of funds. "Other" category inclusive of grants related to the following issue areas: Animals & Environments; Arts, Culture & Humanities; Faith-Based Causes; and Global Affairs.

GRANTS OVERVIEW

Total funded: $32.5 million[1]

The Supporting Organizations have funded **$32,548,403** in grants, representing payments made directly to nonprofit organizations that are improving lives and addressing pressing issues in our local community—and beyond.

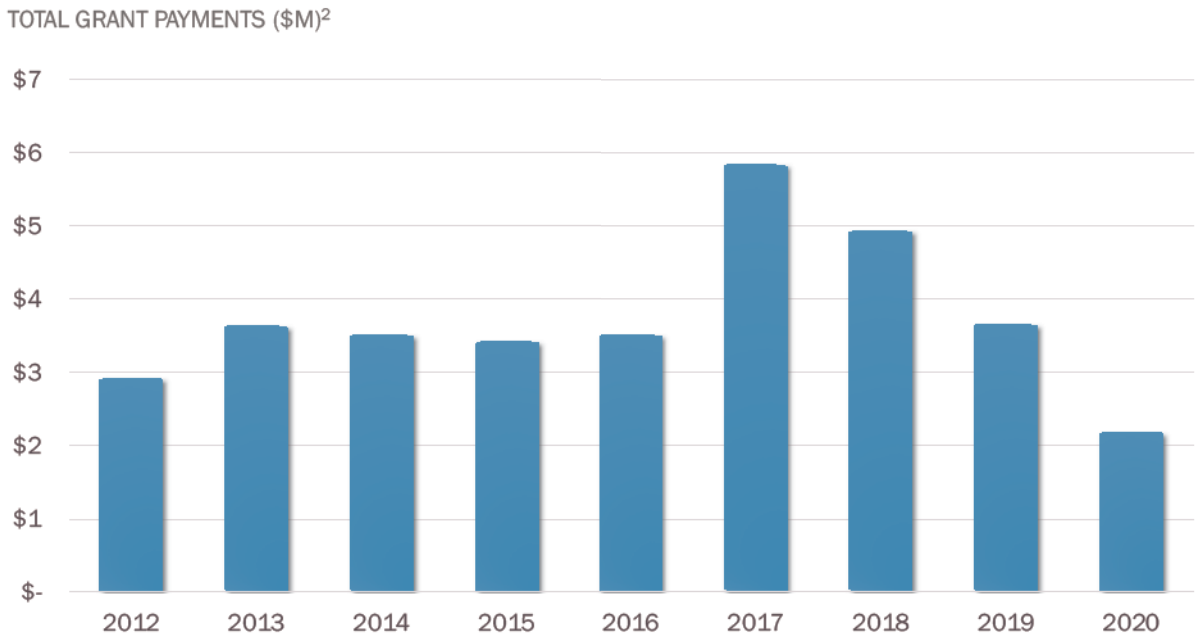
GRANTS FUNDED BY ISSUE AREA[2]



1. As of 12/31/2020. Figures rounded to the nearest hundred thousand. 2. Represents amount committed in grants since 2012 (inclusive of funded and unfunded commitments). Unfunded commitments represent installment payments for multiyear grants to be paid at future dates following a schedule included in the grant agreement. Issue areas defined by HCP. Grants categorized by purpose and/or use of funds. "Other" category inclusive of grants related to the following issue areas: Animals & Environments; Arts, Culture & Humanities; Faith-Based Causes; and Global Affairs.

GRANTS OVERVIEW

Average annual funding: $3.7 million[1]



1. As of 12/31/2020. Figures rounded to the nearest hundred thousand. 2. Represents amount paid in grants and/or grant installments during each calendar year. Not inclusive of grants committed but not funded.

GRANTS OVERVIEW

Highlights of grants' impact

Supporting **4,000** military and law enforcement members

Grants to the Center for BrainHealth helped provide training and other programming to members of the military, veterans, and local law enforcement that aims to improve the cognitive health—all at no cost.

Providing a path to safety for **11,000** victims of family violence

Grants to The Family Place helped the organization serve more than 11,000 clients in 2019, including providing more than 62,000 days of Emergency Shelter.

Enabling **1.2M** visitors to make memorable experiences with wildlife

Grants funding the construction of the new hippo exhibit and providing support for the organization's membership program helped the Dallas Zoo draw a record-breaking 1.2 million visitors in 2017.

Supporting and defending **8,000** abused children

Grants to the Dallas Children's Advocacy Center helped the organization serve over 8,000 children who have been abused each year,

Providing educational opportunities for **600** low-income students in southeast Dallas

Grants to expand the Cristo Rey Dallas campus in Pleasant Grove enable the school to accommodate up to 600 students. 95% of CRD students are the first in their families to attend college, and with a 100% college acceptance rate, the expansion will help create an estimated 570 first-generation college students every four years.

GRANT HIGHLIGHT

Dallas Zoo

About the Dallas Zoo

The Dallas Zoological Society (the "Zoo"), the largest zoological park in Texas, has become a staple in the Dallas community over its 130-year history. Home to over 430 different species, the Dallas Zoo engages and educates visitors, while seeking to create a better world for animals.

Promoting Visitor Engagement: Grant to Support Zoo Membership

The Supporting Organizations have supported the Zoo's membership program since 2014 through a series of multiyear grants that help the Dallas Zoo continue to reach new audiences. In the first full year of the grant, the Zoo welcomed a record 600,000 guests, and that number has steadily increased since. With our support, the Zoo continues to find new ways to deliver unforgettable experiences. As a result, it regularly ranks in the top-10 zoos in the U.S. by USA Today.

Increasing Community Access: Grant to Support Discounted Admission

The Supporting Organizations pursue grant opportunities that increase community access to local civic and cultural institutions. With this goal, we expanded our support of the Zoo in 2017 to include the annual sponsorship of the "Penguin Days" program. The grant enables the Zoo to reduce the price of general admission to $7 on select days from December-February, making the Zoo more accessible to the North Texas Community and allowing families who might not otherwise visit the Zoo to do so in an affordable way.

Opening a New Exhibit: Grant to Support Construction of an Educational/Event Space at the Hippo Exhibit

The Zoo announced in early 2016 that it was planning to break ground on a new exhibit that would bring hippos to the Zoo for the first time in 16 years. The project also marked the first major exhibit opening at the Zoo since 2010. The Supporting Organizations contributed to this project through a grant that helped establish a 4,485-square-foot indoor/outdoor multipurpose event space, which engages visitors in interactive activities that further the Zoo's animal education mission. Currently, the space is a walkthrough exhibit highlighting conservation efforts of hippo habitats around the world. This exhibit helped increase attendance to a record-breaking 1.2 million visitors in 2017.

Issue Area: **Civic & Cultural Institutions**



GRANT HIGHLIGHT

George W. Bush Presidential Center

About the George W. Bush Presidential Center

The George W. Bush Presidential Center (the "Bush Center") is comprised of the George W. Bush Presidential Library and Museum, which houses the official records of the presidency of George W. Bush, and the George W. Bush Institute, an action-oriented, nonpartisan policy organization. Through these dual operations, the Bush Center works to both preserve history and shape the future. The Bush Center is uniquely equipped to promote leadership development, advance policy initiatives, and inspire action on a local, national, and global scale. Its work covers three major Impact Centers: Domestic Excellence; Global Leadership; and Engagement. Through these Impact Centers, the Bush Center is dedicated to solving some of today's most pressing challenges.

Driving a Local Institution's Ambitious Global Agenda: Grant Supporting the Construction of the Bush Center in Dallas

In 2008, the Bush Center officially selected Dallas as its permanent home, announcing plans to construct its building on the campus of SMU. The Supporting Organizations helped make the vision of the Bush Center's Dallas home a reality, making a grant to help complete construction and design for the building. On May 1, 2013, the Bush Center opened its doors to the public. In its first five years after opening, the Bush Center welcomed over $1.6 million visitors.

Securing a Legacy and Driving Engagement: Grant Supporting the Center's Long-term Operations and Engagement Agenda

In 2018, the Bush Center launched an important fundraising initiative to ensure its mission endures for generations to come. With its "A Charge to Keep" capital campaign, the Bush Center aimed to raise funds that would sustain its operations beyond the lifetimes of President and Mrs. Bush.

The Supporting Organizations made a grant to help ensure the Bush Center can continue its important work well into the future. The grant specifically focused on the public speaker series, Engage at the Bush Center. The series brings newsmakers, thought leaders, and authors to the Bush Center for thought-provoking panel discussions and keynote conversations that allow guests to connect with the Bush Center in a meaningful way and dive deeper into many of today's most pressing policy areas and issues.

Issue Area: **Civic & Cultural Institutions**



GRANT HIGHLIGHT

Perot Museum

About the Perot Museum

The Perot Museum of Nature and Science (the "Perot") promotes science and education in the North Texas community through hands-on exhibits, educator resources, unique films, and other special programming that engages audiences of all ages.

Helping Establish a World Class Museum in Downtown Dallas: Grant to Support Construction of the New Perot Museum:

With support from Dallas' philanthropic community, the Perot Museum opened a new building in December 2012. With its bold architectural design, it quickly became a fixture in its new location in Dallas' Victory Park. The project also sparked a renewed commitment to inspire minds and improve community achievement, giving rise to new initiatives that promote science learning.

The Supporting Organizations contributed to the project by issuing a challenge grant, which matched donations, inciting additional giving and helping complete the project's capital campaign. Since then, we have contributed additional funding to support ongoing educational programming, special exhibitions, and community engagement initiatives.

Increasing Community Access: Grant to Support the Perot's Traveling Exhibition Programs

In 2014, the Supporting Organizations began issuing a series of grants to support the traveling exhibitions program. The initial exhibition, the "The World's Largest Dinosaurs" exhibition, educated audiences on the gigantic sauropods that once roamed the earth, drawing nearly 200,000 visitors to the museum. Since then, our grants have made possible the many captivating exhibitions that have been hosted by the Perot, covering a range of subject areas. With two special exhibitions held each year, the grants enable the museum to deliver new experiences that give visitors a reason to keep coming back and serve as a complement to the museum's 11 permanent exhibit halls. The program draws exhibitions from around the globe to the Perot, providing the North Texas community with access to world-class educational experiences. All the special exhibition grants include funding that allows the Perot to make all traveling exhibitions bilingual (with programming in both English and Spanish). These exhibits have helped increase community access to the North Texas Hispanic population.

Issue Area: **Civic & Cultural Institutions**



GRANT HIGHLIGHT

Cristo Rey Dallas

About Cristo Rey Dallas

Cristo Rey Dallas College Prep ("CRD") is a private, independent Catholic high school located in the Pleasant Grove area of Southeast Dallas. The Cristo Rey Network's formula for success is a proven, revolutionary model of college preparatory high school curriculum accessible to those of limited financial resources. It integrates rigorous college preparatory academics with professional work experience through the Corporate Work Study Program—a key component of the fiscal sustainability of the Cristo Rey model. Through the Work Study Program, students work in a professional setting five days per month to earn the majority of their tuition. The 144 job partners include some of Dallas's most prominent companies.

The Cristo Rey model is proven, with 100% of graduates gaining acceptance to a two- or four-year college and 90% matriculating. For students in Pleasant Grove—where only 4% of the population graduated from college—CRD offers access and opportunity that can change their trajectory.

Building Space for Innovation: Grant to Support CRD Campus Expansion and Renovations

The 30th school in the nationwide Cristo Rey network, CRD opened in August 2015, operating out of an old elementary school and aging gymnasium. They quickly outgrew the space and had to begin turning away prospective students. In 2019, CRD launched a $15 million capital campaign to expand the campus, adding new academic and athletic buildings and conducting much needed renovations on the existing buildings.

The Supporting Organizations issued the campaign's lead grant, helping build a new 37,000 sq. ft. Innovation Center, which boasts spaces for fine arts and counseling. The campaign also created a new cafeteria and gymnasium, as well as a new soccer field – something the school never had before. The new buildings opened in time for the 2020 school year.

The Supporting Organizations also helped provide space for CRD students off campus in a centrally located office building near Downtown Dallas. The space gave students a place to study and complete work study programs that were moved to Work From Home due to the pandemic.

Issue Area: **Education & Research**

GRANT HIGHLIGHT

Education Is Freedom

About Education Is Freedom

Education Is Freedom ("EIF") is committed to transforming students' lives through education. With a focus on college planning, the organization provides underserved students in the North Texas community with a range of resources to ensure every student has the opportunity to pursue a college education.

EIF's higher education advisors work onsite at public high schools across the region, helping students and their families navigate the college process. In 20XX, EIF helped high school seniors complete 21,000 college applications and receive over $132 million in scholarships.

In addition to their college planning initiatives, EIF operates a number of supplementary programs to enhance access to postsecondary education and promote workforce readiness.

Developing a Skilled and Educated Workforce: Grant Supporting the Mayor's Intern Fellows Program

In 2008, EIF worked with the Mayor's Office to create the Mayor's Intern Fellows Program ("MIFP"), an initiative to provide workforce readiness. The program provides Dallas high school students with internship opportunities at local companies, nonprofits, and government entities. Through the eight-week, paid internship, students gain real-world experience and insight into the professional opportunities available to them. Not only does the program prepare students for future careers, but it also connects local businesses with the future workforce, promoting collaboration to strengthen the pipeline of talent.

The Supporting Organizations have issued grants to EIF to support the MIFP. The grants have helped EIF put on the program's annual Job Fair. Held in the spring, the Job Fair provides an opportunity for students to interview with prospective employers in the hopes of securing an internship for the summer. Education Is Freedom conducts extensive training with the students throughout the program, offering workshops and coaching on everything from interview preparation to professional etiquette.

In 2018, over 2,400 students from 52 high schools applied for the program. Of those applicants, 1,050 were selected to attend the Job Fair. At the 2018 Job Fair, over 200 employers from across the Dallas-Fort Worth region interviewed internship candidates, ultimately offering positions to 395 students for the summer. In addition to the Job Fair, our grants have funded internships at various nonprofit partners, covering the cost for organizations that might not otherwise be able to hire paid interns.

Issue Area: **Education & Research**



GRANT HIGHLIGHT

SMU Tower Center

About the SMU Tower Scholars Program

The Southern Methodist University ("SMU") Tower Scholars Program provides top undergraduate students with an opportunity to integrate public policy and international affairs into their studies through a dedicated curriculum of academic coursework and real-world experiences. Students in the program receive a minor in public policy and international affairs, offered through SMU's John Goodwin Tower Center for Political Studies (the "Tower Center").

> *"The Tower Scholar Program's resources and curriculum allow me to not only learn public policy principles through lectures, but also gain tactile experience with practicums and classes taught by policy practitioners. Without this program, I would have been unable to experience and explore my interest in public policy."*
>
> *– Tower Scholar, Class of 2020*

Investing in the Next Generation of Policymakers: Grant to Endow the Tower Scholars Undergraduate Program at SMU

In 2014, the Supporting Organizations worked with the Tower Center to create a dedicated undergraduate program that carries out the center's mission of bridging the gap between the scholarship and practice of politics and striving to inspire ethical public service. The grant established an endowment that provides long-term funding for the Tower Scholars Program.

A hallmark of the program is its interdisciplinary focus. Over 75% of the Tower Scholars either earned or are pursuing more than one major—and that is in addition to the minor they earn in the program. Outside the classroom, each student is involved in multiple on-campus organizations, many in leadership positions.

The Supporting Organizations' grant makes possible the unique academic experiences—from meeting with global leaders, to working on real policy issues for major corporations—offered to the Tower Scholars. The program accepts 10 students each year, and recently welcomed its eighth cohort.

Issue Area: **Education & Research**

GRANT HIGHLIGHT

Center for BrainHealth

About the Center for BrainHealth

The Center for BrainHealth ("CBH"), part of The University of Texas at Dallas, is a research institute committed to enhancing, protecting and restoring brain health across the lifespan. CBH is composed of independent labs that are responsible for more than 60 fully funded research projects that investigate brain health, injury, and disease. Many of the center's programs use functional and structural neuroimaging techniques to better understand the neurobiology supporting cognition and emotion in health and disease. Areas of research include addiction, aging, Alzheimer's disease, autism, multiple sclerosis, social cognition, and traumatic brain injuries.

Applying Innovative Research to Improve the Lives of Post-9/11 Veterans and First Responders: Grant Supporting the Warriors Program Through the Brain Performance Institute

In 2015, CBH broke ground on new building dedicated to translating leading-edge science to scalable solutions for the public at large. Through construction of the Brain Performance Institute, CBH sought to extend the reach and applications of its research, providing solutions to the public to maximize brain performance in health, injury, and disease.

The Supporting Organizations made a grant to help fund the construction of the Brain Performance Institute and expand CBH's Warrior Initiative, which that focused on translating research into cognitive therapies for former military personnel. The Warrior Initiative was established to provide high performance brain training to current and former military service men and women and their families.

The goal of the Warrior Initiative program is to arm veteran and active-duty service members with the necessary tools to achieve successful, enriching, and fulfilling lives by proactively optimizing brain performance, building resilience in cognitive brain function, and reversing losses in cognitive capacity. The program was expanded in 2016 to support first responders, specifically focusing on local law enforcement.

The grant help create a space in the Brain Performance Institute building specifically for veterans, first responders, and their families, where these groups are able to come together in a safe, relaxing environment and get to know other members of service before and after training sessions.

Issue Area: **Military, Veterans & First Responders**



GRANT HIGHLIGHT

Friends of the Dallas Police

About Friends of the Dallas Police

The Friends of Dallas Police was founded in 1982 to recognize the commitment that the employees of the Dallas Police Department make to better the city and its residents' quality of life. The organization's mission is to raise and provide funds to be used to host a major awards banquet each year honoring Dallas Police Department personnel for outstanding performance in the line of duty. Over the years, approximately 4,400 awards have been presented to officers and civilian staff, and more than $43,000 in educational scholarships have been awarded to their children.

Helping Show Appreciation and Recognition to Local Law Enforcement: Grant Supporting the Annual Awards Program

The Supporting Organizations have provided grants to help the Friends of the Dallas Police show appreciation to the men and women of the Dallas Police Department who risk their lives every day to make Dallas a safer city. Our grants have helped fund the annual awards event hosted by the Friends of the Dallas Police, which honors and recognizes outstanding employees throughout the Dallas Police Department.

Through our grants, the Supporting Organizations have facilitated the production of the annual awards program, enabled sworn and non-sworn employees and their spouses to attend the event, and provided educational sponsorships for children of police officers.

The Supporting Organizations have also drawn on its philanthropic network to provide gifts to award recipients and their families, including tickets to visit organizations like the Dallas Zoo, George W. Bush Presidential Center, and Perot Museum.

Issue Area: **Military, Veterans & First Responders**



GRANT HIGHLIGHT

Snowball Express

About Snowball Express

Snowball Express (now part of the Gary Sinise Foundation) serves the children of fallen military heroes. By providing events and other experiences in a stress-free environment, the organization is creating a community to learn, grow, and make lasting memories with new friends.

The organization hosts an annual five-day experience for 1,750+ children of the fallen and their surviving parent or guardian. As a therapeutic retreat with a blend of fun and inspiring programs, these families can lean on their peers for support. The organization also hosts community-driven events for these families all year long. From baseball games, to arts and educational opportunities, to camping trips, the events strengthen the local networks of Gold Star families, helping children and surviving spouses to build bonds with the only people who can truly understand their loss: each other.

Supporting Families of Fallen Service Members: Grant to Support Programming for Gold Star Children

In 2014, Myles Eckert, the nine-year-old son of U.S. Army Sergeant was killed in Iraq on active duty, gave a $20 bill that he found to a veteran in a pay-it-forward act of kindness towards our military. Myles's story was shared widely online, and the gift quickly received national attention.

In honor of Myles Eckert's gift, the Supporting Organizations issued a challenge grant to Snowball Express to support the organization's programming for children that have lost one or both parents during active service.

The grant inspired significant giving from individuals and organizations around the world, enabling Snowball Express to expand its services for Gold Star children and their families.

Snowball Express used the proceeds from the challenge grant to provide services to over 8,000 Gold Star children in 2014—almost 6,000 more than the year before and a new record for the organization.

Issue Area: **Military, Veterans & First Responders**



GRANT HIGHLIGHT

Dallas Children's Advocacy Center

About Dallas Children's Advocacy Center

Dallas Children's Advocacy Center ("DCAC") is the only agency of its kind in Dallas County, working in agreement with public and private agencies to investigate, prosecute, and provide healing services for child abuse cases in Dallas County. DCAC reduces the re-victimization of the child, removes barriers to investigation and treatment, and enhances criminal prosecution with its distinctive multidisciplinary approach to these complex and severe cases.

Fostering Crucial Collaboration: Grant to Support DCAC's Operations and Strengthen Collaboration Among Agencies Involved in Child Abuse Cases

The Supporting Organizations have been a longtime partner of the Dallas Children's Advocacy Center ("DCAC"), issuing annual grants that provide funding for a range of operating costs. The grants help DCAC serve over 8,000 children (and their non-offending family members) each year who were sexually abused, severely physically abused, or who had witnessed a violent crime. DCAC's average client is a 9-year-old girl, sexually abused by someone she knows and trusts.

The grants also support DCAC in its efforts to foster crucial collaboration across government agencies and other organizations involved in child abuse cases. The DCAC building houses the Child Abuse Unit of the Dallas Police Department, six units of CPS, and a Dallas County Assistant District Attorney. Having all of these professionals under one roof drives collaboration and communication in the very sensitive cases that DCAC coordinates.

Not only have the Supporting Organizations been a long-time financial supporter of DCAC, we have also provided support in other ways, leveraging connections with our network of nonprofit partners. Most recently, we worked with the Dallas Zoo to provide animal encounter demonstrations during DCAC's summer camps, which serve as a way to deliver ongoing support to—and help build a community for—children who have experienced trauma.

Issue Area: **Youth & Family**



GRANT HIGHLIGHT

The Family Place

About The Family Place

The Family Place was founded in 1978 and has grown to become the largest family violence prevention agency in North Texas, providing shelter and assistance to victims across the region along with counseling and education. Since its founding, the organization has served over 839,000 clients through counseling, shelter, and hotline responses.

In 2019, The Family Place served nearly 12,000 clients, providing over 62,000 days of emergency shelter, over 36,000 days of transitional housing, and over 18,000 hours of counseling to nonresidential clients, and over 8,000 hours of counseling to batterers. All services are in Spanish and in English.

Providing Support for Victims of Family Violence Across North Texas

The Family Place empowers victims of family violence by providing safe housing, counseling, and skills that create independence while building community engagement and advocating for social change to stop family violence.

While The Family Place supports clients in several different ways, its Residential Services, which provide safe shelter for families affected by violence, are one of crucial components of its work. These services include the Emergency Shelter Services, which provide immediate shelter for families escaping abuse, and the Supportive Living Program, which provides long-term housing for families as they rebuild their lives. Not only does the organization provide necessities like food, clothing, and transportation, but it also offers childcare, legal services, counseling, and case management.

As The Family Place expanded, its Residential Services were constrained by the capacity of its emergency shelters, and at many times the organization had to house clients in hotels and other temporary housing in order to meet demand.

In 2016, the Supporting Organizations issued a challenge grant to help The Family Place build a new shelter facility to expand its Residential Services. The new facility provides space and support services for over 2,000 victims per year. It also includes onsite Medical and Dental Clinics and even an Animal Kennel so families can bring their beloved pets with them to safety. The shelter has been operating at full capacity since October 2017. With the new facility, The Family Place now has three emergency shelters, providing 177 shelter beds each night, and three counseling centers.

Issue Area: **Youth & Family**



EXHIBIT 32

the family place
Where family violence stops

July 7, 2021

To Whom It May Concern:

I am pleased to write this letter outlining the relationship between The Family Place and the Highland Dallas Foundation. The Family Place empowers victims of family violence by providing safe housing, counseling and skills that create independence while building community engagement and advocating for social change to stop family violence. Our agency provides emergency shelter, individual and group counseling, case management, transitional housing as well as other essential services to help those seeking refuge from family violence. The Family Place provides free, comprehensive services in both Spanish and English that prevent violence and fully support women, children, and men on their path from fear to safety.

In 2020, The Family Place successfully navigated through COVID-19 and the barriers it presented, serving 11,933 unduplicated clients across our programs. Our emergency shelters served 678 women, 886 children and 58 men for a total of 62,118 shelter nights. 98% of our shelter clients did not return to their abuser after exiting one of our shelters. In our counseling programs, we served 2,258 clients, an 11.5% increase over 2019. 98% of our counseling clients reported feeling safer after attending counseling at The Family Place. At our on-site medical and dental clinics, we treated 778 clients and referred 571 clients to more intensive medical and dental services.

The Highland Dallas Foundation has been a long-standing partner with The Family Place in providing services to domestic violence clients. In 2016, The Family Place launched a 5-year, $16.5 million dollar capital campaign to build a new facility specifically designed to provide all necessary services for victims seeking shelter and counseling. The Family Place successfully reached our capital campaign goal due in large part to the commitment of a $1 million matching grant by the Highland Dallas Foundation. In December 2016, the Highland Dallas Foundation donated $13,950 for Christmas gifts for our clients. In 2017, when the Highland Hippo Hut was opened at the Dallas Zoo, the Highland Dallas Foundation generously invited our shelter clients to a special Mother's Day luncheon.

The collaboration between the Highland Dallas Foundation and The Family Place has been instrumental in providing community exposure and awareness of domestic violence in our community as well as providing essential services to family violence victims. With our new facility, completed in 2017, The Family Place has been able to expand programs and execute on the long-range plans developed for these programs. For victims of family violence, The Family Place is the Dallas area's leading organization delivering proven programs that address emotional and physical abuse and incest. Without the ongoing support of the Highland Dallas Foundation, The Family Place would not be able to successfully serve our domestic violence clients who are in desperate need of support.

Sincerely,

Paige Flink

Paige Flink
CEO, The Family Place

P.O Box 7999
Dallas, Texas 75209
214 559 2170
fax 214 443 7797
www.familyplace.org

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United Way

EXHIBIT 33

CRISTO REY
DALLAS COLLEGE PREP

9701 San Leon Ave. Dallas, TX 75217

Cristo Rey Dallas Update

Cristo Rey Dallas (CRD) is incredibly grateful for the gifts from Highland Dallas Foundation, Inc. CRD is excited to have the Highland Capital Academic Center and the NexBank Gymnasium in the Innovation Center on our campus. These naming rights were given as the result of a donation that Highland Dallas Foundation, Inc.made to our Innovation Center Capital Campaign. These facilities truly impact our students and allow us to provide our services to our population of 465 students.

CRD also receives support from Highland Dallas Foundation, Inc. through the Corporate Work Study Program (CWSP). Cornerstone Healthcare and NexBank both currently have one job team (a team of 4 students) that work in their offices. In the upcoming year, NexBank will host two teams of students. One team is funded through the gift from Highland Dallas Foundation, Inc. and the other is supported by NexBank. The work study program allows students to earn about 60% percent of their tuition to CRD, and the involvement in the work study program makes such a difference in the lives of the 8 students that work in those businesses.

Finally, CRD is incredibly thankful for the remote workspace at Cityplace Tower. CWSP has been greatly affected by COVID-19. This year, many partners were unable to host students in their offices. The space at Cityplace Tower allows 30 students to work remotely for their job partners each day which means that about 120 students benefit from the offices each week. Without this space, CRD would not have the capacity to allow these students to work remotely.

The support of Highland Dallas Foundation, Inc. has meant so much to us at CRD. We are so appreciative, and we look forward to continuing our partnership for many years.

EXHIBIT 34

Dallas Children's Advocacy Center
PROVIDING JUSTICE • RESTORING HOPE

Dallas Children's Advocacy Center (DCAC)
Partnership with Highland Dallas Foundation, Inc.

Organization Mission and History
The mission of DCAC is *to improve the lives of abused children in Dallas County and to provide national leadership on child abuse issues*. Since opening its doors in 1991, DCAC has served more than 60,000 of the most severely abused children and their non-offending family members in Dallas County. In FY2021, DCAC will serve 8,400 children and their non-offending family members.

DCAC was created to coordinate the investigation of child abuse cases that rise to the criminal level in a seamless, collaborative process. We facilitate a coordinated approach to child abuse cases that results in more successful investigation and prosecution outcomes and provides a less traumatic response to child victims and families. DCAC partners with 39 organizations to form a Multidisciplinary Team (MDT) that includes medical, legal, and law enforcement and is designed to ensure child clients receive the appropriate services for healing and safety.

In 2015 DCAC's Partner Relations Team began reading all reports of abuse and neglect made to DFPS in Dallas County as part of a state-wide effort to ensure every child who needs services from a children's advocacy center (CAC) gets them. In FY2019 we read 28,131 reports of child abuse for Dallas County. At the beginning of March 2020 before COVID-19 safety measures were implemented, we had experienced a 15% increase in the number of cases read. While case reports went down during quarantine, we have projected and experienced a dramatic increase in cases; at the end of February 2021, we had experienced a 35% increase in cases read year-over-year.

In addition to supportive services provided by the MDT, DCAC also provides the following Core Programs at no cost to our clients. Please note, for the second half of FY2020, DCAC provided therapy and family advocacy services via a HIPPA-approved telehealth platform, Doxy.me. Forensic interviews were always conducted on-site during quarantine. Below you will find details and outcomes for FY 2020.

Forensic Interview Program
Trained DCAC forensic interviewers conduct interviews of children, both as a first step in the child's healing process and as a vital component of the investigation and prosecution of alleged perpetrators. The result is a legally defensible investigative interview of each alleged child victim. During FY2020, DCAC conducted 1,921 forensic interviews.

Family Advocacy Program
The Family Advocacy Team is committed to helping each family navigate the complex process of investigation, prosecution and healing after a child makes an outcry of abuse. The team helps the family learn about their rights and resources available to them during crisis as well as provides tangible, critical needs items like clothing, toiletries, and financial assistance on an as-needed basis. During FY 2020, the Family Advocacy Program supported 7,431 children and their non-offending family members.

Evidence-Based Therapy Program

Dallas Children's Advocacy Center
PROVIDING JUSTICE • RESTORING HOPE

The Evidence-Based Therapy Program provides clients and their non-offending caregivers with cutting-edge, no-cost therapeutic services. Treatment is informed by an initial assessment to enhance engagement between families and therapists toward the recovery of children. When clients are assessed at the end of treatment, over 70% report a reduction in trauma symptoms. During FY 2020, the DCAC Therapy Program provided services to 2,498 clients.

Education Program

DCAC has pioneered a comprehensive, multi-part training curriculum that provides holistic responses to Texas child abuse reporting laws. In the past year, 100,405 people were educated in our curriculum by means of in-person instruction or online learning. In addition to our cutting-edge curriculum, we also host a Lecture Series at the Center. Lecture Series topics are designed to provide continuing education for medical, legal, clinical, law enforcement and other children's advocacy professionals. Since the start of the pandemic, we moved all lecture series' online; we continue to provide this education virtually and as such have discovered we can reach even more professional.

Partnership with Highland Dallas Foundation, Inc.

Since 2016, Highland Dallas Foundation, Inc. has supported DCAC through yearly, general operating investments towards our mission. We have received over $85,000 over the past five years through sponsorship of our Art for Advocacy event as well as from a golf tournament where DCAC was the dedicated beneficiary. This funding has been critical to the sustainability of our programs and each dollar allows us to serve our clients with transformative services at no cost to them. Alongside the financial commitment, Highland Dallas Foundation, Inc. has gone above and beyond in introducing us to additional community advocates who individually support our efforts as well. The ripple effect of our partnership with Highland Dallas Foundation, Inc. is invaluable and for that we are so grateful.

EXHIBIT 35

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

CHARITABLE DAF FUND, L.P. and CLO HOLDCO, LTD., ***directly and derivatively,***	§	
Plaintiffs,	§	
v.	§	**Cause No. _____**
HIGHLAND CAPITAL MANAGEMENT, L.P. , HIGHLAND HCF ADVISOR, LTD., and HIGHLAND CLO FUNDING, LTD., ***nominally,***	§	
Defendants.	§	

ORIGINAL COMPLAINT

I.

INTRODUCTION

This action arises out of the acts and omissions of Defendant Highland Capital Management, L.P. ("HCM"), which is the general manager of Highland HCF Advisor, Ltd. ("HCFA"), both of which are registered investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act"),[1] and nominal Defendant Highland CLO Funding, Ltd. ("HCLOF") (HCM and HCFA each a "Defendant," or together, "Defendants"). The acts and omissions which have recently come to light reveal breaches of fiduciary duty, a pattern of violations of the Advisers Act's anti-fraud provisions, and concealed breaches of the HCLOF Company Agreement, among others, which have caused and/or likely will cause Plaintiffs damages.

[1] https://adviserinfo.sec.gov/firm/summary/110126

At all relevant times, HCM was headed by CEO and potential party James P. Seery ("Seery"). Seery negotiated a settlement with the several Habourvest[2] entities who owned 49.98% of HCLOF. The deal had HCM (or its designee) purchasing the Harbourvest membership interests in HCLOF for $22.5 million. Recent revelations, however, show that the sale was predicated upon a sales price that was vastly below the Net Asset Value ("NAV") of those interests. Upon information and belief, the NAV of HCLOF's assets had risen precipitously, but was not disclosed to Harbourvest nor to Plaintiffs.

Under the Advisers Act, Defendants have a non-waivable duty of loyalty and candor, which includes its duty not to inside trade with its own investors, *i.e.*, not to trade with an investor to which HCM and Seery had access to superior non-public information. Upon information and belief, HCM's internal compliance policies required by the Advisers Act would not generally have allowed a trade of this nature to go forward—meaning, the trade either was approved in spite of compliance rules preventing it, or the compliance protocols themselves were disabled or amended to a level that leaves Defendants HCM and HCLOF exposed to liability. Thus, Defendants have created an unacceptable perpetuation of exposure to liability.

Additionally, Defendants are liable for a pattern of conduct that gives rise to liability for their conduct of the enterprise consisting of HCM in relation to HCFA and HCLOF, through a pattern of concealment, misrepresentation, and violations of the securities rules. In the alternative, HCFA and HCM, are guilty of self-dealing, violations of the Advisers Act, and tortious interference by (a) not disclosing that Harbourvest had agreed to sell at a price well below the current NAV, and (b) diverting the Harbourvest opportunity to themselves.

[2] "Habourvest" refers to the collective of Harbourvest Dover Street IX Investment, L.P., Harbourvest 2017 Global AIF, L.P., Harbourvest 2017 lobal Fund, L.P., HV International VIII Secondary, L.P., and Harbourvest Skew Base AIF, L.P. Each was a member of Defendant Highland CLO Funding, Ltd.

For these reasons, judgment should be issued in Plaintiffs' favor.

II.

PARTIES

1. Plaintiff CLO Holdco, Ltd. is a limited company incorporated under the laws of the Cayman Islands.

2. Plaintiff Charitable DAF Fund, L.P., ("DAF") is a limited partnership formed under the laws of the Cayman Islands.

3. Defendant Highland Capital Management, L.P. is a limited partnership with its principal place of business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. It may be served at its principal place of business or through its principal officer, James P. Seery, Jr., or through the Texas Secretary of State, or through any other means authorized by federal or state law.

4. Defendant Highland HCF Advisor, Ltd. is a limited company incorporated under the laws of the Cayman Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201. It is a registered investment adviser ("RIA") subject to the laws and regulations of the Investment Advisers Act of 1940 (the "Adviser's Act"). It is a wholly-owned subsidiary of Highland Capital Management, L.P.

5. Nominal Defendant Highland CLO Funding, Ltd. is a limited company incorporated under the laws of the Island of Guernsey. Its registered office is at First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ, Channel Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201.

6. Potential party James P. Seery, Jr. ("Seery") is an officer and/or director and/or control person of Defendants Highland Capital Management, L.P., Highland CLO Funding, Ltd., and Highland HCF Advisor, Ltd., and is a citizen of and domiciled in Floral Park, New York.

III.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. § 1331 as one or more rights and/or causes of action arise under the laws of the United States. This Court has supplemental subject matter jurisdiction over all other claims under 28 U.S.C. § 1367.

8. Personal jurisdiction is proper over the Defendants because they reside and/or have continual contacts with the state of Texas, having regularly submitted to jurisdiction here. Jurisdiction is also proper under 18 U.S.C. § 1965(d).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because one or more Defendants reside in this district and/or a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that is the subject of the action is situated in this district. Venue in this district is further provided under 18 U.S.C. § 1965(d).

IV.

RELEVANT BACKGROUND

HCLOF IS FORMED

10. Plaintiff DAF is a charitable fund that helps several causes throughout the country, including providing funding for humanitarian issues (such as veteran's welfare associations and women's shelters), public works (such as museums, parks and zoos), and education (such as specialty schools in underserved communities). Its mission is critical.

11. Since 2012, DAF was advised by its registered investment adviser, Highland Capital Management, L.P., and its various subsidiaries, about where to invest. This relationship was governed by an Investment advisory Agreement.

12. At one point in 2017, HCM advised DAF to acquire 143,454,001 shares of HCLOF, with HCFA (a subsidiary of HCM) serving as the portfolio manager. DAF did so via a holding entity, Plaintiff CLO Holdco, Ltd.

13. On November 15, 2017, through a Subscription and Transfer Agreement, the DAF entered into an agreement with others to sell and transfer shares in HCLOF, wherein the DAF retained 49.02% in CLO Holdco.

14. Pursuant to that agreement, Harbourvest acquired the following interests in the following entities:

Harbourvest Dover Street IX Investment, L.P., acquired 35.49%;

Harbourvest 2017 Global AIF, L.P., acquired 2.42%;

Harbourvest 2017 lobal Fund, L.P., acquired 4.85%;

HV International VIII Secondary, L.P., acquired 6.5%; and

Harbourvest Skew Base AIF, L.P., acquired 0.72%;

for a total of 49.98% (altogether, the "Harbourvest interests").

15. On or about October 16, 2019, Highland Capital Management filed for Chapter 11 bankruptcy in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, in the case styled *In Re: Highland Capital Management, L.P., Debtor*, Cause No. 19-34054, (the "HCM Bankruptcy" and the Court is the "Bankruptcy Court").

The Harbourvest Settlement with Highland Capital Management in Bankruptcy

16. On April 8, 2020, Harbourvest submitted its proofs of claim in the HCM bankruptcy proceeding. Annexed to its proofs of claims was an explanation of the Proof of Claim and the basis therefor setting out various pre-petition allegations of wrongdoing by HCM. *See, e.g.*, Case No. 19-bk-34054, Doc. 1631-5.

17. The debtor, HCM, made an omnibus response to the proofs of claims, stating they were duplicative of each other, overstated, late, and otherwise meritless.

18. Harbourvest responded to the omnibus objections on September 11, 2020. *See* Cause No. 19-bk-34054, Doc. 1057.

19. Harbourvest represented that it had invested in HCLOF, purchasing 49.98% of HCLOF's outstanding shares.

20. Plaintiff CLO Holdco was and is also a 49.02% holder of HCLOF's member interests.

21. In its Omnibus Response, Harbourvest explained that its claims included unliquidated legal claims for fraud, fraud in the inducement, RICO violations under 18 U.S.C. 1964, among others (the "Harbourvest Claims"). *See* Cause No. 19-bk-34054, Doc. 1057.

22. The Harbourvest Claims centered on allegations that when Harbourvest was intending to invest in a pool of Collateralized Loan Obligations, or CLOs, that were then-managed by Acis Capital Management ("Acis"), a subsidiary of HCM, HCM failed to disclose key facts about ongoing litigation with a former employee, Josh Terry.

23. Harbourvest contended that HCM never sufficiently disclosed the underlying facts about the litigation with Terry, and HCM's then-intended strategy to fight Terry caused HCLOF to incur around $15 million in legal fees and costs. It contended that had it known the nature of the lawsuit and how it would eventually turn out, Harbourvest never would have invested in HCLOF. *See* Cause No. 19-bk-34054, Doc. 1057.

24. HCLOF's portfolio manager is HCFA. HCM is the parent of HCFA and is managed by its General Partner, Strand Management, who employs Seery and acts on behalf of HCM.

25. Before acceding to the Harbourvest interests, HCM was a 0.6% holder of HCLOF interests.

26. While even assuming Harbourvest's underlying claims were valid as far as the lost $15 million went, the true damage of the legal fees to Harbourvest would have been 49.98% of the HCLOF losses (i.e., less than $7.5 million). Harbourvest claimed that it had lost over $100 million in the HCLOF transaction due to fraud, which, after trebling under the racketeering statute, it claimed it was entitled to over $300 million in damages.

27. In truth, as of September 2020, Harbourvest had indeed lost some $52 million due to the alleged diminishing value of the HCLOF assets (largely due to the underperformance of the Acis entities[3])—and the values were starting to recover.

28. HCM denied the allegations in the Bankruptcy Court. Other than the claim for waste of corporate assets of $15 million, HCM at all times viewed the Harbourvest legal claims as being worth near zero and having no merit.

29. On December 23, 2020, HCM moved the Court to approve a settlement between itself and Harbourvest. No discovery had taken place between the parties, and Plaintiff did not have any notice of the settlement terms or other factors prior to the motion's filing (or even during its pendency) in order to investigate its rights.

30. HCM set the hearing right after the Christmas and New Year's holidays, almost ensuring that no party would have the time to scrutinize the underpinnings of the deal.

31. On January 14, 2021, the Bankruptcy Court held an evidentiary hearing and approved the settlement in a bench ruling, overruling the objections to the settlement.

[3] Acis was being managed by Joshua Terry. JP Morgan had listed the four ACIS entities under his management as the four worst performers of the 1200 CLOs it evaluated.

32. An integral part of the settlement was allowing $45 million in unsecured claims that, at the time of the agreement, were expected to net Harbourvest around 70 cents on the dollar. In other words, Harbourvest was expected to recover around $31,500,000 from the allowed claims.

33. As part of the consideration for the $45 million in allowed claims, Harbourvest agreed to transfer all of its interests in HCLOF to HCM or its designee.

34. HCM and Seery rationalized the settlement value by allocating $22.5 million of the net value of the $45 million in unsecured claims as consideration to purchase Harbourvest's interests in HCLOF, meaning, if 70% of the unsecured claims—i.e., $31.5 million—was realized, because $22.5 million of that would be allocated to the purchase price of the Harbourvest interests in HCLOF, the true "settlement" for Harbourvest's legal claims was closer to $9 million.

35. Plaintiffs here are taking no position at this time about the propriety of settling the Harbourvest legal claims for $9 million. That is for another day.

36. At the core of this lawsuit is the fact that HCM purchased the Harbourvest interests in HCLOF for $22.5 million knowing that they were worth far more than that.

37. It has recently come to light that, upon information and belief, the Harbourvest interests, as of December 31, 2020, were worth in excess of $41,750,000, and they have continued to go up in value.

38. On November 30, 2020, which was less than a month prior to the filing of the Motion to Approve the Settlement, the net asset value of those interests was over $34.5 million. Plaintiffs were never made aware of that.

39. The change is due to how the net asset value, or NAV, was calculated. The means and methods for calculating the "net asset value" of the assets of HCLOF are subject to and

governed by the regulations passed by the SEC pursuant to the Adviser's Act, and by HCM's internal policies and procedures.

40. Typically, the value of the securities reflected by a market price quote.

41. However, the underlying securities in HCLOF are not liquid and had not been traded in a long while.

42. There not having been any contemporaneous market quotations that could be used in good faith to set the marks[4] meant that other prescribed methods of assessing the value of the interests, such as the NAV, would have been the proper substitutes.

43. Seery testified that the fair market value of the Harbourvest HCLOF interests was $22.5 million. Even allowing some leeway there, it was off the mark by a mile.

44. Given the artifice described herein, Seery and the entity Defendants had to know that the representation of the fair market value was false. But it does not appear that they disclosed it to Harbourvest to whom they owed fiduciary duties as the RIA in charge of HCLOF, and they certainly did not disclose the truth to the Plaintiff.

45. It is either the case that (i) Defendants conducted the proper analysis to obtain a current value of the assets but decided to use a far lower valuation in order to whitewash the settlement or enrich the bankruptcy estate; *or* (ii) Defendants never conducted the proper current valuation, and therefore baselessly represented what the current value of the assets was, despite knowingly having no reasonable basis for making such a claim.

46. For years HCM had such internal procedures and compliance protocols. HCM was not allowed by its own compliance officers to trade with an investor where HCM had superior knowledge about the value of the assets, for example. While Plaintiff has no reason to believe that

[4] The term "mark" is shorthand for an estimated or calculated value for a non-publicly traded instrument.

those procedures were scrapped in recent months, it can only assume that they were either overridden improperly or circumvented wholesale.

47. Upon finalizing the Harbourvest Settlement Agreement and making representations to the Bankruptcy Court to the Plaintiffs about the value of the Harbourvest Interests, Seery and HCM had a duty to use current values and not rely on old valuations of the assets or the HCLOF interests.

48. Given Defendants' actual or constructive knowledge that they were purchasing Harbourvest's Interests in HCLOF for a less than 50% of what those interests were worth—Defendants owed Plaintiff a fiduciary duty not to purchase them for themselves.

49. Defendants should have either had HCLOF repurchase the interests with cash, or offer those interests to Plaintiff and the other members *pro rata*, before HCM agreed to purchase them all lock, stock and barrel, for no up-front cash.

50. Indeed, had Plaintiff been offered those interests, it would have happily purchased them and therefore would have infused over $20 million in cash into the estate for the purpose of executing the Harbourvest Settlement.

51. That Defendants (and to perhaps a lesser extent, the Unsecured Creditors Committee (the "UCC")) agreed to pay $22.5 million for the HCLOF assets, where they had previously not consented to any such expenditure by the estate on behalf of HCLOF, strongly indicates their awareness that they were purchasing assets for far below market value.

52. The above is the most reasonable and plausible explanation for why Defendants and the UCC forwent raising as much as $22.5 million in cash now in favor of hanging on to the HCLOF assets.

53. Indeed, in January 2021 Seery threatened Ethen Powell that "[Judge Jernigan] is laughing at you" and "we are coming after you" in response to the latter's attempt to exercise his right as beneficial holder of the CLO, and pointing out a conflict of interest in Seery's plan to liquidate the funds.

54. HCM's threat, made by Seery, is tantamount to not only a declaration that he intends to liquidate the funds regardless of whether the investors want to do so, and whether it is in their best interests, but also that HCM intends to leverage what it views as the Bankruptcy Court's sympathy to evade accountability.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Breaches of Fiduciary Duty

55. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

56. HCM is a registered investment advisor and acts on behalf of HCFA. Both are fiduciaries to Plaintiffs.

57. The Advisers Act establishes an unwaivable federal fiduciary duty for investment advisers.[5]

[5] *See e.g, SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) ("§ 206 establishes 'federal fiduciary standards' to govern the conduct of investment advisers."); *Santa Fe Indus, v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court's reference to fraud in the "equitable" sense of the term was "premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers"). *See also* Investment Advisers Act Release No. 3060 (July 28, 2010) ("Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients' interests to its own") (*citing* Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003)).

58. HCM and the DAF entered into an Amended and Restated Investment Advisory Agreement, executed between them on July 1, 2014 (the "RIA Agreement"). It renews annually and continued until the end of January 2021.

59. In addition to being the RIA to the DAF, HCM was appointed the DAF's attorney-in-fact for certain actions, such as "to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner." RIA Agreement ¶ 4.

60. The RIA Agreement further commits HCM to value financial assets "in accordance with the then current valuation policy of the Investment Advisor [HCM], a copy of which will provided to the General Partner upon request." RIA Agreement ¶ 5.

61. While HCM contracted for the recognition that it would be acting on behalf of others and could be in conflict with advice given the DAF, (RIA Agreement ¶ 12), nowhere did it purport to waive the fiduciary duties owed to the DAF not to trade as a principal in a manner that harmed the DAF.

62. HCFA owed a fiduciary duty to Holdco as an investor in HCLOF and to which HCFA was the portfolio manager. HCM owed a fiduciary duty to the DAF (and to Holdco as its subsidiary) pursuant to a written Advisory Agreement HCM and the DAF had where HCM agreed to provide sound investment advice and management functions.

63. As a registered investment adviser, HCM's fiduciary duty is broad and applies to the entire advisor-client relationship.

64. The core of the fiduciary duty is to act in the best interest of their investors—the advisor must put the ends of the client before its own ends or the ends of a third party.

65. This is manifested in a duty of loyalty and a duty of utmost care. It also means that the RIA has to follow the terms of the company agreements and the regulations that apply to the investment vehicle.

66. The fiduciary duty that HCM and Seery owed to Plaintiff is predicated on trust and confidence. Section 204A of the Advisers Act requires investment advisors (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the RIA from trading on material, non-public information. *See* 17 C.F.R. § 275.206(4)-7. That means that Plaintiff should be able to take Defendants at their word and not have to second guess or dig behind representations made by them.

67. The simple thesis of this claim is that Defendants HCFA and HCM breached their fiduciary duties by (i) insider trading with Harbourvest and concealing the rising NAV of the underlying assets—i.e., trading with Harbourvest on superior, non-public information that was neither revealed to Harbourvest nor to Plaintiff; (ii) concealing the value of the Harbourvest Interests; and (iii) diverting the investment opportunity in the Harbourvest entities to HCM (or its designee) without offering it to or making it available to Plaintiff or the DAF.

68. HCM, as part of its contractual advisory function with Plaintiffs, had expressly recommended the HCLOF investment to the DAF. Thus, diverting the opportunity for returns on its investment was an additional breach of fiduciary duty.

69. This violated a multitude of regulations under 27 C.F.R. part 275, in addition to Rules 10b-5 and 10b5-1. 17 CFR 240.10b5-1 ("Rule 10b5-1") explains that one who trades while possessing non-public information is liable for insider trading, and they do not necessarily have to have *used* the specific inside information.

70. It also violated HCM's own internal policies and procedures.

71. Also, the regulations impose obligations on Defendants to calculate a *current* valuation when communicating with an investor, such as what may or may not be taken into account, and what cannot pass muster as a current valuation. Upon information and belief, these regulations were not followed by the Defendants.

72. HCM's internal policies and procedures, which it promised to abide by both in the RIA Agreement and in its Form ADV SEC filing, provided for the means of properly calculating the value of the assets.

73. HCM either did not follow these policies, changed them to be out of compliance both with the Adviser Act regulations and its Form ADV representations, and/or simply misrepresented or concealed their results.

74. In so doing, because the fiduciary duty owed to Plaintiff is a broad one, and because Defendants' malfeasance directly implicates its relationship with Plaintiff, Defendants have breached the Advisers Act's fiduciary duties owed to Plaintiff as part of their fiduciary relationship.[6]

75. At no time between agreeing with Harbourvest to the purchase of its interests and the court approval did Defendants disclose to either Harbourvest or to Plaintiff (and the Bankruptcy Court for that matter) that the purchase was at below 50% the current net asset value as well, and when they failed to offer Plaintiff (and the other members of HCLOF) their right to purchase the interests pro rata at such advantageous valuations. Plaintiff's lost opportunity to

[6] *See* Advisers Act Release No. 4197 (Sept. 17, 2015) (Commission Opinion) ("[O]nce an investment Advisory relationship is formed, the Advisers Act does not permit an adviser to exploit that fiduciary relationship by defrauding his client in any investment transaction connected to the Advisory relationship."); *see also SEC v. Lauer*, No. 03-80612-CIV, 2008 U.S. Dist. LEXIS 73026, at 90 (S.D. Fla. Sept. 24, 2008) ("Unlike the antifraud provisions of the Securities Act and the Exchange Act, Section 206 of the Advisers Act does not require that the activity be 'in the offer or sale of any' security or 'in connection with the purchase or sale of any security.'").

purchase has harmed Plaintiff. Plaintiff had been led to believe by the Defendants that the value of what was being purchased in the Harbourvest settlement by HCM (or its designee) was at fair market value. This representation, repeated again in the Bankruptcy Court during the Harbourvest confirmation, implicitly suggested that a proper current valuation had been performed.

76. Defendant's principal, Seery, testified in January 2021 that the then-current fair market value of Habourvests's 49.98% interest in HCLOF was worth around $22.5 million. But by then, it was worth almost double that amount and has continued to appreciate. Seery knew or should have known that fact because the value of some of the HCLOF assets had increased, and he had a duty to know the current value. His lack of actual knowledge, while potentially not overtly fraudulent, would nonetheless amount to a breach of fiduciary duty for acting without proper diligence and information that was plainly available.

77. Furthermore, HCLOF holds equity in MGM Studios and debt in CCS Medical via various CLO positions. But Seery, in his role as CEO of HCM, was made aware during an advisors meeting in December 2020 that Highland would have to restrict its trading in MGM because of its insider status due to activities that were likely to apply upward pressure on MGM's share price.

78. Furthermore, Seery controlled the Board of CCS Medical. And in or around October 2020, Seery was advocating an equatization that would have increased the value of the CCS securities by 25%, which was not reflected in the HCM report of the NAV of HCLOF's holdings.

79. Seery's knowledge is imputed to HCM.

80. Moreover, it is a breach of fiduciary duty to commit corporate waste, which is effectively what disposing of the HCLOF assets would constitute in a rising market, where there

is no demand for disposition by the investors (save for HCM, whose proper 0.6% interest could easily be sold to the DAF at fair value).

81. As holder of 0.6% of the HCLOF interests, and now assignee of the 49.98% Harbourvest Interests), HCM has essentially committed self-dealing by threatening to liquidate HCLOF now that it may be compelled to do so under its proposed liquidation plan, which perhaps inures to the short term goals of HCM but to the pecuniary detriment of the other holders of HCLOF whose upside will be prematurely truncated.

82. Seery and HCM should not be allowed to benefit from the breach of their fiduciary duties because doing so would also cause Plaintiffs irreparable harm. The means and methods of disposal would likely render the full scope of damages to the DAF not susceptible to specific calculation—particularly as they would relate to calculating the lost opportunity cost. Seery and HCM likely do not have the assets to pay a judgment to Plaintiffs that would be rendered, simply taking the lost appreciation of the HCLOF assets.

83. Defendants are thus liable for diverting a corporate opportunity or asset that would or should have been offered to Plaintiff and the other investors. Because federal law makes the duties invoked herein unwaivable, it is preposterous that HCM, as a 0.6% holder of HCLOF, deemed itself entitled to the all of the value and optionality of the below-market Harbourvest purchase.

84. Defendants cannot rely on any contractual provision that purports to waive this violation. Nothing in any agreement purports to permit, authorize or otherwise sanitize Defendants' self-dealing. All such provisions are void.

85. In the fourth quarter of 2020, Seery and HCM notified staff that they would be terminated on December 31, 2020. That termination was postponed to February 28, 2021.

Purchasing the Harbourvest assets without staffing necessary to be a functioning Registered Investment Advisor was a strategic reversal from prior filings that outlined canceling the CLO management contracts and allowing investors to replace Highland as manager.

86. Seery's compensation agreement with the UCC incentivizes him to expedite recoveries and to prevent transparency regarding the Harbourvest settlement.

87. What is more, Seery had previously testified that the management contracts for the funds—HCLOF included—were unprofitable, and that he intended to transfer them. But he later rejected offers to purchase those management contracts for fair value and instead decided to continue to manage the funds—which is what apparently gave rise to the Harbourvest Settlement, among others. He simultaneously rejected an offer for the Harbourvest assets of $24 million, stating that they were worth much more than that.

88. Because of Defendants' malfeasance, Plaintiffs have lost over $25 million in damages—a number that continues to rise—and the Defendants should not be able to obtain a windfall.

89. For the same reason, Defendants' malfeasance has also exposed HCLOF to a massive liability from Harbourvest since the assignment of those interests is now one that is likely unenforceable under the Advisers Act, Section 47(b), if there was unequal information.

90. HCM and HCFA are liable as principals for breach of fiduciary duty, as are the principals and compliance staff of each entity.

91. Plaintiffs seek disgorgement, damages, exemplary damages, attorneys' fees and costs. To the extent the Court determines that this claim had to have been brought derivatively on behalf of HCLOF, then Plaintiffs represent that any pre-suit demand would have been futile since asking HCM to bring suit against its principal, Seery, would have been futile.

SECOND CAUSE OF ACTION
Breach of HCLOF Company Agreement
(By Holdco against HCLOF, HCM and HCFA)

92. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

93. On November 15, 2017, the members of HCLOF, along with HCLOF and HCFA, executed the *Members Agreement Relating to the Company* (the "Company Agreement").

94. The Company Agreement governs the rights and duties of the members of HCLOF.

95. Section 6.2 of HCLOF Company Agreement provides that when a member "other than … CLO Holdco [Plaintiff] or a Highland Affiliate," intends to sell its interest in HCLOF to a third party (i.e., not to an affiliate of the selling member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

96. Here, despite the fact that Harbourvest agreed to sell its interests in HCLOF for $22.5 million when they were worth more than double that, Defendants did not offer Plaintiff the chance to buy its pro rata share of those interests at the same agreed price of $22.5 million (adjusted pro rata).

97. The transfer and sale of the interests to HCM were accomplished as part of the Harbourvest Settlement which was approved by the Bankruptcy Court.

98. Plaintiff was not informed of the fact that Harbourvest had offered its shares to Defendant HCM for $22.5 million—which was under 50% of their true value.

99. Plaintiff was not offered the right to purchase its pro rata share of the Harbourvest interests prior to the agreement being struck or prior to court approval being sought.

100. Had Plaintiff been allowed to do so, it would have obtained the interests with a net equity value over their purchase price worth in excess of $20 million.

101. No discovery or opportunity to investigate was afforded Plaintiff prior to lodging an objection in the Bankruptcy Court.

102. Plaintiff is entitled to specific performance or, alternatively, disgorgement, constructive trust, damages, attorneys' fees and costs.

THIRD CAUSE OF ACTION
Negligence
(By the DAF and CLO Holdco against HCM and HCFA)

103. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

104. Plaintiffs incorporate the foregoing causes of action and note that all the foregoing violations were breaches of the common law duty of care imposed by law on each of Seery, HCFA and HCM.

105. Each of these Defendants should have known that their actions were violations of the Advisers Act, HCM's internal policies and procedures, the Company Agreement, or all three.

106. Seery and HCM owed duties of care to Plaintiffs to follow HCM's internal policies and procedures regarding both the propriety and means of trading with a customer [Harbourvest], the propriety and means of trading as a principal in an account but in a manner adverse to another customer [the DAF and Holdco], and the proper means of valuing the CLOs and other assets held by HCLOF.

107. It would be foreseeable that failing to disclose the current value of the assets in the HCLOF would impact Plaintiffs negatively in a variety of ways.

108. It would be reasonably foreseeable that failing to correctly and accurately calculate the current net asset value of the market value of the interests would cause Plaintiffs to value the Harbourvest Interests differently.

109. It would be reasonably foreseeable that referring to old and antiquated market quotations and/or valuations of the HCLOF assets or interests would result in a mis-valuation of HCLOF and, therefore, a mis-valuation of the Harbourvest Interests.

110. Likewise, it would have been foreseeable that Plaintiff's failure to give Plaintiff the opportunity to purchase the Harbourvest shares at a $22.5 million valuation would cause Plaintiff damages. Defendants knew that the value of those assets was rising. They further knew or should have known that whereas those assets were sold to HCM for an allowance of claims to be funded in the future, selling them to Plaintiff would have provided the estate with cash funds.

111. Defendants' negligence foreseeably and directly caused Plaintiff harm.

112. Plaintiff is thus entitled to damages.

FOURTH CAUSE OF ACTION
Racketeering Influenced Corrupt Organizations Act
(CLO Holdco and DAF against HCM)

113. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

114. Defendants are liable for violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, for the conduct of an enterprise through a pattern of racketeering activity.

115. HCLOF constitutes an enterprise under the RICO Act. Additionally, or in the alternative, HCM, HCLA, and HCLOF constituted an association-in-fact enterprise. The purpose of the association-in-fact was the perpetuation of Seery's position at HCM and using the

Harbourvest settlement as a vehicle to enrich persons other than the HCLOF investors, including Holdco and the DAF, and the perpetuation of HCM's holdings in collateralized loan obligations owned by HCLOF, while attempting to deny Plaintiffs the benefit of its rights of ownership.

116. The association-in-fact was bound by informal and formal connections for years prior to the elicit purpose, and then changed when HCM joined it in order to achieve the association's illicit purpose. For example, HCM is the parent and control person over HCFA, which is the portfolio manager of HCLOF pursuant to a contractual agreement—both are registered investment advisors and provide advisory and management services to HCLOF.

117. Defendants injured Plaintiffs through their continuous course of conduct of the HCM-HCLA-HCLOF association-in-fact enterprise. HCM's actions (performed through Seery and others) constitute violations of the federal wire fraud, mail fraud, fraud in connection with a case under Title 11, and/or securities fraud laws, pursuant to 18 U.S.C. § 1961(1)(B) and (D).

118. HCM operated in such a way as to violate insider trading rules and regulations when it traded with Harbourvest while it had material, non-public information that it had not supplied to Harbourvest or to Plaintiffs.

119. In or about November 2020, HCM and Harbourvest entered into discussions about settling the Harbourvest Claims. Seery's conduct of HCLOF and HCLA on behalf of HCM through the interstate mails and/or wires caused HCM to agree to the purchase of Harbourvest's interests in HCLOF.

120. On or about each of September 30, 2020, through December 31, 2020, Seery, through his conduct of the enterprise, utilized the interstate wires and/or mails to obtain or arrive at valuations of the HCLOF interests. Seery's conduct of the enterprise caused them to cease

sending the valuation reports to Plaintiffs, which eventually allowed Plaintiffs to be misled into believing that Seery had properly valued the interests.

121. On or about September 30, 2020, Seery transmitted or caused to be transmitted though the interstate wires information to HCLOF investors from HCM (via HCFA), including Harbourvest, regarding the value of HCLOF interests and underlying assets.

122. Additionally, Seery operated HCM in such a way that he concealed the true value of the HCLOF interests by utilizing the interstate wires and mails to transmit communications to the court in the form of written representations on or about December 23, 2020, and then further transmitted verbal representations of the current market value (the vastly understated one) on January 14, 2021, during live testimony.

123. However, Harbourvest was denied the full picture and the true value of the underlying portfolio. At the end of October and November of 2020, HCM had updated the net asset values of the HCLOF portfolio. According to sources at HCM at the time, the HCLOF assets were worth north of $72,969,492 as of November 30, 2020. Harbourvest's share of that would have been $36,484,746.

124. The HCLOF net asset value had reached $86,440,024 as of December 31, 2021, which means that by the time Seery was testifying in the Bankruptcy Court on January 14, 2021, the fair market value of the Harbourvest Assets was $22.5 million, when it was actually closer to $43,202,724. Seery, speaking on behalf of HCM, knew of the distinction in value.

125. On January 14, 2021, Seery also testified that he (implying HCM, HCLA and HCLOF) had valued the Harbourvest Assets at their current valuation and at fair market value. This was not true because the valuation that was used and testified to was ancient. The ostensible purpose of this concealment was to induce Plaintiff and other interest holdings to take no action.

126. In supporting HCM's motion to the Bankruptcy Court to approve the Harbourvest Settlement, Seery omitted the fact that HCM was purchasing the interests at a massive discount, which would violate the letter and spirit of the Adviser's Act.

127. Seery was informed in late December 2020 at an in-person meeting in Dallas to which Seery had to fly that HCLOF and HCM had to suspend trading in MGM Studios' securities because Seery had learned from James Dondero, who was on the Board of MGM, of a potential purchase of the company. The news of the MGM purchase should have caused Seery to revalue the HCLOF investment in MGM.

128. In or around October 2020, Seery (who controls the Board of CSS Medical) was pursuing "equatization" of CSS Medical's debt, which would have increased the value of certain securities by 25%. In several communications through the U.S. interstate wires and/or mails, and with Plaintiffs, and the several communications with Harbourvest during the negotiations of the settlement, Seery failed to disclose these changes which were responsible in part for the ever-growing value of the HCLOF CLO portfolio.

129. Seery was at all relevant times operating as an agent of HCM.

130. This series of related violations of the wire fraud, mail fraud, and securities fraud laws, in connection with the HCM bankruptcy, constitute a continuing pattern and practice of racketeering for the purpose of winning a windfall for HCM and himself--a nearly $30,000,000 payday under the confirmation agreement.

131. The federal RICO statute makes it actionable for one's conduct of an enterprise to include "fraud in connection with a [bankruptcy case]". The Advisers' Act antifraud provisions require full transparency and accountability to an advisers' investors and clients and does not require a showing of reliance or materiality. The wire fraud provision likewise is violated when,

as here, the interstate wires are used as part of a "scheme or artifice … for obtaining money or property by means of false … pretenses, [or] representations[.]"

132. Accordingly, because Defendants' conduct violated the wire fraud and mail fraud laws, and the Advisers' Act antifraud provisions, and their acts and omissions were in connection with the HCM Bankruptcy proceedings under Title 11, they are sufficient to bring such conduct within the purview of the RICO civil action provisions, 18 U.S.C. § 1964.

133. Plaintiffs are thus entitled to damages, treble damages, attorneys' fees and costs of suit, in addition to all other injunctive or equitable relief to which they are justly entitled.

FIFTH CAUSE OF ACTION
Tortious Interference
(CLO Holdco against HCM)

134. Plaintiff respectfully incorporates the foregoing factual averments as if fully set forth herein and further alleges the following:

135. At all relevant times, HCM owned a 0.6% interest in HCLOF.

136. At all relevant times, Seery and HCM knew that Plaintiff had specific rights in HCLOF under the Company Agreement, § 6.2.

137. Section 6.2 of HCLOF Company agreement provides that when a member "other than … CLO Holdco [Plaintiff] or a Highland Affiliate," intends to sell its interest in HCLOF to a third party (i.e., not an affiliate of the member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

138. HCM, through Seery, tortiously interfered with Plaintiff's contractual rights with HCLOF by, among other things, diverting the Harbourvest Interests in HCLOF to HCM without giving HCLOF or Plaintiff the option to purchase those assets at the same favorable price that HCM obtained them.

139. HCM and Seery tortiously interfered with Plaintiff's contractual rights with HCLOF by, among other things, misrepresenting the fair market value as $22.5 million and concealing the current value of those interests.

140. But for HCM and Seery's tortious interference, Plaintiff would have been able to acquire the Harbourvest Interests at a highly favorable price. HCM and Seery's knowledge of the rights and intentional interference with these rights has caused damage to Plaintiff CLO Holdco.

141. Plaintiff is therefore entitled to damages from HCM and Seery, as well as exemplary damages.

VI.

JURY DEMAND

142. Plaintiff demands trial by jury on all claims so triable.

VII.

PRAYER FOR RELIEF

143. Wherefore, for the foregoing reasons, Plaintiffs respectfully pray that the Court enter judgment in its favor and against Defendants, jointly and severally, for:

a. Actual damages;

b. Disgorgement;

c. Treble damages;

d. Exemplary and punitive damages;

e. Attorneys' fees and costs as allowed by common law, statute or contract;

f. A constructive trust to avoid dissipation of assets;

g. All such other relief to which Plaintiff is justly entitled.

Dated: April 12, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti
Texas Bar No. 24058096
Jonathan Bridges
Texas Bar No. 24028835
JPMorgan Chase Tower
2200 Ross Avenue – Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: mas@sbaitilaw.com
jeb@sbaitilaw.com

Counsel for Plaintiffs

EXHIBIT 36

intertrust GROUP

Registration No.: **249232**
Client No.: **KY057017**

REGISTER OF DIRECTORS
FOR:
CLO HOLDCO, LTD.

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited Walkers Corporate Services Limited; Walker House; 87 Mary Street; George Town; Grand Cayman KY1-9005; Cayman Islands.	Director	17 Dec 2010	17 Dec 2010
Grant James Scott Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	17 Dec 2010	24 Mar 2021
Mark E. Patrick .	Director	24 Mar 2021	31 Mar 2021
Grant James Scott Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	31 Mar 2021	02 Apr 2021
Mark E. Patrick .	Director	02 Apr 2021	
Paul Murphy Coutil Jacques; Les Gravees, St Peter Port; Guernsey; Guernsey, C.I. GY1 1RL.	Director	22 Apr 2021	

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 37

intertrust GROUP

Registration No.: **263805**
Client No.: **KY059904**

REGISTER OF DIRECTORS
FOR:
CHARITABLE DAF HOLDCO, LTD

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited Walkers Corporate Services Limited; Walker House; 87 Mary Street; George Town; Grand Cayman KY1-9005; Cayman Islands.	Director	04 Nov 2011	04 Nov 2011
Grant James Scott Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	04 Nov 2011	25 Mar 2021
Patrick Mark Highland Capital Management, L.P.; 13455 Noel Rd, Suite 800; Dallas; TX 75240; USA.	Director	25 Mar 2021	
Paul Murphy Coutil Jacques; Les Gravees, St Peter Port; Guernsey; Guernsey, C.I. GY1 1RL.	Director	22 Apr 2021	

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 38

intertrust GROUP

Registration No.: **269389**
Date of Incorporation: **6 June 2012**
Client No.: **KY061847**

REGISTER OF MEMBERS
FOR:
LIBERTY CLO HOLDCO, LTD.

Share Class: **Ordinary**
Nominal Value: **USD 0.01**
Voting Rights: Yes
Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	6 Jun 2012	Allotment	1.00	6 Jun 2012 : Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	26 Jun 2012 : Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD. pursuant to resolutions dated 26 Jun 2012				
						Nil	**Nil**	26 Jun 2012
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	26 Jun 2012	Transfer	1.00	26 Jun 2012 : Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD. pursuant to resolutions dated 26 Jun 2012	No Cert			
						100	**1.00**	

Notes:

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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intertrust GROUP

Registration No.: **269389**
Date of Incorporation: **6 June 2012**
Client No.: **KY061847**

REGISTER OF MEMBERS
FOR:
LIBERTY CLO HOLDCO, LTD.

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 39

intertrust GROUP

Registration No.: **269389**
Client No.: **KY061847**

REGISTER OF DIRECTORS
FOR:
LIBERTY CLO HOLDCO, LTD.

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited Walkers Corporate Services Limited; Walker House; 87 Mary Street; George Town; Grand Cayman KY1-9005; Cayman Islands.	Director	26 Jun 2012	26 Jun 2012
Grant James Scott Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	26 Jun 2012	24 Mar 2021
Mark E. Patrick Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	24 Mar 2021	
Paul Murphy Coutil Jacques; Les Gravees, St Peter Port; Guernsey; Guernsey, C.I. GY1 1RL.	Director	22 Apr 2021	

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 40

intertrust GROUP

Registration No.: **293607**
Client No.: **KY073541**

REGISTER OF DIRECTORS
FOR:
MGM STUDIOS HOLDCO, LTD.

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited 190 Elgin Avenue; George Town; Grand Cayman KY1-9001; Cayman Islands.	Director	12 Nov 2014	12 Nov 2014
Grant James Scott Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	12 Nov 2014	24 Mar 2021
Mark E. Patrick .	Director	24 Mar 2021	
Paul Murphy Coutil Jacques; Les Gravees, St Peter Port; Guernsey; Guernsey, C.I. GY1 1RL.	Director	22 Apr 2021	

Date printed: 21 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 41

intertrust GROUP

Registration No.: **293607**
Date of Incorporation: **12 November 2014**
Client No.: **KY073541**

REGISTER OF MEMBERS
FOR:
MGM STUDIOS HOLDCO, LTD.

Share Class: **Ordinary**
Nominal Value: **USD 0.01**
Voting Rights: Yes
Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited 190 Elgin Avenue George Town Grand Cayman KY1-9001 Cayman Islands	12 Nov 2014	Allotment	1.00	12 Nov 2014: Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	12 Nov 2014: Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD. pursuant to resolutions dated 12 Nov 2014				
						Nil	**Nil**	12 Nov 2014
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	12 Nov 2014	Transfer	1.00	12 Nov 2014: Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD. pursuant to resolutions dated 12 Nov 2014	No Cert			
						100	**1.00**	

Notes:

Date printed: 21 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 42

intertrust GROUP

Registration No.: **249848**
Client No.: **KY058111**

REGISTER OF DIRECTORS
FOR:
HCT HOLDCO 2, LTD.

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited Walkers Corporate Services Limited; Walker House; 87 Mary Street; George Town; Grand Cayman KY1-9005; Cayman Islands.	Director	30 Dec 2010	30 Dec 2010
Grant James Scott Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	30 Dec 2010	24 Mar 2021
Mark E. Patrick .	Director	24 Mar 2021	
Paul Murphy Coutil Jacques; Les Gravees, St Peter Port; Guernsey; Guernsey, C.I. GY1 1RL.	Director	22 Apr 2021	

Date printed: 21 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 43

intertrust GROUP

Registration No.: **249848**
Date of Incorporation: **29 December 2010**
Client No.: **KY058111**

REGISTER OF MEMBERS
FOR:
HCT HOLDCO 2, LTD.

Share Class: **Ordinary**
Nominal Value: **USD 1.00**
Voting Rights: Yes
Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	29 Dec 2010	Allotment	1.00	29 Dec 2010: Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	30 Dec 2010: Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 30 Dec 2010				
						Nil	**Nil**	30 Dec 2010
Highland Capital Management Partners, Charitable Trust #2 13455 Noel Road Suite 800 Dallas TX 75240 USA	30 Dec 2010	Transfer	1.00	30 Dec 2010: Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 30 Dec 2010	No Cert			
		Transfer	(1.00)	24 Oct 2011: Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CLO HOLDCO, LTD. pursuant to resolutions dated Contribution				

Date printed: 21 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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intertrust GROUP

Registration No.: **249848**
Date of Incorporation: **29 December 2010**
Client No.: **KY058111**

REGISTER OF MEMBERS
FOR:
HCT HOLDCO 2, LTD.

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
				Agreement				
						Nil	**Nil**	24 Oct 2011
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	24 Oct 2011	Transfer	1.00	24 Oct 2011: Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CLO HOLDCO, LTD. pursuant to resolutions dated Contribution Agreement	No Cert			
						100	**1.00**	

Notes:

Date printed: 21 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

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EXHIBIT 35

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, June 8, 2021
	9:30 a.m. Docket
Debtor.	
	- SHOW CAUSE HEARING (2255)
	- MOTION TO MODIFY ORDER AUTHORIZING RETENTION OF JAMES SEERY (2248)
	- MOTION FOR ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH DEBTOR MAY REMOVE ACTIONS (2304)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor:
Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor:
John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor:
Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

APPEARANCES, cont'd.:

For the Charitable DAF, CLO Holdco, Show Cause Respondents, Movants, and Sbaiti & Company:	Mazin A. Sbaiti Jonathan E. Bridges SBAITI & COMPANY, PLLC Chase Tower 2200 Ross Avenue, Suite 4900W Dallas, TX 75201 (214) 432-2899
For Mark Patrick:	Louis M. Phillips KELLY, HART & HALLMAN, LLP 301 Main Street, Suite 1600 Baton Rouge, LA 70801 (225) 338-5308
For Mark Patrick:	Michael D. Anderson KELLY, HART & HALLMAN, LLP 201 Main Street, Suite 2500 Fort Worth, TX 76102 (817) 332-2500
For James Dondero:	Clay M. Taylor Will Howell BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For the Official Committee of Unsecured Creditors:	Paige Holden Montgomery SIDLEY AUSTIN, LLP 2021 McKinney Avenue, Suite 2000 Dallas, TX 75201 (214) 981-3300
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

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THE COURT: All right. We have settings in Highland this morning. We have three settings. We have the show cause hearing with regard to a lawsuit filed in the District Court. We have a couple of more, I would say, ministerial matters, although I think we do have objections. I know we have objections. We have a motion to extend the removal period in this case as well as a motion to modify the order authorizing Mr. Seery's retention.

So let's go ahead and start out by getting appearances from the lawyers who are participating today. I'll get those now.

MR. MORRIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. MORRIS: John Morris from Pachulski, Stang, Ziehl & Jones for the Debtor. I'm joined with me this morning by my colleagues, Jeffrey Pomerantz, Greg Demo, and Zachery Annable.

THE COURT: Okay.

MR. MORRIS: We do have a proposal on how to proceed today, a substantial portion of which is in agreement with the Respondents.

THE COURT: Okay.

MR. MORRIS: So, at the appropriate time, I'd be happy to present that to the Court.

THE COURT: All right. Well, let's get all the

appearances and then I'll hear from you on that.

MR. SBAITI: Your Honor, my name is -- would you like me to approach, Your Honor?

THE COURT: Yes, please.

MR. SBAITI: It's my first time appearing in Bankruptcy Court, Your Honor. My name is Mazin Sbaiti. I'm here on behalf of the charitable DAF Fund, CLO Holdco, and the Respondents to the show cause hearing. We are also representing them as the Movants on the motion to modify the Court's order appointing Mr. Seery.

THE COURT: All right. Thank you.

MR. BRIDGES: Jonathan Bridges, Your Honor, with Mr. Sbaiti, also representing the Charitable DAF and CLO Holdco, as well as our firm that is named in the show cause order.

THE COURT: Okay.

MR. BRIDGES: Thank you, Your Honor.

THE COURT: Thank you.

MR. PHILLIPS: Good morning, Your Honor. Louis M. Phillips from Kelly Hart Hallman here on behalf of Mark Patrick in the show cause matter. I'm joined with my colleague Michael Anderson from the Kelly Hart firm here in Fort Worth. And that's the matter that we're involved in, the show cause auction.

THE COURT: All right. Thank you, Mr. Phillips.

MR. TAYLOR: Good morning, Your Honor. Clay Taylor

of Bonds Ellis Eppich Schafer Jones here on behalf of Jim Dondero. I have Mr. Will Howell here with me from my firm.

THE COURT: All right. Thank you.

MR. CLEMENTE: Good morning, Your Honor. Matthew Clemente from Sidley Austin on behalf of the Committee. I'm here with my partner, Paige Montgomery.

THE COURT: Okay. Thank you.

MR. CLEMENTE: Good morning.

THE COURT: All right. Just to remind people, we do have participants on the WebEx, but in setting the hearing I made clear that participants today needed to be here live in the courtroom. So the WebEx participants are going to be only observers.

We have a camera on the screen here that is poised to capture both the lawyer podium as well as the witness box, and then another camera on the bench.

So, please be mindful. We want the lawyers to speak from the podium so that they are captured and heard by the WebEx. And so hopefully we don't have any cords you will trip over. We've worked hard to make it easy to maneuver around the courtroom.

All right. So, Mr. Morris, you had a proposal on how we would approach this today?

MR. MORRIS: I do, Your Honor. And it's rather brief, but I think it makes a lot of sense.

There are three motions on the calendar for today, --

THE COURT: Uh-huh.

MR. MORRIS: -- only one of which required the personal appearance of certain parties.

THE COURT: Uh-huh.

MR. MORRIS: And for that reason, and because, frankly, it was the first of the three motions filed, we believe that that ought to go first.

THE COURT: Okay.

MR. MORRIS: And then it can be followed by the motion for reconsideration of the July order, assuming time permits, and then the motion to extend the removal deadline.

And with respect to the contempt motion, Your Honor, the parties have agreed that each side shall have a maximum of three hours to make opening statements, closing arguments, direct and cross-examination of witnesses.

You know, I did point out to them that from time to time Your Honor has used the Court's discretion to adjust the time --

THE COURT: Uh-huh.

MR. MORRIS: -- if the Court is making inquiries, and I guess we'll deal with that matter as it comes. But as a general matter, that is what we've agreed to. And I would propose that, unless anybody has any objections, that we just proceed on that basis.

THE COURT: Okay.

MR. MORRIS: And I could -- I could go right forward.

THE COURT: So, three hours in the aggregate?

MR. MORRIS: Uh-huh.

THE COURT: It doesn't matter how people spend it -- with argument, examination, cross -- three hours in the aggregate?

MR. MORRIS: Correct.

THE COURT: Okay. So, Nate, you'll be the timer on that.

MR. MORRIS: Yeah. We thought it was very important to get this done today, with people coming in from out of town.

THE COURT: Okay. Sounds fine.

MR. MORRIS: So does the Court want to inquire if anybody has any questions or comments?

THE COURT: I do. Well, I see Mr. Bridges getting up. You confirm that that's agreeable?

MR. BRIDGES: Thank you, Your Honor. Yes, that's agreeable. We have one slight difference in our proposal. We would suggest to Your Honor that the motion for modification, if Your Honor decides our way, would moot the entire motion for contempt. And we'd suggest, if that possibility is realistic, that we would go first with that motion, perhaps obviate having to have the evidence presented and the lengthy

hearing.

The motion for modification, Your Honor, asks the Court to reconsider -- to modify that order because of jurisdictional and other shortcomings in it that make the order unenforceable. And because that's the order that is the subject of the contempt motion, we'd ask Your Honor to consider putting that motion first.

THE COURT: Okay. Or second? Ahead of the contempt matter?

MR. BRIDGES: Ahead of the contempt matter, --

THE COURT: Uh-huh.

MR. BRIDGES: -- because it has a possibility --

THE COURT: We have the removal matter, which I think is the shortest. All right.

MR. BRIDGES: No objection to that, Your Honor. That's correct.

THE COURT: Okay. So, Mr. Morris, that's fine by you?

MR. MORRIS: Your Honor, that doesn't make a lot of sense to us. We don't believe there's any basis for the Court to reconsider, modify, or amend in any way the July order. But even if we were wrong about that, that would not retroactively validate conduct which was otherwise wrongful at the time it was committed.

The contempt motion needs to go first. The other motion

will have no impact on whether or not there is a finding of contempt of court.

THE COURT: All right. And update me on this. There was something filed yesterday, a notice of a proposed form of order that the Debtor had proposed, that I think was not agreed to, where there would be a change about any action that goes forward, the cause of action would be in the sole jurisdiction of the Court, and you all agreed to change that part of the order, correct?

MR. MORRIS: So, just as a division of labor for Your Honor, I'm doing the contempt motion.

THE COURT: Okay. That's Mr. Pomerantz's?

MR. MORRIS: Mr. Pomerantz is going to take care of that.

MR. POMERANTZ: Yes, Your Honor. Good morning. Good to see you again.

THE COURT: Good to see you.

MR. POMERANTZ: Yes, Your Honor, that's correct. If Your Honor recalls, there's really three aspects of the January 9th and the July 16th order. First, requiring people to come to Bankruptcy Court before commencing or pursuing an action. Second, for the Bankruptcy Court to have the sole and exclusive authority to determine whether the claim is a colorable claim of willful negligence or gross misconduct. And then third, if Your Honor passed the claim through the

gate, whether you would have jurisdiction.

In Your Honor's January 9th and July 16th orders, you said you would have exclusive jurisdiction. In the motion for reconsideration, and particularly the reply, Movants said, if you just change that and say that if passes through the gate that you'd have jurisdiction only to the extent you would otherwise have it, that would resolve the motion, in the same way that the plan of reorganization was amended.

We proposed that. They rejected it. We put it before Your Honor. So we believe that it moots out a good portion -- actually, we think it should moot out the entire motion. They obviously disagree. But we definitely agree it moots out the most significant portion of their motion, which is that Your Honor would take jurisdiction to adjudicate a matter on an exclusive basis when you might not otherwise have jurisdiction on an exclusive basis.

THE COURT: Okay. Well, --

MR. BRIDGES: Your Honor, may I respond to that?

THE COURT: You may. And --

MR. BRIDGES: Thank you, Your Honor.

THE COURT: -- why -- could you clarify why you think it would moot out the entire show cause matter? I wouldn't be retroactively changing my order. Is that what you're proposing?

MR. BRIDGES: Your Honor, with all respect, we

believe the order is defective and unenforceable and has to be modified in order to fix it. And because of the defects, we're -- we're actually arguing, Your Honor, that it is unenforceable in a contempt proceeding. That is exactly what our argument is.

THE COURT: Okay. I think I'm getting way farther down this road than maybe I want to right now. But I guess here's the elephant in the room, I feel like: *Republic Supply versus Shoaf*.

MR. BRIDGES: Uh-huh.

THE COURT: The U.S. Supreme Court *Espinosa* case, for that matter. If I accept your argument that maybe there was a flaw in those orders, that maybe they went too far, don't you have a problem with those two cases?

MR. BRIDGES: Your --

THE COURT: The orders weren't appealed.

MR. BRIDGES: I understand completely, Your Honor.

THE COURT: Uh-huh.

MR. BRIDGES: And I think the answer is no because of the *Applewood* case from the Fifth Circuit. The *Applewood* case cited in our reply brief explains that in order for an order, a final order of the Bankruptcy Court to have exculpatory effect, in order for it to release claims, for example, that the claims at issue must be enumerated in the order. It's not enough to have a blanket statement like the order, the July

order has, like the January order has, saying that Mr. Seery's claims -- claims cannot be brought against him for ordinary negligence at all. The -- Your Honor, we're delving into my argument.

THE COURT: Okay.

MR. BRIDGES: And I was hoping to do this on a preliminary basis.

THE COURT: Right.

MR. BRIDGES: I don't mean to bog you down with that. But Your Honor, no, mandatory authority from the Fifth Circuit after *Shoaf* limits *Shoaf's* application and says that it does not extinguish the claims that are not specifically enumerated in the order. And the reason for that is because it doesn't give the kind of notice to the parties that they would need to make an appearance and object to those orders at the time. It actually helps to stem the amount of litigation at the time rather than to encourage it.

THE COURT: All right. Well, you'll get your opportunity to make your full argument on this. But I'm not convinced, preliminarily, at least, to affect my decision on the sequence, okay? So even if it potentially wastes time under your view of the law, I am going to do the removal matter first -- the extension of time request, I should say -- and then the show cause and then the motion to modify. And I realize, those last two matters, everything is kind of

interrelated. All right?

MR. BRIDGES: Yes, Your Honor.

THE COURT: All right. So, with that decided, is there a desire on the part of the lawyers to make opening statements, or shall we just go to the motions? And, of course, people can use their three hours for oral argument, however much they want to use for oral argument.

MR. MORRIS: Your Honor, the -- to be clear, the six-hour time limit only applies to the contempt proceeding.

THE COURT: Oh, yes. Yes. Uh-huh.

MR. MORRIS: And I do want to make an opening statement.

THE COURT: Okay.

MR. MORRIS: So, as the Movant, I'd like to go first.

THE COURT: You want to make opening statements?

MR. BRIDGES: Yes. Yes, Your Honor.

THE COURT: Okay. Okay.

MR. BRIDGES: I believe we've got a PowerPoint prepared that I think can lay out our side of it.

THE COURT: Okay.

MR. BRIDGES: I don't think we're participating in the motion to extend the removal time.

THE COURT: Okay.

MR. BRIDGES: That's going first.

THE COURT: All right.

MR. BRIDGES: So we'll wait until that is --

THE COURT: Well, so we don't get confused on the timing, let's just do the motion to extend right now. And I think we only had one objection. As Mr. Sbaiti just pointed out, they're not objecting on that one. We have a Dondero objection. So let's, without starting the timer, hear that one. Okay?

MR. DEMO: Good morning, Your Honor. Greg Demo; Pachulski, Stang, Ziehl & Jones.

THE COURT: Good morning.

MR. DEMO: I'll be arguing the removal motion and then turn it over.

It's fairly basic and straightforward, Your Honor. We're asking for a further extension of the statutory deadline to remove cases until December 14th, 2021. The deadline is procedural only. As Your Honor is well aware, there's a lot of moving parts in this case. You know, we don't know to this date, really, the full universe of what could actually be out there. So we're just asking for a short extension of the removal period to cover through December.

I know that there was an objection from Mr. Dondero. I know that he argues that 9006 does not allow us to extend that deadline past the effective date of the plan, and he cites one case for that purpose, which is *Health Support*. I think it's out of Florida. That case dealt with the extension of the

two-year extension of the statute of limitations and was very clear that you can't use 9 --

THE COURT: You mean the 546 deadline?

MR. BRIDGES: Yes. Yes.

THE COURT: Okay.

MR. BRIDGES: That you can't use 9006 to extend non-bankruptcy deadlines. That's not what we're doing here, Your Honor. We're using 9006 to extend the bankruptcy deadline to remove the cases.

THE COURT: Uh-huh.

MR. DEMO: And we'd just ask Your Honor for the extension through December.

THE COURT: Okay. I'll hear Mr. Dondero's counsel.

MR. HOWELL: Good morning, Judge. Will Howell for Mr. Dondero.

So, the argument here is not that the Court can't do this. I was just pointing that there is an outside limit to what we're doing. And so if you look at the cases that the Debtor cites in support of this motion, the one that is most apt was when Judge Nelms did a fourth extension of time. But those were all 90-day extensions. Here, we're in a situation where the Debtor is asking for a fourth 180-day extension of time, and this is really where the, you know, objection came -- or, the response in opposition came from. They specifically asked that it be without prejudice to further extensions.

And so, at some point, you know, does 9006 have an outside limit? You know, do we need to see some sort of a light at the end of the tunnel here?

So we would ask that the motion, at a minimum, be denied in part with respect to this open-ended request for extension beyond two years for a 90-day period. The other cases that they cite, they have one extension here, one extension there, 120 days here, but not 180 days after 180 days after 180 days, and then asking specifically for without prejudice to further extensions beyond two years. So that's -- that's where this comes from.

THE COURT: All right. Do you think it matters that this is a very complex case?

MR. BRIDGES: I --

THE COURT: There's litigation here, there, and everywhere.

MR. HOWELL: I also think, you know, *Mirant* was complex. I think *Pilgrim's Pride* was complex. I think, you know, it is not out of bounds for the Court to grant a fourth extension.

THE COURT: Uh-huh.

MR. BRIDGES: But to -- you know, at some point -- you know, maybe the Court could grant a 90-day extension and make them come back a little more frequently to kind of corral this thing, rather than just saying "This grant of 180 days,

the fourth time, is going to be without prejudice to further extensions." It just gets kind of large.

THE COURT: Okay. Mr. Demo, your motion. You get the last word.

MR. DEMO: Your Honor, I mean, it is without prejudice for further extensions, but that doesn't mean that Your Honor is granting the further extensions now. It means we'll have to come back. We'll have to make our case for why an extension is necessary. And, you know, if Your Honor doesn't want to give us another extension past December 2021, Your Honor doesn't have to. This is not an order saying that it's a limitless grant.

You know, I'd also ask, you know, quite honestly, why Mr. Dondero has such an issue with this. He hasn't said that any of these cases involve him. He hasn't given any reasons why this affects him. He hasn't given any reason why this damages him at all. So I do, I guess, wonder as an initial matter kind of why we're here, you know, why we're responding to Mr. Dondero's request, when that request really has no impact on him.

And then, Your Honor, to the extent that you are inclined to limit this, I would say, you know, we would ask for a reasonable extension of time. We do think an extension of time, because of the complexity of this case, through December is warranted. But if Your Honor for some reason does agree

that a shorter extension is necessary under 9006 -- I don't think it is -- we'd just ask that Your Honor grant us leave to come back for further extensions of time.

THE COURT: Okay. All right. I will -- I'll grant a 90-day extension, without prejudice for further extensions.

MR. DEMO: Thank you, Your Honor.

THE COURT: Maybe in 90 days we'll be farther down the road and we won't need any more extensions, but you'll have the ability to argue for more if you think it's really necessary. All right. So that will bring us to around September 14th, I guess.

All right. Well, let's go ahead and hear opening statements with regard to the show cause matter. And again, if you want to roll in arguments about the -- well, no, you said the six hours only applies to show cause, so we'll not hear opening statements with regard to the Seery retention modification, just show cause.

MR. MORRIS: All right. Before I begin, Your Honor, I have a small deck to guide --

THE COURT: Okay.

MR. MORRIS: -- to guide my opening statement.

THE COURT: All right.

MR. MORRIS: Can I approach the bench?

THE COURT: You may. And is your legal assistant going to share her content --

MR. MORRIS: Yes.

THE COURT: -- so people on the WebEx will see? Okay.

MR. MORRIS: That's the intention, Your Honor.

THE COURT: Okay.

MR. MORRIS: All right. Are you ready for me to proceed?

THE COURT: I am. And obviously, everyone has a copy?

MR. MORRIS: Yes.

THE COURT: Your opponents have a copy of this?

MR. MORRIS: Yep.

THE COURT: Okay. Although we hope to see it on the screen.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

We're here today on the Debtor's motion to hold certain entities and individuals in contempt of court for violating a very clear and specific court order. I hope to be relatively brief in my opening here, Your Honor, and I'd like to begin where I think we must, and that is, how do we -- how do we prove this and what do we have to prove?

The elements of a claim for contempt of court are really rather straightforward. The Movant must establish by clear

and convincing evidence three things.

THE COURT: Let me stop you and stop the clock. We're not seeing the shared content.

MR. MORRIS: Uh-huh.

THE COURT: Did you want her to go ahead and share her content?

MR. MORRIS: I did.

THE COURT: Okay.

MR. MORRIS: I was hoping that she'd do that.

THE COURT: All right. It says it's receiving content.

MR. MORRIS: There we go. It's on my screen, anyway.

THE COURT: Oh, here it is. I don't know why it's not on my Polycom. Can you all see it out there?

(Chorus of affirmative replies.)

THE COURT: Okay. Very good.

MR. MORRIS: Okay.

THE COURT: You may proceed.

MR. MORRIS: Thank you, Your Honor.

So, there's three elements to the cause of action for contempt, for civil contempt. We have to prove by clear and convincing evidence that a court order was in effect; that the order required certain conduct by the Respondents; and that the Respondent failed to comply with the Court's order.

We've cited in the footnote the applicable case law from

the Fifth Circuit, and I don't believe that there's any dispute that is indeed the legal standard.

The intent of the Respondents as to liability is completely irrelevant. It doesn't matter if they thought they were doing the right thing. It doesn't matter if they believed in their heart of hearts that the court order was invalid. These are the three elements, and we will be able to establish these elements not by clear and convincing evidence, but if we ever had to, beyond reasonable doubt.

If we can go to the next slide, please.

We begin with the Court's order, the Court's July 9 order. And that order states very clearly what conduct was required. And the conduct that was required was that no entity could commence or pursue -- those are really the magic words -- commence or pursue a claim against Mr. Seery without the Bankruptcy Court doing certain things. And we've referred to this as the gatekeeper. And the only question I believe the Court has to ask today is whether the Respondents commenced or pursued a claim against Mr. Seery without seeking Bankruptcy Court approval, as set forth in this order.

I'll dispute that there's anything ambiguous about this. I'll dispute that it could not be clearer what conduct was prohibited. It could not be clearer. The only question is whether the conduct constitutes the pursuit of a claim.

Let's see what they did. If we could go to the next

slide. There will be no dispute about what they did. And what they did is, a week after filing a lawsuit against the Debtor and two others arising out of the HarbourVest settlement, a settlement that this Court approved, after notice and a hearing and participation by the Respondents, after they had the opportunity to take discovery, after they had the opportunity to examine Mr. Seery about the value of HarbourVest's interest in HCLOF, after all of that, they brought a lawsuit after Mr. Patrick took control of the DAF and CLO Holdco. And that lawsuit related to nothing but the HarbourVest suit, and it named in Paragraph 2, right up above, Mr. Seery as a potential party. And a week later, Your Honor, they filed what we call the Seery Motion, and it was a motion for leave to amend their complaint to add Mr. Seery as a defendant.

We believe that that clearly violates the Court's July 7 order. And indeed, again, these are facts. They're not -- they're not in dispute. Just look at the first sentence of their motion. The purpose of the motion was to name James Seery as a defendant. That was the purpose of the motion. And the way that they made the motion, Your Honor -- and these are undisputed facts -- the way they made the motion, Your Honor, shows contemptuous intent. We don't have to prove intent, but I think it might be relevant when you get to remedies. Okay?

And so how do I -- why do I say that? Because they made this motion, Your Honor, and they didn't have to. Everybody knows that under Rule 15 they could have amended the complaint if they wanted to. If they wanted to, they didn't need the Court's permission. What they wanted to do was try to get the District Court to do what they knew they couldn't. And that's contemptuous.

And they did it, Your Honor, without notice to the Debtor. Even after the Debtor had accepted service of the complaint, even after we told them, if you go down this path, we're going to file a motion for contempt, they did it anyway. They didn't serve the Debtor. They didn't give the Debtor a courtesy copy. They didn't notify the Debtor. The only thing that happened was the next day, when the District Court dismissed it without prejudice, they sent us a copy of that notice. And within three days, we were here.

A court order was in effect. Mr. Patrick is going to admit to that. There's not going to be any dispute about that. The order required that the Respondents come to this Court before they pursue a claim against Mr. Seery, and they failed to comply with that order. The facts, again -- if we can go to the next slide. We can look at some of the detail, because the timeline is mindboggling.

Mr. Patrick became the Plaintiffs' authorized representative on March 24th. And folks, when I took their

depositions, weren't specific about dates, and that's why some of the entries here refer to sometime after, but there's no question that the order of events is as presented here and as the evidence will show today.

The evidence will show that sometime after Patrick became the Plaintiffs' authorized representative, Mr. Dondero informed Mr. Patrick that Highland had usurped an investment opportunity from the Plaintiffs. Mr. Patrick is going to testify to that. Mr. Patrick is also going to testify that, without prompting, without making a request, D.C. Sauter, the general counsel of NexPoint Advisors, recommended the Sbaiti firm to Mr. Patrick. Mr. Patrick considered nobody else.

Mr. Patrick retained the Sbaiti firm in April. In other words, within 12 days of the filing of the complaint. They're retained and they conduct an investigation. You're going to hear the assertion of the attorney-client and the common interest privilege every time I ask Mr. Dondero what he and Mr. Sbaiti talked about and whether they talked about naming Jim Seery as a defendant. But with Patrick's authorization, the Sbaiti firm filed the complaint on April 12th, just days after they were retained.

It's like a -- it's an enormous complaint. I don't know how they did that so quickly. But in any event, the important point is that they all worked together. None of this happened until Mr. Patrick became the authorized representative.

Mr. Patrick is going to tell you, Your Honor, he's going to tell you that he had no knowledge of any wrongdoing by Mr. Seery prior to the time he assumed the rein of the DAF and the CLO Holdco. He had no knowledge, Your Honor, of any claims that the DAF and CLO Holdco had against the Debtor until he became the Plaintiffs' authorized representative and Mr. Dondero spoke to him.

If we can flip to the next page. Mr. Dondero has effective control of the DAF. He has effective control of CLO Holdco. You're going to be bombarded with corporate documents today, because they're going to show you -- and they want you to respect the corporate form, they really want you to follow the rules and respect the corporate form, because only Mr. Scott was responsible for the DAF and CLO Holdco until he handed the reins on March 24th to Mr. Patrick. Mr. Dondero has nothing to do with this. He's going to tell you. He's going to tell you he had nothing to do with the selection of Mr. Patrick as Mr. Scott's replacement.

The facts are going to show otherwise, Your Honor. The DAF is a $200 million charitable organization that is funded almost exclusively with assets derived from Highland or Mr. Dondero or the Get Good Trust or the Dugaboy Trust. The evidence is going to show that at all times these entities had shared services agreements and investment advisory agreements with HCMLP. The evidence will show that HCMLP at all times

was controlled by Mr. Dondero.

And it made sense. The guy put in an awful lot of money for charitable usage. Is he really just going to say, I don't really care who runs it? The evidence is going to show that between October 2020 and January 2021, Grant Scott actually exercised independence. Grant Scott was Mr. Dondero's childhood friend. They went to UVA together. They were roommates. Mr. Scott was the best man at Mr. Dondero's wedding. But we were now in bankruptcy court. We're now in the fishbowl. And I will -- this may be a little argument, but there's no disputing the facts that Mr. Scott acted independently, and he paid the price for it. Mr. Scott did it three times.

He did it when he amended CLO Holdco's proof of claim to take it down to zero. He did it again after he withdrew the objection to the HarbourVest settlement motion. And he did it again when he settled the lawsuit that the Debtors had brought against CLO Holdco. And that -- and on each of those three occasions, the evidence will show that Mr. Scott did not communicate with Mr. Dondero in advance, that Mr. Dondero found out about these acts of independence after the fact, and that each time he found out about it he had a little conversation with Mr. Scott.

Mr. Dondero is going to tell you about it, and he's going to tell you that he told Mr. Scott each act was inappropriate.

You may have heard that word before. Each act was not in the best interests of the DAF.

The last of those conversations happened either on or just after January 26th. And by January 31st, Mr. Scott gave notice of his resignation. And you're going to see that notice of resignation. And he asks for releases.

Mr. Patrick becomes, almost two months later, the successor to Mr. Scott. Mr. Dondero is going to say he has no idea how that happened. He was just told after the fact that Mr. Patrick and Mr. Scott had an agreement. He's going to tell you they had an agreement and he just heard about it afterwards. He didn't really -- for two months, I guess, he sat there after Mr. Scott told him that he wanted out and did nothing to try to find out who's going to take control of my charitable foundation with $200 million. He wasn't interested.

But here's the thing, Your Honor. If we go to the next slide. Let's see what Mr. Scott said at his deposition last week. Question, "Do you know who selected Mark?" Answer, "I do not." Question, "Do you know how Mark was selected?" Mark is a reference to Mark Patrick. "I do not." "Did you ever ask Mark how he was selected?" "I did not." "Did you ever ask Mark who selected him?" "I did not." "Did you ever ask anybody at any time how Mr. Patrick was selected to succeed you?" "No, I did not." "Did you ever ask anybody at any time

as to who made the decision to select Mr. Patrick to succeed you?" "No, I did not."

So I don't know what happened between Mr. Patrick and Mr. Dondero when Mr. Patrick supposedly told Mr. Dondero that there was an agreement with Mr. Scott, but that is news to Mr. Scott. He had no idea.

Your Honor, we are going to prove by clear and convincing evidence that each of the Respondents violated a very clear and specific court order. And unless the Court has any other questions, I'll stop for now.

THE COURT: No questions.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. Who is making the argument for the Respondents?

MR. SBAITI: Your Honor, I am. I'm just trying to put the PowerPoint up on the WebEx.

THE COURT: Okay.

MR. SBAITI: Sorry about that.

MR. MORRIS: Your Honor, I'll try not to make this a practice, but can I inquire as to how much time I used?

THE COURT: Oh. Nate?

THE CLERK: About thirteen minutes.

THE COURT: Thirteen minutes?

MR. MORRIS: Thank you very much.

THE COURT: Okay. All right.

MR. SBAITI: Your Honor, our PowerPoint is a little bit longer than that one. May I approach with a copy?

THE COURT: You may. Uh-huh.

(Pause.)

MR. SBAITI: Your Honor, it does feel good to be back in the courtroom.

THE COURT: Okay.

MR. SBAITI: It's been a long time.

THE COURT: Yes. For us, too.

MR. SBAITI: Jut wish it wasn't under a circumstance where someone is trying to sanction me.

But we're going to be dividing up this oral argument a little bit. Also, to just kind of break up a little bit of the monotony, because I think we have a lot to cover at the opening stage of this. And I'll try to be as expeditious as I can be.

OPENING STATEMENT ON BEHALF OF THE SHOW CAUSE RESPONDENTS

MR. SBAITI: Your Honor, the thing we -- the thing we open with is the due process issue that we raised in our brief. And where this really arises from is the Court's show cause order calls us violators before we've had a chance to respond to the allegations and before we've obviously been able to approach this hearing. And the word violators means something to us, Your Honor, because I've been a lawyer for a long time, my partner has been a lawyer for a long time, our

clients have never been sanctioned, we've never been sanctioned, and for us to be labeled violators first by counsel and then in a court order makes us wonder whether or not this process is already prejudged or predetermined.

THE COURT: I actually want to address that. Turn off the clock.

Just so you know, I looked this up a while back, because we gave a bankruptcy judges panel at some CLE. The average bankruptcy judge in our district, back when I looked, signs over 200 orders a week.

MR. SBAITI: Sure.

THE COURT: Many of those -- in fact, most of them -- are submitted by lawyers. So, you know, a big chunk of my week is signing orders. And I obviously give more scrutiny to those that are substantive in nature. Okay? If someone submits to me a 50-page debtor-in-possession financing order, I will look at that much more carefully than what I consider a mere procedural order setting a hearing.

So I regret that that word was used, but I can assure you I fairly quickly set that -- signed that, I should say -- regarding it as a merely procedural order setting a hearing. Okay? So it's as simple as that. There was no hmm, I like that word, violator. I had a stack, if you will, an electronic stack of probably 200 orders in front of me the day I signed that. Okay?

So, if that makes anyone feel any better, I don't know, but that's the reality.

Okay. You can start the clock again.

MR. SBAITI: And I appreciate Your Honor saying that. It does make us feel better, both about where the -- the genesis of the order and the impact and its reflection on what Your Honor thinks in terms of going into this.

The other thing that obviously raised concerns, and I assume this comes from the same place, was four days ahead of that order counsel told us the Court was going to order everyone to be in person, and they had advance notice of that, and we weren't sure how they had advance notice of that. I guess they assumed --

THE COURT: I can assure you right here on the record I never had ex parte communications with any lawyer in this case, on this matter or any other matter. Okay? Again, those are pretty strong words to venture out there with, which your pleading did venture out there with those words.

My courtroom deputy, Traci, I think answers her phone 24 hours a day. So I'm quite sure she had communications with the lawyers about this, just like she probably had communications with you and your firm and every other firm in this case. Okay?

MR. SBAITI: Like I said, Your Honor, we appreciated what Your Honor -- appreciate what Your Honor said, but that

issue obviously stuck out -- stuck out to us, in combination. So I'll move on from that issue.

This has to do with the lawsuit that was filed, and the lawsuit, the genesis of the lawsuit, I think it's important to say, because the argument has been raised in the briefing and we wanted to address it upfront, why the lawsuit comes about. And it comes about because of the Advisers Act and the responsibilities that the Debtor has to the assets of the funds that it manages. And the Advisers Act imposes a duty not only on Highland but obviously on its control people and its supervised people. And the lawsuit has to do with HCLOF, which is what HarbourVest owned a piece of. And Highland, as the advisor to HCLOF and the advisor to the DAF, owed fiduciary duties to CLO Holdco, which is the DAF's holding entity of its assets in HCLOF, but Highland Capital was also an advisor, a registered investment advisor to the DAF directly at the time. And so those federally-imposed fiduciary duties lie at the crux of that lawsuit.

Moving on, Mr. Seery testified at the hearing that was in this Court to be -- to get him appointed, and this was Exhibit 2 that was presented by the Debtor, and on Page 16 at the bottom he says -- of the transcript, he says, I think, from a high level, the best way to think about the Debtor is that it's a registered investment advisor. As a registered investment advisor, which is really any advisor of third-party

money over $25 million, it has to register with the SEC, and it manages funds in many different ways.

In the middle of the next page he says, In addition, the Debtor manages about $2 billion, $2 billion in total managed assets, around $2 billion in CLO assets, and then other securities, which are hedge funds -- other entities, rather, which are hedge funds or PE style. Private equity style.

On Page 23 towards the bottom he says, As I said, the Investment Advisers Act puts a fiduciary duty on Highland Capital to discharge its duty to the investors. So while we have duties to the estate, we also have duties, as I mentioned in my last testimony, to each of the investors in the funds. CLO Holdco would be an investor in one of those funds, HCLOF.

He goes on to say, Some of them are related parties, and those are a little bit easier. Some of them are owned by Highland. HCLOF was not owned by Highland. But there are third-party investors in these funds who have no relation whatsoever to Highland, and we owe them a fiduciary duty both to manage their assets prudently but also to seek to maximize value.

Now, the lawsuit alleges that Seery testified that the HarbourVest portion of Highland CLO Funding was worth $22-1/2 million. Now, Mr. Morris wants the Court to hinge on the fact that, well, no one asked him whether he was lying. But that's not really the standard, and it certainly isn't the standard

when someone's an investment advisor and owes fiduciary duties, which include fiduciary duties to be transparent with your investors.

It also includes fiduciary duties not to self-deal.

The lawsuit also alleges that, in reality, those assets were worth double that -- double that amount at the time. We found out just, you know, in late March/early April that a third -- from a third party who had access to the underlying valuations at the time that those values were actually double and that there was a misrepresentation, giving rise to the lawsuit. That change in circumstance is the key issue behind the lawsuit.

We allege that Mr. Seery and the Debtor, as RIAs, had a duty to not self-deal and be fully transparent with that information, and we think both of those things were violated under the Advisers Act.

We don't allege that the HarbourVest settlement should be undone or unwound. We can't unscramble that egg. We do seek damages, as I believe is our right, arising out of the wrongdoing and the process of pushing forth the settlement.

I think one of the allegations in the actual motion for the show cause order was that this was going to undo all of the hard work that Court had done and basically unwind and try to re-piece Humpty Dumpty back together again. But that's simply not the case. Nowhere in our allegations or in the

relief that we request are we trying to undo the HarbourVest settlement as such.

Now, whether the lawsuit should be dismissed under the affirmative defenses that they bring up -- res judicata, waiver, release -- all of those are questionable under the Advisers Act, given the change of circumstance, and therefore are also questions on the merits. They don't go to the colorability of the underlying claims in and of themselves, which I think is important.

So we asked for leave to amend from the Court. And what they want us to do, Your Honor, is they want to sanction us for asking. They're saying asking for leave to amend is the same thing as pursuing a claim. And I'll get to the specifics on that in a little bit. But that's the frame. Can we be sanctioned for asking a court, any court, even if it's the wrong court, for permission to bring the lawsuit? They don't cite a single case that says that that, in and of itself, is sanctionable conduct, us asking.

So I'd like to introduce some of the Respondents.

Your Honor, may I have one of these waters?

THE COURT: Certainly.

MR. SBAITI: Thank you.

THE COURT: That's why they're there, by the way.

MR. SBAITI: I didn't know if they belonged to somebody else.

THE COURT: We've scattered water bottles around for people.

MR. SBAITI: I appreciate it. Thank you, Your Honor.

THE COURT: So if you see these little ones, that's for anyone.

MR. SBAITI: So, this is an org chart, and you'll see it as -- the exhibits that the Debtor's going to bring up. And when we talk about the DAF, Your Honor -- I don't know if that's visible to you. We're on Slide 19, if you're looking at it on paper. There's a little number at the lower right-hand corner. The charitable DAF GP, LLP and then the Charitable DAF Holdco, Ltd. together are the principles of the Charitable DAF Fund, LP. And so when we refer to the DAF or the Charitable DAF, that's really the entity structure that we're referring to. And then the GP and Holdco Ltd. have a managing member. It used to be Grant Scott at the time this was done. Today, it's Mr. Mark Patrick, who's in the room, sitting next to Mr. Bridges.

The DAF is a charitable fund. It's funded over $32 million, as the evidence will show, including Dallas-Fort Worth organizations, The Family Place, Dallas Children's Advocacy, Center for Brain Health, the Crystal Ray Initiative, Friends of the Dallas Police, Snowball Express, various community and education initiatives, Dallas Arts, museums, the Perot Museum, Dallas Zoo. That evidence is undisputed, Your

Honor. The DAF is a real fund. It is a real charitable fund. It does real good in the community.

Now, Respondents -- Holdco, which you will see at the bottom of that chart, is essentially the investment arm. There are assets that the DAF owns in various pots, and Holdco is the actual business engine that generates the money from those assets that then -- that then gets passed up to the charitable -- the four charitable foundations at the top.

I'll go back to Slide 21. And if you look at the top, Your Honor, the Dallas Foundation, Greater Kansas City Community, Santa Barbara Foundation, The Community Foundation of North Texas: Those are the charities that then themselves bestow the funds onto the actual recipients. So the money flows up as dividends or distributions, and then gets contributed.

CLO Holdco invests those assets, and it's an important part of the business model, so that you're not sending out principal. It's the money that CLO makes, the profits, if you will, that it is able to generate that gets donated and makes its way into the community.

So there's an important feature to the structure in that it has to be able to generate money. It's not just money that sits there and waits to be distributed. There's active investing going on.

Mr. Mark Patrick owns the control shares of the entities

comprising the DAF and CLO Holdco, as I showed you, and the beneficiary charitable foundations hold what we call beneficial interests, where they just get money. They don't have a vote.

Mr. Patrick cares about the public service the DAF engages in. He's been an advisor to the DAF, CLO Holdco, and its predecessor, Mr. Scott, since its inception. He receives no compensation for the job he's doing today. And you'll hear how he became -- how he inured to the control position of the DAF and CLO Holdco from him, but it doesn't involve Mr. Dondero, and the absence of someone saying that it did, I think, is going to be striking by the end of the presentation of evidence.

Their only argument against you, Your Honor, is going to be you just can't believe them. But not believing witnesses is not a substitute for the lack of affirmative evidence.

Mr. Patrick has said all along he authorized the filing of the motion for leave to add Mr. Seery to the lawsuit in District Court. He doesn't believe the motion to amend violated this Court's orders, for the reasons stated in our responsive filings to the motions for contempt and show cause order. That's why he authorized it.

My firm, Sbaiti & Company, we're a small Dallas litigation boutique retained by the DAF and CLO Holdco to file the lawsuit. We did an investigation. I'm tickled to death that

Mr. Morris loved our complaint so much and gave us the compliment that we got it done in a short amount of time, but we did get it done in a short amount of time, because, in the end, it's a rather simple issue, as I was able to lay it out in about three or four bullet points in a previous slide.

The written aspect of that doesn't take that long, as Your Honor knows, but the idea that there's a suspicion that we didn't write it or someone else wrote it and ghost-wrote it and gave it to us, which I think is the insinuation he was making, is completely unfounded. There's no evidence of that.

We carefully read Your Honor's orders. We developed a good-faith basis, as required by Rule 11, that the lawsuit and the motion to add Mr. Seery were not filed in bad faith or for an improper purpose. We don't think they're frivolous. We don't think they're in violation of Your Honor's orders, given the current state of the law.

Mr. Dondero is one of the settlors of the CRT, of the Charitable Remainder Trust that ultimately provided assets to CLO Holdco and the DAF. He does care about the DAF's mission. I think Mr. Morris hit the nail on the head. Of course Mr. Dondero cares about what happens to it. He's one of the settlors, and it was his funds that initially were put into it, so he's allowed to care. And I don't think him caring is insidious, and him caring doesn't mean he has control and doesn't mean he's the driving force behind some insidious

conspiracy that they're trying to insinuate exists.

He is an advisor to the DAF and CLO Holdco. It is a lot of money and it needs advice, and he's an advisor to Mr. Patrick. We don't run away from any of those facts, Your Honor.

We also don't run away from the fact that he was the source of some of the information that came in to that complaint and that he relayed some of that information. The content, we do claim work product privilege and attorney-client privilege, because he's an agent of our client, and as lawyers doing an investigation, the content of our communications is protected under the attorney-client and work product privileges, as well as the joint interest privilege. But the fact that we admit that those communications happened, we're not running away from that fact.

So, what does he have to do with this? It's interesting that that opening argument you just heard spent about three minutes on contempt and the other fourteen or fifteen minutes or so on Mr. Dondero. And only on Mr. Dondero. There's a negative halo effect, I believe, that they're trying to get this Court to abide by. They want to inflame Your Honor and hopefully capture -- cultivate and then capitalize on whatever antipathy you might have for Mr. Dondero, and then sweep us all in under that umbrella and sanction everybody just because he had some involvement.

But whatever involvement he has, which we admit he had some involvement in helping us marshal the facts, that's not a basis for us to be sanctioned if there isn't an actual sanctionable conduct that -- as we say there isn't.

We think there's an ulterior motive. That's why Mr. Morris just announced to Your Honor, Mr. Dondero controls it all. The ulterior motive, I believe, is, down the line, when they want to argue some kind of alter ego theory, they want to lay that foundation here. I don't think this is the appropriate time for that foundation, and I don't think any of the information and the evidence they're trying to marshal in front of you is really going to be relevant to the very specific question that's before Your Honor: Does our motion asking the District Court to add Mr. Seery violate your order, or violate it in a way that can be -- that we can be sanctioned for? We don't believe it violates it.

So, the three core standards that have to be met. First of all, civil contempt requires a valid, enforceable order. It's not debatable and it's not -- I don't think that's a shocking statement. Then they have to have clear and convincing evidence of a violation of a specific unambiguous term therein. Mr. Morris wants his version of the word pursue to be unambiguous, and I think the word pursue is unambiguous. But the way he wants you to construe it makes it completely ambiguous, and we'll -- I'll get to that in a moment.

Now, for sanctioning counsel, the Fifth Circuit has held you have to find bad faith. We're adjudged under a slightly separate standard under the Fifth Circuit law. So the contempt motion, though, to the extent it seeks to impose double and treble attorney's fees, those are in punitive fines. They are not compensatory. So criminal contempt standards are raised, and so they have to show a violation in bad faith. In other words, our arguments that we're making have to be bad faith, not simply that we're wrong, and they have to show beyond a reasonable doubt, usually in front of a jury. The U.S. Supreme Court explained the difference and the different procedural protections that have to be involved if they're really going to seek double and treble compensatory damages.

Now, he's right. Saying we intended -- saying that we didn't mean to violate it isn't necessarily a defense. But what you're actually going to hear from him is the opposite argument, that even though we didn't violate it, we wanted to. That's what he says. That's why he quoted you the opening section of our motion asking for permission to sue Mr. Seery, because that's a statement of purpose. And he says you should sanction them right there. That's literally what he said. It's right there, their purpose. If intent is irrelevant to them, it's irrelevant as to us. The fact that we wanted to sue Seery is fully admitted. We don't deny the fact that we

believe Mr. Seery should be a defendant in this lawsuit. But the fact that we didn't sue him is why we didn't violate the order. And they can't say that the fact that we eventually wanted to sue him means we did violate the order. That door swings both ways, Your Honor.

We don't think any element is met. The order, while writ large, prohibits suing Mr. Seery without permission, and we did not sue James Seery, pure and simple. The July 12 -- 14th, 2020 order purports to reserve exclusively to this Court that which, according to the statutes and the case law, we believe the Court can't exclusively reserve to itself. And Your Honor, the order prohibits commencing and pursuing a claim against Jim Seery without coming here first to decide the colorability of such a claim.

They, I believe, admit that we didn't commence a claim against Jim Seery. I think they've admitted that now. So now we're talking about what does pursue mean? We didn't pursue a claim against Jim Seery. Is asking for leave to bring suit the same thing as pursuing a claim? That's the question that's really before Your Honor. Lawyers never talk of pursuing a claim that hasn't been filed. We don't say, I'm pursuing a claim and I'm going to file it next week or next year. Usually, that type of language is in an order, because when the order happens, there may already be claims against Mr. Seery. And so the pursuit of claim is supposed to attack

those cases, to come here and show colorability, presumably, before they continue on with those lawsuits. It doesn't mean asking for permission.

If it did mean asking for permission, then complying with Your Honor's order would be a violation. If the motion for leave is a violation because it is pursuing a claim, if I had filed that motion in this Court, it would still be pursuing a claim without Your Honor's permission. I'd have to get permission just to ask for permission. It puts us in this endless loop of, well, if asking for permission is pursuing a claim, and pursuing a claim is without permission violates the Court's order, we'd always be in violation of the Court's order just for asking, just for following Your Honor's edict.

THE COURT: I'm just, I'm going to interject. You were supposed to, under the order, file a motion in this Court.

MR. SBAITI: I understand that, Your Honor, and I think that we can get to the specifics on why we disagree with how the motion went, Your Honor. We hadn't sued Mr. Seery. So as long as we dealt with the order, which is what our position is, then we don't believe we violated the order.

THE COURT: You think the order was ambiguous, requiring a motion to be filed in the Bankruptcy Court?

MR. SBAITI: Your Honor, what we believe is that the order was ambiguous in terms of whether us asking for

permission in the District Court was in and of itself a violation of the order. We don't think it was. Actually, we don't think the order's ambiguous to that extent. The second we file a suit against Mr. Seery and we don't have some resolution of the issue, then I think the question of sanctionability comes in. But we never filed suit, Your Honor.

The Court doesn't say I can't seek permission in the District Court or that we can't go to the District Court with -- which has general jurisdiction over this case, and has jurisdiction, we believe, over the actual case and controversy that's being raised. But the idea of pursuit being a violation of the order, of the letter of that order, is nonsensical under that, it leads to an absurd result, and it's plainly vague and ambiguous, Your Honor.

Asking Judge Boyle or asking a District Court for permission is not a violation of this Court's order, not the way it was written and not -- and I don't even believe it was a violation necessarily of the Court's -- of the language that the Court has. We -- it doesn't unambiguously prevent us from asking the District Court for leave.

The Court's order yesterday, Your Honor, applied this very rule. The TRO -- you said the TRO did not specifically state, Turn your cell phone over. And you denied motion for sanctions on that. That's basically the argument we're making

here, Your Honor. We think that was the correct ruling, and we think the same type of ruling applies here.

Your order yesterday also determined that the Court ultimately believes that hiring lawyers to file motions should not be viewed as having crossed the line into contemptuous behavior. That's essentially the argument they want you to buy, that there's somehow a vindictiveness behind this and an insidious plan to violate court orders, Your Honor. We don't have any evidence of that.

THE COURT: Okay. Take the words vindictiveness and insidious out of the equation. That's making things personal, and I don't like that. The key is the literal wording of the order, is it not?

MR. SBAITI: Your Honor, the key, I believe, is the --

THE COURT: No entity may commence or pursue a cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court first determining, after notice, that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery and specifically authorizing such entity to bring such a claim. So I'm trying to understand why you argue that filing a motion asking the District Court for permission is not inconsistent

with this order.

MR. SBAITI: Because it's not commencing a claim, Your Honor. It's not commencing a claim against him.

THE COURT: Okay. So is your argument that if Judge Boyle authorizes amendment of the pleading to add Mr. Seery and then you do it, at that point they may have grounds for a motion for contempt, but not yet, because she has not actually granted your motion?

MR. SBAITI: Correct, Your Honor. I mean, in a nutshell. In fact, that's one of -- I think that's probably our next argument. We think, in a sense, this argument is incredibly premature. There is three ways that this -- well, I'd like to address this, so I've got -- I've got a diagram that I think will actually help elucidate what our thought process was.

There's three things she could have done. She could have referred -- referred it to Your Honor, which is what we expected was likely to happen.

THE COURT: But you didn't file a motion for referral of the motion before her.

MR. SBAITI: Well, no, I don't mean in respect of enforcing the reference. The referral we thought was most likely going to happen because it's an associated case, and we actually put those orders in front of her, so we expected that those orders would end up -- that the question would

ultimately end up in front of Your Honor on that basis.

She could have denied our motion outright, in which case we haven't filed a claim, we haven't violated it, or she could have granted our motion and done one of two things. She could have granted it to the extent that she thought leave would be proper but then referred it down, or she could have decided -- taken the decision as the court with general jurisdiction and simply decided it all on her own. She had all of those options, Your Honor, and none of them results in a claim being commenced or pursued without the leave of this Court, if leave is absolutely necessary, Your Honor. And that's the point that we were trying to make.

Your Honor, the -- there's -- you know, there's no evidence that, absent an order from a court with jurisdiction, that we were going to file a claim against Mr. Seery, that we were going to commence or pursue a claim against Mr. Seery. We were cognizant of Your Honor's order. We considered that. And the reason we filed them the way we did is because, according to the statutes and the case law, this is the type of case that would be subject to a mandatory withdrawal of the reference.

And so there's this paradox that arises, Your Honor. And the paradox that arises is that we show up and immediately go, well, we need to be back in the District Court. So we filed our motion there, and I don't think that was contemptuous, it

wasn't intended to be contemptuous of the Court, but we showed the orders to the Court, made the same arguments that we have been making here, that we believe that there's problems with the order, we believe the order oversteps its jurisdiction and maybe is unenforceable, and it's up to that District Court, as it has been in almost all of these other gatekeeper order cases that get filed. None of them result in sanctions, Your Honor. What they result in is a District Court deciding, well, either they refer it or they decide I don't need to refer it. But I don't think that that is the same thing as commencing or pursuing a claim in the end, Your Honor, because all we did was ask for permission, and permission could have been denied or granted or granted in part.

Your Honor, they haven't cited an injury. You've heard the testimony, Your Honor, that they -- the first time they knew we had filed a motion -- which I don't understand why that's the first time they knew we had filed a motion; we told them we were going to file the motion -- was when I forwarded an email saying that it's been denied without prejudice, Your Honor. Well, that means they didn't have to do any work to respond to the motion. They didn't have to do any work to do any of the other things.

And one hundred percent of the damages that they're going to say they incurred is the litigation of this contempt hearing or this sanction motion, as opposed to some other

simpler remedy, like going in to Judge Boyle and saying, Your Honor, all that needs to go, which is what they eventually did. But they would have had to incur those costs anyway because they're now moving to enforce the reference. They filed a 12(b)(6). That briefing would have existed regardless of whether or not we had filed our motion, regardless of whether the sanctions hearing had commenced.

Your Honor, I'm going to let my partner, Mr. Bridges, address this part of it, if I could. I think that gets into more of the questions that you asked, and I think he can answer them a lot better than I can.

THE COURT: Okay.

MR. SBAITI: Thank you.

THE COURT: That's fine.

MR. BRIDGES: Thank you, Your Honor. And I do want to address pointedly the questions that you're asking. First, though, I was hoping to back up to some preliminary remarks that you made and say that I find the 200 orders a week just mindboggling. It amazes me, and puts the entire hearing in a different perspective for me. I'm grateful that you shared that with us.

Your expression of regret about naming us violators was very meaningful to me. It causes me -- well, the strong words in our brief were mine. I wrote them. And your expression of regret causes me to regret some of those words. I'm hopeful

that you can understand, at least in part, our reaction out of concern.

And Your Honor, it's awkward for me to talk about problems with your order, and that's the task that's come to me, to list and talk through four of them and why we think they put us in a really awkward position in deciding what to do in this case, in the filing of it, in where we filed it, and in how we sought leave to go forward against Mr. Seery. That was awkward and difficult for us, and I'm hopeful that I can explain that and that you'll understand, if I'm blunt about problems with the order, that I mean it very respectfully. Two hundred orders a week is still very difficult for me to get my mind around.

The four issues in the order start with the gatekeeping. Then, secondly, in the preliminary remarks, I made mention of the *Applewood* case and the notice that the order releases some claims. Its effect of --

THE COURT: And by the way, I mean, you might elaborate on the facts and holding of *Applewood*, because I came into this thinking *Republic Supply v. Shoaf*, and for that matter, as I said, *Espinosa*, were much more germane. And so, you know, you'll have to elaborate on *Applewood*. I remember that case, but it's just not one people cite as frequently as those two.

MR. BRIDGES: Yes, Your Honor. And our reply brief

devotes a page to the case, and I'm hopeful that I can remember it well enough to give you what you're looking for about it, but I would point you to our reply brief on that topic as well.

The *Shoaf* case that *Applewood* quotes from and distinguishes and expressly limits, the *Shoaf* case actually has been cautioned and limited and distinguished numerous times, if you Shepardize it, and the *Applewood* case is the leading case, and it also is from the Fifth Circuit, that describes and cabins the effects of *Shoaf*. And in *Applewood*, what happened is a bankruptcy confirmation order became final with releases in it, and the court held that exculpatory orders in a final order from the Bankruptcy Court do not have res judicata effect and do not release claims unless those claims are enumerated in the exculpatory order. And --

THE COURT: Okay. So it was about specificity more than anything else, right?

MR. BRIDGES: Yes, Your Honor. It was a --

THE COURT: Okay.

MR. BRIDGES: -- a blanket release, a blanket --

THE COURT: Okay.

MR. BRIDGES: -- exculpatory order that didn't specify what claims were released by what parties, and therefore the parties didn't have the requisite notice.

In my mind, Your Honor, it's comparable to the Texas

Supreme Court's holdings on what's required in a settlement release in terms of a disclaimer of reliance, --

THE COURT: Okay. But, again, --

MR. BRIDGES: -- that if you aren't --

THE COURT: -- it's about specificity --

MR. BRIDGES: Yes, Your Honor.

THE COURT: -- more than anything else? And then we've got the U.S. Supreme Court *Espinosa* case subsequent.

MR. BRIDGES: Okay. Your Honor, I'm not sure what *Espinosa* you're referring to. Can you tell me why that applies?

THE COURT: Well, it was a confirmation order. It was in a Chapter 13 context. And there were provisions that operated to discharge student loan debt, --

MR. BRIDGES: Uh-huh.

THE COURT: -- which, of course, cannot be discharged without a 523 action, a separate adversary proceeding. Nevertheless, the confirmation order operated to do what 523 suggests you cannot do, discharge student loan debt through a plan confirmation order.

The U.S. Supreme Court says, well, that's unfortunate that the confirmation order did something which it doesn't look like you can do, but no one ever objected or appealed. That's my recollection of *Espinosa*. So it seems to be the same holding as *Republic Supply v. Shoaf*. And what I -- why I

asked you to elaborate on *Applewood* is because it does seem to deal with the specificity of the order versus the enforceability, no?

MR. BRIDGES: Your Honor, if it's not obvious already, I'm not prepared to argue *Espinosa*. And your explanation of it is very helpful to me. I think you're right that the specificity issue from *Applewood* is what we're relying on. And it sounds like --

THE COURT: Okay. So, that being the case, how was this order not specific? Okay?

MR. BRIDGES: That's easy, Your Honor, because it doesn't say which parties are releasing which claims. And what we're talking specifically about there -- as we go through the order, I can show you the language -- but what we're talking about specifically are the ordinary negligence and breach of fiduciary duty claims that your order doesn't provide for at all. Rather, it says colorability of gross negligence or willful wrongdoing, if I remember the words precisely, that's what must be shown to pursue a case -- a cause of action against Mr. Seery, thereby -- thereby indicating that claims for mere negligence, not gross negligence, or breach of fiduciary duty, which is an even lesser standard, that those claims are prohibited entirely.

And by having that kind of general all-encompassing release or exculpation for potential liability involving

negligence, and most importantly, fiduciary duty breach under the Advisers Act, that that kind of exculpation under *Applewood* is not enforceable and has no res judicata effect because it wasn't -- those claims weren't enumerated in the order.

That for it to have the intended exculpatory effect, if that was what was intended, that the fiduciary duty claims and the parties who those claims may belong to would have to have been enumerated.

And indeed, that kind of specificity, what was required in *Applewood*, isn't even possible for a claim that hasn't yet occurred for future conduct. It's not possible to enumerate the details, any details, of a future claim, because the underlying act -- if the underlying basis, facts for that claim, haven't yet happened. It's something to happen in the future.

And here, that's what we're dealing with. We're dealing with conduct that took place well after the January and July 2020 orders that had that exculpatory effect. Is -- is that clear?

THE COURT: Understood.

MR. BRIDGES: Thank you, Your Honor. So, the four areas of the order, the four functions that the order does that are problematic to us that led us to do what we have done are the gatekeeping function; the release; the fact that by

stating sole jurisdiction, that it had a jurisdiction-stripping effect; and then, finally, jurisdiction asserting, where, respectfully, Your Honor, we think to some extent the order goes beyond what this Court's jurisdiction is. And so that not only claiming exclusive jurisdiction, but claiming jurisdiction over all actions against Mr. Seery, as described in the order, is going too far.

And those are the four issues I want to talk about one at a time, and here -- I went two screens instead of one. There we go. And here's the order. I have numbered the highlights here out of sequence because this is the sequence that I wish to talk about them and that I think their significance to our decision applies.

Before we get into the words of this July 16, 2020 order, I want to mention the January order as well. Although the motion for contempt recites both orders, we don't actually think the January order applies to us, because our lawsuit against Mr. Seery is not about his role as a director at Strand in any way. We didn't make an issue of that, other than in a footnote in our brief, because we don't think that distinction matters much since the orders essentially say the same things.

I'm not sure that it matters whether we have potentially violated one order or two. If Your Honor finds we've violated one, I think we're on the hook regardless. If Your Honor

finds that we didn't violate the July order, I don't think you will find that we violated the January order, either. So my focus is on the July order.

The gatekeeping function comes from the preliminary language about commencing or pursuing a claim or cause of action against Mr. Seery. And it says what you want us to do first before bringing such a claim.

The second issue of the release comes a little bit later. It's the colorable claim of willful misconduct or gross negligence language. In other words, because only claims of willful misconduct or gross negligence can pass the bar, can pass muster under this order, that lesser claims -- ordinary negligence and breach of fiduciary duty -- that those claims are released by this order. That's the second argument.

Third is your reference to sole jurisdiction and the effect that that has of attempting to say that other courts, courts of original jurisdiction, do not have jurisdiction because it solely resides here. That's the third thing I want to address.

And then the fourth is the notion that we have to come to this Court first for any action that fits the description of an action against Mr. Seery, when some actions are, through acts of Congress, removed from what this Court has the power to address. Under 157(d) of Title 28, Your Honor, there are some kinds of actions which withdrawal of the reference is

mandatory, and therefore this court lacks jurisdiction to address those.

And so those are the four issues I want to tackle, starting with the first, the gatekeeping. Your Honor, Section 28 -- Section 959 of Title 28 appears to be precisely on point. It calls -- it is called by some courts an exception to the Barton Doctrine, which we believe is the only basis, the Barton Doctrine, for this Court to claim that it has jurisdiction or sole jurisdiction and can require us to come here first. We think the Barton Doctrine is the only basis for that. We haven't seen anything in the briefing from opposing counsel indicating there was another basis for it. We think we're talking about the Barton Doctrine here as the basis for that.

959 is exception to the Barton Doctrine, and we think it explicitly authorizes what we have done.

Secondly, Your Honor, the order, the gatekeeping functions of the order are too broad because of its incorporation of the jurisdictional problems and the release problem that we'll talk about later. But for problem number one, the key issue that we're talking about is 959 as an exception to the Barton Doctrine. And I went the wrong way.

THE COURT: So, we could go down a lot of rabbit trails today, and I'm going to try not to do that, but are you saying the very common practice of having gatekeeping

provisions in Chapter 11 cases is just defective law under 28 U.S.C. § 959(a)?

MR. BRIDGES: Can I say yes and no?

THE COURT: Okay.

MR. BRIDGES: Yes, to some extent, for some claims. No as to other claims to another extent. We are not saying gatekeeping orders are altogether wrong, --

THE COURT: Okay.

MR. BRIDGES: -- no.

THE COURT: Okay.

MR. BRIDGES: There are problems with gatekeeping orders that do more than what the law, Section 959 in particular, allows them to do.

THE COURT: Okay. Be more explicit. I'm not -- I think you're saying, no, except when certain situations exist, but I don't know what the certain situations are.

MR. BRIDGES: And Your Honor, you're exactly right. It's complicated, and it takes a long explanation. Let me start --

THE COURT: Okay. I really want to know, --

MR. BRIDGES: Yeah, me, too.

THE COURT: -- since I do these all the time, and most of my colleagues do.

MR. BRIDGES: Thank you, Your Honor. And 959 is on the screen. Managers of any property --

THE COURT: Uh-huh.

MR. BRIDGES: -- is what we're talking about, including debtors in possession. Now, it starts off by saying trustees, receivers. I mean, this is exactly what the Barton Doctrine is about, right? We're talking about trustees and receivers, but not just them. We're also talking about managers of any property, including debtors in possession, --

THE COURT: Uh-huh.

MR. BRIDGES: -- may be sued without leave of the court appointing that. That's contrary to the Barton Doctrine so far.

With respect to what I've numbered five here -- these numbers are mine -- the quote is directly verbatim out of the U.S. Code, but the numbering one through five is mine. With respect to what acts or transactions in carrying on business connected with such property.

And so, Your Honor, what we're talking about isn't Barton Doctrine is inapplicable, or you can't have a gatekeeping order for any claims, but it's about managers of property. And one of the hornbook examples of this is the grocery store that files for bankruptcy and then, when --

THE COURT: Slip-and-fall.

MR. BRIDGES: You've got it, Your Honor.

THE COURT: Uh-huh.

MR. BRIDGES: And because they're managing property,

--

THE COURT: So your cause of action, if it went forward, is the equivalent of a slip-and-fall --

MR. BRIDGES: Yes, Your Honor.

THE COURT: -- in a grocery store?

MR. BRIDGES: Yes, Your Honor.

THE COURT: Okay. Let me skip ahead. What about the last sentence of 959(a)?

MR. BRIDGES: 959(b)? Or 959(a)?

THE COURT: No, of 959(a).

MR. BRIDGES: What we're looking at here?

THE COURT: That's the sentence that I have always thought was one justification for a gatekeeper provision. And I know, you know, a lot of others feel the same.

MR. BRIDGES: Are we talking about what I have listed in number five here?

THE COURT: No. I'm talking about the last sentence of 959(a). Such actions, okay, shall be subject to the general equity power of such court, you know, meaning the Bankruptcy Court, so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to a trial by jury.

Isn't that one of the provisions that lawyers sometimes rely on in arguing a gatekeeper provision is appropriate?

MR. BRIDGES: Certain --

THE COURT: You, Bankruptcy Judge, have the power, the general equity power, so far as the same may be necessary to the ends of justice?

MR. BRIDGES: Your Honor, you bet. Absolutely, there is equitable power to do more. There's no doubt that there are reliance -- there is reliance on that in many instances. So I'm not sure -- I'm not sure I'm responding to your point.

THE COURT: Well, again, I think this is the third or fourth argument down the line that really you start with in the analytical framework here, but I guess I'm just saying I always thought a gatekeeping provision was consistent, entirely consistent with 28 U.S.C. § 959(a), the last sentence.

MR. BRIDGES: When you're dealing --

THE COURT: You disagree with that?

MR. BRIDGES: I do, Your Honor.

THE COURT: Okay.

MR. BRIDGES: And it's not that the Court lacks equitable powers to do more. It's that those equitable powers are affected by when management of other parties, third parties' property is at issue.

What we're talking about is similar to yesterday's contempt order. When you set the basis of describing what it is that Highland's business is, that they're a registered investment advisor in the business of buying, selling, and

managing assets -- assets, of course, are property, and that property is not just Highland's, but it's third-party property, as if a railroad loses luggage belonging to its customers. Rather than the railroad with a trustee appointed having mismanaged railroad property, we're talking about third-party property here, third-party property that belongs to the CLOs, about a billion dollars of assets in these CLO SPEs that Highland manages.

And again, the slide that Mr. Sbaiti showed you showing Highland, yes, they manage their own assets, the assets of the Debtor, but also of the third parties, including the Charitable DAF and CLO Holdco, and that the Advisers Act imposes fiduciary duties on them that are unwaivable when they're doing that.

In *Anderson*, the Fifth Circuit called 959 an exception to the rule requiring court's permission for leave to sue. In *Hoffman v. City of San Diego* much more recently, relying on this statute again, the court rejected a *Barton* challenge and called it a statutory exception. And in *Barton* itself, from a century ago, the U.S. Supreme Court even acknowledged there that where a receiver misappropriated the property of another -- not the debtor's property, the property of another -- that the receiver could still be sued personally, without leave of court.

Absent *Barton*, absent applicability of the Barton

Doctrine, Your Honor, the gatekeeper order is problematic.

Barton applies where a court has appointed a trustee, and I don't think, Your Honor, under the circumstances in this case, that it is fair to say Mr. Seery was appointed, as opposed to approved by this Court. And it involves a trustee's actions under the powers conferred on him. The Barton Doctrine is not about a broader exculpation of the trustee.

Here, what the Debtor asked for in its motion for approval, approval of hiring Mr. Seery, what it asked for specifically in the motion was that the Court not interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and asking the Court to uphold the board's decision to appoint Mr. Seery as the CEO as long as they are attributable to any rationale business purpose.

At the hearing, Your Honor, at the hearing, we've quoted your comments saying that the evidence amply shows a sound business justification and reasonable business judgment on the part of the Debtor in proposing that Mr. Seery be CEO and CRO. Your Honor, respectfully, those words don't sound like the judge using its discretion to choose -- appoint a trustee. They sound like the Court exercising deference to the business judgment of a business. And appropriately so. We don't have trouble with application of the business judgment rule. Our problem is with application of it and the Barton Doctrine.

Those two do not go together. A trustee has protection because it's acting under color of the court that appointed it. A court that merely deferred to someone else's appointment, that's not what the Barton Doctrine is about. The Barton Doctrine is about the court's function that the trustee takes on, not deference to the business judgment of the debtor in possession or the other fiduciary appointed by the court.

Problem one was the gatekeeping. Problem two is about the release and the *Applewood* case. Your Honor, again, ordinary negligence and ordinary fiduciary duty breaches do not rise to the level of gross negligence and willful misconduct. And because of that, the language of this order appears to be barring them entirely. No entity may bring a lawsuit against Mr. Seery in certain circumstances without the Bankruptcy Court doing what? Determining that the cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery.

A breach of fiduciary duty under the Advisers Act can be unintentional, it can fall short of gross negligence by miles, and to exculpate Mr. Seery from those kinds of claims entirely is to make him no longer a fiduciary. A fiduciary duty that is unenforceable makes someone not a fiduciary. That's plainly not what Mr. Seery thinks his role is. It's inconsistent with the Advisers Act. And Your Honor, the

notion that he would not owe his clients fiduciary duties as he manages their assets would require disclosures under the SEC regulations. It creates all kinds of problems to state that a fiduciary under the Advisers Act does not have enforceable fiduciary duties. The order appears to be releasing all of those. But for *Applewood's* specificity requirement, it would be doing that.

As an asset manager under the Advisers Act, Mr. Seery is managing assets belonging to CLO Holdco and The Charitable DAF. That's precisely what the District Court action is about, those fiduciary duties. And Mr. Seery, in describing these recently in testimony here -- forgive me for reading through this, Your Honor, but it is pretty short -- Mr. Seery testifies, I think, from a high level, the best way to think about the Debtor is that it's a registered investment advisor. As a registered investment advisor, which is really any advisor of third-party money over $25 million, it has to register with the SEC and it manages funds in many different ways. The Debtor manages approximately $200 million current values -- it was more than that of the start of the case -- of its own assets.

I'm pausing there, Your Honor. $200 million of its own assets, but we're about to talk about third-party assets.

It doesn't have to be a registered investment advisor for those assets, but it does manage its own assets, which include

directly-owned securities, loans, from mostly related entities but not all, and investments in certain funds, which it also manages.

And then here it comes: In addition, the manager -- the Debtor manages about roughly $2 billion, $2 billion in total managed assets, around $2 billion in CLO assets, and then other entities, which are hedge funds or PE style.

We also had to get a very good understanding of each of the funds that we manage. And as I said, the Investment Advisers Act puts a fiduciary duty on Highland Capital to discharge its duty to the investors. So while we have duties to the estate, we also have duties, as I mentioned in my last testimony, to each of the investors in the funds.

Now, some of them are related parties, and those are a little bit easier. Some of them are owned by Highland. But there are third-party investors in these funds who have no relation whatsoever to Highland, and we owe them a fiduciary duty both to manage their assets prudently but also to seek to manage -- maximize value.

Those duties do not require -- requires the opposite of what I mean. They don't merely require avoiding gross negligence or willful wrongdoing. When you're managing assets of others, the fiduciary duties that you owe are far stricter than that. The highest duty known to law is a fiduciary duty.

The order is inconsistent with that testimony,

acknowledging the fiduciary duties owed to The Charitable DAF and to CLO Holdco. It appears to release the Debtor -- maybe not the Debtor. My slide may be wrong about that. It appears to release Seery from having to uphold these duties.

In addition to problems with the gatekeeping under the Barton Doctrine, in addition to the release problem and *Applewood* and the unwaivable fiduciary duties under the Advisers Act, there's also a problem with telling other courts that they lack jurisdiction. Your Honor knows bankruptcy court law -- bankruptcy -- and the Bankruptcy Code far better than I do, I'm certain. But a first principle, I believe, of bankruptcy law is that this Court's jurisdiction is derivative of the District Court's. And the only doctrine I've heard of that can allow this Court to exercise exclusive jurisdiction of the District Court that it sits in is the Barton Doctrine, which, again, is very problematic to apply in this case, for the reasons we've discussed already.

By claiming to have -- by stating in the order that this Court has sole jurisdiction, it appears to either be inclusive of the District Court, which I understand Your Honor doesn't think her order can be read that way, but if it's not read that way, then it results in telling the District Court that it doesn't have the original jurisdiction that Congress has given it. And that's problematic in the order as well.

THE COURT: Let me ask you. If you think the word

"power" had been used, or "authority," versus "jurisdiction," that would have cured it?

MR. BRIDGES: I think there would still have been other problems. Would it have cured this? I don't think so, Your Honor, because, again, I think the only basis for that power is the Barton Doctrine.

THE COURT: Okay.

MR. BRIDGES: To listen to opposing counsel, you'd think that our jurisdictional argument was entirely about the jurisdiction stripping. It's not. Frankly, Your Honor, that's maybe even a lesser point. A key problem here to is the assertion of jurisdiction, not over any of the claims, but over all of the claims, because of 157(d), Your Honor, because some claims, some causes of action, have been put outside the reach of bankruptcy, the Bankruptcy Court, and those actions may in some instances fit within your description of the cases that are precluded here.

That's a problem jurisdictionally with this Court's ability to say it retains jurisdiction or that it has, that it asserts jurisdiction. Over what? Any kind of claim or cause of action against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor.

Some claims that fit into that bucket also fit into the description in 157(d) of cases that require both consideration

of bankruptcy law and federal laws affecting interstate commerce or regulating it. Right? Some cases must fall into -- under 157(d), despite having something to do with Mr. Seery's role as a chief executive officer. And Your Honor, the Advisers Act fiduciary duty claims asserted by Respondents in the District Court are such claims. They cannot be decided without considering the Advisers Act.

There are also RICO claims that, of course, require consideration of the RICO statute. But the Advisers Act claims absolutely require consideration of both bankruptcy law and this Court's order exonerating -- exculpating Mr. Seery from some liability, in addition to the unwaivable fiduciary duties imposed by the Advisers Act.

The assertion of jurisdiction here blanketed, in a blanket manner, over all claims against Mr. Seery in any way related to his CEO role is a 157(d) problem that the order has no -- has no solution for and we see no way around. 157(d) requires withdrawal of the reference, makes it mandatory, when a case requires considerations of federal law implicating interstate commerce.

Your Honor, we think we had to do it the way we did, filing in the District Court instead of filing here, in order to preserve our jurisdictional arguments. To come to this Court with a motion and then what? Immediately file a motion to withdraw the reference on our own motion here? To come

here and ask for a decision on colorability, when first colorability would exclude the claims that we're trying to bring, at least some of them, the mere negligence, mere fiduciary duty breaches, because they don't rise to the level necessarily of gross negligence or willful wrongdoing.

Your Honor, coming here and asking this Court to rule on that may well have waived our jurisdictional objections. Coming here to this Court and doing that and immediately filing a motion --

THE COURT: I don't get it.

MR. BRIDGES: The ordinary --

THE COURT: Subject matter jurisdiction, if it's a problem, it's not waivable.

MR. BRIDGES: The ordinary issue -- the ordinary waiver rule, Your Honor, is that when you come and ask for a court to rule on something, that you waive your right to -- to later -- you're estopped judicially from taking the contrary position.

THE COURT: Okay. Well, again, I don't get it. If you filed your motion and I ruled in a way you didn't like, you would appeal to the District Court.

MR. BRIDGES: Yes, Your Honor. An appeal to the District Court, we would be entitled to do. I understand, no matter what happens here, we can appeal to the District Court. That's different from whether or not, by coming here first,

have we waived or have we created an estoppel situation, in terms of arguing jurisdiction.

THE COURT: Okay.

MR. BRIDGES: Because of the problems with the order, we thought we were in a situation where coming here would waive rights that we could avoid waiving by asking in the District Court.

In other words, there was a jurisdictional paradox: How does a party ask a court to do something it believes the court lacks the power to do? That's the spot we found ourselves in. What were we supposed to do?

Your Honor, it is definitely a complex case. And coming into this matter with over 2,000 filings on the docket before I had ever heard of Highland was a very daunting thing, coming into this case. And whether or not there's something that we missed is certainly possible, but these orders that are the subject of the contempt motion, these orders are not things that we overlooked. These are things that we studied carefully, that we did not ignore or have disdain for, but that affected and changed our actions.

And in the Slide #3 from Mr. Morris's -- from Mr. Morris's presentation, in his third slide, he quotes from the first page of our motion for leave, the motion that he says exhibits our contemptuous behavior.

The second paragraph is kind of tiny print there, Your

Honor, and it's not highlighted, but I'd like to read it. Seery is not named in the original complaint, but this is only out of an abundance of caution due to the Bankruptcy Court in HCM's pending Chapter 11 proceeding having issued an order prohibiting the filing of any causes of action against Seery in any way related to his role at HCM, subject to certain prerequisites. In that order, the Bankruptcy Court also asserts sole jurisdiction over all such causes of action.

Your Honor, our intent was not to violate the order. Our intent was to be cautious about how we proceeded, to fully disclose what we were doing, and to do it in a District Court that absolutely could refer the matter here to this Court for a decision, but to do it in a way that didn't waive our jurisdictional arguments, that didn't waive our arguments regarding the release of the very claims we were trying to bring, by first having to prove that they were colorful claims of willful misconduct or gross negligence, when we were trying to assert claims that weren't willful negligence or gross -- gross negligence or willful misconduct. That was what I was trying to say.

Your Honor, this was not disregard of your order. If we're wrong on the law, we're wrong on the law, but it's not that we disregarded your order or lacked respect for it. We disclosed it.

Mr. Morris has argued in the briefs that we attempted to

do this on an ex parte basis. Your Honor, we did not attempt to do this on an ex parte basis. And if there are errors, they probably are mine. I know one error is mine. On the civil cover sheet in the filing in the District Court, I noted and passed on that we should check the box for related case and list this case on there. I did not follow up to make sure that it happened, and administratively, it didn't happen. We did not check the box on the civil cover sheet. Mr. Morris is correct that we failed to do that. He's incorrect that that was sneaky or intentional. It was my error, having noticed it but not followed up.

Your Honor, similarly, the argument that we didn't serve them with the motion I think is disingenuous. What happened, Your Honor, is that counsel for the Debtor had agreed to accept service of the complaint itself against the Debtor before the motion for leave, and after accepting service, I was under the impression that they'd be monitoring the docket, especially when I emailed them, informed them that we were filing the motion for leave to amend, because I was required to submit a certificate of conference on that motion. I informed them in a polite email. The polite email is not quoted in their brief. It is included in the record, and it's quoted in full in our brief.

The email exchange indicates to them, Thank you for pointing out the Court's orders. We've carefully studied them

and we don't think what we're doing is a violation of those orders.

That we didn't serve them is because we thought they already knew that the motion was coming and would be monitoring the docket, and we didn't know which lawyers they were going to have make an appearance in that case, so we wouldn't have known who to serve. But if not serving them -- first, the Rules do not require that service. But if not serving them out of politeness --

THE COURT: Mr. Morris is standing up. Did --

MR. MORRIS: I move to strike all of this, Your Honor. If Counsel wants to take the stand and raise his hand, he should testify under oath. I'm just going to leave it at that. He's not on their witness list.

THE COURT: All right. I overrule. You can continue.

MR. BRIDGES: Thank you, Your Honor.

If failure to serve them was an error, it was mine. I know of no rule that requires it.

THE COURT: Can I ask you, you were talking about the cover sheet mistake in not checking the box. What about your jurisdictional statement in the actual complaint not mentioning 28 U.S.C. § 1334 as a possible basis for subject matter jurisdiction? Do you think that was a mistake as well, or was that purposeful, not necessary?

MR. BRIDGES: Candidly, Your Honor, standing here right now, I have no recollection whatsoever of it.

THE COURT: You mention 28 U.S.C. § 1331, and then 1367 supplemental jurisdiction, but you don't mention 1334.

MR. BRIDGES: I suspect it's true, but Mr. Sbaiti would have written that.

THE COURT: Okay.

MR. BRIDGES: I have no recollection of --

THE COURT: Okay.

MR. BRIDGES: -- making any decision at all --

THE COURT: All right.

MR. BRIDGES: -- with regards to that.

THE COURT: Okay.

MR. BRIDGES: Your Honor, you've been very patient with a very long opening argument, and I'm very grateful for that. Please know that we take this Court's order seriously. We voluntarily appeared here before the Court ordered us to do so by filing our motion asking for a modification of the order we're accused now of having been in violation of.

And the last thing I'd like to say, Your Honor, Mr. Morris's brief claims that the first he knew of the motion, the motion seeking leave to add Mr. Seery to the District Court claim, the first he knew of that was when Mr. Sbaiti forwarded him the District Court's order dismissing that motion, denying that motion without prejudice.

Your Honor, in a civil contempt proceeding, where the issue is compensating, not punishing, if the aggrieved party didn't even know about the action until it had been denied by the District Court, we submit that there can be no harm from that having taken place.

That's all I have for opening. Thank you, Your Honor.

THE COURT: All right. Thank you.

Before we give you a time check, do we have other opening statements?

MR. ANDERSON: Yes. Yes, Your Honor. Michael Anderson on behalf of Mr. Patrick. If we need to take a break, that's fine, too.

THE COURT: Well, how long do you plan to use?

MR. ANDERSON: No more than ten minutes, for sure.

THE COURT: Let's go ahead and do that, and then we'll take a break.

MR. POMERANTZ: Your Honor, after, I would ask the opportunity to respond to Mr. Bridges' argument. Probably another ten minutes.

THE COURT: All right. Let's go ahead and take a ten-minute break. And Mr. Taylor, you're going to have something, because you --

MR. TAYLOR: Five.

THE COURT: Okay. We'll take a ten-minute break. And Nate, can you give them a time?

THE CLERK: I'm showing it was about 59-1/2 minutes.

THE COURT: Fifty-nine and a half? And is that subtracting some for my questioning?

THE CLERK: I stopped whenever you talked, maybe a little over --

THE COURT: Okay. So he stopped it whenever I asked questions and you answered, so 59 minutes has been used by the Respondents.

All right. We'll take a ten-minute break. We'll come back at 11:35.

THE CLERK: All rise.

(A recess ensued from 11:25 a.m. to 11:37 a.m.)

THE COURT: All right. We're going back on the record in the Highland matter. We have further opening statements. Counsel, you may proceed.

OPENING STATEMENT ON BEHALF OF MARK PATRICK, RESPONDENT

MR. ANDERSON: Thank you. May it please the Court, Counsel. Michael Anderson on behalf of Respondent, Mark Patrick.

Your Honor, after listening to this and looking at the filings in this case, this issue of whether there's contempt -- and I would argue there's not -- is ripe for decision. We have no real undisputed facts for purposes of the contempt issue. We have your Court's July order, the subject of Mr. Bridge's arguments. We have the Plaintiffs in the underlying

lawsuit at issue. They commenced the lawsuit in April of this year. There's absolutely nothing improper about that filing. It's not subject to the contempt. A week later, there is a motion for leave to add Mr. Seery. That's the issue. There's no dispute over that. There's no dispute that Mr. Patrick authorized the filing of the motion for leave.

And so then the question becomes we look at the Court's July order, did a motion for leave, did that violate the terms of the order? The motion for leave is not commencing a lawsuit. It's also not pursuing a claim, because whether or not the Court grants the motion, denies the motion, or whatever the Court does, nothing happened, because the day after the motion for leave was filed it was dismissed *sua sponte* without prejudice because not all parties had been served in the case.

It was permission asked one day. The matter was mooted the following day by the District Court. And so that is completely undisputed.

And so the question is, is asking permission, is that commence? I think everybody says there's no way that's commencing a lawsuit because you have asked permission. The question, then, is it pursuing a claim? And the argument, well, no, that's not pursuing a claim; it's asking permission.

And I think it's also important to note that when the motion for leave was filed, there were no secrets there. I

mean, I'm coming in this after the fact, representing Mr. Patrick. You look at a motion for leave, and right there on Page 1 it talks about Your Honor's order. Page 2, it quotes the order and it gives the reasons, there's arguments being made as to why that order doesn't bar adding Mr. Seery as a defendant in the lawsuit, many of the arguments that Mr. Bridges made.

So that's where we are. And so when I hear, hey, we've got six hours, three hours and three hours, and we're going to split this up, you know, maybe too simplistic from Fort Worth, but I'm like, wait a second, this is all undisputed. It's totally undisputed. The -- whether or not the prior order is enforceable or not enforceable, those are all legal arguments. You know, no witnesses are necessary for that. And as I understood, right before we broke, counsel stood up and he's going to do what generally doesn't happen in opening statements, which is respond to opening statements, which shows that that's a legal issue.

And so it really does come down to undisputed facts. There's no testimony. No -- nothing is necessary. And a lot of what this comes down to is the old statement, you know, is it better to ask forgiveness or permission? And usually that statement comes up when somebody has already done something: Hey, I'm going to go do it anyway and I'll ask for forgiveness later. Well, what the Plaintiffs in the underlying case did

was ask permission. Motion for leave. That is not contemptuous. And there's literally no damages. As was pointed out, by the time counsel found out, it had already been dismissed.

The last thing I want to point out, Your Honor, is that the argument from opposing counsel was, well, under Rule 15 of the Federal Rules of Civil Procedure, since parties hadn't answered yet, the Plaintiffs in the underlying case could have just simply added Mr. Seery as a defendant and moved on that way, but then that would be another ball of wax and then we would be addressing issues as far as whether or not there is a violation of the Court's order, notwithstanding Mr. Bridge's arguments. But then we would have those issues. But that's not what happened. Everybody knows that's not what happened. It was a motion for leave that was resolved the following day.

And so, Your Honor, for those reasons, and those undisputed reasons, we would request that the Court at the end of this hearing deny the request for sanctions and a contempt finding against our client, Mr. Patrick.

Mr. Phillips is going to address one brief issue bankruptcy-wise I believe that was raised earlier.

THE COURT: Okay. Mr. Phillips?

MR. PHILLIPS: Your Honor, thank you very much. Louis M. Phillips on behalf of Mark Patrick.

The only thing that I would point out, Your Honor, and I'm

going to do -- try to simplistically, because that's about the level at which I operate, boil down the questions about the order.

This order was an employment order. The problem that Mr. Bridges has elucidated to Your Honor is that the precise effect, one of the precise effects of that order is to bar the claims of third parties that arise into the future on the basis of the employment of Mr. Seery, because the order required that all claims asserting gross negligence or willful misconduct need to be brought before you to determine that they're colorable.

One question I have is, does it apply to the lawsuit that was filed? Doesn't apply unless the effect of the order was to release those claims and preclude any party from bringing those claims at all. And while you can say correctly that this Court issues gatekeeper orders all of the time, one thing I cannot imagine that you would say is that in employment orders you release claims of third parties existing and as may arise in the future that could be brought against the party employed to be a CRO of a debtor, who, by his own testimony, says we do all kinds of stuff in the billions of dollars for third parties that we owe fiduciary duties to.

There's no way, Your Honor, that you were considering your July order to bar third-party claims arising from breach of fiduciary duties by Mr. Seery to third parties who held third-

party claims that did not involve some assertion that, in his capacity as CRO, he was in some way acting within the scope of his authority as CRO for the Debtor and yet committed negligence against the Debtor.

Now, if the order was asserting that you know what a lot of people in this courtroom know, that the standard of liability for a CRO doing work for a debtor, just like the standard of liability for the president of a corporation or an officer of the corporation, is as long as you're within the course and scope of your employment, your actions for the corporation have -- can -- the corporation takes care of you because there's no personal claim unless you're outside the scope, and you're outside the scope if you commit gross negligence or willful misconduct.

That, if you're restating the standard of care and standard of liability for a CRO, we have no problem with that, because Mr. Patrick did not authorize a cause of action arising against Mr. Seery against the Debtors for damage to the Debtors. He authorized the filing of a complaint in the District Court with jurisdiction for a third-party claim for breach of a fiduciary duty to a third party that Mr. Seery admits he owes, and then sought leave because they didn't understand the order that Your Honor issued. It couldn't have been to release the breach of fiduciary duty claims that wouldn't rise to gross negligence or willful misconduct, it

couldn't be that, but it might be. But if it did, under an employment order? That's very different from *Espinosa*, that's very different from *Shoaf*, when you're at the end of a case in a confirmation of a plan and you're talking about matters arising in the past.

This order, if it has the effect it could be read to have, precludes any third party from asserting a breach of fiduciary duty against Seery for actions that violate the duty to that third party, when Seery's biggest job, it looks to us like, is running third-party money. That could not have been what Your Honor was thinking.

And so all I'm pointing out is I'm trying to distill down. The lawsuit doesn't involve gross negligence or willful misconduct allegations. It involves breach of fiduciary duty, breach of the Advisers Act, et cetera, et cetera. Mr. Patrick authorized that lawsuit.

Now, what we're here for today is to determine whether the complaint, which was not against the Debtor -- which was not against Seery, the motion for leave, which did not -- all they did was ask for permission, not forgiveness. And we can't understand how the Debtor should be saying, all they had to do was amend. Well, if they amended, would we be in hotter water than we are today for asking for permission to sue? I think we would have been, that should have been the prescribed course, when we are more concerned and we are more risk-averse

by asking for leave rather than just amending by right. Absolutely, that makes no sense. We can't be held to be more contemptuous because we asked for permission, when we could have just sued him, because they're saying asking for permission was wrong. Certainly, suing him would have been wrong. That would have been easier.

THE COURT: But Mr. Phillips, the issue is you all didn't come to the Bankruptcy Court and ask permission.

MR. PHILLIPS: Look at your order, Your Honor.

THE COURT: It's right in front of me.

MR. PHILLIPS: Right. That order either doesn't apply to the claims that were brought or it released the claims that were brought. That's our point. It couldn't have released them. Does it apply to them? Thank you.

THE COURT: Okay. Mr. Taylor?

MR. TAYLOR: Good morning.

THE COURT: Good morning.

OPENING STATEMENT ON BEHALF OF JAMES DONDERO

MR. TAYLOR: Your Honor, Clay Taylor on behalf of Jim Dondero. I'll be very brief because I know we've already spent a lot of time on opening argument. But I do think it is appropriate to, one, first look at who brought the lawsuit, CLO Holdco & DAF. That was authorized -- it's undisputed it was authorized by Mr. Patrick. There is no dispute about that. There's no dispute who the Plaintiffs are. But yet my

client is up here as an alleged violator.

I think it's very clear, as all the parties have said, there's no dispute as to there's an order, there was a complaint, and there was a motion for leave.

It seems to me that the rest of the evidentiary hearing that you may be about to go through is going to be about pin the blame on Mr. Dondero. It is undisputed that he is not a control person for the DAF or CLO Holdco. The only type of evidence you will hear is going to be insinuation that he somehow controls Mr. Patrick and used to control Mr. Scott. There will be no direct evidence that he authorized this or that he's the control person and the proper corporate authorized representative that signed off on the --

It seems to me, Your Honor, first of all, that's a discrete issue that should be able to be decided separately from this, and the first gating issue is, was there indeed a violation of this Court's order? It would seem to me that there is no disputes about those facts and that we should bifurcate that, and if you then find that there is a violation and find that there is any even need to move into who the alleged violators are, that then we could have that evidentiary portion. But there is no reason to do that now before there's even been found to be a violation.

THE COURT: All right. Thank you.

All right. Well, someone made the point rebuttals in

opening statements are not very common, --

MR. POMERANTZ: Your -- Your --

THE COURT: -- but you can use your three hours however you want.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: Your Honor, I didn't intend to stand up.

THE COURT: Okay.

MR. POMERANTZ: I also didn't intend to have the motion to modify the sealing order presented to Your Honor, which it was in the course of that opening argument. And despite your comments at the beginning of the hearing, the Movants have taken Your Honor down a series of rabbit holes that have really no relevance to the contempt motion. And notwithstanding, as I said, your ruling that basically the contempt would go first and the modification would go second, there they were, persistent in making all the arguments why this Court should modify the order.

They're just really trying to obfuscate the simple issue that Mr. Morris presented and raised at the beginning of the hearing: Did they violate the order by pursuing a claim? We think the answer is undoubtedly yes.

I'm not going to try to address each of the issues they raised in connection with the modification motion in detail. I have a lengthy presentation. I'll do it at the appropriate

time. But there are a few issues I want to address. I want to address one of the last points Mr. Bridges raised first. If they thought that the order was a problem, they could have filed their motion to modify that order before Your Honor. They could have had that heard first. There was no statute of limitations issue in connection with the HarbourVest matter. They could have come to Your Honor to do that. But no, they didn't. They went to the District Court first, and it was only after we filed our contempt motion that they came back and said, well, Your Honor, you should modify the order. Their argument that if they did that there would have been waiver and estoppel is just an after-the-fact justification for what they did and what they tried to do, which was unsuccessful. They tried to have the District Court make the decision.

And why? Your Honor, they've filed motions to recuse before Your Honor. They -- they -- it's no secret the disdain they have for Your Honor's rulings as it relates to them. They wanted to be out of this courtroom and in another courtroom.

And their belated argument, Mr. Bridges falling on the sword, that they failed to check the box, inadvertent, it's on me, it's very curious. Because if they had done so and had referred to the correct 1334 jurisdictional predicate, as Your Honor had mentioned, the complaint would have been referred to

this Court and the entire trajectory of the proceedings would have been different. They would have had the opportunity to take their shot to go to District Court and argue that your order didn't apply.

Your Honor, they say the January 9th order is not relevant. It is entirely relevant. It covered the independent directors and their agents. Yes, Mr. Seery is an independent director, but he was also an agent of the independent directors and carried out the duties. You heard argument at the July 16th hearing that Mr. Seery had been acting as the chief executive officer for several months. And why is it important? Mr. Bridges said, well, if we violated one order, we violated the other. It's important because, Your Honor, number one, Mr. Dondero supported that order. We would never have had an independent board in this case if Mr. Dondero, the decision-making -- of the Debtor at that time, supported that order and supported the exculpations that are now claimed to have been invalid.

And also Your Honor heard testimony at the confirmation hearing that the independent directors would never have taken this job, would never have taken this job because of the potential for litigation, litigation that we've now had to endure for several months. So to come back 16 months later and say, well, you know, you couldn't really exculpate them, it's really an employment order: It was an employment order.

They know it. We know it. Your Honor knows it. It was a resolution of corporate governance issues that changed the whole trajectory of the case, and luckily it -- luckily, Your Honor approved it.

The question just is whether they violated the order, period. And I'll have a lot to say about res judicata, but I won't go in too much in detail, but I will just briefly address their arguments. They're correct and the Court is correct that there's a difference between *Applewood* and *Shoaf*. And Your Honor got the exact difference. In one case, a release was not specific, *Applewood*. In one case it was. *Shoaf* hasn't been discredited by *Applewood*. It was different facts. In fact, *Shoaf* relied on two Supreme Court cases, the *Stoll* case and the *Chicot* case, both for the propositions that a court that enters an order, a clear order, even if it didn't have jurisdiction, that cannot be attacked in res judicata. So here what we have is clear, unambiguous, you come to this Court before commencing or pursuing a claim. That's the clarity. The focus on the releases, that's not what we're here for today, that's not what we're here for on a contempt motion, on whether the release covered them or it didn't cover them. We're here on the clear issue of did they violate the language, and we submit that they did.

And similarly, *Espinosa* applies. Your Honor, just to quote some language, "Appellees could have moved to remand the

action to state court after it improperly -- after its improper removal to the federal court or challenge the district court's exercise in jurisdiction on direct appeal. Because they did neither, they are now barred by principles of res judicata."

Res judicata actually does apply, and I will speak about it in much more detail in the modification motion.

With respect to *Barton*, Your Honor, we disagree with their argument that Mr. Seery is not a court-appointed agent. We've briefed it extensively in our motion to modify. *Barton* applies to debtors in possession. *Barton* applies to general partners of the debtor. *Barton* applies to chief restructuring orders -- officers who are approved by the debtor. And it applies to general counsel who are appointed by the chief restructuring order. Officer.

So the argument that *Barton* is somehow inapplicable is just wrong. Your Honor knows that. Your Honor has written extensively on *Barton* in connection with your *Ondova* opinion.

Some of the argument about 959 is all wrong, as well. Your Honor got it right that 959 applies to slip-and-fall cases or torts, injuries to parties that are strangers to this process. There is a legion of cases that I will cite to Your Honor in connection with argument. 959 does not apply here. There's nothing more core to this case than the transactions surrounding the resolution of the HarbourVest claims.

We also disagree, Your Honor, that the complaint is subject to mandatory withdrawal of the reference. We've -- one of our exhibits in the motion to modify is our motion to enforce the reference. We think Movants have it completely wrong. This is not the type of case that will be subject to withdrawal -- mandatory withdrawal of the reference, and in any event, for this contempt motion, it's irrelevant.

And they argue -- one of the other points Mr. Bridges raises is that, because this Court would not have had jurisdiction under 157 because of the mandatory withdrawal, then Your Honor could not legally act as a gatekeeper. But they haven't addressed *Villegas v. Schmidt*. We've raised it throughout this case. And again, in these series of pleadings, they don't even address it. And *Villegas v. Schmidt* was a *Barton* case. It was a *Barton* case where the -- where the argument was that *Barton* does not apply because it's a *Stern* claim and the Bankruptcy Court would not have jurisdiction. And *Villegas* said no, it does apply. And Your Honor even cited that in your *Ondova* case. And why does it apply? Because there's nothing inconsistent with a Bankruptcy Court having exclusive decision to make a *Barton* determination.

In fact, in that case *Villegas* said, you can't go to the District Court for that decision, it is the Bankruptcy Court's decision.

So, again, it's a red herring, Your Honor. Your Honor had the ability to act as an exclusive gatekeeper for these types of actions.

With that, Your Honor, I'll leave the rest of my argument for the next motion.

THE COURT: All right. Thanks.

All right. Nate, let's give everyone their time.

THE CLERK: That was just about eight and a half additional from the Debtor, and then altogether the other ones were just shy of fourteen minutes. Thirteen minutes and fifty seconds for the other three combined. Do you want me to --

THE COURT: Yes, I meant for Debtor combined versus --

THE CLERK: Oh. Oh.

THE COURT: Respondents combined.

THE CLERK: So that would be twenty one and a half the Debtor. Let me do the math on the other one. Be an hour twelve minutes and fifty seconds for --

THE COURT: Okay. All right. Got that? Debtors used a total of twenty one and a half minutes; Responders have used an hour twelve minutes and fifty seconds.

All right. Mr. Morris, you may call your first witness.

MR. MORRIS: Thank you very much, Your Honor. The Debtor calls Mark Patrick.

THE COURT: All right. Mr. Patrick? Please approach

our witness stand and I'll swear you in. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Please take a seat.

MARK PATRICK, DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Patrick.

A Good afternoon.

Q Can you hear me okay?

A Yes, I can.

Q Okay. You have before you several sets of binders. They're rather large. But when I deposed you on Friday, we did that virtually. Now, I may direct you specifically to one of the binders or one of the documents from time to time, so I just wanted you to know that those were in front of you and that I may be doing that.

Mr. Patrick, since March 1st, 2001 [sic], you've been employed by Highland Consultants, right?

A I believe the name is Highgate Consultants doing business as Skyview Group.

Q Okay. And that's an entity that was created by certain former Highland employees, correct?

A That is my understanding, correct.

Q And your understanding is that Mr. Dondero doesn't have an

ownership interest in that entity, correct?
A That he does not. That is correct.
Q And your understanding is that he's not an employee of that -- of Skyview, correct?
A That is correct.
Q Prior to joining Skyview on March 1st, you had worked at Highland Capital Management, LP for about 13 years, correct?
A Correct.
Q Joining in, I believe, early 2008?
A Correct.
Q Okay. I'm going to refer to Highland Capital Management, LP from time to time as HCMLP. Is that okay?
A Yes.
Q While at HCMLP, you served as a tax counselor, correct?
A No, I would like to distinguish that. I did have the title tax counsel. However, essentially all my activities were in a non-lawyer capacity, being the client representative. I would engage other outside law firms to provide legal advice.
Q Okay. So you are an attorney, correct?
A Yes, I am.
Q But essentially everything you did at Highland during your 13 years was in a non-lawyer capacity, correct?
A Correct.
Q In fact, you didn't even work in the legal department; is

that right?
A That is correct. I worked for the tax department.
Q Okay. Let's talk about how you became the authorized representative of the Plaintiffs. You are, in fact, authorized representative today of CLO Holdco, Ltd. and Charitable DAF, LP, correct?
A Charitable DAF Fund, LP. Correct.
Q And those are the two entities that filed the complaint in the United States District Court against the Debtor and two other entities, correct?
A Correct.
Q And may I refer to those two entities going forward as the Plaintiffs?
A Yes.
Q You became the authorized representative of the Plaintiffs on March 24th, 2021, the day you and Mr. Scott executed certain transfer documents, correct?
A Correct.
Q And you had no authority to act on behalf of either of the Plaintiffs before March 24th, correct?
A Correct.
Q The DAF controls about $200 million in assets, correct?
A The Plaintiffs, you mean? CLO Holdco and Charitable DAF Fund, LP.
Q Yes.

A Around there.
Q Okay. Let me try and just ask that again, and thank you for correcting me. To the best of your knowledge, the Plaintiffs control about $200 million in assets, correct?
A Net assets, correct.
Q Okay. And that asset base is derived largely from HCMLP, Mr. Dondero, or Mr. Dondero's trusts, correct?
A Can you restate that question again, Mr. Morris?
Q Sure. The asset base that you just referred to is derived largely from HCMLP, Mr. Dondero, or donor trusts?
A The way I would characterize it -- you're using the word derived. I would characterize it with respect to certain charitable donations --
Q Uh-huh.
A -- that were -- that were made at certain time periods, where the donors gave up complete dominion and control over the respective assets and at that time claimed a federal income tax deduction for that.

I do -- I do believe that, as far as the donor group, as you specified, Highland Capital Management, I recall, provided a donation to a Charitable Remainder Trust that eventually had expired and that eventually such assets went into the supporting organizations. And then I do believe Mr. Dondero also contributed to the Charitable Remainder Trust No. 2, which seeded substantial amounts of the original assets that

were eventually composed of the $200 million. And then from time to time I do believe that Mr. Dondero's trusts made charitable donations to their respective supporting organizations.

Q Okay. Thank you.

A Is that responsive?

Q It is. It's very responsive. Thank you very much. So, to the best of your knowledge, the charitable donations that were made that form the bases of the assets came from those three -- primarily from those three sources, correct?

A Well, you know, there's two different trusts. There's the Dugaboy Trust and the Get Good Trust.

Q Okay.

A Then you have Mr. Dondero and Highland Capital Management. So I would say four sources.

Q Okay. All right. Thank you. Prior to assuming your role as the authorized representative of the Plaintiff, you had never had meaningful responsibility for making investment decisions, correct?

A I'm sorry. You kind of talk a little bit fast. Please slow it down --

Q That's okay.

A -- and restate it. Thank you.

Q And I appreciate that. And any time you don't understand what I'm saying or I speak too fast, please do exactly what

you're doing. You're doing fine.

Prior to assuming your role as the authorized representative of the Plaintiffs, you never had any meaningful responsibility making investment decisions. Is that correct?

A To whom?

Q For anybody.

A Well, during my deposition, I believe I testified that I make investment decisions with respect to my family. Family and friends come to me and they ask me for investment decisions. I was -- in my deposition, I indicated to you that I was a board member of a nonprofit called the 500, Inc. They had received a donation of stock in Yahoo!, and the members there looked to me for financial guidance. As an undergrad at the University of Miami, I was a -- I was a finance major, and so I do have a variety of background with respect to investments.

Q Okay. So you told me that from time to time friends and family members come to you for investing advice. Is that right?

A That is correct.

Q And when you were a young lawyer you were on the board of a nonprofit that received a donation of Yahoo! stock and the board looked to you for guidance. Is that correct?

THE COURT: Just a moment. I think there's an objection.

MR. MORRIS: Uh-huh.

THE COURT: Go ahead.

MR. ANDERSON: So far -- relevance, Your Honor. This is way out of the bounds of the contempt proceeding. You know, what he did as a young person with Yahoo! stock. We're here to -- he authorized the lawsuit. They filed the lawsuit. That's it. Getting into all this peripheral stuff is completely irrelevant.

THE COURT: Your response?

MR. MORRIS: My response, Your Honor, is very simple. Mr. Patrick assumed responsibility, and you're going to be told that he exercised full and complete authority over a $200 million fund that was created by Mr. Dondero, --

THE COURT: Okay.

MR. MORRIS: -- that funds -- that is funded virtually by Mr. Dondero, and for which -- Mr. Patrick is a lovely man, and I don't mean to disparage him at all -- but he has no meaningful experience in investing at all.

THE COURT: All right. Counsel, I overrule. I think there's potential relevance.

And may I remind people that when you're back at counsel table, please make sure you speak your objections into the microphone. Thank you.

BY MR. MORRIS:

Q When you were a young lawyer, sir, you were on the board

of a nonprofit that received a donation of Yahoo! stock and the board looked to you for guidance, correct?

A Yes, correct.

Q And -- but during your 13 years at Highland, you never had formal responsibility for making investment decisions, correct?

A That is correct.

Q Yeah. In fact, other than investment opportunities that you personally presented where you served as a co-decider, you never had any responsibility or authority to make investment decisions on behalf of HCMLP or any of its affiliated entities, correct?

A That is correct.

Q And at least during your deposition, you couldn't identify a single opportunity where you actually had the authority and did authorize the execution of a transaction on behalf of HCMLP or any of its affiliates, correct?

A Correct.

Q And yet today you are now solely responsible for making all investment decisions with respect to a $200 million charitable fund, correct?

A Yes, but I get some help. I've engaged an outside third party called ValueScope, and they have been as -- effectively working as a "gatekeeper" for me, and I look to them for investment guidance and advice, and I informally look to Mr.

Dondero since the time period of when I took control on March 24th for any questions I may have with respect to the portfolio. So I don't feel like I'm all by myself in making decisions.

Q Okay. I didn't mean to suggest that you were, sir, and I apologize if you took it that way. I was just asking the question, you are the person now solely responsible for making the investment decisions, correct?

A Yes.

Q Okay. Let's talk about the circumstances that led to the filing of the complaint for a bit. On April 12, 2021, you caused the Plaintiffs to commence an action against HCMLP and two other entities, correct?

A Correct.

Q Okay. One of the binders -- you've got a couple of binders in front of you. If you look at the bottom, one of them says Volume 1 of 2, Exhibits 1 through 18. And if you could grab that one and turn to Exhibit 12. Do you have that, sir?

A It says -- it says the original complaint. Is that the right one?

Q That is the right one. And just as I said when we were doing this virtually last Friday, if I ask you a question about a particular document, you should always feel free to review as much of the document as you think you need to

competently and fully answer the question. Okay?
A Okay. Thank you.
Q All right. You instructed the Sbaiti firm to file that complaint on behalf of the Plaintiffs, correct?
A Correct.
Q And to the best of your recollection, the Plaintiffs returned -- retained the Sbaiti firm in April, correct?
A Correct.
Q So the Sbaiti firm was retained no more than twelve days before the complaint was filed, correct?
A Correct.
Q You personally retained the Sbaiti firm, correct?
A Correct.
Q And the idea of filing this complaint originated with the Sbaiti firm, correct?
A Correct.
Q Before filing -- withdrawn. Before becoming the Plaintiffs' authorized representative, you hadn't had any communications with anyone about potential claims that might be brought against the Debtor arising out of the HarbourVest settlement, correct?
A That is correct.
Q Now, after you became the Plaintiffs' authorized representative, Mr. Dondero communicated with the Sbaiti firm about the complaint that's marked as Exhibit 12, correct?

A Yes. After he brought certain information to myself and then that I engaged the Sbaiti firm to launch an investigation, I also wanted Mr. Dondero to work with the Sbaiti firm with respect to their investigation of the underlying facts.

Q Okay. Mr. Dondero did not discuss the complaint with you, but he did communicate with the Sbaiti firm about the complaint, correct?

A I believe -- yeah. I heard you slip in at the end "the complaint." I know he communicated with the Sbaiti firm. I can't -- I can't say what he said or didn't say with respect to the -- the actual complaint.

Q Okay. But Mr. Dondero got involved in the process initially when he brought some information to your attention concerning the HarbourVest transaction, correct?

A Correct.

Q And he came to you with the HarbourVest information after you assumed your role as the authorized representative of the Plaintiffs on March 24th, correct?

A That is correct.

Q At the time he came to you, you did not have any specific knowledge about the HarbourVest transaction, correct?

A I did not have specific knowledge with respect to the allegations that were laid out and the facts with respect to the original complaint. I think I had just had a general

awareness that there was a HarbourVest something or other, but the specific aspects of it, I was unaware.

Q Okay. And you had no reason to believe that Mr. Seery had done anything wrong with respect to the HarbourVest transaction at the time you became the Plaintiffs' authorized representative, correct?

A That is correct.

Q But you recall very specifically that some time after March 24th Mr. Dondero told you that an investment opportunity was essentially usurped or taken away, to the Plaintiffs' harm and for the benefit of HCMLP, correct?

A That is correct.

Q And after Mr. Dondero brought this information to your attention, you hired the Sbaiti firm to launch an investigation into the facts, correct?

A Correct.

Q You had never worked with the Sbaiti firm before, correct?

A That is correct.

Q And you had hired many firms as a tax counselor at HCMLP, but not the Sbaiti firm until now. Correct?

A That is correct.

Q You got to the Sbaiti firm through a recommendation from D.C. Sauter, correct?

A Correct.

Q Mr. Sauter is the in-house counsel, the in-house general

counsel at NexPoint Advisors, correct?
A Correct.
Q You didn't ask Mr. Sauter for a recommendation for a lawyer; he just volunteered that you should use the Sbaiti firm. Correct?
A That is correct.
Q And you never used -- considered using another firm, did you?
A When they were presented to me, they appeared to have all the sufficient skills necessary to undertake this action, and so I don't recall interviewing any other firms.
Q Okay. Now, after bringing the matter to your action, Mr. Dondero communicated directly with the Sbaiti firm in relation to the investigation that was being undertaken. Correct?
A That is correct.
Q But you weren't privy to the communications between Mr. Dondero and the Sbaiti firm, correct?
A I did not participate in those conversations as the -- what I, again, considered Mr. Dondero as the investment advisor to the portfolio, and he was very versant in the assets. I wanted him to participate in the investigation that the Sbaiti firm was undertaking prior to the filing of this complaint.
Q Let's talk for a minute about the notion of Mr. Dondero being the investment advisor. Until recently, the entity

known as the DAF had an investment advisory committee with HC -- an investment advisory agreement with HCMLP. Correct?

A It's my understanding that the investment advisory agreement existed with the Plaintiffs, CLO Holdco, as well as Charitable DAF Fund, LP, up and to the end of February, throughout the HarbourVest transaction.

Q Okay. And since February, the Plaintiffs do not have an investment advisory agreement with anybody, correct?

A That is correct.

Q Okay. So Mr. Dondero, if he serves as an investment advisor, it's on an informal basis. Is that fair?

A After I took control, he serves as an informal investment advisor.

Q Okay. So there's no contract that you're aware of between either of the Plaintiffs and Mr. Dondero pursuant to which he is authorized to act as the investment advisor for the Plaintiffs, correct?

A That is correct.

Q Okay. When you communicated with Grant Scott -- withdrawn. You know who Grant Scott is, right?

A Yes, I do.

Q He's the gentleman who preceded you as the authorized representative of the Plaintiffs, correct?

A Yes.

Q Okay. You communicated with Mr. Scott from time to time

during February and March 2021, correct?

A February and March are the dates? Yes.

Q Yeah. And from February 1st until March 21st -- well, withdrawn. Prior to March 24th, 2021, Mr. Scott was the Plaintiffs' authorized representative, correct?

A Correct.

Q And you have no recollection of discussing with Mr. Scott at any time prior to March 24th any aspect of the HarbourVest settlement with Mr. Scott. Correct?

A Correct.

Q And you have no recollection of discussing whether the Plaintiffs had potential claims that might be brought against the Debtor. Correct? Withdrawn. Let me ask a better question.

You have no recollection of discussing with Mr. Scott at any time prior to March 24th whether the Plaintiffs had potential claims against the Debtor. Correct?

A That is correct.

Q You and Mr. Scott never discussed whether either of -- either of the Plaintiffs had potential claims against Mr. Seery. Correct?

A Correct.

Q Okay. At the time that you became their authorized representative, you had no knowledge that the Plaintiffs would be filing a complaint against the Debtors relating to the

HarbourVest settlement less than three weeks later, correct?
A That is correct.
Q Okay. Now, if you look at Page 2 of the complaint, you'll see at the top it refers to Mr. Seery as a potential party. Do you see that?
A Yes, I do.
Q Okay. You don't know why Mr. Seery was named -- withdrawn. You don't know why Mr. Seery was not named as a defendant in the complaint, correct?
A No, I -- that's correct. I do not know why he was not named. That's in the purview of the Sbaiti firm.
Q Okay. And the Sbaiti firm also made the decision to name Mr. Seery on Page 2 there as a potential party when drafting the complaint, correct?
A That's what the document says.
Q And you weren't involved in the decision to identify Mr. Seery as a potential party, correct?
A That is correct. Again, I rely on the law firm to decide what parties to bring a suit to -- against.
Q Okay. Okay. Do you recall the other day we talked about a document called the July order?
A Yes.
Q Okay. That's in -- that's in Tab 16 in your binder, if you can turn to that. And take a moment to look at it, if you'd like. And my first question is simply whether this is

the July order, as you understand it.

(Pause.)

A Yes, it is. I was just looking for the gatekeeper provision. It looks like it's Paragraph 5. So, --

Q Okay. Thank you for that. About a week after the complaint was filed, you authorized the Plaintiffs to file a motion in the District Court for leave to amend the Plaintiffs' complaint to add Mr. Seery as a defendant. Correct?

A I authorized the filing of a motion in Federal District Court that would ask the Federal District Court whether or not Jim Seery could be named in the original complaint with respect to the gatekeeper provision cited in that motion and with respect to the arguments that were made in that motion.

Q Okay. Just to be clear, if you turn to Exhibit 17, the next tab, --

A I'm here.

Q -- do you see that document is called Plaintiffs' Motion for Leave to File First Amended Complaint?

A Yes.

Q And that's the document that you authorized the Plaintiffs to file on or about April 19th, correct?

A Correct.

Q Okay. And can we refer to that document as the motion to amend?

A Yes.
Q Okay. You were aware of the July order at Tab 16 before you authorized the filing of the motion to amend. Correct?
A Yes, because it's cited in the motion itself.
Q Okay. And at the time that you authorized the filing of the motion to amend, you understood that the July order was still in effect. Correct?
A Yes, because it was referenced in the motion, so my assumption would be it would still be in effect.
Q Okay. Before the motion to amend was filed, you're -- you are aware that my firm and the Sbaiti firm communicated by email about the propriety of filing the motion to amend?
A Before it was filed? Communications between your firm and the Sbaiti firm? I would have to have my recollection refreshed.
Q I'll just ask the question a different way. Did you know before you authorized the filing of the motion to amend that my firm and the Sbaiti firm had engaged in an email exchange about the propriety of filing the motion to amend in the District Court?
A It's my recollection -- and again, I could be wrong here -- but I thought the email exchange occurred after the fact, not before. But again, I -- I just --
Q Okay. In any event, on April 19th, the motion to amend was filed. Correct?

A Correct.
Q That's the document that is Exhibit 17. And you personally authorized the Sbaiti firm to file the motion to amend on behalf of the Plaintiffs, correct?
A Correct.
Q And you authorized the filing of the motion to amend with knowledge -- withdrawn.
Can you read the first sentence of the motion to amend out loud, please?
A Yeah. (reading) Plaintiffs submit this motion under Rule 15 of the Federal Rules of Civil Procedure for one purpose: to name as defendant one James P. Seery, Jr., the CEO of defendant Highland Capital Management, LP (HCM) and the chief perpetrator of the wrongdoing that forms the basis of the Plaintiffs' causes of action.
Q And does that fairly state the purpose of the motion?
MR. SBAITI: Objection, Your Honor. Asks him to make a legal conclusion about the purpose of the legal motion filed in court that he didn't draft.
THE COURT: Okay. I overrule. You can answer if you have an answer.
THE WITNESS: It's always been my general understanding that the purpose of filing this motion was to go to the Federal District Court and ask that Court of reference to this Court whether or not Mr. Seery could be named with

respect to the original complaint, citing again the gatekeeper provisions and citing the various arguments that we've heard much earlier.

BY MR. MORRIS:

Q Okay. You personally didn't learn anything between April 9th, when the complaint was filed, and April 19th, when the motion to amend was filed, that caused you to authorize the filing of the motion to amend, correct?

A That is correct.

Q In fact, you relied on the Sbaiti firm with respect to decisions concerning the timing of the motion to amend. Correct?

A Correct.

Q And you had no knowledge of whether anyone acting on behalf of the Plaintiffs ever served the Debtor with a copy of the motion to amend. Correct?

A Yes. I have no knowledge.

Q Okay. And you have no knowledge that the Sbaiti firm ever provided my firm with a copy of the motion to amend. Correct?

A I cannot recall one way or another.

Q Okay. You never instructed anyone on behalf -- acting on behalf of the Plaintiffs to inform the Debtor that the motion to amend had been filed, correct?

A That is correct.

Q And that's because you relied on the Sbaiti firm on

procedural issues, correct?
A That is correct.
Q You didn't consider waiting until the Debtor --
(Interruption.)
Q -- had appeared in the action before authorizing the filing of the motion --
A Yeah, --
THE COURT: Yes. Y'all are being a little bit loud. Okay.
A VOICE: Sorry.
MR. MORRIS: No problem.
MR. PHILLIPS: I've heard that before, Your Honor, and I apologize.
THE COURT: I bet you have. Thank you.
MR. MORRIS: Admonish Mr. Phillips, please.
THE COURT: Okay.
MR. MORRIS: He's always the wild card.
MR. PHILLIPS: I admonish --
MR. MORRIS: He's always the wild card.
MR. PHILLIPS: I admonish myself.
THE COURT: All right. I think he got the message. Continue.
BY MR. MORRIS:
Q You didn't consider waiting until the Debtor had appeared in the action before filing the motion to amend, correct?

A Again, I am the client and I rely upon the law firm that's engaged with respect to making legal decisions as to the timing and notice and appearance and what have you. I'm a tax lawyer.

Q Okay. You wanted the District Court to grant the relief that the Plaintiffs were seeking. Correct?

A I wanted the District Court to consider, under the gatekeeper provisions of this Court, whether or not Mr. Seery could be named in the original complaint. That's -- that, from my perspective, is what was desired.

Q All right. You wanted the District Court to grant the relief that the Plaintiffs were seeking, correct?

MR. SBAITI: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

THE WITNESS: Again, I would characterize this motion as not necessarily asking for specific relief, but asking the Federal District Court whether or not, under the gatekeeper provision, that Mr. Seery could be named on there. What happens after that would be a second step. So I kind of -- I dispute that characterization.

BY MR. MORRIS:

Q All right. I'm going to cross my fingers and hope that Ms. Canty is on the line, and I would ask her to put up Page 57 from Mr. Patrick's deposition transcript.

THE COURT: There it is.

MR. MORRIS: There it is. It's like magic. Can we go down to Lines 18 through 20?

BY MR. MORRIS:

Q Mr. Patrick, during the deposition on Friday, did I ask you this question and did you give me this answer? Question, "Did you want the Court to grant the relief you were seeking?" Answer, "Yes."

A I -- and it was qualified with respect to Lines 12 through 17. In my view, when I answered yes, I was simply restating what I stated in Line 12. I wanted the District Court to consider this motion as to whether or not Mr. Seery could be named in the original complaint or the amended complaint pursuant to the existing gatekeeper rules and the arguments that were made in that motion. That's -- that's what I wanted. And so then when I was asked, did you want the Court to grant the relief that you were seeking, when I answered yes, it was from that perspective.

Q Okay. Thank you very much. If the District Court had granted the relief that you were seeking, you would have authorized the Sbaiti firm to file the amended complaint naming Mr. Seery as a defendant if the Sbaiti firm recommended that you do so. Correct?

A If the Sbaiti firm recommended that I do so. That is correct.

Q Okay. Let's talk for a little bit about the line of succession for the DAF and CLO Holdco. Can we please go to Exhibit 25, which is in the other binder? It's in the other binder, sir.

(Pause.)

Q I guess you could look on the screen or you can look in the binder, whatever's easier for you.

A Yeah. I prefer the screen. I prefer the screen.

Q Okay.

A It's much easier.

Q All right. We've got it in both spots. But do you have Exhibit 25 in front of you, sir?

A Yes, I do.

Q All right. Do you know what it is?

A This is the organizational chart depicting a variety of charitable entities as well as entities that are commonly referred to the DAF. However, when I look at this chart, I do not look at and see just boxes, what I see is the humanitarian effort that these boxes represent.

MR. MORRIS: Your Honor, may I interrupt?

THE COURT: You may.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q I appreciate that, and when your lawyers get up to ask you questions, I bet they'll want to know just what you were about

to tell me. But I just want to understand what this chart is. This chart is the DAF, CLO Holdco, structure chart. Correct?

A Correct.

Q Okay. And you were personally involved in creating this organizational structure, correct?

A I -- yes.

Q Okay. And from time to time, the Charitable DAF Holdco Limited distributes cash to the foundations that are above it. Correct?

A Correct.

Q All right. I want to talk a little bit more specifically about how this happens. The source of the cash distributed by Charitable DAF Holdco Limited is CLO Holdco, Ltd., that entity, the Cayman Islands entity near the bottom. Correct?

MR. ANDERSON: Your Honor, I have an objection. Completely irrelevant. I'm objecting on relevance grounds. This has nothing to do with the contempt proceeding. We've already gone over that he authorized the filing of the complaint, that he authorized the filing of the motion to amend. It's all in the record. This is completely irrelevant at this point.

THE COURT: Okay. Relevance objection. Your response?

MR. MORRIS: I believe that it's relevant to the Debtor's motion to hold Mr. Dondero in contempt for pursuing

claims against Mr. Seery, in violation of the July 7 order. I think an understanding of what the Plaintiffs are, how they're funded, and Mr. Dondero's interest in pursuing claims on behalf of those entities is relevant to the -- to the -- just -- it's just against him. It's not against their clients, frankly. It's just against Mr. Dondero.

THE COURT: I overrule.

MR. MORRIS: I'll try and -- I'll try and make this quick, though.

BY MR. MORRIS:

Q CLO Holdco had two primary sources of capital. Is that right?

A Two primary sources of capital?

Q Let me ask it differently. There was a Charitable Remainder Trust that was going to expire in 2011, correct?

A That is correct.

Q And that Charitable Remainder Trust had certain CLO equity assets, correct?

A Correct.

Q And the donor to that Charitable Remainder Trust was Highland Capital Management, LP. Correct?

A Not correct. After my deposition, I refreshed my memory. There were two Charitable Remainder Trusts that existed, which I think in my mind caused a little bit of confusion. The Charitable Remainder Trust No. 2, which is the one that

expired in 2011, was originally funded by Mr. Dondero.
Q Okay. So, so the Charitable Remainder Trust that we were talking about on Friday wasn't seeded with capital from Highland Capital Management, it came from Mr. Dondero personally?
A That is correct.
Q Okay. Thank you. And the other primary source of capital was the Dallas Foundation, the entity that's in the upper left-hand corner of the chart. Is that correct?
A No.
Q The -- you didn't tell me that the other day?
A You said -- you're pointing to the Dallas Foundation. That's a 501(c)(3) organization.
Q I apologize. Did you tell me the other day that the Dallas Foundation was the second source of capital for HCLO Hold Company?
A No, I did not. You --
(Pause.)
Q Maybe I know the source of the confusion. Is the Highland Dallas Foundation something different?
A Yes. On this organizational chart, you'll see that it has an indication, it's a supporting organization.
Q Ah, okay. So, so let me restate the question, then. The second primary source of capital for CLO Holdco, Ltd. is the Highland Dallas Foundation. Do I have that right?

A Yes.
Q Okay. And the sources of that entity's capital were grantor trusts and possibly Mr. Dondero personally. Correct?
A In addition -- per my refreshing my recollection from our deposition, the other Charitable Remainder Trust, I believe Charitable Remainder Trust No. 1, which expired later, also sent a donation, if you will, or assets to -- and I cannot recall specifically whether it was just the Highland Dallas Foundation or the other supporting organizations that you see on this chart.
Q But the source of that -- the source of the assets that became the second Charitable Remainder Trust was Highland Capital Management, LP. Is that right?
A I think that is accurate from my recollection. And again, I'm talking about Charitable Remainder Trust No. 1.
Q Okay. So is it fair to say -- I'm just going to try and summarize, if I can. Is it fair to say that CLO Holdco, Ltd. is the investment arm of the organizational structure on this page?
A Yes.
Q And is it fair to say that nearly all of the assets that are in there derived from either Mr. Dondero, one of his trusts, or Highland Capital Management, LP?
A Yes. It's like the Bill Gates Foundation or the Rockefeller Foundation. These come from the folks that make

their donations and put their name on it.

Q Okay.

MR. MORRIS: Now, now, Your Honor, I'm going to go back just for a few minutes to how Mr. Scott got appointed, because I think that lays kind of the groundwork for his replacement. It won't take long.

THE COURT: Okay. I have a question either --

MR. MORRIS: Sure.

THE COURT: -- for you or the witness. I'm sorry, but --

MR. MORRIS: Sure. Yeah.

THE COURT: -- the organizational chart, it's not meant to show everything that might be connected to this substructure, right? Because doesn't CLO Holdco, Ltd. own 49.02 percent of HCLOF, --

MR. MORRIS: That --

THE COURT: -- which gets us into the whole HarbourVest transaction issue?

MR. MORRIS: You're exactly right, Your Honor.

THE COURT: Okay.

MR. MORRIS: But that's just an investment that HCLO Holdco made.

THE COURT: Right.

MR. MORRIS: Right? And so I -- let me ask the witness, actually.

THE COURT: Okay. Thank you. Thank you.

MR. MORRIS: Let me ask the witness. Yeah.

THE COURT: I just want my brain --

MR. MORRIS: Right.

THE COURT: -- to be complete on this chart.

BY MR. MORRIS:

Q Mr. Patrick, there are three entities under CLO Holdco, Ltd. Do you see that?

A Yes.

Q And does CLO Holdco, Ltd. own one hundred percent of the interests in each of those three entities?

A Yes.

Q Do you know why those three entities are depicted on this particular chart? Is it because they're wholly-owned subsidiaries?

A Correct.

Q Okay. And CLO Holdco, Ltd. has interests in other companies. Isn't that right?

A It has other investments. That is correct.

Q And the reason that they're not depicted on here is because they're not wholly-owned subsidiaries, they're just investments; is that fair?

A That is fair.

MR. MORRIS: Does that--?

THE COURT: Yes.

MR. MORRIS: Okay.

THE COURT: Uh-huh.

BY MR. MORRIS:

Q So, so let's go back to Mr. Grant for a moment. Mr. Scott, rather. Mr. Dondero was actually the original general partner. If you look at this chart, while it's still up here, you see on the left there's Charitable DAF GP, LLC?

A Yes.

Q And the Charitable DAF GP, LLC is the general partner of the Charitable DAF Fund, LP. Correct?

A Correct.

Q And on this chart, Grant Scott was the managing member of Charitable DAF GP, LLC. Right?

A Correct.

Q Okay. But Mr. Dondero was the original general partner of that entity, correct?

A That is correct. But I do want to point out, I just note that the GP interest is indicating a one percent interest and the 99 interest to Charitable DAF Holdco. I believe that's incorrect. It's a hundred percent by Charitable DAF Holdco, Ltd., and the Charitable DAF GP interest is a noneconomic interest. So that should actually reflect a zero percent to the extent it may indicate some sort of profits or otherwise.

Q Okay. Thank you for the clarification. Can you turn to Exhibit 26, please, in your binder? And is it your

understanding that that is the amended and restated LLC agreement for the DAF GP, LLC?

A Yes.

Q Okay. And this was amended and restated effective as of January 1st, 2012, correct?

A Yes.

Q And if you go to the last page, you'll see there are signatures for Mr. Scott and Mr. Dondero, correct?

A Yes.

Q And Mr. Dondero is identified as the forming -- former managing member and Mr. Scott is identified as the new managing member. Correct?

A Correct. That's what the document says.

Q And it's your understanding that Mr. Dondero had the authority to select his successor. Correct?

A Correct.

Q In fact, it's based on your understanding of documents and your recollection that Mr. Dondero personally selected Mr. Scott as the person he was going to transfer control to, correct?

A Upon advice of Highland Capital Management's tax compliance officer, Mr. Tom Surgent.

Q What advice did Mr. Surgent give?

A He gave advice that, because Mr. Dondero -- and this is what I came to an understanding after the fact of this

transaction, because I was not a part of it -- that by Mr. Dondero holding that GP interest, that it would be -- the Plaintiffs, if you will, would be an affiliate entity for regulatory purposes, and so he advised that if he -- if Mr. Dondero transferred his GP interest to Mr. Scott, it would no longer be an affiliate, is my recollection.

Q Okay. You didn't appoint Mr. Scott, did you?

A No.

Q That was Mr. Dondero. Is that right?

A Yes.

Q Okay. Let's go to 2021. Let's come back to the current time. Sometime in February, Mr. Scott called you to ask about the mechanics of how he could resign. Correct?

A That is correct.

Q But the decision to have you replace Mr. Scott was not made until March 24th, the day you sent an email to Mr. Scott with the transfer documents. Correct?

A That is correct.

Q And it's your understanding that he could have transferred the management shares and control of the DAF to anyone in the world. Correct?

A Correct.

Q That's what the docu... that he had the authority under the documentation, as you understood it, to freely trade or transfer the management shares. Correct?

A Wait. Now, let's be precise here.
Q Okay.
A Are you talking about the GP interests or the management shares held by Charitable DAF Holdco, Ltd.?
Q Let's start with the management shares. Can you explain to the Court what the management shares are?
MR. ANDERSON: Your Honor? Hang on one second. Your Honor, I want to object again on relevance. We're going way beyond the scope of the contempt issue, whether or not --
MR. MORRIS: This is about control.
MR. ANDERSON: -- the motion to amend somehow violated the prior order of this Court. Getting into the management structure, transfer of shares, that's way outside the bounds. I object on relevance.
THE COURT: Okay. Relevance objection?
MR. MORRIS: Your Honor, they have probably 30 documents, maybe 20 documents, on their exhibit list that relate to management and control. I'm asking questions about management and control. Okay? This is important, again, to (a) establish his authority, but (b) the circumstances under which he came to be the purported control person.
THE COURT: Okay. Overruled. Go ahead.
THE WITNESS: It might be helpful to look at the organizational chart, but if not -- but I'll describe it to you again. With respect to the entity called --

MR. MORRIS: Hold on one second. Can we put up the organizational chart again, Ms. Canty, if you can? There you go.

THE WITNESS: Okay. So with respect to the Charitable DAF Holdco, Ltd., it is my understanding that Mr. Scott, he organized that entity when he was the independent director of the Charitable Remainder Trust, and he caused the issuance of the management shares to be issued to himself. And then those are, again, noneconomic shares, but they are control shares over that entity.

And I think, to answer your question, is -- it -- he alone decides who he can transfer those shares to.

BY MR. MORRIS:

Q Do I have this right, that whoever holds the noneconomic management shares has the sole authority to appoint the representatives for each of the Charitable DAF entities and CLO Holdco? It's kind of a magic ticket, if you will?

A It -- I think there's a -- the answer really is no from a legal standpoint, because Charitable DAF Holdco is a limited partner in Charitable DAF Fund, LP, so it does not have authority -- authority under all -- the respective entities underneath that. It could cause a redemption, if you will, of Charitable DAF Fund. And so, really, the authority -- the trickle-down authority that you're referencing is with respect to his holding of the Charitable DAF GP, LLC interest. It's a

member-managed Delaware limited liability company. And from that, he -- that authority kind of trickles down to where he can appoint directorships.

Q All right. I think I want to just follow up on that a bit. Which entity is the issuer of the manager shares, the management shares?

A Yeah, the -- per the organizational chart, it is accurate, it's the Charitable DAF Holdco, Ltd. which issued the management shares to Mr. Scott.

Q Okay. And that's why you have the arrow from Mr. Scott into that entity?

A Correct.

Q And do those -- does the holder of the management shares have the authority to control the Charitable DAF Holdco, Ltd.?

A Yes.

Q Okay. And as the control person for the Charitable DAF Holdco, Ltd., they own a hundred -- withdrawn. Charitable DAF Holdco Limited owns a hundred percent of the limited partnership interests of the Charitable DAF Fund, LP. Correct?

A Correct.

Q And so does the holder of that hundred percent limited partnership interest have the authority to decide who acts on behalf of the Charitable DAF Fund, LP?

A I would say no. I mean, you know, just -- I would love to

read the partnership agreement again. But I, conceptually, what I know with partnerships, I would say the limited partner would not. It would be through the Charitable DAF GP, LLC interest.

Q The one on the left, the general partner?

A The general partner.

Q I see. So when Mr. Scott transferred to you the one hundred percent of the management shares as well as the title of the managing member of the Charitable DAF GP, LLC, did those two events give you the authority to control the entities below it?

A Yes.

Q Thank you. And so prior to the time that he transferred those interests to you, is it your understanding that Mr. Scott had the unilateral right to transfer those interests to anybody in the world?

A Yes.

Q Okay. And you have that right today, don't you?

A Yes, I do.

Q If you wanted, you could transfer it to me, right?

A Yes, I could.

Q Okay. But of all the people in the world, Mr. Scott decided to transfer the management shares and the managing member title of the DAF GP to you, correct?

A Restate that question again?

Q Of all the people in the world, Mr. Scott decided to transfer it to you, correct?
A Yeah. Mr. Scott transferred those interests to me.
Q Okay. And you accepted them, right?
A Yes.
Q You're not getting paid anything for taking on this responsibility, correct?
A I am not paid by any of the entities depicted on this chart.
Q And Mr. Scott used to get $5,000 a month, didn't he?
A I believe that's what he testified to.
Q Yeah. But you don't get anything, right?
A Correct.
Q In fact, you get the exact same salary and compensation from Skyview that you had before you became the authorized representative of the DAF entities and CLO Holdco. Correct?
A Correct.

MR. MORRIS: Okay. Your Honor, if I may just take a moment, I may be done.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Your Honor, I have no further questions.

THE COURT: All right. Pass the witness. Any examination of the witness?

CROSS-EXAMINATION

BY MR. ANDERSON:

Q Mr. Patrick, I just had a few follow-up questions. When you authorized the filing of the lawsuit against Highland Capital Management, LP, Highland HCF Advisor Limited, and Highland CLO Funding, Limited, when that lawsuit was filed in April of this year, was Mr. Seery included as a defendant?

A No.

Q Have the two Plaintiffs in that lawsuit, have they commenced any lawsuit against Mr. Seery?

A No.

Q Have they pursued any lawsuit against Mr. Seery?

A No.

Q Have they pursued a claim or cause of action against Mr. Seery?

A No.

Q At most, did the Plaintiffs file a motion for leave to add Mr. Seery as a defendant?

MR. MORRIS: Objection, Your Honor. To the extent that any of these questions are legal conclusions, I object. He's using the word pursue. If he's trying -- if he's then going to argue that, But the witness testified that he didn't pursue and that's somehow a finding of fact, I object.

THE COURT: Okay. I understand.

MR. MORRIS: Yeah.

THE COURT: But I overrule. He can answer.

MR. MORRIS: That's fine.

THE WITNESS: Can you restate the question again?

BY MR. ANDERSON:

Q Sure. On behalf of the Plaintiffs -- well, strike that. Did the Plaintiffs pursue a claim or cause of action against Mr. Seery?

A No.

Q At most, did the Plaintiffs file a motion for leave to file an amended complaint regarding Mr. Seery?

A Yes. But, again, I viewed the motion as simply asking the Federal District Court whether Mr. Seery could or could not be named in a complaint, and then the next step might be how the Federal District Court might rule with respect to that.

Q And we have -- it's Tab 17 in the binders in front of you. That is Plaintiffs' motion for leave. If you could turn to that, please.

A Yes. I've got it open.

Q Is the Court's July order, the Bankruptcy Court's July order, is it mentioned on the first page and then throughout the motion for leave to amend?

A Yes, it is. I see it quoted verbatim on Page 2 under Background.

Q Was the Court's order hidden at all from the District Court?

A The document speaks for itself. It's very transparent.

Q Was there any effort whatsoever to hide the prior order of the Bankruptcy Court?
A No.
MR. ANDERSON: Pass the witness.
THE COURT: Okay. Other examination?
MR. SBAITI: Yes, Your Honor. Just a couple of questions.

CROSS-EXAMINATION

BY MR. SBAITI:
Q Do you mind flipping to Exhibit 25, which I believe is the org chart, the one that you were looking at before?
A Okay.
Q It'll still be in --
A Okay. Yeah.
Q -- the defense binder. No reason to swap out right now.
A I've got the right binders. Some of them are repeatable exhibits, so --
Q Yeah.
A -- I have to grab the right binder. Yes.
Q As this org chart would sit today, is the only difference that Grant Scott's name would instead be Mark Patrick?
A Yes.
Q Was there ever a period of time where Jim Dondero's name would sit instead of Grant Scott's name prior?
A Yes, originally, when this -- yes.

Q So did Mr. Dondero both have the control shares of the GP, LLC and DAF Holdco Limited?
A No, I believe not. I believe he only held the Charitable DAF GP interest and that Mr. Scott at all times held the Charitable DAF Holdco, LTD interest, until he decided to transfer it to me.
Q Can you just tell us how Mr. Scott came to hold the control shares of the Charitable DAF Holdco, LTD?
A When he was the independent trustee of the Charitable Remainder Trust, he caused that -- the creation of that entity, and that's how he became in receipt of those management shares.
Q And does the Charitable DAF GP, LLC have any control over Charitable DAF Fund, LP's actions or activities?
A Yes, it does.
Q What kind of control is that?
A I would describe complete control. It's the managing member of that entity and can -- and effectively owns, you know, the hundred percent interest in the respective subsidiaries, and so the control follows down.
Q And when did Mr. Scott replace Mr. Dondero as the GP -- managing member of the GP?
A Well, I think as the -- and Mr. Morris had shown me with respect to that transfer occurring on March 2012.
Q So nine years ago?

A Yes.
Q Does Mr. Dondero today exercise any control over the activities of the DAF Charitable -- the Charitable DAF, GP or the Charitable DAF Holdco, LTD?
A No.
Q Is he a board member of sorts for either of those entities?
A No.
Q Is he a board members of CLO Holdco?
A No.
Q Does he have any decision-making authority at CLO Holdco?
A None.
Q The decision to authorize the lawsuit and the decision to authorize the motion that you've been asked about, who made that authorization?
A I did.
Q Did you have to ask for anyone's permission?
A No.

MR. SBAITI: No more questions, Your Honor.

THE COURT: Okay. Any -- I guess Mr. Taylor, no. All right. Any redirect?

REDIRECT EXAMINATION

BY MR. MORRIS:
Q Since becoming the authorized representative of the Plaintiffs, have you ever made a decision on behalf of those

entities that Mr. Dondero disagreed with?

A I have made decisions that were adverse to Mr. Dondero's financial -- financial decision. I mean, financial interests. Whether he disagreed with them or not, I don't -- he has not communicated them to me. But they have been adverse, at least two very strong instances.

Q Have you ever -- have you ever talked to him about making a decision that would be adverse to his interests? Did he tell -- did --

A I didn't -- I don't -- I did not discuss with him prior to making the decisions that I made that were adverse to his economic interests.

MR. MORRIS: Okay. No further questions, Your Honor.

THE COURT: Any further examination? Recross on that redirect?

MR. ANDERSON: No further questions.

MR. SBAITI: No further questions, Your Honor.

MR. ANDERSON: Sorry.

THE COURT: Nothing?

MR. ANDERSON: I think we're good.

THE COURT: Okay. I have one question, Mr. Patrick. My brain sometimes goes in weird directions.

EXAMINATION BY THE COURT

THE COURT: I'm just curious. What are these Cayman Island entities, charitable organizations formed in the Cayman

Islands?

THE WITNESS: Yeah. I'll keep it as simple as I can, even though I'm a tax lawyer, so I won't get into the tax rules, but the Cayman structure is modeled after what you typically see in the investment management industry, and so I -- and I won't reference specific entities here with respect to the Highland case, but I think you'll note some similarities, if you think about it. They're -- it's described as an offshore master fund structure where you have a -- and that would be the Charitable DAF Fund that's organized offshore, usually in the Cayman or Bermuda Islands, where the general partner, typically, in the industry, holds the management --

THE COURT: Yeah. Let --

THE WITNESS: Okay.

THE COURT: -- me just stop you. I've seen this enough --

THE WITNESS: Yeah, it's

THE COURT: -- to know that it happens in the investment world. But in --

THE WITNESS: Yeah.

THE COURT: You know, usually, I see 501(c)(3), you know, domestically-created entities for charitable purposes, so I'm just curious.

THE WITNESS: Yes.

THE COURT: Uh-huh.

THE WITNESS: The offshore master fund structure typically will have two different types of -- they call it foreign feeder funds. One foreign feeder fund is meant to accommodate foreign investors; the other foreign feeder fund is meant to accommodate U.S. tax-exempt investors.

Why, why is it structured that way? In order to avoid something called -- I was trying not to be wonkish -- UBTI. That's, let's see, Un -- Unrelated Trader Business Income. I probably have that slightly wrong. But it's essentially, it's a means to avoid active business income, which includes debt finance income, which is what these CLOs tend to be, that would throw off income that would be taxable normally if the exempts did not go through this foreign blocker, and it converts that UBTI income -- it's called (inaudible) income -- into passive income that flows -- that flows up to the charities.

And so it's very typical that you'll have a U.S. tax-exempt investor, when they make an investment in a fund, prefer to go through an offshore feeder fund, which is actually Charitable DAF Holdco, LTD. That's essentially what, from a tax perspective, represents as a UBTI blocker entity. And then you have the offshore investments being held offshore because there's a variety of safe harbors where the receipt of interest, the portfolio interest exception, is not taxable.

The creation of capital gains or losses under the -- they call it the trading, 864(b) trading safe harbor, is not taxable. So that's why you'll find these structures operating offshore to rely on those safe harbor provisions as well as -- as well as what I indicated with respect to the two type blocker entities. It's very typical and industry practice to organize these way. And so when this was set --

THE COURT: It's very typical in the charitable world to --

THE WITNESS: In the investment management --

THE COURT: -- form this way?

THE WITNESS: In the investment management world, when you have charitable entities that are taking some exposure to assets that are levered, to set this structure up in this way. It was modeled after -- they just call them offshore master fund structures. They're known as Mickey Mouse structures, where you'll have U.S. investors --

THE COURT: Yes. I -- yes, I --

THE WITNESS: -- enter through a U.S. partnership, and the foreign investors enter through a blocker.

THE COURT: It was really just the charitable aspect of this that I was --

THE WITNESS: Yeah. Yeah.

THE COURT: -- getting at.

THE WITNESS: Yeah. No, but I'm just trying to

emphasize if --

THE COURT: All right. It's --

THE WITNESS: Yeah.

THE COURT: -- neither here nor there. All right.

MR. SBAITI: Your Honor, may I ask a slightly clarifying leading question on that, because I think I understand what he was trying to say, just for the record?

THE COURT: Well, --

MR. MORRIS: I object.

THE COURT: -- I tell you what. Anyone who wants to ask one follow-up question on the judge's question can do so. Okay? You can go first.

MR. SBAITI: I'll approach, Your Honor.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. SBAITI:

Q Would it be a fair summary of what you were saying a minute ago that the reason the bottom end of that structure is offshore is so that it doesn't get taxed before the money reaches the charities on the U.S. side?

A Tax -- it converts the nature of the income that is being thrown off by the investments so that it becomes a tax friendly income to the tax-exempt entity. Passive income. That's --

Q So, essentially, --

THE COURT: Okay. Okay.

MR. SBAITI: -- so it doesn't get taxed before it hits the --

THE COURT: I said one question.

MR. SBAITI: Sorry, Your Honor.

THE COURT: Okay. He answered it.

MR. PHILLIPS: And I have one question, Your Honor

THE COURT: Okay.

MR. PHILLIPS: I don't know if I need to ask this question, but I'd rather not ask you if I need to ask it.

THE COURT: Go ahead.

MR. PHILLIPS: But if I do, you know, I could --

THE COURT: Go ahead.

MR. PHILLIPS: Well, okay.

RECROSS-EXAMINATION

BY MR. PHILLIPS:

Q We've talked about the offshore structure. Are the foundations in the top two tiers of the organizational chart offshore entities?

A No.

Q They're --

A They're onshore entities. They're tax-exempt entities.

Q Thank you.

A The investments are offshore.

Q Thank you.

THE COURT: Mr. Morris? One question.

FURTHER REDIRECT EXAMINATION

BY MR. MORRIS:

Q Do you hold yourself out as an expert on the organizational structures in the Caribbean for charitable organizations?

A I hold myself out as a tax professional versant on setting up offshore master fund structures. It's sort of a bread-and-butter thing. But there are plenty of people that can testify that this is very typical.

Q Uh-huh. Okay.

THE COURT: Okay. Thank you.

All right. You are excused, Mr. Patrick. I suppose you'll want to stay around. I don't know if you'll potentially be recalled today.

(The witness steps down.)

THE COURT: All right. We should take a lunch break. I'm going to put this out for a democratic vote. Forty-five minutes? Is that good with everyone?

MR. SBAITI: Do we have to leave the building to eat, Your Honor, or is there food in the building?

THE COURT: I think --

MR. SBAITI: I'm sorry to ask that question, but --

THE COURT: Yes. You know what, there used to be a very bad cafeteria, but I think it closed. Right, Mike? So,

you know, --

MR. SBAITI: Sorry I asked that.

A VOICE: Hate to miss that one.

THE COURT: Is 45 minutes not enough since you have to go off campus? I'll give you an hour. It just means we stay later tonight.

A VOICE: Can we just say 2:00 o'clock?

MR. SBAITI: That's fine with us, Your Honor.

THE COURT: 2:00 o'clock. That's 50 minutes. See you then.

MR. SBAITI: Thank you.

A VOICE: Your Honor, can we just get a time check?

THE COURT: Okay.

THE CLERK: Yeah. The Debtors are at an hour and eleven minutes. Respondents at an hour nineteen.

THE COURT: And hour and eleven and an hour and nineteen.

A VOICE: Wait, that's not right.

A VOICE: That can't be right.

A VOICE: Two hours? We started at --

THE COURT: Okay. So, again, their side, the collective Respondents?

THE CLERK: An hour and eleven, responding to your questions, --

A VOICE: Yeah, he's not recording --

THE CLERK: So an hour and eleven and an hour and nineteen.

THE COURT: But they were already over an hour --

A VOICE: Yeah. It's been over three hours.

THE COURT: -- with opening statements.

THE CLERK: An hour and twelve. Yes. They were very short with the questioning. It was only like --

THE COURT: Okay. We'll double-check that over the break with the court reporter.

A VOICE: All right. Thank you, Your Honor.

THE COURT: We'll double-check and let you know.

THE COURT: All rise.

(A luncheon recess ensued from 1:09 p.m. until 2:03 p.m.)

THE COURT: All right. Please be seated. We're going back on the record in Highland after our lunch break. I'm going to confirm time. We've had the Debtor an aggregate of an hour and eleven minutes. The Respondents, an aggregate of an hour and twenty minutes. Okay? So we've gone two hours and thirty-one minutes.

If it seems like we've been going longer, it's because we did not do the clock on the opening matters regarding removal, extension of time. And then when I interjected with questions, we stopped the clock. All right? So let's go.

You may call your next witness, Mr. Morris.

MR. MORRIS: Thank you, Your Honor. The Debtor calls

James Dondero.

THE COURT: All right.

A VOICE: He had to step down the hall. We had a little trouble getting through security. Let me --

THE COURT: All right. Mr. Dondero, you've been called as the next witness. So if you'll approach our witness stand, please. All right. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Please be seated.

JAMES D. DONDERO, DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Dondero.

A Good afternoon.

Q Can you hear me?

A Yes.

Q Okay. So, you were here this morning, correct?

A Yes.

Q All right. So, we're going to put up -- we'll put it up on the screen, but if you'd prefer to look at a hard copy in the binder that's marked Volume 1 of -- 2 of 2, I'd ask you to turn to Exhibit 25. Or you could just follow on the screen. And this is a one-page document, so maybe that's easier.

A Sure.

Q Do you have it? All right.

A Yes.
Q This is the organizational chart for what's known as the DAF, correct?
A Yes.
Q And Mark Patrick set up this structure, correct?
A I believe he coordinated. I believe it was set up by third-party law firms. I believe it was Hutton or a firm like that.
Q Mr. Patrick participated in the creation of this structure because you gave him the task of setting up a charitable entity for Highland at that time, correct?
A Yes.
Q And you approved of this organizational structure, correct?
A Yes.
Q And Grant Scott was the Trustee of the DAF for a number of years, correct?
A I often use that word, trustee, but technically I think it's managing member.
Q That's right. I appreciate that. I was using your word from the deposition. But is it fair to say that, to the best of your knowledge, Grant Scott was the sole authorized representative of the entity known as the DAF from 2011 until just recently?
A Sole -- I would describe it more he was in a trustee

function.
Q Uh-huh.
A Advice was being provided by Highland on the investment side. He wasn't expected to be a financial or an investment expert. And then accounting, tax, portfolio, tracking, you know, compliance with all the offshore formation documents, that was all done by Highland as part of a shared services agreement.
Q Okay. I appreciate that, but listen carefully to my question. All I asked you was whether he was the authorized representative, the sole authorized representative for the ten-year period from 2011 until recently.
A Yes.
Q Okay.
A I believe so.
Q Thank you. You served as the managing member of the DAF GP, LLC before Mr. Scott, correct?
A Yes.
Q Okay. And if you turn to Exhibit 26 in your binder, that's the amended and restated limited liability company agreement for the DAF GP, LLC, correct?
A Yes.
Q And on the last page, that's your signature line, right?
A Yes.
Q And you stepped down as the managing member on March 12,

2012, and were replaced by Mr. Scott, correct?

A Yes.

Q And as you recall it, Mr. Scott came to be appointed the trustee of the DAF based on your recommendation, right?

A Based on my recommendation? Yes, I would say that's fair.

Q And you made that recommendation to Mr. Patrick, right?

A I -- I don't remember who I made the recommendation to. But I would echo the testimony of Mark Patrick earlier that the purpose of stepping down was to make the DAF unaffiliated or independent versus being in any way affiliated.

MR. MORRIS: I move to strike.

BY MR. MORRIS:

Q And I'd ask you to listen carefully to my question.

THE COURT: Sustained.

BY MR. MORRIS:

Q You made the recommendation to Mr. Patrick, correct?

A I would give the same answer again.

Q Okay.

MR. MORRIS: Can we please put up Mr. Dondero's deposition transcript from last Friday at Page 297?

I believe, Your Honor, that the court reporter thought that this was a continuation of a prior deposition, and that's why the pages begin in the, you know, high in the 200s and not at Page 1. Just to avoid any confusion.

BY MR. MORRIS:

Q Mr. Dondero, do you see the transcript in front of you?
A Yes.
Q Okay. Were you asked this question and did you give this answer? "Who did you make the" -- question, "Who did you make the recommendation to?" Answer, "It would have been Mark Patrick."
A I don't recall right now as I sit here, and it seems like I was speculating when I answered, but it -- it probably would have been Mark Patrick. I just don't have a specific recollection.
Q You made the recommendation to Mr. Patrick because he was responsible for setting up the overall structure, correct?
A I -- I can't testify to why I did something I don't remember. I think that would be --
Q Can we --
A -- speculative.
Q Are you finished, sir?
A Yeah.
Q Okay.

MR. MORRIS: Can we go to Page 299, please?

BY MR. MORRIS:
Q Lines 6 through 10. Did I ask this question and did you give me this answer? Question, "But why did you select Mr. Patrick as the person to whom to make your recommendation?" Answer, "Because he was responsible for setting up the overall

structure."

Were you asked that question and did you give that answer last Friday?

A Yes.

Q Thank you. But it's your testimony that you don't really know what process led to Mr. Scott's appointment, correct?

A No, I -- I said I was refreshed by Mark Patrick's testimony earlier.

Q Yeah. Were you refreshed that, in fact, you specifically had the authority to and did appoint Grant Scott as the managing member of the DAF GP, LLC?

A I -- I don't know.

Q Well, you're referring to Mr. Patrick's testimony and I'm asking you a very specific question. Did you agree -- is your memory refreshed now that you're the person who put Grant Scott in the position in the DAF?

A I -- I don't know if I owned those secret shares that -- well, they're not secret, but shares that could appoint anybody on the planet. I guess if I was in that box at that time before Grant, then I would have had that ability. I'm not denying at all that I recommended Grant. I'm just saying I don't -- I don't remember if I went specifically to him or if it was Thomas Surgent that was orchestrating it at the time. I don't remember.

Q Do you deny that you had the authority to and that you did

appoint Grant Scott as your successor?

MR. TAYLOR: Your Honor, objection to the extent it calls for a legal conclusion. I can't get close to a mic, so --

THE COURT: I overrule the objection.

THE WITNESS: Can you repeat the question for me?

BY MR. MORRIS:

Q Do you deny that you had the authority to and that you did, in fact, appoint Grant Scott as your successor?

A It'd be better to say I don't -- I don't -- no, I don't remember or I didn't know the details at the time. But, again, I -- I assume I owned those shares. And, again, I do remember recommending Grant and -- but exactly how it happened, I don't remember.

Q Did you hear Mark Patrick say just an hour ago that you appointed Grant Scott as your successor?

MR. SBAITI: Objection, Your Honor. Misstates testimony. The witness testified he transferred shares. That's different than an appointment power.

THE COURT: Response? I can't remember the exact way you worded it, to be honest.

MR. MORRIS: Neither can I, but I'll even take it that way.

THE COURT: Okay.

MR. MORRIS: I think he's wrong, but I'll even take

it that way.

THE COURT: Okay.

BY MR. MORRIS:

Q Mr. Dondero, did you listen to Mark Patrick say that you are the person who made the decision to transfer the shares to Mr. Scott in 2012?

A Yes, I heard him say that.

Q Okay. So, do you -- do you dispute that testimony?

A I -- I don't have any better knowledge to dispute or confirm.

Q You and Mr. Scott have known each other since high school, correct?

A Yes.

Q You spent a couple of years at UVA together, correct?

A Yes.

Q You were housemates together, correct?

A Yes.

Q He was the best man at your wedding, correct?

A Yes.

Q He's a patent lawyer, correct?

A Yes.

Q He had no expertise in finance when -- when he was appointed as your successor to the DAF, correct?

A Correct.

Q To the best of your knowledge, at the time Mr. Scott

assumed his position, he had never made any decisions concerning collateralized loan obligations, correct?

A Correct, but he wasn't hired for that. That wasn't his position.

Q Was he the person who was going to make the decisions with respect to the DAF's investments?

A My understanding on how it was structured was the DAF was paying a significant investment advisory fee to Highland. Highland was doing portfolio construction and the investment selection of -- or the investment recommendations for the portfolio. There is an independent trustee protocol that I believe was adhered to, but it was never my direct involvement. It was always the portfolio managers or the traders.

You have to provide three similar or at least two other alternatives, and then with a rationale for each of them, but a rationale for why you think one in particular is better. And the trustee looks at the three, evaluates them. And the way I understand it always worked, that it works at pretty much every charitable trust or trust that I'm aware of, they generally, if not always, pick alongside the -- or, pick the recommendation of their highly-paid investment advisory firm.

Q And are you the highly-paid investment advisory firm?

A Highland was at the time, yes.

Q And you controlled Highland, right?

A Yes.
Q Okay. But at the end of the day, is it your understanding that Mr. Scott had the exclusive responsibility for making actual decisions on behalf of the charitable trust that you had created?
A Yeah, I mean, subject to the protocol I just described.
Q Yeah, okay, so let's keep going. Mr. Scott had no experience or expertise running charitable organizations at the time you decided to transfer the shares to him, correct?
A Yes, I believe that's correct.
Q Okay. You didn't recommend Mr. Scott to serve as the DAF's investment advisor, did you?
A No.
Q And until early 2021, as you testified, I believe, already, HCMLP served as the DAF's investment advisor, correct?
A Yes.
Q And until early 2021, all of the DAF's day-to-day operations were conducted by HCMLP pursuant to a shared services agreement, correct?
A Yes.
Q And from the time the DAF was formed until January 9, 2020, you controlled HCMLP, correct?
A Yes.
Q You can't think of one investment decision that HCMLP

recommended that Mr. Scott ever rejected in the ten-year period, correct?

MR. SBAITI: Objection, Your Honor. Lacks foundation.

THE COURT: Response?

MR. MORRIS: I'm not quite sure what to say, Your Honor. The witness has already testified that HCMLP was the investment advisor, made recommendations to Mr. Scott, and that Mr. Scott was the one who had to make the investment decisions at the end of the day.

MR. SBAITI: He's not here as a witness for HCMLP. He's here in his personal capacity. There's no foundation he'd have personal knowledge of which specific investments were proposed, which ones were rejected or accepted. He said it was done by the portfolio manager.

THE COURT: Okay. I overrule. He can answer if he has an answer.

BY MR. MORRIS:

Q Sir, you can't think of one investment decision that HCMLP ever recommended to Mr. Scott that he rejected, correct?

A I can't think of one, but I would caveat with I wouldn't have expected there to be any.

Q So you expected him to just do exactly what HCMLP recommended, correct?

A No. I would expect him to sort through the various

investments when he was given three or four to choose from and be able to discern that, just as we had with our expertise, which was much greater than his, discern which one was the best and most suitable investment, the best risk-adjusted investment, that he would come to the same conclusion.

Q Okay. You can't think of an investment that Mr. Scott ever made on behalf of the DAF that didn't originate with HCMLP, correct?

A Again, no, but I wouldn't expect there to be.

Q Okay. And that's because you expected all of the investments to originate with the company that you were controlling, correct?

A We were the hired investment advisor with fiduciary responsibility --

Q Uh-huh.

A -- and with a vested interest in making sure the DAF performance was the best it could be.

Q Okay. Let --

A He was, as you said, a patent attorney. It would have been unusual for him to second-guess. I'm sure, in any private investment or any investment that was one off or didn't have comps, you know, he probably sought third-party valuations. But you would have to talk to him about that, or the people at Highland that did that.

MR. MORRIS: I move to strike. It's a very simple

question.

THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, you can't think of one investment that Mr. Scott made on behalf of the DAF that did not originate with HCMLP, correct?

A I'm going to give the same answer.

Q Okay. Let's go to Page 371 of the transcript, please. Lines 7 through 11.

Oh, I apologize. I think I might -- I think I meant 317. I think I got that inverted. Yeah.

Did I ask this question and did you give this answer: "Can you think of any investment that Mr. Scott made on behalf of the DAF that didn't original with HCMLP?" Answer, "He wasn't the investment advisor, but no, I don't -- I don't recall."

Is that the answer you gave on Friday?

A Yes.

Q Thank you. Let's --

MR. SBAITI: Just for clarification, Your Honor, --

THE COURT: Pardon?

MR. SBAITI: -- the deposition was last Tuesday, not on Friday.

MR. MORRIS: I stand corrected, Your Honor.

THE COURT: Okay.

MR. MORRIS: I apologize.

THE COURT: Okay.

MR. MORRIS: I apologize if the Court thinks I misled it.

BY MR. MORRIS:

Q Let's talk about Mr. Scott's decision during the bankruptcy case that preceded his resignation. After HCMLP filed for bankruptcy, CLO Holdco, Ltd. filed a proof of claim, correct?

MR. ANDERSON: Your Honor, I haven't objected yet, but we literally haven't covered anything that deals with commencing or pursuing a claim or cause of action. I'm going to object. This is way outside, again, the bounds of the contempt hearing. It's -- otherwise, it's other discovery for something else. It literally has nothing to do with pursue a claim or cause of action.

THE COURT: We have another relevance objection. Your response?

MR. MORRIS: Your Honor, the evidence is going to show that Mr. Dondero told Mr. Scott on three separate occasions that his conduct, which were acts of independence, were inappropriate and were not in the best interests of the DAF. Within days of the third strike, he resigned. Okay?

I think it's relevant to Mr. Dondero's control of the DAF. I think that the moment that Mr. -- this is the argument I'm

going to make. I'll make it right now. You want me to make it now, I'll make it now. The moment that Mr. Scott exercised independence, Mr. Dondero was all over him, and Mr. Scott left. That's what happened. The evidence is going to be crystal clear.

And I think that that control of the DAF is exactly what led to this lawsuit. And what led -- and I'm allowed to make my argument. So that's why it's relevant, Your Honor, because I think it shows that Mr. Scott -- Mr. Scott, after exercising independence, was forced out.

MR. ANDERSON: That doesn't move the needle one bit as to whether a lawsuit was commenced or a claim or cause of action was pursued, which is the subject of the contempt motion. It doesn't move the needle one bit as to those two issues, as to whether that has any bearing on was it commenced or was it pursued.

MR. MORRIS: Your Honor, I appreciate the very narrow focus that counsel for a different party is trying to put on this, but it is absolutely relevant to the question of whether Mr. Dondero was involved in the pursuit of these claims. All right? That's what the order says. Pursue.

THE COURT: All right. Overruled.

BY MR. MORRIS:

Q After HCMLP filed for bankruptcy, CLO Holdco filed a proof of claim, correct?

A I believe so.
Q And in the fall of 2020, Mr. Scott amended the proof of claim to effectively reduce it to zero, correct?
A I -- I guess.
Q And Mr. Scott made that decision without discussing it with you in advance, correct?
A Yes.
Q But you did discuss it with him after you learned of that decision, correct?
A I don't -- I don't recall. I'm willing to be refreshed, but I don't remember.
Q Well, you told him specifically that he had given up bona fide claims against the Debtor, correct?
A Let me state or clarify my testimony this way. Um, --
MR. MORRIS: Your Honor, it's really just a yes or no question. His counsel can ask him if he wants to clarify, but it's really just a yes or no question.
BY MR. MORRIS:
Q You told Mr. Scott that he gave up bona fide claims against the Debtor, correct?
THE COURT: Okay.
THE WITNESS: I don't know if I told him then with regard to those claims.
BY MR. MORRIS:
Q Okay. Can we go to Page 321 of the transcript? At the

bottom, Line 21? 22, I apologize.

Did I ask this question and did you give this answer? "And what do you" -- Question, "And what do you recall about your discussion with Mr. Scott afterwards?" Answer, "That he had given up bona fide claims against the Debtor and I didn't understand why."

Did I ask that question and did you give that answer last Tuesday?

A Yes.

Q Okay. A short time later, in December, the Debtor filed notice of their intention to enter into a settlement with HarbourVest, correct?

A Yes.

Q And CLO Holdco, under Mr. Scott's direction, filed an objection to that settlement, correct?

A Yes.

Q And that settlement, the substance of that settlement was that the Debtor did not have the right to receive HarbourVest's interests in HCLOF at the time, correct?

A I don't remember the exact substance of it.

Q Okay. But you do remember that you learned that Mr. Scott caused CLO Holdco to withdraw the objection, correct?

A Yes, ultimately.

Q Okay. And again, Mr. Scott did not give you advance notice that he was going to withdraw the HarbourVest

objection, correct?

A No, he -- he did it an hour before the hearing. He didn't give anybody notice.

Q You learned that Mr. Scott caused CLO Holdco to withdraw its objection to the HarbourVest settlement at the hearing, correct?

A Yes.

Q And you were surprised by that, weren't you?

A I believe everybody was.

Q You were sur... you were surprised by that, weren't you, sir?

A Yes.

Q And you were surprised by that because you believed Mr. Scott's decision was inappropriate, right?

A Partly inappropriate, and partly because 8:00 o'clock the night before he confirmed that he was going forward with the objection. And I think the DAF's objection was scheduled to be first, I think.

Q After you learned that Mr. Scott instructed his attorneys to withdraw the CLO Holdco objection to the HarbourVest settlement, you again spoke with Mr. Scott, correct?

A Yes.

Q And that conversation took place the day of the hearing or shortly thereafter, correct?

A Yes.

Q And during that conversation, you told Mr. Scott that it was inappropriate to withdraw the objection, correct?
A Yes.
Q And in response, Mr. Scott told you that he followed the advice of his lawyers, correct?
A Yes.
Q But that didn't -- that explanation didn't make sense to you, right?
A Yes.
Q In fact, you believed that Mr. Scott failed to act in the best interests of the DAF and CLO Holdco by withdrawing its objection to the HarbourVest settlement, correct?
A Yes.
Q And while you didn't specifically use the words fiduciary duty, you reminded Mr. Scott in your communications with him that he needed to do what was in the best interests of the DAF, correct?
A Yes.
Q You're the founder of the DAF, correct?
A I put it -- I put it in motion. Yeah. I tasked Mark Patrick and third-party law firms to do it, but if that boils down to founder, I guess yes.
Q Uh-huh. And you're the primary donor to the DAF, correct?
A Yes.
Q You're the investment advisor to the DAF, or at least you

were at that time?
A Yes.
Q And because you served in these roles, you expected Mr. Scott to discuss his decision to withdraw the HarbourVest objection in advance, correct?
A Yes, I -- I think it was even broader than that. I mean, he was having health and anxiety issues, and to the extent he felt overwhelmed, I -- you know, yeah, you should do what's in the best interests at all times, but -- but yes, I thought it would be helpful if he conferred with me or Mark Patrick or whoever he was comfortable with.
Q Mr. Dondero, you specifically believed that Mr. Scott's failure to tell you that he was going to withdraw the HarbourVest objection in advance was inappropriate, right?
A Yes.
Q Even though he was the sole authorized representative, you believed that, because you were the founder of the DAF, the primary donor of the DAF, and the investment advisor to the DAF, he should have discussed that before he actually made the decision, correct?
A No. What I'm saying is at 8:00 o'clock at night, when he confirms to numerous people he's ready to go first thing with his objection, and then he or counsel or some combination of them change their mind and don't tell anybody before the hearing, that's odd and inappropriate behavior.

MR. MORRIS: Can we go to Page 330 of the transcript, please?

And Your Honor, before I read the testimony, there is an objection there. So I'd like you to rule --

THE COURT: Okay.

MR. MORRIS: -- before I do that. It can be found at -- on Page 330 at Line 21.

(Pause.)

MR. MORRIS: Here we go. Page 30, beginning at Line 19. 330, rather.

THE COURT: Okay.

(Pause.)

THE COURT: Okay. I overrule that objection.

BY MR. MORRIS:

Q Mr. Dondero, were you asked this question and did you give this answer last Tuesday? Question, "Do you believe that he had an obligation to inform you in advance?" Answer, "I don't know if I would use the word obligation, but, again, as the founder or the primary donor and continued donor to the DAF, and as the investment advisor fighting for above-average returns on a daily basis for the fund, significant decisions that affect the finances of the fund would be something I would expect typically a trustee to discuss with the primary donor."

Did you give that answer the other day, sir?

A Yes.
Q If Mr. Patrick decides tomorrow to withdraw the lawsuit that's in District Court, does he have an the obligation to tell you in advance?
A Again, I wouldn't use the word obligation. But something that I think ultimately is going to be a $20 or $30 million, if not more, benefit to the DAF, to the detriment of Highland, if you were to give that up, I would expect him to have a rationale and I would expect him to get other people's thoughts and opinions before he did that.
Q Okay. But does he have to get your opinion before he acts?
A No, he does not.
Q Okay. So he -- Mr. Patrick could do that tomorrow, he could settle the case, and if he doesn't come to you to discuss it in advance, you won't be critical of him, right?
A He doesn't have the obligation, but there's -- there's a reasonableness in alignment of interests. I -- a growing entrepreneur sets up a trust, a lot of times they'll put their wife in charge of it, and she hires investment advisers and whatever, but they've got the best interests at mind for the charity or the children or whatever.

You know, people who go rogue and move in their own self-interest or panic, that stuff can happen all the time. It doesn't make it appropriate, though.

Q A couple of weeks after Mr. Scott withdraw the objection to the HarbourVest settlement, he entered into a settlement agreement with the Debtor pursuant to which he settled the dispute between the Debtor and CLO Holdco, correct?
A Yes.
Q Okay. You didn't get advance notice of that third decision, correct?
A No.
Q Can we go to Page -- Exhibit 32 in your binder? And this is the settlement agreement between CLO Holdco and the Debtor, correct? Attached as the exhibit. I apologize.
A Yes.
Q And do you understand that that's Mr. Scott's signature on the last page?
A Yep.
Q And you learned about this settlement only after it had been reached, correct?
A Yep.
Q And you believed Mr. Scott's decision not to pursue certain claims against the Debtor or to remove HCMLP as the manager of the CLOs was not in the best interests of the DAF, correct?
A Correct.
Q And you let Mr. Scott know that, correct?
A Yes.

Q After learning about the settlement agreement on January 26th, you had one or two conversations with Mr. Scott on this topic, correct?
A Yes.
Q And your message to Mr. Scott was that the compromise or settlement wasn't in the DAF's best interest, correct?
A It was horrible for the DAF.
Q Uh-huh. And you told him that, right?
A Yes.
Q Okay. From your perspective, any time a trustee doesn't do what you believe is in the trust's best interest, you leave yourself open to getting sued, correct?
A Who is "you" in that question?
Q You. Mr. Dondero.
A Can you repeat the question, then, please?
Q Sure. From your perspective, any time you're a trustee and you don't believe that the trustee is doing what's in the best interests of the fund, the trustee leaves himself open to getting sued, correct?
A I don't know who the trustee leaves himself open to, but as soon as you go down a path of self-interest or panic, you -- you potentially create a bad situation. But I don't know who holds who liable.
Q Did you believe that Mr. Scott was acting out of self-interest or panic when he decided to settle the dispute with

the Debtor on behalf of CLO Holdco?
A Yes.
Q Did you tell him that?
A He told me that.
Q He told you that he was acting out of panic or desperation? With self-int... withdrawn. Withdrawn. Did he tell you that he was acting out of self-interest?
A He was having health problems, anxiety problems, and he didn't want to deal with the conflict. He didn't want to testify. He didn't want to come to court. He didn't want to do those things. And I told him I didn't think the settlement was going to get him out of that stuff. I think, you know, it got him out of some issues, but I think you guys are going to go after him for other stuff. But he -- he panicked.
MR. MORRIS: I move to strike the latter remark.
THE COURT: Sustained.
BY MR. MORRIS:
Q Shortly after you had the conversation with Mr. Scott, he sent you notice of his intent to resign from his positions at the DAF and CLO Holdco, correct?
A Yes.
Q Okay. Let's take a look at that, please. Exhibit 29. This is Mr. Scott's notice of resignation, correct?
A Yes.
Q He sent it only to you, correct?

A Yes.
Q A couple of days before he sent this, he told you he was considering resigning; isn't that right?
A Yes.
Q Okay. And he told you he was considering resigning because he was suffering from health and anxiety issues regarding the confrontation and the challenges of administering the DAF given the bankruptcy, correct?
A Yes.
Q He didn't tell you that he made the decision -- withdrawn. Did you tell him in this same conversation -- withdrawn. Is this the same conversation where you conveyed the message that the compromise or settlement wasn't in the best interests of the DAF?
A You mean the conversation -- or the resignation? Is that -- can you rephrase the question, please?
Q Yeah, I apologize. It's my fault, sir. You testified that after the January 26th hearing you had a conversation with Mr. Scott where you told him that the compromise or settlement was not in the best interests of the DAF, correct?
A Yes.
Q Okay. Did Mr. Scott share with you his concerns about anxiety and health issues in that same conversation, or was it in a subsequent conversation?
A It was at or around that time. I -- I don't remember

which conversation.
Q Okay.
A But it was right at or around that time.
Q All right. You never asked Mr. Scott to reconsider, did you?
A No.
Q You don't recall sending this notice of resignation to anyone, do you?
A No.
Q You don't remember notifying anyone that you'd received notice of Mr. Scott's intent to resign from the DAF, do you?
A It was -- yeah, no, I -- I don't remember. It was a busy time around that time and this was a secondary issue.
Q Okay. So the fact that the person who has been running the DAF for a decade gives you and only you notice of his intent to resign was a secondary issue in your mind?
A Yes, because when I talked to him at about that time, I said, okay, well, it's going to take a while. I don't even know how the mechanism works. But don't do anything adverse to the DAF, don't do anything else until, you know, you've figured out transition.
Q Uh-huh.
A And so once he had confirmed he wouldn't do anything outside normal course until he transitioned, I didn't worry about this. I had bigger issues to worry about at the time.

Q In the third paragraph of his email to you, he wrote that his resignation will not be effective until he approves of the indemnification provisions and obtains any and all necessary releases. Do you see that?
A Yes.
Q And that was the condition that on January 31st Mr. Scott placed on the effectiveness of his resignation, correct?
A Condition? Yeah, I -- I think he's trying to state the timing will happen after that.
Q After he gets the release, right?
A Yes.
Q And he wanted the release because you'd told him three different times that he wasn't acting in the best of the DAF, correct?
MR. TAYLOR: Objection, Your Honor.
MR. SBAITI: Objection. Calls for --
MR. TAYLOR: Objection. Calls for speculation.
THE WITNESS: Yeah, I --
THE COURT: Sustained.
THE WITNESS: I can't take that jump. Yeah.
BY MR. MORRIS:
Q In response to this email from your lifelong friend, you responded, if we could scroll up, about whether divest was a synonym -- if we can look at the first one -- whether divest is a synonym for resigned. Do I have that right?

A (no immediate response)
Q If you will look at your response on Monday morning at 9:50.
A Yes.
Q Okay. And then after Mr. Scott responds, you respond further, if we can scroll up, and you specifically told him, "You need to tell me ASAP that you have no intent to divest assets." Correct?
A Yes.
Q And you wrote that because you believed some of his behavior was unpredictable, right?
A I think I wrote that because the term divest in investment terms means sale or liquidate, but I guess it had a different legal term in the way he was looking at it. I wasn't aware at that time of the shares that could be bequeathed to anybody, and I think the divest refers to that, but I wasn't aware that that's how the structure worked at that time, and I was worried that divest could be the investment term and I -- it wouldn't have been appropriate for him to liquidate the portfolio.
Q So, and you wanted to make sure he wasn't liquidating or intending to liquidate any of the CLOs, correct?
A Correct.
Q Okay. So he's still the authorized, the sole authorized representative, but you wanted to make sure that he didn't do

anything that you thought was inappropriate. Fair?
A It's because I had talked to him before this and he said he wasn't going to do anything outside normal course, and then the word divest scared me, but I didn't realize it was a legal term in this parlance here.
Q And so after he explained, you still wanted to make sure that he wasn't divesting any assets, correct?
A Yes.
Q Okay. Since February 1st, you've exchanged exactly one text messages with Mr. Scott; is that right?
A I think there've been several, several text messages. But one on his birthday.
Q Yeah. And you haven't spoken to him in months, correct?
A In a couple months, yes.
Q All right. Let's talk about the replacement of Mr. Scott. With -- with Mr. Scott's notice, someone needed to find a replacement, correct?
A Yes.
Q And the replacement was going to be responsible for managing a charitable organization with approximately $200 million of assets, most of which was seeded directly or indirectly through you, correct?
A Yes.
Q And the replacement was going to get his and her -- his or her investment advice from you and NexPoint Advisors; do I

have that right?
A That was the plan.
Q Okay. Ultimately, Mr. Patrick replaced Mr. Scott, correct?
A Yes.
Q But it's your testimony that you had no knowledge that Mr. Patrick was going to replace Mr. Scott until after it happened on March 24, 2021. Correct?
A That's correct. I believe it happened suddenly.
Q So, for nearly two months after you had received notice of Mr. Scott's intent to resign, you were uninvolved in the process of selecting his replacement, correct?
A I was uninvolved. I'd say the process was dormant for an extended period of time until Mark Patrick came on board, and then Mark Patrick ran the process of interviewing multiple potential candidates.
Q Mark Patrick didn't have any authority prior to March 24th, correct?
A Is March 24th the date that he transitioned the shares to himself from Grant Scott?
Q Yep.
A That's when he then became the trustee of the DAF, yes.
Q Do you know -- do you know who was instructing Mr. Patrick on who to interview or how to carry the process out?
A He was doing that on his own with, I think,

recommendations from third-party tax firms.

Q So Mr. Patrick was trying to find a successor to Mr. Scott, even though he had no authority to do that, and you were completely uninvolved in the whole process? Do I have that right?

A I was uninvolved, yes. He was trying to facilitate it for the benefit of his friendship with Grant Scott and knowing that it -- it -- with his resignation, it had to transition to somebody. And he enjoys working on the DAF, he enjoys the charitable stuff in the community, and he was the most appropriate person to work on helping Grant transition.

MR. MORRIS: All right. I move to strike, Your Honor. It's hearsay.

THE COURT: Sustained.

BY MR. MORRIS:

Q You're aware that Mr. Seery was appointed the Debtor's CEO and CRO last summer, correct?

A Yes.

Q And you're aware that Mr. Seery's appointment was approved by the Bankruptcy Court, correct?

A Yes.

Q And you were aware of that at the time it happened, correct?

A Yes.

Q And even before that, in January of 2020, you consented to

a settlement where you gave up control of the Debtor. Correct?

A To the independent board for a consensual Chapter 11 restructuring that would leave Highland intact.

Q And do you understand that the gatekeeper provision in the July order is exactly like the one that you agreed to in January except that it applies to Mr. Seery instead of the independent directors?

A I -- I learned a lot about that today, but I don't think it's appropriate to move what applied to the board to the CEO of a registered investment advisor.

Q Okay. I'm just asking you, sir. Listen carefully to my question. Were you aware in January 2020 that you agreed to a gatekeeper provision on behalf of the independent board?

A Generally, but not specifically.

Q Okay.

A Not -- not like what we've been going over today.

Q Okay. And you knew that Mr. Seery had applied to be appointed CEO subject to the Court's approval, correct?

A Wasn't it backdated to March? I -- I think the hearing was in June, but it was backdated for -- for money and other purposes, right? I -- that's my recollection. I don't remember otherwise.

Q You do remember that Mr. Seery got -- he got -- his appointment got approved by the Court, right?

A Yes. But, as far as the dates are concerned, I thought it was either in March or retroactive to March. Maybe it was June or July.
Q And you --
A But I don't remember.
Q Did you have your lawyers review the motion that was filed on behalf of the Debtor?
A I'm -- I assume they do their job. I -- if they didn't, I don't know.
Q Okay. That's what you hired them to do; is that fair?
A Yes.
Q Okay. Can we go to Exhibit 12, please? I think it's in Binder 1. You've seen this document before, correct?
A Yes.
Q In fact, you saw versions of this complaint before it was filed, correct?
A Yes, I saw one or two versions towards the end. I don't know if I saw the final version, but --
Q Sir, you participated in discussions with Mr. Sbaiti concerning the substance of this complaint before it was filed, correct?
A Some. I would just use the word some.
Q Okay. Can you describe for me all of your conversations with Mr. Sbaiti concerning the substance of this complaint?
MR. SBAITI: Your Honor, I would object on the basis

of work product privilege and attorney-client communications. He was an agent for my client, the DAF, at the time he was having these discussions with us, and our discussions with him were work product. So to the extent he can reveal the conversations without discussing the actual content, we would raise privilege objection, Your Honor.

THE COURT: Mr. Morris?

MR. MORRIS: Your Honor, there is no privilege here. That's exactly why I asked Mr. Patrick the questions earlier today. Mr. Dondero is not party to any agreement with the DAF today. It's an informal agreement, perhaps, but there is no contractual relationship, there is no privity any longer between Mr. Dondero or any entity that owns and controls in the DAF, as far as I know. If they have evidence of it, I'm happy to listen, but that -- that's exactly why I asked those questions of Mr. Patrick earlier today.

THE COURT: All right.

MR. SBAITI: Your --

THE COURT: That was the testimony. There's an informal arrangement, at best.

MR. SBAITI: Well, Your Honor, I would suggest that that doesn't necessarily mean that he isn't an agent of the DAF. It doesn't have to be a formal agreement for him to be an agent of the DAF.

Everyone's agreed he was an advisor. Everyone's agreed he

was helping out. That is an agency relationship. It doesn't have to be written down. It doesn't have to be a formal investment advisory relationship. He's still an agent of the DAF. He was requested to do something and agreed to do it under the expectation that all of us had that those would be privileged, Your Honor. That is -- that is sufficient -- that is sufficient, I would argue, to get us where we need to be. The privilege should apply, Your Honor, and they don't have a basis for, I would say, invading the privilege, Your Honor.

THE COURT: Well, do you have any authority? Because it just sounds wrong. He's not an employee of your client. He doesn't have any contractual arrangement with your client.

MR. SBAITI: Your Honor, I would dispute the idea that he has no contractual arrangement with my client. The question was asked, do you have a -- do you have a written agreement, and then the question was, so you don't have a contract, and the answer was no, I don't have a contract, building upon that first -- that first question. But the testimony as he just recounted is that there is an agreement that he would advise Mr. Patrick and he would advise the DAF.

THE COURT: Okay.

MR. SBAITI: That's -- that's a contract.

THE COURT: Okay. My question was, do you have any legal authority? That's what I meant when I said authority. Any legal authority to support the privilege applying in this

kind of --

MR. SBAITI: In an informal arrangement, Your Honor? I don't have one at my fingertips at the moment, Your Honor, but I don't know that that should be a reason to invade the privilege.

And I would just add, Your Honor, I would just add, we've already -- because of the purpose of these questions, you've heard Mr. Morris state several times that the purpose is to show that Mr. -- that Mr. Dondero had some role in advising and participating in the creation of this complaint. That's been conceded by myself. I believe it was conceded by Mr. Dondero.

The actual specific facts, the actual specific conversations, Your Honor, shouldn't be relevant at this point and they shouldn't be admissible, given -- given the relevancy, given the perspective of the privilege.

THE COURT: Okay.

MR. MORRIS: If I might --

THE COURT: I overrule your objection. I don't think a privilege has been shown here --

MR. SBAITI: And Your Honor, --

THE COURT: -- and I think it's relevant.

MR. SBAITI: -- I would ask if we could *voir dire* the witness on the basis of the privilege, if that's --

THE COURT: All right. You may do so.

VOIR DIRE EXAMINATION

BY MR. SBAITI:

Q Mr. Dondero, do you have a relationship with the DAF?

A Yes.

Q How would you describe that relationship?

A I view myself and my firm as the investment advisor. I was actually surprised by the testimony today that there wasn't a contract in place, but there should be one. There should be one soon, in my opinion.

Q Have you -- did you hear Mr. Patrick testify earlier that he comes to you for advice?

A Yes.

Q Is that --

A As he should. Yeah.

Q Is that true?

A Yes.

Q When you render that advice, do you render that advice with some expectation about him following or listening to that advice?

A Okay, I think there's only been one investment or one change in the DAF portfolio since Mark Patrick's been involved, only one, and it was a real estate investment that I wasn't directly involved in. And so the people who put that investment forward worked with Mark without my involvement, and then I think Mark got third-party appraisal firms and

third-party valuation firms involved to make sure he was comfortable, which was a good process.

Q When you supplied information to Mr. Patrick, do you do so under the belief that there is a contractual, informal or formal, relationship?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. SBAITI: What specific form?

THE COURT: Overruled.

MR. SBAITI: Thank you.

THE WITNESS: Yes. I believe it -- it's a relationship that can and should be papered as -- soon. That's my -- I mean, unless I get some reason from counsel not to, I think it's something that should be memorialized.

BY MR. SBAITI:

Q And when you have that -- in that relationship, when you communicate with Mr. Patrick about matters, investment or otherwise, is there an expectation of privacy?

A Yes.

Q When Mr. Patrick -- did Mr. Patrick request that you interface with my firm and myself, as he testified earlier?

A Yes.

Q And when he did so, did he ask you to do so in an investigatory manner?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained. Rephrase.

BY MR. SBAITI:

Q Did he tell you why he wanted you to talk to us?

A Yeah. At that point, he had started an investigation into the HarbourVest transaction.

Q And -- and when he -- when you were providing information to us, did he tell you whether he wanted you to help the Sbaiti firm conduct the investigation?

A The -- overall, the financial numbers and tables in there were prepared by not myself, but I -- I did -- I did help on -- on the -- some of the registered investment advisor issues as I understood them.

Q Okay. And the communications that you had with us, was that part of our investigation?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. SBAITI:

Q And did you understand that we had been retained by Mr. Patrick on behalf of the DAF and CLO Holdco?

A Yes.

Q And did you appreciate or have any understanding of whether or not you were helping the law firm perform its legal function on behalf of the DAF and CLO Holdco?

A Perform its legal function? I was just helping with

regard to the registered investment advisor aspects of the overall, you know, like that.

Q Let me ask a more simple question. Did you -- did you appreciate that you were assisting a law firm in its representation of the DAF?

A Yes.

Q And you were helping the law -- and were you helping the law firm develop the facts for a complaint?

A Yes. I would almost say, more importantly, I wanted to make sure that there weren't errors in terms of understanding either how CLOs worked or how the Investment Advisers Act worked. So I was -- it was almost more of a proofing.

MR. SBAITI: Your Honor, based upon that, I mean, he's helping a law firm perform its function for the client. That's an agency relationship that gets cloaked. You can call him a consulting expert. You can call him, to a certain extent, a fact witness, Your Honor. If we want to take a break, I'm sure we could find authority on that basis for a work product privilege pretty easily.

But he's an agent of the DAF. Even if it's an informal agency relationship, that's still agency. He's in some respects, I guess, an agent of the law firm, to the extent he's helping us perform our legal work. And it seems like invading that privilege at this juncture is (a) unnecessary, because we've already conceded that there's been

conversations, which I think is the relationship they wanted to establish. And it's not unusual for a law firm to use someone with specialized knowledge to understand some of the intricacies of the actual issues that they're -- that they're getting ready to litigate.

THE COURT: Okay. I find no privilege. All right. That's the ruling.

MR. BRIDGES: Your Honor, may I add one thing to the objection for the record?

THE COURT: Okay, we have a rule, one lawyer per witness. Okay? So, thank you. A District Court rule, by the way, not mine.

MR. SBAITI: Your Honor, may we take a short recess, given the Court's ruling?

THE COURT: Well, I'd really like to finish this witness. How much longer do you have?

MR. MORRIS: About eight more questions.

THE COURT: All right. We'll take a break after the direct, okay?

MR. SBAITI: Your Honor, I would ask that we -- if he's going to ask him more questions about the content of the communications, I ask respectfully for a recess so we can figure out what to do about that. Because, right now, there's a ruling that he's going to have to reveal privileged information, and we don't have a way to go around and figure

out how to resolve that issue if we needed to.

THE COURT: Okay. I've ruled it's not privilege. Okay?

MR. SBAITI: I understand that, Your Honor, but --

THE COURT: Your client is CLO Holdco and the DAF.

MR. SBAITI: Yes, Your Honor.

THE COURT: Representative, Mark Patrick. No contract with Mr. Dondero. The fact that he may be very involved I don't think gives rise to a privilege. That's my ruling.

MR. SBAITI: I understand, Your Honor. I understand, Your Honor, but I'm asking for a recess so that we can at least undertake to provide Your Honor with some case law on a reconsideration before we go there, because that bell can't be unrung.

MR. MORRIS: Your Honor, if I may?

MR. SBAITI: And it's --

THE COURT: Uh-huh.

MR. MORRIS: I'm happy to give them ten minutes, Your Honor, as long as they don't talk to the witness.

THE COURT: Okay.

MR. MORRIS: I want to give them the opportunity. Go right ahead.

THE COURT: All right. We'll take a ten-minute break.

MR. SBAITI: Thank you.

THE COURT: It's 3:05.

THE CLERK: All rise.

(A recess ensued from 3:03 p.m. until 3:17 p.m.)

THE CLERK: All rise.

THE COURT: Okay. Please be seated. Going back on the record in Highland. Mr. Sbaiti?

MR. SBAITI: Yes, Your Honor. May I approach?

THE COURT: You may.

MR. SBAITI: Your Honor, we have some authority to support the position we'd taken. We'd ask the Court to reconsider your ruling on the privilege.

The first bit of authority is Section 70 of the Restatement (Third) of Law Governing Lawyers. Privileged persons within the meaning of Section 68, which governs the privilege, says that those persons include either agents of either the lawyer or the client who facilitate communications between the two in order for the lawyers to perform their function.

Another case that we found is 232 F.R.D. 103 from the Southern District of New York, 2005. It's *Express Imperial Bank of U.S. v. Asia Pulp Company*. And in that case, Your Honor, the consultant was a -- had a close working relationship with the company and performed a similar role to that of the employee and was assisting the law firm in

performing their functions, and the court there found that the work product privilege -- actually, the attorney-client privilege -- attached in what they called a Functional Equivalents Doctrine, Your Honor.

And here we have pretty much the same set of facts that's pretty much undisputed. The fact that there -- and the fact that there isn't a written agreement doesn't mean there isn't a contractual arrangement for him to have rendered services and advice. And the fact that he's, you know, recruited by us to help us perform our functions puts him in the realm, as I said, of something of a consulting expert.

Either way, the work product privilege, Your Honor, should apply, and we'd ask Your Honor not to invade that privilege at this point, Your Honor. And I'll ask you to reconsider your prior ruling.

Furthermore, I believe Mr. Morris, you know, in making his argument, is trying to create separation. The fact that he has no relationship, that the privilege can be invaded, seems to defeat the whole premise of his whole line of questioning.

So, once again, Your Honor, I just -- it's a tit for a tat there, and it seems to kind of eat itself. Either he is working with us, which we've admitted he is working with us, us being the law firm, and helping us do our jobs, or he's not. And if he's not, then this should be done.

THE COURT: Okay.

MR. MORRIS: Your Honor, briefly?

THE COURT: Well, among other things, what do you want me to do? Take a break and read your one sentence from the Restatements and your one case? And could you not have anticipated this beforehand?

MR. SBAITI: Your Honor, --

THE COURT: This is not the way we work in the bankruptcy courts, okay? We're business courts. We have thousands of cases. We expect briefing ahead of time.

MR. SBAITI: Your Honor, this has been a rather rushed process anyway. And to be honest, --

THE COURT: When was the motion filed?

MR. SBAITI: Your Honor, --

THE COURT: More than a month ago.

MR. SBAITI: -- his deposition was a week ago.

THE COURT: Well, okay. So you could not have anticipated this issue until his deposition one week ago?

MR. SBAITI: Your Honor, this issue arose at the deposition, obviously, because that's what he's quoting from. However, at least to us, this is such a well-settled area, and to be honest, --

THE COURT: Such a well-settled area that you have one sentence from the Restatement and one case from the Southern District of New York?

MR. SBAITI: No, Your Honor. I think the work

product privilege lexicon -- we had ten minutes to try to find something more on point than the general case law that applies the work product privilege to people that work with lawyers, consultants who work with lawyers, employees who work with lawyers, even low-down employees who normally wouldn't enjoy the privileges that attach to the corporation, when they work with the company for -- when they work with the company lawyers, it typically attaches.

THE COURT: You know, obviously, I know a few things about work product privilege, but he doesn't check any of the boxes you just listed out.

MR. SBAITI: I disagree, Your Honor.

THE COURT: He's not an employee. He's not a low-level employee.

MR. SBAITI: He's a consultant.

THE COURT: With no agreement.

MR. SBAITI: With a verbal agreement. He's an advisor. And he was recruited by us, and at the request of the DAF, of the head of the DAF, Mr. Patrick, to help us do our job for the DAF. I don't --

THE COURT: Okay. Mr. Morris, what do you want to say?

MR. MORRIS: Just briefly, Your Honor. This issue has been ripe since last Tuesday. They directed him not to answer a whole host of questions about his involvement at the

deposition last Tuesday, so they've actually had six days to deal with this. That's number one.

Number two, there's absolutely nothing inconsistent with the Debtor's position that Mr. Dondero is participating in the pursuit of claims and at the same time saying that his communications with the Sbaiti firm are not privileged. There's nothing inconsistent about that.

So the argument that he just made, that somehow because we're trying to create separation, that that's inconsistent with our overall arching theme that Mr. Dondero is precisely engaged in the pursuit of claims against Mr. Seery, I think that takes care of that argument.

Finally, your Honor, with respect to this consultancy arrangement, not only isn't there anything in writing, but either you or Mr. Sbaiti or I, I think, should ask Mr. Dondero the terms of the agreement. Is he getting paid? Is he doing it for free? Who retained him? Was it Mr. -- because the -- there's no such thing. There's no such thing.

The fact of the matter is what happened is akin to I have a slip-and-fall case and I go to a personal injury lawyer and I bring my brother with me because I trust my brother with everything. It's not privileged. Any time you bring in somebody who is not the attorney or the client, the privilege is broken. It's really quite simple. Unless there's a common interest. They can't assert that here. There is no common

interest. So --

THE COURT: Okay. Mr. Sbaiti, I'll give you up to three more minutes to *voir dire* Mr. Dondero to try to establish some sort of agency relationship or other evidence that you think might be relevant.

VOIR DIRE, RESUMED

BY MR. SBAITI:

Q Mr. Dondero, when you provided information to the law firm, were you doing so under an agency relationship? Do you know what an agency relationship is?

A Generally. When you're working on the -- or why don't you tell me?

Q Tell me your understanding, so we can use --

A That you're working for the benefit or as a proxy for the other entity or the other firm or the other person.

Q Right. So you're working for the DAF?

A Yes.

Q Do you do work for the DAF?

A Yes. As I stated, I'm surprised there isn't -- when we reconstituted after leaving Highland, we put in shared services agreements in place and asset management agreements in place and tasked people with doing that for most of the entities. There might be still a few contracts that are being negotiated, but I thought most of them were in place.

So I would imagine that there'll be an asset management

agreement with the DAF back to NexPoint sometime soon, so it -- it's --

Q Let me ask you this question. When you were providing information to us and having conversations with us, were you doing that as an agent of the DAF, the way you described it, --

A Yes.

Q -- on their behalf?

A Yes.

Q Were you also doing it to help us do our jobs for the DAF?

A Yes.

Q Did you respond to requests for information from myself?

A Yes.

Q Did you help coordinate other -- finding other witnesses or sources of information at my request?

A Yes.

Q Did you do so based upon any understanding that I was working on behalf of the DAF for that?

A Yes. I knew -- I knew you were working for the DAF. No one else, yeah.

Q And so -- and so did you provide any expertise or any in-depth understanding to myself in helping me prepare that complaint?

A I think so, but I give a lot of credit to your firm for researching things that I -- I knew reasonably well but then

you guys researched in even more depth.

MR. MORRIS: I'd move to strike the answer as nonresponsive.

THE COURT: Sustained.

BY MR. SBAITI:

Q Let me ask the question again. When you were providing us information and expertise, were you doing so knowing you were working -- helping us work for the DAF?

A Yes.

Q Now, did you demand any compensation for that?

A No.

Q Do you require compensation necessarily to help the DAF?

A No.

Q Do you do other things for the DAF sometimes without compensation?

A Right. We do the right thing, whether we get paid for it or not. Yes.

Q Had you known that our communications were not necessarily part of an agency relationship with the DAF, as you understood it, that you were just some guy out on the street, would you have had the same conversations with us?

A (sighs)

Q Let me ask a better question. If I had come to you working for someone that wasn't the DAF, you didn't already have a relationship with, would you have given us the same

help?
A I wouldn't have been involved if it was somebody else.
Q Is the reason you got involved because we were the lawyers for the DAF?
A Correct.
MR. MORRIS: Objection. It's just leading. This is all leading.
THE WITNESS: Correct.
THE COURT: Sustained.
MR. SBAITI: Can --
THE WITNESS: Yeah. Sorry.
BY MR. SBAITI:
Q Do you get -- do -- did you -- did you do work for the -- did you provide the help for the DAF laboring under the understanding that there was an agreement?
MR. MORRIS: Objection; leading.
THE COURT: Sustained.
BY MR. SBAITI:
Q Earlier you testified you believed there was an agreement?
A I thought that was an agreement, and I thought there will be one shortly if there isn't one, yes.
Q Okay.
A And so we -- I've been operating in a bona fide way in the best interests of the DAF throughout -- assuming there was an agreement, but even if there wasn't a formal one, I would

still be moving in the best interests of the DAF and helping your firm out or --

Q And you did that because you believed there was an agreement or soon would be?

A Yes.

MR. SBAITI: Your Honor, I mean, I believe we've established a dual role here, both as an agent of the DAF and as an agent of the law firm, Your Honor.

THE COURT: Okay. Just a minute. I'm looking at Texas authority on common interest privilege to see if there's anything that --

(Pause.)

THE COURT: All right. Again, it would have been very nice to get briefing ahead of time. I think this absolutely could have been anticipated.

I do not find the evidence supports any sort of protection of this testimony under work product privilege, common interest privilege. I just haven't been given authority or evidence that supports that conclusion. So the objections are overruled.

Mr. Morris, go ahead.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Can you describe for the Court the substance of your communications with Mr. Sbaiti concerning the complaint?

A As I've stated, directing him toward the Advisers Act and then largely in a proofing function regarding CLO nomenclature and some of the other fund nomenclature that sometimes gets chaotic in legal briefs.

Q Did you communicate in writing at any time with anybody at the Sbaiti firm regarding any of the matters that are the subject of the complaint?

A I can't remember anything in writing. Almost everything was verbal, on the phone.

Q You don't tend to write much, right?

A Periodically.

Q Did you communicate with Mr. Patrick? Did you communicate with anybody in the world in writing regarding the substance of anything having to do with the complaint?

MR. SBAITI: Objection, Your Honor. Argumentative.

THE COURT: Overruled.

THE WITNESS: I --

MR. SBAITI: Your Honor, may I just -- one housekeeping. Rather than raise the same objection, may we have a standing objection, just so we're not disruptive, as to the privilege, just for preservation purposes, on the content of these communications? Otherwise, I'll just make the same objections and we can go through it.

THE COURT: Well, disruptive as it may be, I think you need to object to every --

MR. SBAITI: Okay.

THE COURT: -- question you think the privilege applies to.

MR. SBAITI: I will do so. Thank you, Your Honor. Uh-huh.

BY MR. MORRIS:

Q Mr. Dondero, the question was whether you've ever communicated with anybody in the world in writing concerning anything having to do with the complaint?

A Not that I remember.

Q Okay.

MR. MORRIS: I will point out, Your Honor, that last week, when the privilege was asserted, I had requested the production of a privilege log. I was told -- I forget exactly what I was told, but we never received one. I'll just point that out as well.

THE COURT: Okay.

BY MR. MORRIS:

Q You provided comments to the drafts of the complaint before it was filed, correct?

A Yes, a few.

Q Can you describe for the Court all of the comments that you provided to earlier drafts of the complaint?

MR. SBAITI: Your Honor, we object on the basis of privilege and work product and joint -- joint interest

privilege.

THE COURT: Overruled.

THE WITNESS: It's along the lines of things I've said in this court several times. The obligations under the Advisers Act cannot be negotiated away and they cannot be waived by the people involved, full stop. I remember giving the -- Mazin the example of the only reason why we're in a bankruptcy is from an arbitration award that, even though we did what was in the best interests of the investors, we got the investors out more than whole over an extended period of time, they got an arbitration award that said when we purchased some of the secondary interests we should have offered them up to the other 800 members in the committee besides the -- the 800 investors in the fund besides the eight people on the committee who had approved it and that the committee couldn't approve a settlement that went against the Advisers Act and the Advisers Act stipulates specifically that you have to offer it up to other investors before you take an opportunity for yourself. And someday, hell or high water, in this court or some other, we will get justice on that. And that was the primary point that I reminded Mazin about.

BY MR. MORRIS:

Q And that's exactly the conversation you had with Mark Patrick that started this whole thing, correct?

A No.

Q You told Mark Patrick that you believe the Debtor had usurped a corporate opportunity that should have gone to the DAF, didn't you?
A That was not our conversation.
Q So when Mr. Patrick testified to that earlier today, he just got it wrong, right?
A Well, maybe later on, but it wasn't that in the beginning. The beginning, any conversation I had with Mark Patrick in the beginning was smelling a rat in the way that the Debtor had priced the portfolio for HarbourVest.
Q Hmm. So you're the one, again, who started that piece of the discussion as well, correct?
A Started the -- I -- I guess I smelled a rat, but I put the person who could do all the numbers in touch with the Sbaiti firm.
Q And was the rat Mr. Seery?
A Was the rat Mr. Seery? Or the independent board. Or a combination thereof. I believe the independent board knew exactly what Seery was doing with --
Q Do you have any idea --
A -- HarbourVest.
Q Do you have any idea why, why the Sbaiti firm didn't name the whole independent board in the -- in the motion for leave to amend?
A I don't know. Maybe they will at some point.

Q Yeah.
A I don't know.
Q But did you tell the Sbaiti firm that you thought the whole independent board was acting in bad faith and was a rat?
MR. SBAITI: Your Honor, I object on the basis of privilege.
THE COURT: Overruled.
MR. SBAITI: All three.
THE WITNESS: I knew Jim Seery was and I knew Jim Seery had weekly meetings with the other independent board members, so the HarbourVest settlement was significant enough that it would have been approved, but I don't have direct knowledge of their involvement.
BY MR. MORRIS:
Q And so you -- but you believed Jim Seery was certainly a rat, right?
A Oh, I -- there was a defrauding of third-party investors to the tune of not insignificant 30, 40, 50 million bucks, and it was obfuscated, it was -- it was highly obfuscated in the 9019.
Q Did you think Mr. Seery was a rat, sir? Yes or no?
A I believe he had monthly financials. He knew that the numbers presented in the 9019 were wrong. And if that makes him a rat, that makes him a rat. Or maybe he's just being aggressive for the benefit of his incentive or for the estate.

But I -- I believe those things wholeheartedly.

Q Did you tell the Sbaiti firm you thought Jim Seery was a rat?

MR. SBAITI: Objection, Your Honor. Privilege.

THE COURT: Overruled.

THE WITNESS: I -- I don't remember using those words.

BY MR. MORRIS:

Q Did you tell the Sbaiti Firm that you thought Jim Seery had engaged in wrongful conduct?

MR. SBAITI: Your Honor, objection. Privilege.

THE COURT: Overruled.

THE WITNESS: I believe he violated the Advisers Act, and I was clear on that throughout.

BY MR. MORRIS:

Q Listen carefully to my question. Did you tell the Sbaiti firm that you believed that Jim Seery engaged in wrongful conduct?

MR. SBAITI: Objection, Your Honor. Calls for privileged communications.

THE COURT: Overruled.

THE WITNESS: I think I gave the answer. I'll give the same answer. I believe he violated the Advisers Act.

BY MR. MORRIS:

Q What other wrongful conduct did you tell the Sbaiti firm

you thought Mr. Seery had engaged in?

MR. SBAITI: Same objection, Your Honor.

THE COURT: Overruled.

MR. SBAITI: Calls for privileged communications.

THE COURT: Overruled.

THE WITNESS: I -- I just remember the obfuscating and mispricing portfolio violations of the Advisers Act was all I discussed with the Sbaiti firm regarding Seery's behavior.

BY MR. MORRIS:

Q Did you talk to them about coming to this Court under the gatekeeper order to see if you could get permission to sue Mr. Seery?

A I --

MR. SBAITI: Objection, Your Honor. Calls for privileged communication.

THE COURT: Overruled.

THE WITNESS: I wasn't involved in any of the --

BY MR. MORRIS:

Q Did you --

A -- tactical stuff on who to sell or -- who to sue or when or whatever.

Q Did you tell the Sbaiti firm that you thought they should sue Mr. Seery?

MR. SBAITI: Objection, Your Honor. Calls for

privileged communication.

THE COURT: Overruled.

MR. SBAITI: I'll also say, Your Honor, the question is getting a little argumentative.

THE WITNESS: I didn't get directly --

THE COURT: Overruled.

THE WITNESS: I didn't get directly involved in who was -- who was specifically liable.

BY MR. MORRIS:

Q How many times did you speak with the Sbaiti firm concerning the complaint?

A Half a dozen times, maybe.

Q Did you ever meet with them in person?

A I've only met with them in person a couple, three times. And I don't think any of them -- no, it was, excuse me, it was on deposition or other stuff. It wasn't regarding this.

Q Did you send them any information that was related to the complaint?

A I did not.

Q Did you ask anybody to send the Sbaiti firm information that related to the complaint?

A I did not. I -- I was aware that Hunter Covitz was providing the historic detailed knowledge to the firm, but it -- it wasn't -- I don't believe it was me who orchestrated that.

Q Did you talk to anybody at Skyview about the allegations that are contained in the complaint before it was filed?
A I don't -- I don't remember.
Q Have you ever talked to Isaac Leventon or Scott Ellington about the allegations in the complaint?
A No. They weren't involved.
Q How about -- how about D.C. Sauter? You ever speak to him about it?
A I don't --

MR. TAYLOR: Objection, Your Honor.

THE WITNESS: I don't remember.

MR. TAYLOR: At this point, D.C. Sauter is indeed an employee of Skybridge and is a general counsel for some of the entities which he worked for. And to the extent he's trying to ask for those communications, that would be invasion of the privilege.

MR. MORRIS: I'll withdraw it, Your Honor. That's fair.

THE COURT: Okay

MR. MORRIS: That's fair.

THE COURT: Question withdrawn.

THE WITNESS: I thought you only had eight more questions.

MR. MORRIS: Opened the door.

BY MR. MORRIS:

Q Can you describe the general fact -- withdrawn. You provided facts and ideas to the Sbaiti firm in connection with your review of the draft complaint, correct?
A Ideas and proofreading.
Q Anything beyond what you haven't described already?
A Nope.
Q Okay. Who is your primary contact at the Sbaiti firm, if you had one?
A Mazin.
Q Okay. Did you suggest to Mr. Sbaiti that Mr. Seery should be named as a defendant in the lawsuit before it was filed?
MR. SBAITI: Your Honor, calls for privileged communication. We object --
THE COURT: Overruled.
MR. SBAITI: -- to that answer.
MR. SBAITI: Okay.
THE WITNESS: Again, no. I wasn't involved with the tactics on who would be defendants and when or if other people would be added.
BY MR. MORRIS:
Q Did you -- are familiar with the motion to amend that was filed by the Sbaiti firm?
A I'm more familiar with it after today --
Q Right.
A -- than I was before.

Q And were you aware that that motion was going to be filed prior to the time that it actually was filed?
A I -- I don't remember. Probably.
Q And who would have been the source of that information? Would that have been Mr. Sbaiti?
A Yes.
Q Okay. And did you express any support for the decision to file the motion for leave to amend in the District Court?
A I -- I wasn't involved. It was very complicated legal preservation conver... -- I wasn't involved. I knew the conversations were going on between different lawyers, but I wasn't involved in the ultimate decision. I didn't encourage, applaud, or even know exactly what court it was going to be filed in.

MR. MORRIS: All right. I have no further questions, Your Honor.

THE COURT: All right. Pass the witness.

MR. ANDERSON: We have no questions, Your Honor.

THE COURT: Okay. Any questions from Respondents?

MR. SBAITI: No questions.

THE COURT: Okay. Mr. Taylor?

CROSS-EXAMINATION

BY MR. TAYLOR:
Q Mr. Dondero, --

A Yes, sir.
Q -- you are not the authorized representative of CLO Holdco, are you?
A No.
Q You're not the authorized representative for the DAF, are you?
A No.
Q Do you know who that person is as we sit here today?
A Yes.
Q Who is that?
A Mark Patrick.
Q Thank you.

MR. TAYLOR: No further questions.

THE COURT: Any redirect on that cross?

MR. MORRIS: I do not, Your Honor. I would just like to finish up the Debtor's case in chief by moving my exhibits into evidence.

THE COURT: Okay. Mr. Dondero, you're excused.

(The witness steps down.)

THE COURT: All right. So you have no more witnesses; you're just going to offer exhibits?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay.

MR. MORRIS: So, at Docket #2410, --

THE COURT: Uh-huh.

MR. MORRIS: -- the Court will find Exhibits 1 through 53.

THE COURT: Uh-huh.

MR. MORRIS: In advance, Your Honor, I've conferred with the Respondents' counsel. They had previously objected to Exhibits 15 and 16, which I believe were the Grant Scott deposition transcripts. They objected to them on the grounds of lack of completeness because I had taken the time to make deposition designations, but I'm happy to put the entirety of both transcripts into evidence, and I hope that that will remove the objections to Exhibits 15 and 16.

THE COURT: All right. Before we confirm, let's just make sure we have the right one.

MR. MORRIS: Oh, I apologize.

THE COURT: I have 16 as the July order.

MR. MORRIS: I apologize. You're absolutely right, Your Honor. What I was referring to was -- oh, goodness. One second. (Pause.) I was referring to Exhibits 23 and 24. Those are Mr. Scott's deposition designations. They had lodged an informal objection with me on grounds of completeness. And in order to resolve that objection, we're happy to put the entirety of both transcripts in.

THE COURT: All right. So if our Respondents could confirm with the agreement to put in the entire depos at 23 and 24, you stipulate to 1 through 53?

MR. PHILLIPS: We also -- Your Honor, --

MR. MORRIS: Yeah, I was going to take them one at a time. Just take those two.

MR. PHILLIPS: Yeah, can we just take those two? Confirmed?

MR. MORRIS: Okay.

THE COURT: Oh, okay.

MR. PHILLIPS: Because there are other -- there are other -- we exchanged objections to each other's witness and exhibit lists. And so I think you can handle the rest of them kind of in a bunch, right?

MR. MORRIS: Yeah. Yeah, there's two bunches, actually.

MR. PHILLIPS: Yeah.

THE COURT: Okay. So you have just now stipulated to 23 and 24 being admitted --

MR. MORRIS: Correct.

THE COURT: -- with the full depos? Okay.

MR. PHILLIPS: Yes, ma'am. Thank you.

THE COURT: All right.

(Debtor's Exhibits 23 and 24 are received into evidence.)

MR. MORRIS: And then the next two that they objected to are Exhibits 15 and 16. 15 is the January order and 16 is the July order. They objected on relevance grounds. I think 16 -- these are the two orders that the Debtors contend the

Respondents have violated, so I don't understand the relevance objection, but that's what it was and that's my response.

MR. PHILLIPS: Resolved, Your Honor.

THE COURT: Okay. 15 and 16 are admitted.

(Debtor's Exhibits 15 and 16 are received into evidence.)

MR. MORRIS: Okay. And then the last objection relates to a group of exhibits. They're Exhibits 1 through 11. Those exhibits I think either come in together or stay out together. They are exhibits that relate to the HarbourVest proceedings, including deposition notices, including I think the transcript from the hearing, the Court's order, the motion that was filed.

The Debtor believes that those documents are relevant because they go right to the issue of the gatekeeper order and had they filed, had the Respondents followed the gatekeeper order, this is -- this is why they didn't do it. You know what I mean? That's the argument, is that the Respondents, one of the reasons the Respondents -- argument -- one of the reasons the Respondents didn't come to this Court is because they knew this Court had that kind of record before it. And I think that's very relevant.

THE COURT: All right. Response?

MR. PHILLIPS: Your Honor, we think that these exhibits are not relevant. We have a very focused, we think, -- we have the Court's order. Those objections are withdrawn.

We have the complaint. We have the motion to amend. And the issue is whether the motion to amend, which was dismissed one day, or the next day after it was filed, constitutes criminal -- constitutes contempt.

So we think the prior proceedings go to their underlying argument, which is the lawsuit or the complaint is no good, and that has nothing to do with -- there's been no foundation laid and it's not relevant what happened in connection with the HarbourVest settlement. It is what it is, and there's no dispute that it is what it is, but it's not relevant to establish any type of -- they've even said intent is not even relevant here. So we -- that's -- we think all of that goes out and simplifies the record, because it has nothing to do with whether or not there was a contempt.

THE COURT: Response?

MR. MORRIS: We withdraw the exhibits, Your Honor. I'm just going to make it simple for the Court.

THE COURT: Okay.

MR. MORRIS: I'm just going to make it simple for the Court.

THE COURT: 1 through 11 are withdrawn.

(Debtor's Exhibits 1 through 11 are withdrawn.)

MR. MORRIS: So, the balance, there was no objection. So all of the Debtor's exhibits on Docket #2410 -- let me restate that. Exhibits 12 through 53 no longer have an

objection. Is that correct?

MR. PHILLIPS: Yes.

MR. MORRIS: Okay. And then --

MR. PHILLIPS: Confirmed.

THE COURT: Okay.

(Debtor's Exhibits 12 through 53 are received into evidence.)

MR. MORRIS: Okay. Thank you. And then we filed an amended list, I believe, yesterday --

THE COURT: Uh-huh.

MR. MORRIS: -- to add Exhibits 40 -- 54 and 55.

THE COURT: Uh-huh.

MR. MORRIS: And those exhibits are simply my firm's billing records.

THE COURT: Okay.

MR. MORRIS: You know, we added Mr. Demo to the witness list in case there was a need to establish a foundation. That's the only thing he would testify to. I don't know if there's an objection to those two exhibits, because we hadn't had an opportunity to confer.

THE COURT: Any objection?

MR. PHILLIPS: Your Honor, we're not going to require authenticity and foundation for -- we have the right, we think, to say that they're not a ground -- we're not going to challenge that they are the bills, and the bills say what they

say. We don't need Mr. -- we don't need a witness to authenticate those exhibits. But we reserve all substantive rights with respect to the effect of those exhibits.

THE COURT: All right. 54 and 55 are admitted.

(Debtor's Exhibits 54 and 55 are received into evidence.)

MR. MORRIS: And with that, Your Honor, the Debtor rests.

THE COURT: Okay. All right. Respondents?

(Counsel confer.)

MR. PHILLIPS: If I could have a second?

THE COURT: Okay.

A VOICE: Sorry, Your Honor.

(Pause.)

MR. PHILLIPS: Your Honor, we have filed in our witness and exhibit list, and I have to say I don't have the number, but we'll get the docket entry number, but we have 44 exhibits. There's an objection to Exhibit #2, which is -- thank you -- it's Document 2411, Your Honor. Thank you.

THE COURT: Uh-huh.

MR. PHILLIPS: There is a pending objection to Exhibit #2 which we have not resolved. There's no objection to any other exhibit. But in reviewing our exhibit list, I found that we had some -- some mistakes and duplications.

So, with respect to 2411, we would withdraw Exhibit 13, 14, and 29, and we would offer Exhibit 1, and then 30 through

44, with 13, 14, and 29 deleted.

THE COURT: Okay. So 1, 3 through 12, --

MR. PHILLIPS: Yes.

THE COURT: -- 15 through 28, and then 30 --

MR. PHILLIPS: And then 30 through 44.

THE COURT: -- through 44? Do you confirm, Mr. Morris?

MR. MORRIS: Yes, Your Honor. The only objection we have is to Exhibit #2.

THE COURT: And that's -- he's not offering that?

MR. MORRIS: Yeah.

MR. PHILLIPS: Not at this time, Your Honor.

THE COURT: Okay.

MR. PHILLIPS: We would have to have testimony about that.

THE COURT: Okay. All right. So those are admitted.

MR. PHILLIPS: Okay.

(Mark Patrick's Exhibits 1, 3 through 12, 15 through 28, and 30 through 44 are received into evidence.)

THE COURT: By the way, it looks like Exhibit 44 is at a different docket number, Docket 2420. Correct? You have --

MR. SBAITI: Your Honor, I believe Exhibit 44 is the hearing transcript from the July approval hearing. At least that's what it's supposed to be.

THE COURT: Okay.

MR. SBAITI: It was Exhibit 2 on the Debtor's list, and then I think they took it off, so we had to add it.

MR. PHILLIPS: Oh, okay. I was looking -- oh, that's right. They -- that's correct, Your Honor.

THE COURT: Okay.

MR. PHILLIPS: Exhibit 44 was added --

THE COURT: Okay.

MR. PHILLIPS: -- because the Debtor's withdrew it, and so it was added in the second -- in the supplemental and amended list. The -- the one that I was talking about was the prior list.

THE COURT: Okay. So that's at Docket 2420?

MR. PHILLIPS: Yes.

THE COURT: You're not offering 45 or 46?

MR. PHILLIPS: No, I think we'd offer 45 and 46 as well. I'm sorry.

THE COURT: Okay. Any objections, Mr. Morris?

MR. MORRIS: No, Your Honor.

THE COURT: Okay. So 45 and 46 are admitted as well. They're at Docket Entry 2420.

(Mark Patrick's Exhibits 45 and 46 are received into evidence.)

THE COURT: All right. Your witnesses?

MR. PHILLIPS: Your Honor, could we have five minutes

to just see what we're -- our plan is, and then we'll be back at 4:00?

THE COURT: Okay. We'll be back at 4:00.

MR. PHILLIPS: Thank you.

THE CLERK: All rise.

(A recess ensued from 3:55 p.m. until 4:04 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. Back on the record in Highland. Mr. Phillips?

MR. PHILLIPS: Your Honor, with the introduction of the Respondents -- CLO Holdco, DAF Fund, LP, and Mark Patrick, those Respondents, and we consider Mark Patrick a Respondent although not formally named as a Respondent because he is the party who authorized the filing of the Seery motion -- we rest.

THE COURT: You rest? Okay. Well, Mr. Morris, closing arguments?

MR. MORRIS: How much time do I have?

THE COURT: You've got a lot more time than you probably thought you were going to. You're under an hour.

MR. MORRIS: 42 minutes?

THE COURT: How much?

THE CLERK: 42 minutes.

THE COURT: 42 minutes? Feel free not to use it all.

MR. SBAITI: Out of curiosity, how long do we have?

THE COURT: You have a lot of time, which I hope you won't use.

THE CLERK: Hour and twenty-five minutes or so.

MR. SBAITI: I was afraid it was going to be an hour and twenty, so --

MR. PHILLIPS: No, not either.

MR. MORRIS: I don't suspect I'll use all the time.

THE COURT: Okay. Thank you.

MR. MORRIS: May I proceed?

THE COURT: You may.

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Good afternoon, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for the Debtor. I'd like to just make some closing remarks after the evidence has closed.

This is a very, very important motion, Your Honor. I take this stuff seriously. It's only the second contempt motion I've ever brought in my life. I've never gone after another law firm. But these facts and circumstances require it, because my client is under attack, and these orders were entered to prevent that.

It is serious stuff. There's no question in my mind, there's no question the evidence showed, clear and convincingly, beyond reasonable doubt, that they violated this Court's order.

I started off with three very simple prongs. So simple you'd think I'd remember them. Number one, was a court order in effect? There is no dispute. The court order was in effect.

Number two, did the order require certain conduct by the Respondent? We believe it did. We heard an hour-long argument styled as an opening statement, but it was really argument and not an opening statement, about all the defects in the order. But the one thing that is crystal clear in the order are the words commence or pursue. You've been told many times by the Respondent that nobody has commenced an action against Mr. Seery. That is true. We all know what the word commence means. We all know what the word pursue means.

I heard argument this morning that pursue means after a claim is filed you pursue a case. That's the way lawyers talk about it. But that doesn't make any sense, Your Honor, because once you've commenced the action you've violated the order. It's commence or pursue, it's in the disjunctive, and you can't read out of the order the concept of pursuit by making it an event that happens after the commencement, because that's exactly what they're trying to do. They're trying to read out of the order the word pursuit.

And I ask you to use very simple common sense. If filing a motion for leave to amend a complaint to add Mr. Seery as a defendant is not pursuit, what is? What is? There's nothing

left. You commence an action or you do something less than commencing an action when you're going after the man. That's what pursuit means. They're going after the man. And they asked the District Court to do what they knew they couldn't.

Mr. Phillips is exactly right. I made the point about Rule 15 because they knew they couldn't do it. I'm not suggesting that they should have. I'm suggesting that the reason that they didn't is because they knew they were -- they were in a bad place. Because if they really just wanted to name Mr. Seery as a defendant, they wouldn't have done it. They knew commence was crystal clear.

What they're trying to do is claim that somehow there's an ambiguity around the word pursuit. Does that make any sense at all? Filing a motion for leave to amend the complaint. And Mr. Patrick, to his credit, candidly admitted that if the motion was granted, they were suing, yeah, as long -- as long as the Sbaiti firm, you know, recommended it. That's what would have happened.

Those orders that you signed, nothing, absolutely meaningless from their point of view. They believed they were wrong. They believed that they were overbroad. They believed they were too narrow. They believed they were vague. They believed they were without authority. They don't get to be the gatekeeper. They want to be the gate -- that's this Court's decision. That's why we went through all of the

processes that we did. And they just flagrantly said, I don't agree. I don't agree because it's wrong this way and it's wrong that way and it's wrong the other way, and therefore let me go find a higher authority to validate my thinking. That's not the way this process is supposed to work.

The independent directors and Mr. Seery relied on the gatekeeper in accepting their positions. It was a quid pro quo. Mr. Dondero agreed to the exact same provision, the exact same gatekeeper provision in the January order that he now complains about today, that the DAF complains about today. Where were these people?

As the Court knows, nobody appealed either order. The Debtor, the independent board, Mr. Seery expected that the plain and unambiguous words would be honored and enforced. I think that's fair. I think that's the way the process is supposed to work.

Instead, we have games. We have these linguistic gymnastics. We have statements that are too cute by half. Mr. Dondero won't even admit that he appointed Mr. Scott back in 2012. I couldn't even get him to do that, really, even though the documents say it, even though Mr. Patrick says it.

I'll take the Respondents one at a time in a moment, but I just want to deal with some of the more interesting arguments they make. The order was vague because it didn't say you can't seek leave from the District Court to amend your

complaint to add Mr. Seery. They said that that's what makes the order vague.

Your Honor, if you had thought to put that language in, you know what they would have done? They would have sued Mr. Seery in New York State Supreme Court, where he lives, and said, the order didn't say I couldn't do that. Where does it end?

There's a reason why the order was crafted broadly to say no commencement or pursuit without Bankruptcy Court approval. You have to bring a colorable claim.

We heard an argument this morning that they couldn't possibly have brought that motion for reconsideration first. You know, the one they filed about eight hours after we filed the contempt motion. They couldn't possibly have brought that motion before the motion for leave to amend because somehow they would have been estopped or they would have been found to have waived some right.

How could it be that anybody reasonably believes that complying with a court order results in a waiver of some right? It just -- these are games. These are not good arguments. And they certainly don't carry the day on a contempt motion.

We've heard repeatedly, the District Court denied the motion without prejudice, how have you been harmed? They shouldn't be able to rely on the District Court's prudence to

protect themselves. The question shouldn't be, have you been harmed since the District Court didn't grant the motion? No. The question should be, were we harmed by the attempt to name Mr. Seery a defendant, in violation of court orders, without notice? Without notice.

I'm told they assumed that I'd be checking the dockets. I wasn't checking the docket, Your Honor. I hadn't filed an appearance in the case. And, in fact, if you look at the exhibits, because I could pull it out, but we put in the communications between the lawyers. The last communication was from Mr. Pomerantz, and the last communication from Mr. Pomerantz said, Don't do it or we're going to file a motion for contempt. That's now in the evidence.

So, having sent that message, I wasn't going to check the docket to see if they really were going to go ahead and do it. I didn't think they would. And if they did, I certainly thought I'd get notice of it. Nothing.

And, again, I don't really need to establish intent at all in order to meet my burden of clear and convincing evidence of a contempt of court, but I think it is relevant when the Court hopefully finds liability and is considering damages, because that's really the most important point I have to make right now, is the Court needs to enforce its own orders, because if the Court doesn't, or doesn't impose a penalty that's meaningful, this is just going to continue. And Your Honor,

it's all in the record. Your Honor knows this. Mr. Daugherty has gone through it. Right? Mr. Terry went through it. UBS went through it. You've seen litigation now for a year and a half. It's happening in New York, right, the Sbaiti firm is reopening the Acis case. we've got this other lawsuit that's filed by an entity with like a five-tenths of one percent interest who's complaining about the SSP transaction that Mr. -- that the Debtor engaged in. There's no end here.

We need the Court to pump the brakes. We need the Court to exercise its authority. We need the Court to protect the estate fiduciary that it approved.

It is true, Mr. Seery is not a trustee. But it is also true that he is a third-party outsider who came into this case with the expectation and the promise in an order that he wouldn't be subjected to frivolous litigation, that this Court would be the arbiter of whether claims could be pursued against him. That was the code of conduct. That was the quid pro quo. That was the deal that Mr. Seery made. It's the deal that the board members made.

What gives these people the right to just say, your order is wrong, and because I think your order is wrong I'm going to go to the District Court, and if the District Court agrees, too bad, and if the District Court doesn't agree, we'll be back before Your Honor, and no harm, no foul? No. It can't be. It can't be that that's the way this process works. It

just can't.

So, Your Honor, let me take the Defendants one at a time, the Respondents one at a time. CLO Holdco and the DAF are corporate entities. They've done what they've done. Mr. Patrick, bless him, I think he's a lovely man. I don't think he quite bargained for what he's getting right now, but nevertheless he is where he is and he's willing to stand up and be counted, and for that, at least, I admire his courage. He's willing to say, I authorized those. But you know what? It's a violation of the law, it's a violation of this Court's order to file that motion, and so he has -- and he was very candid today. He knew of the order. Right? He knew it was in effect. He pointed out that it was in their papers. Right?

They're trying to be cute, they're trying to thread this needle, but it has no hole in it. They keep -- they keep doing this. Well, maybe if we do it this way, maybe if we do it -- no. The order was crystal clear.

The Sbaiti firm. They're probably fathers and husbands and good people and I wish them no ill will, but this is wrong. This is wrong. To come into a court you've never been in before and in less than twelve days to jump the shark like this in twelve -- in less than twelve days, because Mr. Patrick said they weren't hired until April, and the complaint was filed on the 12th.

We're told that they understood this was an overwhelming case with two -- why don't you take your time? What was the rush? Why not wait until the Defendant -- the Debtor appeared in the action before rushing to do this?

It's bad conduct, Your Honor, and that's really a very important point that I have to make, is that there's lots of lawyers who are engaging in highly-questionable conduct here that, from my perspective, goes well beyond the bounds of zealous advocacy.

It's not aggressive lawyering. I love aggressive lawyering. I really do. Respectful, honest -- and I don't, you know, I don't want to say that they're dishonest people. I don't mean to do that. But I think, I think they made a gross error in judgment, and there's no question that they violated this Court's order.

And then that leaves Mr. Dondero. I don't even know what to say about his testimony, Your Honor. He pursued claims against Mr. Seery. He thinks he's a rat. He's the one who started the whole process. He's the one who put the bug in Mark Patrick's ear. All of this is uncontested. Right? Uncontested.

I don't have to go back in time. We can talk about what happened to Grant Scott. It's a very sad story. Mr. Scott, I think, did his honest best to do what he believed, on the advice of counsel, was in the best interest of the DAF. And

Mr. Dondero, as you hear time and time again when he speaks about Mr. Seery, it was inappropriate. He's the arbiter of what's in the best interest of entities that other people control. And they pay a price. And they pay a price. And so Mr. Dondero felt it was his job, even though he tries to distance himself from the DAF -- I have no responsibility, I don't -- I'm not involved -- until, until somebody wants to sue Seery and the Debtor. Then he'll go all in on that, no matter how specious the claim may be.

The Debtor's not going to fold its tent because a motion for leave to amend was denied without prejudice. That's not the point. The point is that people need to respect this Court, people need to respect the Court's orders, and those that aid and abet or otherwise support the violation of court orders ought to be held to account, Your Honor.

I have nothing further.

THE COURT: All right. Thank you. Respondents?

CLOSING ARGUMENT ON BEHALF OF THE RESPONDENTS

MR. SBAITI: Your Honor, the fact that we're here on a motion for leave, and the motion for leave is what they're saying is pursuing a claim under the Court's order, and then you hear that the mere act of investigating a claim against Mr. Seery is also pursuing a claim, this goes to the infinite regression problem with this word pursue the way they want to construe it, Your Honor. Asking for permission is not

pursuing a claim and can't be the definition of pursuing a claim because it's not doing anything other than asking for permission.

We didn't file a suit. We didn't commence a suit. I think that's established. We did not pursue a claim. Mr. Morris ignores, I think, the very commonsensical aspect that we put out in the opening, which is that the reason pursue -- and sometimes the language in these types of orders is, instead of pursue, it's maintain -- but the reason that word is there is because sometimes the case has already been started when the order is entered. And so to pursue a claim, *i.e.*, one that's already been filed as of the date of the order, that would be lost if the commencement of that claim hadn't happened until after the -- until the -- if the commencement happened before the order was filed. That's the --

THE COURT: Okay. So are you saying it's a sequential thing?

MR. SBAITI: I'm not sure I understood your question, Your Honor. I'm sorry.

THE COURT: Well, I'm trying to understand what it is you're saying about how pursue should be interpreted.

MR. SBAITI: Sure.

THE COURT: I think you're saying you have to -- you can either have -- well, we've got a prohibition on commencing

an action.

MR. SBAITI: Yes.

THE COURT: And then the separate word pursue, I think you're saying that must refer to you already have an action that's been commenced and you're continuing on with it. Is that what you're saying?

MR. SBAITI: Yes, Your Honor.

THE COURT: Then why not use the word continue?

MR. SBAITI: Well, Your Honor, the choice of --

THE COURT: Kind of like 362(a) of the Bankruptcy Code, you know, is worded.

MR. SBAITI: Well, Your Honor, the choice of the wording of pursue at that point, Your Honor, I believe ends up being ambiguous, because by filing the motion here that would be pursuing a claim under that definition. So before I got permission to pursue a claim, I've got to pursue a claim. That's the problem that they have with the words that they're trying to get you to adopt, or the meaning of the words they're trying to get you to adopt.

If I came to this Court and said, Judge, I need permission, I need leave to file suit against Mr. Seery, and then the question is, well, you're not allowed to seek leave because that's pursuing the claim, it's infinitely regressive. And in fact, his closing argument just proved how it's infinitely regressive.

THE COURT: Okay. Let me -- I'm not following this infinitely regressive or whatever the term was.

MR. SBAITI: Yes.

THE COURT: Just answer this very direct question. Why did you not file a motion for leave in the Bankruptcy Court? That would have clearly, clearly complied with the July order.

MR. SBAITI: Your Honor, I believe we explained this in the opening. I took a stab at it. Mr. Bridges took a stab at it. We did not believe coming here and asking for leave and asking for -- for Your Honor to do what we don't believe Your Honor can do, would effectuate an estoppel or a waiver, which we didn't think was in the best interest of our client to have. Your Honor, this happens -- I don't believe this is the --

THE COURT: Okay. Connect the dots. Make that clear as clear can be for me. You file a motion for leave --

MR. SBAITI: Yes.

THE COURT: -- to file this District Court action against the Debtor and Seery, and if I say yes, everything is fine and dandy from your perspective. If I say no, tell me again what your estoppel argument is.

MR. SBAITI: Your Honor, the key question is whether us putting the Court's ability to decide colorability and the Court's gatekeeper functions, for us to invoke those functions

concerned us because there's case law that says that that effectuates an estoppel. And so we don't get our chance in front of an Article III judge to make that in the first instance.

THE COURT: Okay. Tell me what cases you're talking about and the exact context of those cases.

MR. SBAITI: Your Honor, I would have to defer to my partner on this one, Your Honor.

THE COURT: Okay.

MR. SBAITI: So, --

THE COURT: Because I'm just letting you know --

MR. SBAITI: Yes.

THE COURT: -- I am at a complete loss. I'm at a complete loss understanding what you're saying. I am.

MR. SBAITI: Well, Your Honor, the --

THE COURT: I don't understand. If you have followed the order to the letter and I tell you no, --

MR. SBAITI: Then --

THE COURT: -- what, you're saying you were worried you'd be estopped from appealing my order to the District Court and saying abuse of discretion or invalid order in the first place? You'd be estopped from taking an appeal?

MR. SBAITI: No, Your Honor. We wouldn't be estopped from taking an appeal.

THE COURT: Then why didn't you follow the letter of

the order?

MR. SBAITI: For one thing, Your Honor, asking the District Court made sense to us, given the order and given our understanding of the law. Certainly, we had other options, as Your Honor is pointing out. We could have come here. Our read of the law, our understanding of what we were doing, made it -- put us in, like I said, put us in the sort of jurisdictional and paradoxical position.

THE COURT: This is your chance to tell me exactly which law you think applies here. What case? What statute?

MR. SBAITI: Your Honor, like I said, I don't have those at the moment.

THE COURT: Why not? Your whole argument rides on this, apparently.

MR. SBAITI: Well, Your Honor, I don't know that our whole argument rides on that.

THE COURT: Okay.

MR. SBAITI: I mean, our argument rides on we don't think we violated the letter of the order. I think that's really what I'm -- what we're here to say, is that we didn't commence a lawsuit and we didn't pursue a claim by filing for leave in the District Court, just like filing for leave in this Court would not be pursuing a claim. It would be filing for leave.

THE COURT: I agree. Filing a motion for leave in

this Court would be exactly what the order contemplated.

MR. SBAITI: I understand, Your Honor.

THE COURT: What you did is not exactly what the order contemplated.

MR. SBAITI: Your Honor, but we're -- we're moving back and forth between two concepts. One, your question is why didn't we file for leave?

THE COURT: Uh-huh.

MR. SBAITI: And the answer to that, I've tried to explain. And if we -- if you'd like us to bring up the case law or to give you a better articulation of our concern, I'm happy to defer to my partner.

What I'm really here to say, Your Honor, is a very simple point, though. Just because we didn't file for leave here and we filed for leave in the District Court doesn't mean we violated your order, and that's the point I'm trying to make, Your Honor. And I think that's the simplest point I can make. Asking the Article III judge for leave to amend, for leave to amend to add Mr. Seery, doesn't violate, facially, at least as we read it, Your Honor's order. It's not commencing a suit and it's not -- it's not pursuing a claim against him. It's all preliminary to pursuing a claim against him, because a claim hasn't even been filed.

The judge could have -- the judge could have -- the District Court could have denied it, the District Court could

have referred it down here, the District Court could have decided part of it and then asked Your Honor to rule on some portion of it. There are innumerable ways that could have gone. That fork -- those forks in the road is precisely why we say this is not pursuing the claim. Otherwise, where does it stop?

Does pursuing a claim happen just when we file the motion for leave? Why didn't it happen when we started the investigation? If pursuing a claim means having the intent and taking steps towards eventually filing a lawsuit, that's the point that I'm making that it is infinitely regressive, and that's exactly what Mr. Morris argued to you.

He said Mr. Dondero, by merely speaking to me, is pursuing a claim and that violates your order. Speaking to me. Even if we had never filed it. Speaking is pursuing a claim.

THE COURT: I don't agree with that, for what it's worth.

MR. SBAITI: Okay. But that was his argument. I'm just responding to it.

THE COURT: Okay.

MR. SBAITI: And if that's not pursuing a claim, filing a motion for leave likewise wouldn't be pursuing a claim. I understand it's an official act in a court, but we did it in a Court that is an adjutant to this Court. This Court is an adjutant to that Court. It's the Court with

original jurisdiction over the matter. So we didn't go to New York. We didn't go to the state court in New York where I learned Mr. Seery lives. We came to the Northern District of Texas, understanding that this Court and this Court's orders had to be -- had to be addressed. And that's the very first thing we did. We asked the Court to address it.

That judge could either decide to send it down here, which is normally what I think -- what we understood would happen. So it's not like we were avoiding it. But we wanted to invoke the jurisdiction which we, as the Plaintiff, we believe we had the right to invoke. We're allowed to choose our forum. So that's the forum we chose for the primary case, which there's not a problem, no one's raised an issue with us filing the underlying lawsuit.

Adding Mr. Seery to that lawsuit and filing a motion for leave in the same court where we actually had the lawsuit, knowing that it might get -- that might get decided or referred in some way, doesn't strike me as being anything improper, because he didn't get sued and we don't know what Judge Boyle would have said had the motion gone forward. And for them to speculate and to say that, well, this is exactly the type of thing you have to protect against, I completely disagree.

The case law that they cited for you on these -- on most of these orders really do discuss the fact that you have

somebody who is actually protecting the underlying property of the Debtor. This claim comes from a complete third party that Mr. Seery himself has admitted under oath he owes a fiduciary duty to. Two third parties. One is an investor of a fund that he manages, and one to a fund that the Debtor, with Mr. Seery as the head of it, was an advisor for up until recently.

Those fiduciary duties exist. We felt like there was a valid claim to be brought against Mr. Seery. And the only reason -- and he says this like it's a negative; I view it as a positive -- the reason he wasn't named is because of Your Honor's orders. And so we asked a Court, the Court with general jurisdiction, to address it for us or to tell us what to do. And I don't see how that is a violation of this Court's order, nor is it contemptuous of this Court's order.

If every time one of these issues came up it was a contempt of the court that appointed a trustee, we'd see a lot more contempt orders.

Interestingly, the cases that were thrown out to you in the opening argument by the other side, for example, *Villages* [sic] *v. Schmidt*, was a trustee case, but not one that involved a sanction. And the trustee case specifically in that case held that the Barton Doctrine didn't have an exception for *Stern* cases, whereas the cases we cited to you, *Anderson*, for example, in the Fifth Circuit, which is 520 F.2d 1027, expressly held that Section 959 is an exception to the

Barton Doctrine.

And my partner, Mr. Bridges, can walk through the issues that we had on the enforceability of the order, but all -- to me, all of that is sort of a secondary issue because, *prima facie*, we didn't violate this order. I understand it may irritate the Debtor and may raise questions about why the motion wasn't filed here versus the District Court. But it was a motion for leave. In order to sanction us, Your Honor would have to find that asking for permission is sanctionable conduct in the gatekeeper order. Even if we ask the wrong court. Simply asking the wrong court is sanctionable, not knowing what that court would have done, not knowing what that court's mindset was, not even having the benefit of the argument. And that's, I guess, where this bottom -- the bottom line is for me.

The evidence that they put on for you, Your Honor. Everything you heard was evidence in the negative. You know, they talk about the transition from Mr. Dondero to Mr. Scott and Mr. Scott to Mr. Patrick, but if you actually look at the evidence he wants you to see and he wants you to rule on, it's the evidence that wasn't there. It's the evidence that Mr. Dondero had no control. In fact, I believe that was the basis he argued for why there should be no privilege. And all he said is that he was promoting it.

But the fact of the matter is, like I said, all of that is

secondary to the core issue that we didn't violate the order. We didn't take steps to violate the order. We took steps to try to not violate the order. And they want you to punish us to send a message. Even used words like the Court needs to enforce its own orders. And he did that as a transition away from the idea that there were no damages, Your Honor, and I think that has implications.

And then he said you have to enforce a meaningful penalty. Well, Your Honor, I don't think that is the purpose of these sanctions. These sanctions are supposed to be remedial, according to the case law, according to the case law that they cite. So a meaningful --

THE COURT: Coercive or remedial.

MR. SBAITI: Sorry?

THE COURT: Coercive or remedial. Civil contempt.

MR. SBAITI: Sure, Your Honor. But usually coercive sanctions require someone to do something or they are sanctioned until they do it.

THE COURT: Coerced compliance. Coerced compliance --

MR. SBAITI: Yes.

THE COURT: -- with an existing order.

MR. SBAITI: Yes.

THE COURT: Uh-huh.

MR. SBAITI: The last thing, he says you have to

protect the estate of the fiduciary and his expectation -- I believe he's talking about Mr. Seery -- his expectation that the Court would be the gatekeeper. And Your Honor, that argument rings a little bit hollow here, given that what they're really saying is that we should have come here first and asked for permission. But that insinuates that, by coming here, the case is dead on arrival, which I don't think is the right argument.

I think the issue for us has been, who do we have to ask and who can we ask to deal with the Court's gatekeeper order? I believe we chose a court, a proper court, a court with jurisdiction, to hear the issue and decide the issue. Your Court's -- Your Honor's indication of the jurisdiction of this Court we believed invoked the District Court's jurisdiction at the same time.

And so the last thing is he said -- the last thing, and getting back to the core issue, is Mr. Morris wants you to believe that we intended to violate the order, and now, as an afterthought, we're using linguistic gymnastics to get around all of that. But it's not linguistic gymnastics. Linguistic gymnastics is saying that pursue means doing anything in pursuit of a claim. That's a little -- I believe that's almost a direct quote. They're chasing the man. Well, that's the infinite regression that I talked about, Your Honor, that it's going to be impossible in any principled way to reconcile

Mr. Morris's or the Debtor's definition of pursue with any logical, reasonable limitation that is readable into the order, Your Honor.

And I'm going to defer to my partner, Mr. Bridges -- oh, go ahead.

THE COURT: I'm going to stop you. I mean, we have the linguistic argument. But how do you respond to this?

MR. SBAITI: Sure.

THE COURT: What if I tell you, in my gut, this appears to be an end run? An end run. I mean, I'm stating something that should be obvious, right? An end run around this Court. This Court spent hours, probably, reading a motion to compromise issues with HarbourVest, issues between the Debtor and HarbourVest. I had objections. An objection from CLO Holdco that was very document-oriented, as I recall. Right of first refusal. HarbourVest can't transfer its 49.98 percent interest in HCLOF, right? Talk about alphabet soup. We definitely have it.

MR. SBAITI: Yes.

THE COURT: Without giving CLO Holdco the first right to buy those assets. Read pleadings. Law clerk and I stay up late. And then, you know, we get to the hearing and there's the withdrawal -- we heard a little bit about that today -- withdrawal of the objection. We kind of confirmed that two or three different ways on the record. And then I remember going

to Mr. Draper, who represents the Dugaboy and Get Good Trusts. You know, are you challenging the legal propriety of doing this? And he backed off any objection.

So the Court ended up having a hearing where we went through what I would call the standard 9019 prove-up, where we looked at was it in the best interest, was it fair and equitable given all the risks, rewards, dah, dah, dah, dah. You know, HarbourVest had initially, you know, started at a $300 million proof of claim, eye-popping, but this all put to bed a very complicated claim.

MR. SBAITI: Yeah.

THE COURT: Tell me something that would make me feel better about what is, in my core, in my gut, that this is just a big, giant end run around the Bankruptcy Court approval of the HarbourVest settlement, which is not on appeal, right? There are a gazillion appeals in this case, but I don't think the HarbourVest --

A VOICE: It is on -- it is on appeal, Your Honor.

THE COURT: Is it? Oh, it is on appeal? Okay. So I may be told --

MR. SBAITI: I didn't know.

THE COURT: I may be told, gosh, you got it wrong, Judge. You know, that happens sometimes.

So, this feels like an end run. You know, the appeal is either going to prevail or not. If it's successful, then, you

know, do you really need this lawsuit? You know, I don't -- okay. Your chance.

MR. SBAITI: Thank you, Your Honor.

THE COURT: Uh-huh.

MS. SBAITI: Your Honor, this wouldn't be the first case where finality or where there was a settlement -- I'm not familiar as well with bankruptcy, but certainly in litigation -- where the settlement then reveals -- well, after a settlement is done, after everyone thinks it's done, some new facts come to light that change people's views about what happened before the settlement or before the resolution. And that's what happened here, Your Honor. This is what we've pled. And this is what we understand.

There were the instances of Mr. Seery's testimony where he testified to the value of the HarbourVest assets. I believe, as I recall, he testified in I believe it's the approval hearing that Your Honor is talking about that the settlement gave HarbourVest a certain amount of claims of I think it's, Series 8 and then Series 9 claims, and that those were discounted to a certain dollar value that he quantified as about $30, $31 million. And the way he ratified and justified the actual settlement value, the actual money or value he was conferring on HarbourVest, given the critique of HarbourVest claims that he was settling, is he explained it this way. He said $22-1/2 million of this whole pot that I'm giving them

pays for the HarbourVest -- HarbourVest's interests in HCLOF -- it's alphabet soup again -- and Highland CLO Funding, Limited. And so it's the other $9 million that's really settling their claims. And given the amount of expense it's going to take, so on and so forth, $9 million seems like a reasonable amount to settle them with, especially since we're just giving them claims.

So that $22-1/2 million everyone apparently took to the bank as being the value, including CLO Holdco at the time, because they didn't have the underlying valuations. Highland was supposed to give the updated valuations.

So, fast-forward a couple of months -- and this is what we've played in our lawsuit, Your Honor; this is why I don't think it's an end run -- we pled in our lawsuit just a couple months later Highland -- I believe some of the people that worked at Highland started leaving, according to some mechanisms that I saw where Highland didn't want to keep all the staff and so the staff was migrated to other places. And one of those gentlemen, I believe Mr. Dondero referred to him as a gentleman named Hunter Covitz, and Hunter Covitz, who's also an investor in HCLOF, he owns a small piece of HCLOF, he had the data, he had some of the information that showed that, actually, in January, when Mr. Seery said that the HarbourVest settlement was worth 22 -- excuse me, the HarbourVest interests in HCLOF were worth $22-1/2 million, that they're

actually worth upwards of $45 million.

And so that information, Your Honor, we believe gives us a different -- a different take on what happened and what was supposed to happen. This is strictly about the lack of transparency.

THE COURT: Okay. Assuming --

MR. SBAITI: Yeah.

THE COURT: -- I buy into your argument that this is newly-discovered evidence --

MR. SBAITI: Yes.

THE COURT: -- CLO Holdco would not have had reason to know -- I guess that's what you're saying, right?

MR. SBAITI: I'm saying they -- they didn't know.

THE COURT: That they didn't know.

MR. SBAITI: Uh-huh.

THE COURT: And didn't have reason to know. I'm trying to figure out who's damaged here.

MR. SBAITI: Well, CLO Holdco, my client, is damaged, Your Honor.

THE COURT: How?

MR. SBAITI: Because one of the aspects of the -- of Highland, one of the issues under, excuse me, of Highland's advisory, is that it has a fiduciary duty. And that fiduciary duty, at least here, entails two, if not, three prongs. The first prong is they have to be transparent. You can't say --

THE COURT: How is -- you know, I know a lot about fiduciary duties, believe it or not. How is CLO Holdco harmed and the DAF harmed?

MR. SBAITI: Because, Your Honor, they lost out on an investment opportunity to buy the piece of -- the HarbourVest piece. They would have been able to go out and raise the money. They had the opportunity --

THE COURT: Okay.

MR. SBAITI: They would have had the opportunity to make a different argument.

THE COURT: What you're saying, you're saying, if they had known what they didn't have reason to know, that it was worth, let's say, $45 million, that they would have gone out and raised money and said, oh, we do want to exercise this right of first refusal that we decided we didn't have and gave in on, we're going to press the issue and then outbid the $22 million, because we know it's worth more? Is that where you're going? I'm trying to figure out where the heck you're going, to be honest.

MR. SBAITI: That's -- Your Honor, I'd push back on a little of the phrasing, only because the way these duties -- the way we understand the SEC's duties work when you're an investment advisor is you have a transparency obligation and an obligation --

THE COURT: Yes. Yes.

MR. SBAITI: -- not to divert these. So, yes, CLO Holdco would have at least had the opportunity and been offered the opportunity, which it could have taken advantage of, to, if the assets were really on the block for $22-1/2 million, they should have been able to buy their percentage pro rata share of that $22-1/2 million deal. I mean, in a nutshell, that's -- that's where we believe we've been harmed. And we believe that the obfuscation of those values and, to a certain extent, the misrepresentation of those values in the settlement is not cleansable by the argument, well, you should have asked.

Well, you should have asked is fine in normal litigation, but when the person you should have asked actually owes you a positive duty to inform, we believe that the should-have-asked piece doesn't really apply and there's -- and that's, that's the basis of our case.

So it's not an end run around the settlement, Your Honor. I think I opened with we're not trying to undo the settlement. We're not saying HarbourVest has to take its interest back. We're not saying the settlement has to go on. We're not even saying any of the things that happened in Bankruptcy Court need to change. But Section 959 is pretty clear that this is management of third-party property --

THE COURT: I guess -- okay. Again, rabbit trail, maybe. But CLO Holdco still owns its same 49.02 percent

interest that it did before this transaction. So if there's value galore in HCLOF, it still has its 49.02 percent interest. What am I missing?

MR. SBAITI: Oh, I think Your Honor's assuming that HCLOF bought the piece back from HarbourVest. It didn't.

THE COURT: No, I'm not.

MR. SBAITI: Oh.

THE COURT: I'm not assuming that.

MR. SBAITI: Well, --

THE COURT: I know that now the Debtor has, what, fifty point, you know, five percent of HCLOF, whereas it only had, you know, a fraction.

MR. SBAITI: Point six-ish. Yeah.

THE COURT: Point six-ish, and HarbourVest had 49.98.

MR. SBAITI: Right.

THE COURT: So, again, please educate me. I'm really trying to figure out how this lawsuit isn't just some crazy end run around a settlement I approved. And moreover, what's the damages?

MR. SBAITI: Well, Your Honor, --

THE COURT: What's the damages? CLO Holdco still has its 49.02 percent interest in HCLOF.

MR. SBAITI: Your Honor, again, --

THE COURT: What am I missing? I must be missing something.

MR. SBAITI: I think so, Your Honor.

THE COURT: What?

MR. SBAITI: The damages is the lost opportunity, the lost opportunity to own more of HCLOF.

THE COURT: Oh, it could have owned the whole darn thing?

MR. SBAITI: I could have owned 90 -- whatever 49 plus 49.98, 98.98 percent.

THE COURT: But --

MS. SBAITI: Or some pro rata portion.

THE COURT: But Mr. Seery had some information that you think he was holding back from CLO Holdco that CLO Holdco had no reason to know?

MR. SBAITI: Yes, Your Honor. The -- the -- what he testified to that the value of those assets, excuse me, the value of the HarbourVest interests in HCLOF or its share of the underlying assets being $22-1/2 million was either, one, intentionally obfuscated, or, two, and I don't think this excuses it at all, he simply used ancient data and simply never updated himself, not for the Court and not for any representations to the investors, who he himself testified under oath in this Court that he has a fiduciary duty to under the Investment Advisers Act.

THE COURT: This could get very --

MR. SBAITI: So that's injury to my client, Your

Honor.

THE COURT: This could get really dangerous. Maybe --

MR. SBAITI: I'm sorry.

THE COURT: This could get really dangerous. Maybe I should cut off where I'm going on this.

MR. SBAITI: Okay.

THE COURT: Of course, someone dangled it out there in a pleading. You know where I'm going, right?

MR. SBAITI: I'm not sure I do, Your Honor.

THE COURT: Hmm. I do read the newspaper, but someone put it in a pleading. HCLOF owns MGM stock, right? Is that what this is all about? Is that what this is all about? Or shall we not do this on the record?

MR. SBAITI: Well, Your Honor, this has nothing -- I don't -- I don't think this has anything to do with the MGM stock one way or the other.

THE COURT: You don't? OH?

MR. SBAITI: Your Honor, my charge as a counsel for the DAF is pretty straightforward. We looked at the claims. We looked at the newly-discovered information. We talked to the people who had it, Your Honor. That was our investigation. We put together a complaint. We believed that we had a good basis to file suit, despite Your Honor's -- the settlement approval. We expressly, because we understand how

finality is so critical in a bankruptcy context, we expressly didn't ask for rescission. We expressly didn't ask for anything that would undo the settlement.

Asking for damages because of how the settlement happened, through no fault of the Court's, of course, but asking for damages is not, at least not as I see it, an end run around the Court's settlement, and it's a legitimate claim. And I don't think this is far from the first time that new evidence has come up that's allowed someone to question how something was done that actually -- that actually damaged them.

THE COURT: Usually, they come in for a motion to reopen evidence to the court who issued the order approving the settlement.

MR. SBAITI: Well, Your Honor, I mean, that's --

THE COURT: Newly-discovered evidence.

MR. SBAITI: That would be the case in a final judgment, Your Honor. But, you know, our understanding of the way the settlement worked was that that was not necessarily going to be -- not the direction anybody wanted to go, but seeking damages on a straight claim for damages, which we're allowed to seek, which I think is our prerogative to seek, we went that direction.

THE COURT: Okay. Okay.

MR. SBAITI: But this --

THE COURT: My last question.

MR. SBAITI: Yes, Your Honor.

THE COURT: Again, I have to know. You have filed some sort of pleading to reopen litigation against Acis in New York? I'm only asking this because it's part of what's going on here. What is going on here?

MR. SBAITI: Your Honor, that's a -- that's a separate lawsuit, and it's not to reopen litigation against Acis. It deals with post-plan confirmation mismanagement by Acis.

THE COURT: Oh, okay. Okay.

MR. SBAITI: Yeah.

THE COURT: All right.

MR. SBAITI: But I believe there's a motion in front of Your Honor, just to -- that gave notice that the suit was filed, but I believe Mr. -- well, a bankruptcy lawyer filed it. I don't know.

THE COURT: A motion or a notice? I don't know.

MR. SBAITI: I don't know, Your Honor. That's above my paygrade.

THE COURT: I have not seen it. Okay?

MR. SBAITI: Okay.

THE COURT: Maybe it's there, but no one has called it to my attention.

MR. SBAITI: With the Court's permission, I'm going to yield time to Mr. Bridges.

THE COURT: Okay. Mr. Bridges?

CLOSING ARGUMENT ON BEHALF OF THE RESPONDENTS

MR. BRIDGES: Thank you, Your Honor. I'm grateful that you asked most of those questions to Mr. Sbaiti. I would not have been able to answer them. The one I can answer is the one about judicial estoppel. Apparently, I did a pretty lousy job earlier. I think I'm prepared to do a better job now.

The case law I'd like to refer you to is the Texas Supreme Court's 2009 decision in *Ferguson v. Building Materials*, 295 S.W.3d 642. And this was my concern and my issue, perhaps because I used to teach it and so it was at the front of my mind. But contrary to what you would think and what you said earlier, it's not your ruling against us that would create a judicial estoppel problem. It's if you ruled in our favor. And I know that seems weird. Let me explain.

The two things that have to take place for there to be judicial estoppel are, first, successfully maintaining a position in one proceeding, and then taking an inconsistent position in another. And Your Honor, what we talked about earlier is the notion that your July order forecloses the key claim that Mr. Sbaiti was just describing, that Mr. Seery should have known. Not that he was grossly negligent or did intentional wrong, but that he breached fiduciary duties because he should have known and should have disclosed.

And if your order forecloses that and we come and convince you that we nonetheless have colorable claims, colorable claims of gross negligence or willful wrongdoing, that we ultimately are unable to prove, our lawsuit could fail, even though we had proved -- in the lawsuit we had proved he should have known and that he breached fiduciary duties, but we would be estopped, having succeeded from coming here and asking in compliance with the order and its colorability rule, that we would be estopped from then saying that this Court lacked the authority to have issued that order in the first place, to have released the claim on the mere breach of fiduciary duty or ordinary negligence. That's the inconsistency that I was concerned about.

By coming here rather than trying to make our objection and our position known without submitting to the foreclosure of that claim that is, in many ways, the most important, the headliner from our District Court complaint, is the concern, Your Honor. And frankly, if Your Honor's order does foreclose that, then we're in serious trouble. That's the claim that we're trying to preserve.

But Your Honor, I don't think it was in anyone's contemplation in July of 2000 that what that order would do is terminate -- 2020; sorry, Your Honor -- in July of 2020, that that order would terminate future claims that might arise based on future conduct that had not yet happened in Mr.

Seery's role. Not in his role as a manager of the Debtor's property, but in his role as a registered investment advisor on behalf of his clients and their property. And that is the concern that the judicial estoppel argument is about.

THE COURT: I still don't understand. I'm very well aware of judicial estoppel, the old expression, you can't play fast and loose with the court. Take one position in one court, you're successful, and then take another position in another court. That's the concept.

MR. BRIDGES: Coming here --

THE COURT: How is this judicial estoppel if you had done what I think the order required and asked this Court for leave? What -- and I said fine, you have leave. Where's the judicial estoppel problem?

MR. BRIDGES: If you say fine, you have leave, but that leave is only, as the order states, because we have colorable claims of gross negligence, colorable claims of intentional wrongdoing, what happens to our mere negligence and mere breach of fiduciary duty claims? Are they foreclosed? The order on its face --

THE COURT: Well, I would interpret the order to be yes, and then you could appeal me, and the Court would either say it's too late to appeal that because you didn't appeal it in July 2020, or fine, I'll hear your appeal. Where's the estoppel?

MR. BRIDGES: Your Honor, our claims that this Court lacks the authority either to have made that order in the first place or the jurisdiction to rule on colorability now because of Section -- the mandatory abstention provision, whose section number I've now lost. That if we come to you and ask you to rule on those things, have we not thereby waived on appeal our claim that you couldn't rule in the first place on those things?

That is what our motion for leave in the District Court argues, is that there's -- there are jurisdictional shortcomings with your ability to decide what we're asking that Court to decide. And Your Honor, by coming here first and then appealing, that's what we fear we would have lost. And instead of coming here and appealing, what we -- what we would have done, in the alternative, I guess, would be to come here and ask you not to rule but move to withdraw the reference of our own motion.

That two-step, filing here and filing a motion to withdraw the reference on the thing we filed here, we didn't think was required, nor could we find any case law or rule saying that that was appropriate.

THE COURT: Okay.

MR. BRIDGES: These are not games, Your Honor. We were not trying to play games. We aren't bankruptcy court lawyers. We're not regularly in front of the Bankruptcy

Court. So the notion why didn't we come here first isn't exactly at the top of our mind. The question for trial lawyers typically is, where can we file this, what are the permissible venues, not why don't we come to Bankruptcy Court? Especially when your order appears to say that causes of action that don't rise to the level of gross negligence or intentional wrongdoing are already foreclosed.

Your Honor, the January order, I think I have to just briefly address again, even though I don't understand why it makes a difference. Apparently, counsel thinks it makes a difference because Mr. Dondero apparently supported it in some way. Our position is, for whatever difference it makes, the January versus the July, we don't believe there's anything in the District Court complaint putting at issue Mr. Seery's role as a director, so we don't understand how that order is implicated.

Again, I'm not sure that matters at all. I'm not raising it as a defense. I'm just telling Your Honor this is all about the July order, from our perspective. Certainly, the July order puts his role as a CEO -- certainly, the District Court case puts his role as a CEO at issue, and that's what the July order is about.

Your Honor, the *Applewood* case requires specifics in order to terminate our rights to sue and to bring certain causes of action, and without that kind of specificity, Your Honor, we

believe that that order fails to preclude, fails to have preclusive effect as to these later-arising claims. And we would submit not only that it was not contemplated, but that it was not intended to have that effect, and that even Mr. Seery's testimony suggests that that's not how he understood that order to be effective.

Counsel argued that the Barton Doctrine does apply here and rattled off the names of cases that don't -- to my knowledge, no case, no case that I can find deals with this type of deferential order where someone is asked -- where a court is asked to defer to the business judgment of an entity in approving an appointment, and nonetheless deciding that the Barton Doctrine applies. That's not what *Villegas* holds. That's not what *Espinosa* holds. I don't think *Barton* is applicable in a situation like that. Certainly, it's outside of the context of what *Barton* anticipated itself over a century ago when it was decided.

Your Honor, if we're wrong, please know we're wrong in earnest. These are not games. These are not sneakiness. No such motivation is at issue here. I was hopeful that that would be plain from the text of the motion for leave itself. If it's not, I'd offer this in addition. The docket at the District Court shows that immediately upon filing the motion for leave, a proposed order was filed with it asking to have the proposed complaint deemed filed, which as soon as I saw I

asked us to immediately retract it and to substitute a new proposed order that does not ask for the amended complaint to be deemed filed. That is not what we wanted.

And the fear was what if our motion is granted because the District Court says you have the right, you don't even need leave, but as to the Bankruptcy Court, you're on your own, this is at your own risk, I'm not going to rule on any of the jurisdictional questions that you attempt to raise? We did not want our complaint deemed filed for that reason. What we did want was for a court where we did not risk judicial estoppel to decide whether or not our key claim under the Advisers Act had been foreclosed by your July order, and that was the key and motivating factor.

On top of that, Your Honor, instead of arguing the meaning of the word pursue, let me just say this. We understood pursue in that context to refer to claims or causes of action, not potential, unfiled, unasserted, contemplated claims or causes of action. That until a claim or cause of action is actually asserted in some way, that it can't be pursued, and that the reference here was to two kinds of action, those that had not yet been commenced -- and your order foreclosed the commencing of them without permission -- and those that had been commenced. And your order couldn't foreclose the commencing of them because they hadn't been commenced yet, but your order did foreclose pursuing them.

And that was my reading of what that order said. And it fits with this notion that a claim or cause of action isn't something you're considering or even researching. It didn't dawn on us that researching or talking to a client about a potential claim could violate the order because in some respect that conversation could be in pursuit of the claim.

By the same notion, we didn't think asking a court with original jurisdiction according to Congress, asking a court to decide whether or not we were foreclosed from bringing our claims in a motion for leave was violating your order.

We don't have much else, Your Honor. In terms of the need to enforce compliance with your orders, if we understand them, we sure as heck are going to follow them. And if we've misconstrued the term pursue, I'm certainly very sorry about that.

I appreciate counsel saying he thinks we're probably good people. I did not think what we did was any kind of gross error in judgment. I thought that what we were doing was preserving our clients' rights, going to a court of competent jurisdiction, and asking the question, can we do what we think we ought to be able to do, but is -- frankly, Your Honor, we're a bit confused about because of the order that seems on its face to foreclose the very lawsuit that we think we should be bringing on behalf on this charitable organization that foreclosed it months before the conduct at issue that gave

rise to the complaint. And with that conundrum, knowing what to do was not obvious or easy for the lawyers or for the client who was dependent on his lawyers to give him good, sound advice.

I'm very grateful for you giving us the time and for your very pointed questions. Thank you, Your Honor.

THE COURT: Thank you. All right. Who's next?

CLOSING ARGUMENT ON BEHALF OF MARK PATRICK

MR. ANDERSON: May it please the Court, Michael Anderson on behalf of Mr. Patrick, Mark Patrick.

You know, this is a contempt proceeding. It's very serious. And, you know, my stomach aches for the people here.

THE COURT: Mine does, too, by the way.

MR. ANDERSON: It truly aches.

THE COURT: Uh-huh.

MR. ANDERSON: And I mean what I said when I did opening, when I said we don't need a hearing, an evidentiary hearing. And I still don't believe we did, because it comes down to what does the word pursue mean, because there's already been an acknowledgement --

THE COURT: Do you all want to withdraw all your exhibits? I've got a lot of exhibits that I now need to go through. If I admit them into evidence, I'm going to read them.

MR. ANDERSON: No, I understand.

THE COURT: Uh-huh.

MR. ANDERSON: But it does come down to the word pursue. Counsel has already said commence doesn't do it, and so then it's pursue.

And I could ask Your Honor, what did you mean when you said pursue in the July order, but I'm not going to say that. And I asked my client on the stand, you know, did you pursue a claim or cause of action? And then it was very telling. What happened with counsel? He stood up and objected to me even asking if it was pursued. And it dawned on me, if he's going to object, does pursue have some sort of legal -- that was his objection. It was he objected on legal grounds. Does that have some sort of legal meaning?

This is contempt. You can't be held in contempt unless it is bright-line clear that you have deviated from a standard of conduct and there's no ambiguity. Well, clearly, there is ambiguity, because over on this side of the room we say filing a motion for leave can't be pursue. We can look at the order and we know it doesn't mean pursue because I just heard Your Honor say you should have filed a motion for leave in this Court before doing anything. All right? So if that -- if that is what without the Bankruptcy Court first determining, if that's what the motion for leave is, well, then if we go up to the first sentence, No entity may commence or pursue a claim or cause of action, then it has this, without the

Bankruptcy Court first determining, that means -- if pursue means a motion for leave, if that's what that means, then that order says you can't commence or file a motion for leave before you file a motion for leave. Because that's what it means. If pursue means motion for leave and you've said you should have come here and filed a motion for leave because it says, Debtor, without the Bankruptcy Court first determining that notice that such claim or cause of action represents a colorable claim, and specifically authorizing. The vehicle to do that would be a motion for leave, right? And you can't pursue anything until a motion for leave has been filed.

Now, where was the motion for leave? And I understand, Your Honor, you know, no expert at reading the room, obviously, you're frustrated that the motion for leave was filed in the District Court and not in this Court. But it doesn't change the fact, and neither did any of the evidence, change anything, is what does pursue mean?

And if someone says, well, it's obviously clear it means x, well, is it really obviously clear it means filing a motion for leave? Because nobody on my side, when you read it, when you say pursue, can read it that way. And if we're going to have contempt sanctions being posed, and there has to be clear and convincing evidence or beyond reasonable doubt, depending upon, you know, I don't think you have to get to that part, but clear --

THE COURT: This is not criminal contempt.

MR. ANDERSON: Clear and convincing is the civil standard for contempt.

THE COURT: Right.

MR. ANDERSON: And if pursue is open to that much interpretation, it's not the kind of thing that can be held in contempt on. And I understand the frustration. I hear the frustration. I hear counsel talk about that was not their intent when they filed it. You know, I heard Mr. Patrick get up there. I heard counsel say, hey, Mr. Patrick's doing his job, he's a good guy, seems like a good guy. Well, Mr. Patrick's up there. Look, they filed the underlying lawsuit. Nobody -- there's no motion for that in this Court about the underlying lawsuit. It's only about the motion for leave. That's all we're here about.

And so you go to that, and we've heard all these arguments about it, and we've been here almost as long as the motion for leave was actually on file before it was sua sponte dismissed without prejudice.

And so I go back to that and I say that, if pursue means filing a motion for leave, then that order would require an order for anyone to violate -- it would be violated upon the filing of a motion for leave, because you can't pursue something until the Bankruptcy Court has already first determined, after notice, that such claim or cause of action

represents a colorable claim and specifically authorizing the entity to bring such a claim. Because that -- we already know that's a motion for leave in and of itself. Therefore, pursue, just simply filing a motion for leave will put you in that.

But that gets into all these -- we don't need to be having this discussion about, you know, is a motion for leave pursue? Is pursue a motion for leave? I've heard both arguments here. It doesn't justify contempt. And I know -- and so certainly with respect to my side, I, you know -- given that, I would request that the Court deny the request for contempt.

And again, I want to say, too, look, we hear you. Absolutely hear you. Understand the frustration. Totally hear you on that.

I'm going to turn over the balance of my time to Mr. Phillips, --

THE COURT: Okay.

MR. ANDERSON: -- unless you have any questions, Your Honor. I appreciate it.

THE COURT: Okay. I do not.

CLOSING ARGUMENT ON BEHALF OF MARK PATRICK

MR. PHILLIPS: Your Honor, Louis M. Phillips, and I'll be brief. I'm going to try to bring it down to -- I was not involved. We are -- we are here because of the indemnification provisions of CLO Holdco representing Mr.

Patrick individually. My firm was not involved in the litigation. We were hired to represent CLO Holdco and some of the defendants in the UCC litigation, and our role has expanded to do some other stuff, particularly represent Mr. Patrick because of the indemnification provisions of the Holdco entity documents. He's entitled to indemnification and we're providing a defense for him. That's why we're here.

So I come way after the order. We have not been involved in anything. But I think I'm just going to try to distill everything about the order and about the concern and about the litigation, because the Court is asking about is this an end run on the settlement? The Court is also saying, all you had to do was come here first.

But let's look. We're here about one thing, the motion for leave. And as Mr. Anderson pointed out, the commence or pursue a claim, according to the order, commence or pursue can only occur after the Court has authorized the litigation. Okay. So that's what the order says. You can't commence or pursue.

Counsel for the Debtors says, well, it can't be after commencement because you've already commenced the action. So pursue has to mean something before the commencement of the action. It would mean something before the commencement of the action under this order.

But it doesn't mean something before the Court approves

the commencement of the action, because commence or pursue under this order does not occur before the Court has acted. That's the language of the order. It only occurs after the Court has authorized it. That's the context in which commence or pursue exists, after this Court has authorized.

Okay. So it can't be pursuit before the Court has authorized without commencement because it only is triggered by the Court's authorization of the action, which means, before you commence it, actions in time take time, before you commence the action, you have to pursue the action to commence it. But you can't do that until you've approved it. All right?

That's the temporal concern and why we say the motion for leave can't be pursuit of an action under this order. It might be pursuit under another definition or another order. In other words, maybe an order could be issued saying, you can't file a motion for leave in any other court but this one. I don't know whether it'd be a good order, but the order could say that. But when you say all you had to do was file a motion for leave in this Court and everything would be okay, no. The motion for leave is not, under this order, pursuit. Pursuit only occurs under this order after you've done something, after Your Honor has done something.

So if a motion for leave is violative at the District Court, the motion for leave would be violative here, because

it occurs before Your Honor has taken action.

Now, clearly, you want people to ask, but just as clearly, and this was the point of my remarks earlier at the tail-end of opening, just as clearly, I have a question, because frankly, I understand what these guys are saying. These guys haven't really said it. They're a little shame-faced at what these guys are asking. Because what these guys are asking is whether or not an employee Seery, as the CRO -- and we heard, oh, he bargained for it, he wouldn't have done it without getting the order and the protections because -- did he bargain for not having to comply with the Investor Advisory Act? Did he bargain for not having a fiduciary duty to third parties? Because the one thing that Mr. Bridges has been trying to tell you is that, under this order, if it's interpreted one way, you would never authorize a violation of the Investment Advisory Act because it wouldn't necessarily be gross negligence or willful misconduct.

In other words, in employing Seery, did the Debtor go out in this disclosure statement and say, we are advisor to $1.2 billion of third-party money, and guess what, our CRO has no fiduciary duty to you? We have forestalled any claim under the Investment Advisory Act in our employment order. Did that happen?

Because if that happened, I don't know if the Court was really thinking that way, because that -- that can't happen in

a confirmation order before, under the Fifth Circuit authority, after disclosure statement, plan, et cetera, et cetera, because that's a third party release of claims that may -- that haven't occurred yet. You would be releasing because you would be saying you have no right. You have no right. This is not temporal. This is saying you have no right, if it's saying that, to bring an Investment Advisory -- Investment Advisory Act or a Breach of Fiduciary Duty Act that's not gross negligence or willful misconduct forever upon an employment order.

Now, if that's not what it means, then we have another conundrum. The other conundrum -- and I'm new to this, maybe this has been thought out by everybody, but I don't think so. The other conundrum is this order doesn't apply to actions that don't involve willful -- gross negligence or willful misconduct. It only applies to those types of actions. So, frankly, I don't know what the order does.

I think the problem -- I probably shouldn't be the purviewer of who ought to know because my standard's probably really low, given my capacity here. But I'm a guy off the street. Seery gets hired to run the Debtor. Seery testifies and he admits, we've got Investment Advisory Act all over the place. We're making lots of fees out of administering all this third-party money. Do they know? Do they know he's immune? Do the third parties know?

Now, a standard about managing the Debtor? Absolutely. That's just pure D Chapter 11, pure D corporate, pure D standard liability if you're operating an entity. You're not liable for gross negligence or willful misconduct. You're not. And so any claim for damage to the Debtor or to the estate by actions taken in the CRO capacity, absolutely. Absolutely. You don't want a bunch of yoyos suing, you did something against the Debtor and the Debtor is now worth $147 less than it was because you did something, you were negligent and you forgot to put the dog out. No. It's got to be gross negligence or willful misconduct if you are talking about running the Debtor and running the estate.

But that's not what we have here. And you can ask all the questions you want about whether the lawsuit's any good, but that's not what's up before the Court. What's up before the Court is whether filing a motion for leave is contempt. And under this order, you're saying, all you had to do is come here. Well, in one reading of it, you'd have never got relief because you can't bring the kind of action. I foreclosed it by employing Seery. He no longer has a fiduciary duty and is no longer bound by the Investment Advisory Act. Case closed. Get out of here. Unless you can formulate something around so that you can establish gross negligence or willful misconduct, I've done away with all those causes of action.

I don't think that's what happened. And if that's not

what happened, this doesn't apply because it shouldn't apply to third-party actions. It should apply to actions for damage to the estate by creditors of the estate for whom Seery is acting as CRO of the Debtor, who is the -- in possession of the estate. That makes perfect sense. Perfect sense. And nobody would say that you shouldn't have sole authority to determine whether a CRO who's acting for the estate and damages the estate -- because that'd be a claim against the estate. That would be an administrative claim against the estate. That is just hornbook law.

That's the way I see this order. And I admit I didn't write it. I admit I didn't submit it. I admit I didn't litigate it. I admit I'm coming in late. But sometimes maybe a fresh pair of elderly, trifocal-assisted eyes doesn't hurt. Because I will tell you, Judge, on one read this Court says don't bother coming here because you don't have the kind of claim that can be brought, even if you're a third party. And the only way that happens is if Seery's released from any obligation under the Investment Advisory Act, and I think everybody would like to know that. And he can't be sued for breach of fiduciary duty to third parties that he admits he owes. I think people would like to know that.

And if it doesn't, then this is not -- this order is not about that. But the fact -- I've been at this 40 years, and I usually don't want to talk about myself. There's really not a

lot to talk about. But I hear Mr. Morris how he's never done this, he's never done that. I hear this, I'm a good -- you know, whatever. I'm confused. I've been doing this 41 years. Bankruptcy, 39.7. I must be crazy, but that's what I've been doing. And I'm confused because I don't even know if they needed to come here. I don't even know if, had they come here, if they could have even presented an action for gross -- for negligence or breach of fiduciary duty, could have -- gross negligence or willful misconduct? I don't know whether this order just applies to Seery's duties as CRO vis-a-vis creditors of the estate and property of the estate and damage to the estate. Because that's not what we're dealing with here.

The point is, Judge, this is contempt. And I understand Your Honor knows all about contempt. Your Honor knows about *Matter of Hipp*. Your Honor knows about civil contempt authorization for bankruptcy courts. Your Honor knows that you can't operate without the right to impose civil contempt sanctions. And Your Honor knows, and I agree with Your Honor, that civil contempt is both remedial and coercive.

But how do you coerce around my questions? Maybe I am all wet, but if I am, I don't think I am, and I don't understand that I am, and that's why I'm concerned about going off into this contempt wilderness and millions in fees, when the motion for leave was dismissed and when the lawsuit doesn't ask for

or includes most of its claims. I don't even -- I have not studied the lawsuit. I wasn't involved in it. But if it's a breach of fiduciary duty and Advisory Act and it says what you've been told it says, that he should have pulled up different stuff, that the valuation metrics were different, that he shouldn't have used it, I don't know that they're saying fraud. I don't know that they're saying he knew he was doing -- I think they're saying he breached the Investment Advisory Act. And that's not gross negligence or willful misconduct. Then does this order apply or this order -- does this order foreclose that?

The fact is, I think we could have decided this on the pleadings and on the order. We didn't. The fact that Mr. Dondero did A, B, C. And I will tell you this. Mr. Patrick has stood up. He's going to get a harpoon, he's going to get a harpoon, subject to his right to appeal. But he has told this Court. We represent him. We're not trying to get him out of having authorized the order. It's very important for this Court to understand. Mr. Patrick is one of these entities. Mr. Dondero can holler and scream all he wants to. Mr. -- and look, did he terminate Grant Scott? If I'm Grant Scott, and this is my best friend and I was in his wedding and I was his roommate and I was his best friend and I'm doing this stuff for $5,000 and I do something and $5,000 a month and I do something and I get hollered at and I've got a full a

law practice, I'm an IP lawyer, why don't I just tell him to go jump in a lake, which is the other way you could look at Grant Scott leaving. I want you to jump in a lake. I'm out of here. I don't need this.

Thank you.

THE COURT: All right. Thank you.

MR. DEMO: Your Honor, how much time do they have left, --

THE COURT: Um, --

MR. DEMO: -- to be honest?

THE COURT: Nate, are you -- 26 minutes? All right.

MR. TAYLOR: I'll go way under, Your Honor.

THE COURT: Okay.

CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

MR. TAYLOR: Your Honor, Clay Taylor. I'm here on behalf of Mr. Dondero. He was named as an individual alleged violator within the order.

THE COURT: Okay. I'm getting lawyers mixed up. Mr. Anderson, who did you represent?

MR. ANDERSON: Mr. Patrick. Mr. Phillips and I represent --

THE COURT: You're Mr. Patrick?

MR. PHILLIPS: We're Mr. Patrick.

THE COURT: You're both --

MR. PHILLIPS: Mr. Patrick.

THE COURT: Okay. I'm sorry. I'm getting my Fort Worth law firms mixed up. Okay.

MR. TAYLOR: That's quite all right. Clay Taylor from Bonds Ellis here on behalf of Mr. Dondero. And we're here because he was named in the alleged violator motion within the order as an alleged violator. We don't think that he is, for the reasons that we're about to explain, but we were ordered to appear --

A VOICE: No.

MR. TAYLOR: -- and so therefore we are appearing and telling you why we're not an alleged violator.

First of all, for all the reasons that Mr. Sbaiti and Mr. Bridges and Mr. Phillips and Mr. Anderson said, the court order was in effect. We agree with that. It required certain conduct to be done. Yes, it did. It said you couldn't commence something. It said you couldn't pursue it. I think we have gone through what the pursuit and commence. Nobody is arguing that anything was commenced. It comes down to pursuit.

But let's talk about what the evidence shows about Mr. Dondero. It shows that Mr. Dondero believes that there have been breaches of fiduciary duty. He thinks that there has been negligence committed. He believes that actions should be taken. We don't run away from that. He, frankly, told you that.

But here, he didn't take any action to pursue it. The DAF did. CLO Holdco did. It's undisputed that he's not an officer, director, or control person for either of those entities. The act we're here on is a motion for leave to file an amended complaint to include Mr. Seery. That's -- Mr. Dondero didn't take any of those acts. He believes it should have been done, but he's not the authorizing person.

He might have -- let's just pretend that he thought he was authorizing something. It doesn't matter that he thought he could authorize something or that he was trying to push for it. The fact remains he can't authorize it. You know, he can say, I declare war on Afghanistan. Well, he can't. Congress can't. He can write a letter to his Congressman. He already wrote a letter to his Congressman. He talked. He talked with the head of the acting CLO -- CLO Holdco and he said, I think there's something wrong here. I think you should be looking into it. You know what, he goes, you might be right. Go talk with Mazin about it. Give him some data. Conduct an investigation. They did. And then they went to the authorizing person and they filed a motion for leave to include Mr. Seery. Mr. Dondero did nothing wrong in that.

Now, there is some personal animosity. I think that Your Honor has probably seen there seems to be some personal animosity between Mr. Seery and Mr. Dondero, and that's unfortunate. But just because there's some personal animosity

doesn't mean that maybe something wasn't done wrong. Maybe that Mr. Dondero -- he's certainly allowed to at least tell people, well, I think there was something done wrong. And if there is an action to be had, then those appropriate entities can take it. But he didn't do those things.

And so even if he says, just like Michael Scott, "I declare bankruptcy," it doesn't matter. You have to take the certain actions.

THE COURT: I got it. I don't know if everyone did.

MR. TAYLOR: Yes, well, yeah, you have to be a *The Office* fan.

But so that's where we stand. And for all the reasons the prior people have discussed, I don't think that there was any violation of this Court's order. But even if there was, Mr. Dondero in this situation was not the one. We're going to have to deal with the other order that came out yesterday in due course, but for this discrete issue that is before this Court today, Mr. Dondero didn't violate anything.

Thank you.

THE COURT: All right. Mr. Morris, you get the last word.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Thank you, Your Honor. These are going to be discrete points because it's truly rebuttal. I'm going to try to respond to certain points.

Mr. Bridges and Mr. Phillips made extensive arguments about why they believe the order is wrong, why it's overreaching. They tried to get into your head to think about what you intended or what you thought. The fact of the matter is, the answer to all of those questions -- first of all, none of it's relevant to this motion because we've got the order -- but the answer is very simple. Forget about coming here to seek leave to amend to add Mr. Seery. We can avoid Mr. Sbaiti's concerns about judicial estoppel or something. Why didn't they just file the motion for reconsideration? They filed that after they filed the motion for leave to amend, after we filed the motion for contempt. Only then did they file the motion for reconsideration.

Now, we think it's ill-thought-out. We think it's problematic. Probably not today, is my guess, we'll argue to you as to why we think that motion ought to be denied. But if they truly believed that the order was infirm in any way, wouldn't the proper thing to have been to come here and tell you that? Wouldn't the proper thing to be to come to the court that issued the order that you have a problem with and ask the court to review it again? And if Your Honor overruled the motion, to appeal it.

Why are we even doing this? Why did they do it? It's not we. Why did they do it? Right? And that solves almost everything they've said. That's point one.

Point two, the January order. The January order is very important. It's important not just because it applies to directors, but it's important because Mr. Dondero agreed to it, and it also applies -- I want to get it -- Paragraph 10. It's Exhibit 15. It applies to the independent directors and the independents directors' agents. If a CEO is not an agent of an independent director, I'm not sure what is. The independent directors are the body that appointed the CEO. The CEO, Mr. Seery, is acting on behalf of the board. This is the order that Mr. Dondero agreed to. It's the order -- take out the word independent director; put in Mr. Seery -- it's the order everybody's complaining about. But even the January order certainly applied to Mr. Seery. That's point two.

Point three. I've heard a lot of concerns about the slippery slope and what does pursuit mean and does talking to a lawyer mean pursuit and doing an investigation being pursuit. I don't know, Your Honor, and I don't care, because that's not what we're here to talk about. We're here to talk about a specific act -- not a hypothetical, not a slippery slope. We're talking about the filing of a motion for leave to amend a complaint to add Mr. Seery as a defendant. That's all we're talking about. So, you know, the rest of it, it's just noise. And the only question is whether, and I think it's pretty clear, that means pursuit.

Another version on the theme of was there any alternative

to filing the motion in the District Court, I think there was. The Sbaiti firm did file that suit against Acis in New York. And if Your Honor checks the docket in the Acis bankruptcy, I think you'll find that there's a motion from Mr. Rukavina, for a comfort order, basically, saying that -- asking the court to declare that the filing of the complaint in New York against Acis didn't violate the plan injunction. I think I have that right.

But I point that out, Your Honor -- it's not evidence in the record, but the Court can certainly take judicial notice of what's on its docket -- I point that out because there's another example of a lawyer who is very active in this case who actually -- now, he already commenced the suit, so he did -- they did both simultaneously, so I don't want to suggest that that's the perfect thing to have done, but at least he's here asking for -- he's bringing it to your attention, he's telling you it's happened, he's asking for a comfort order, and someday Your Honor may rule on it. I don't know.

Number six, what's with the pursuit of Mr. Seery? What is with the pursuit of Mr. Seery? Is there any doubt in anybody's mind that the Debtor is going to have to indemnify Mr. Seery and will bring in another law firm? And while I don't think it will ever happen in a hundred billion years, if there is a judgment against Mr. Seery, isn't that going to be the Debtor's responsibility? Why are they even bothering to

do this? I think it's a fair question for the Court to ask.

I think Mr. Taylor came up and talked about animosity. How do you explain going after Jim Seery? How do you do it? He's going to be indemnified. It's in -- it's in like three different orders. It's in the confirmation order. It's in the CEO order. It's -- it's probably as a matter of law. It's in the Strand partnership agreement. It's -- he's been indemnified like 12 different times. What is the purpose, other than to make Mr. Seery's life miserable? There is none. You'll never hear a rational explanation for why they're doing this.

THE COURT: Just so you know, I've not looked at any of the pleadings in the District Court --

MR. MORRIS: And I'm not asking you to.

THE COURT: -- other than what has been presented to me today.

MR. MORRIS: Yeah. That's fine, Your Honor.

THE COURT: But I'm very flipped out about the causes of action against the Debtor, --

MR. MORRIS: Yeah.

THE COURT: -- who hasn't reached an effective date.

MR. MORRIS: Well, --

THE COURT: And I'm most interested to know what the defenses, motions --

MR. MORRIS: We'll get to that.

THE COURT: -- are going to be raised in that regard.

MR. MORRIS: We will get to that in due course.

I do want to point out, just to be clear, because we keep hearing that they learned about, you know, all of these horrible things after the fact. In the complaint, which I think is Exhibit 12, --

THE COURT: I'm there.

MR. MORRIS: -- at Paragraph 127, the Plaintiffs allege, "Mr. Seery was informed in late December 2020 at an in-person meeting in Dallas, to which Mr. Seery had to fly, that HCO" -- excuse me "HCLF and HCM had to suspend trading in MGM Studios' securities because Seery had learned from James Dondero, who was on the board, of a potential purchase of the company. The news of the MGM purchase should have caused Seery to revalue."

I cannot begin to tell you the problems with that paragraph. We're not going to discuss them today. I made a promise to these folks that we wouldn't get into the merits of the complaint. But Your Honor was onto something before, and those issues, you know, may see the light of day one day. And if they do, folks are going to have to deal with it. But I will point out that at the time the communication was made, the other TRO was in effect. We didn't bring that one to the Court's attention. But the important point there, Your Honor, is December 2020. It is December 2020. That is the

allegation that's being made against Mr. Seery. And the fact of the matter is, because I've done the research myself, the Court will find that on December 23rd, the day the HarbourVest settlement motion was filed, it was fully public knowledge that Amazon and Apple, I think, had shut down negotiations with MGM at that time. Right? So the big secret information, it was in the public domain on December 23rd.

There will also never be any evidence ever that Mr. Seery got on a plane and flew to Dallas in December 2020, but that's a minor point.

I'd like to just conclude, Your Honor, by saying I've heard pleas that they understand. They understand, Your Honor, now they understand. It would be good if they promised the Court that they won't seek to assert claims against Mr. Seery anywhere but in this Court and comply with the order as it's written. That, that, that would be taking a little bit of responsibility.

I have nothing further, Your Honor.

THE COURT: Okay. Thank you.

All right. Let me give you some clue of when I'm going to be able to rule. I've been glancing at my email in hopes that something set tomorrow would go away, but that's not happening. I've got a hearing that I've been told will take all day tomorrow on a case involving a half-built hotel, luxury hotel in Palm Springs, California. So I have to spend

the next I don't know how long getting ready for that hearing tomorrow, and then I have what looks like a full day of hearings Thursday, including you people coming back on something.

MR. POMERANTZ: Your Honor, I was going to address that. We have Dugaboy's motion to enforce compliance on the 2015(3) reports.

THE COURT: That's what it was.

MR. POMERANTZ: Since we haven't gotten to the motion to modify the Seery order, my suggestion would be we use that time -- of course, Dugaboy, I'm not sure if they're on the phone. They're not here. I'm not sure that's time sensitive. But if Your Honor wanted to have a hearing on that motion, which was contemplated to take place today, the Debtor would be okay having that motion heard on Thursday, perhaps by WebEx, unless Your Honor wants us to stay here, which we would if you do, and then reschedule the 2015(3) motion.

But again, that wasn't my motion. It's Dugaboy's. I'm not sure Mr. Draper is on. But we obviously have some calendar issues.

MR. MORRIS: And Your Honor, just to complete it, I think also on Thursday the Court is supposed to hear HCRE and Highland Capital Management Services motions for leave to amend their complaint in the promissory note litigation against each of them. I think that's also on the calendar for

Thursday. I don't expect that -- I hope that doesn't take very long, but that's also, I believe, on the calendar.

THE COURT: Okay. Mr. Draper, are you out there?

MR. PHILLIPS: I didn't see him on the list, Your Honor. I was just looking. But --

THE COURT: Okay. All right. Well, --

MR. PHILLIPS: What is the question? I can send him a text real quick.

THE COURT: Well, just have -- if you all could follow up with Traci Ellison, my courtroom deputy, tomorrow, I am perfectly happy to continue the motion to modify the Seery order to Thursday morning at 9:30 if Draper is willing to continue the 2015 motion.

MR. POMERANTZ: I know, if I was him, my first question would be is what times does the Court have available? We could work that through Ms. Ellison.

THE COURT: Yes. And I'm just letting you know -- talk to her. Okay. Number one, I'll do these by video, okay? WebEx. But I know I don't have any time Wednesday, and Thursday's a busy day.

We have court Friday morning at 9:30 in--?

THE CLERK: Cici's Pizza.

THE COURT: Cici's Pizza? That's not going to take very long, right?

THE CLERK: I don't think so.

THE COURT: I can potentially do something, you know, 10:00 o'clock Friday morning. Other than that, then you've got to wait a while, because I have a seven-day trial, live human beings in the courtroom starting next Monday. And so my point is mainly to tell you, as much as I would like to rule very, very fast, it's going to be, it looks like, a couple of weeks or so before I can give you a ruling on this.

MR. BRIDGES: Your Honor?

THE COURT: Yes?

MR. BRIDGES: May I? It's our motion. I would propose, if counsel would agree, that we just submit it on the papers.

THE COURT: Everybody good with that? I'm certainly good with that.

MR. POMERANTZ: Your Honor, I'd like there to be argument. I have a lengthy argument. I think I'd like to address a number of the things that -- Mr. Bridges made his argument today. Okay?

THE COURT: Okay.

MR. POMERANTZ: His deck, it was entitled, Motion to Modify.

THE COURT: Okay.

MR. POMERANTZ: So that's very nice of him, but I would like to make my argument.

THE COURT: Okay. Let's try to nail this down right

now. Friday at 10:00 o'clock, can we do the oral argument WebEx?

MR. POMERANTZ: On that one, yes, Your Honor.

THE COURT: On that one? Everybody good? Okay. So we'll come back Friday, 10:00 o'clock, WebEx, for that motion.

You know, I'm going to say a couple of things where -- I've leaned toward thinking this is a pretty simple motion before me, the motion for contempt, but when people offer into evidence documents, I read your documents. Okay? That's my duty. And so I have however many exhibits I admitted today that I am going to look at and see how they sway me one way or another on this issue. But I will tell you that my gut is there has been contempt of court. Okay? I don't see anything ambiguous at all about Paragraph 5 of my July 16th, 2020 order. Somebody may think I overreached, but if that was the case, someone should have argued at the time I was overreaching. Someone should have appealed the order. And I think it's a *Shoaf/Espinosa* problem at this point for anyone to argue about the enforceability of that order.

I think there's nothing ambiguous in the wording. Pursue is not ambiguous. There's nothing confusing about the requirement that any entity who wanted to sue or pursue a claim, you know, commence claim, pursue a claim against Mr. Seery, had to come to the Bankruptcy Court. Standard-fare gatekeeping order.

So what I'm going to be looking at is, do these documents I admitted into evidence change my view on that, and then the harder question is who of the alleged contemnors am I going to think it's clear and convincing committed contempt and -- who are the contemnors, and then, of course, what are the damages? Coercive or compensatory damages?

So, again, you know how I feel, to the extent that's helpful in your planning purposes. I'm pretty convinced contempt of court has occurred. It's just a matter of who's a contemnor and what are the damages.

I'll say a couple of remaining things. I continue to be frustrated, I think was the word people used, about unproductive ways we all spend our time. I am going to spend I don't know how many more hours drafting another ruling on a contempt motion, and attorneys' fees are through the roof. And, you know, I dangled out there a question I couldn't resist about MGM.

And I will tell you, I mean, someone mentioned about their stomach aching. Personal story, I could hardly sleep the night it became public about the Amazon purchase, because, silly me, maybe, I'm thinking game-changer. This is such potentially a windfall, an economic windfall. Maybe this could be the impetus to make everyone get in a room and say look, we've got this wonderful windfall of money. I don't know how much is owned directly or indirectly by the Debtor of

MGM stock. I don't know how much the Debtor manages. I don't know how much, you know, some other entity. I know it's probably spread out in many different entities. But I know, I know because I listen, that one or more of the Highland-managed CLOs has some of this, and I think I read -- remember that HCLOF, which now Highland owns more than 50 percent of, has some of this stock. Right?

MR. DONDERO: Do you want to know what happened?

THE COURT: Oh.

A VOICE: No.

THE COURT: Well, okay. So, you know, I can understand I'm getting into maybe uncomfortable territory in a public proceeding, so I'll stop.

But, you know, do we need to set up a status conference? Do you all need to like talk about this? Am I just being naïve? Couldn't this be a game-changer, where maybe it would give new incentive to --

MR. POMERANTZ: Your Honor, I would -- he's been pretty quiet through the whole hearing, Mr. Clemente. He has the Committee, that a couple of people you've heard have sold claims. They're now held by other parties.

You know, the door is always open. I don't think this is going to be game-changer, unfortunately. We would like nothing more, as Debtor's counsel. We don't enjoy coming to Your Honor for contempt hearings.

Mr. Clemente said that it was productive. We would sure participate. But right now, we have creditors who are very angry that millions and millions of dollars have been spent on really a waste of time and a waste of the Court's time and a waste of everyone's time and eating into the creditors' money. So I would ask Mr. Clemente to address that.

MR. CLEMENTE: I'm here.

THE COURT: Yes, he's way in the back, hoping to be ignored.

MR. CLEMENTE: It's too cold, Your Honor, where I was sitting. For the record, Your Honor, --

THE COURT: I noticed some entity called Muck Holdings bought HarbourVest, according to the docket.

MR. CLEMENTE: That's correct. Muck Holdings bought HarbourVest, and I believe also the Acis claim, and then there's a different entity that bought the Redeemer claim.

THE COURT: Uh-huh.

MR. CLEMENTE: So, as we mentioned in our -- one of our pleadings, I think it was the retention pleading for Teneo, the Committee consists of two members currently, Meta-e and UBS.

THE COURT: Uh-huh.

MR. CLEMENTE: Obviously, Your Honor just approved the UBS settlement recently. The U.S. Trustee is aware of the make-up of the Committee, and is currently comfortable with

the Committee maintaining a two-person membership at this point.

In terms of whether the MGM transaction is a game-changer, we've not yet seen, to Your Honor's point, how all of that rolls up through the various interests that the Debtor may or -- you know, may have --

THE COURT: Okay.

MR. CLEMENTE: -- that would be implicated by the MGM transaction. If ultimately the MGM transaction has to actually occur, right? I mean, so, you know, just based on what I read in the public documents, we're not sure when that transaction may actually happen. But obviously it's a good thing for the Debtor's estate because it's going to recognize value for the estate.

In terms of whether it ultimately changes how Mr. Dondero, you know, wishes to proceed, that's entirely up to him, Your Honor. But we don't see it as something at this point that would suggest that there's an overall back to let's talk about a pot plan because of where the MGM transaction might ultimately come out.

So I don't know if that's helpful to Your Honor, but those are -- that's my perspective.

THE COURT: Well, and I'm not trying to, you know, push a pot plan on anyone.

MR. CLEMENTE: No, I understand.

THE COURT: I'm just saying it looked like an economic windfall. I just -- I don't know how much is Highland versus other entities in the so-called byzantine complex, but, gosh, I just hoped that there might be something there to change the dynamic of, you know, lawsuit, lawsuit, lawsuit, lawsuit, motion for contempt, motion for contempt.

MR. CLEMENTE: Agreed, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: And like I said, it was a very positive development obviously for the creditors for the Debtor. But whether it's the game-changer that Your Honor would envision, I'm not sure that I can suggest at this point that it is.

I think that, you know, obviously, we don't like to see these lawsuits continue to be filed. That's the whole point of the gatekeeper order, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: I didn't say anything during the hearing, but obviously the January 9th order, as Your Honor has said many times, was in the context of a trustee being appointed.

THE COURT: Right. Right.

MR. CLEMENTE: Right? So, and the July 16th order, very similar vein, it's an outshoot of that. In fact, it was contemplated in the January 9th settlement that a CEO could be

appointed.

So I think, again, it's just -- it's important, the context in which that January 9th order came into play, for this very reason, so we could avoid this type of litigation, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: And so again, I didn't -- I obviously didn't rise to mention that during the hearing, but Your Honor is already aware of that. I didn't need to remind Your Honor of that.

THE COURT: Uh-huh. Okay.

MR. CLEMENTE: Anything else for me, Your Honor?

THE COURT: No. Thank you.

MR. CLEMENTE: Okay, then, Your Honor.

THE COURT: Sorry I picked on you. But, all right. Well, again, I hope the message has landed in the way I hope will matter, and that is I'm going to look at your documents but I feel very strongly that, unless there's something in there that, whoa, is somehow eye-opening, I'm going to find contempt of court. It's just a matter of who and what the damages are. There's just not a thing in the world ambiguous about Paragraph 5 of the July 9th, 2020 order. So I'll get to it as soon as we humanly can get to it.

Mr. Morris, anything else?

MR. MORRIS: Nothing. No, thank you.

THE COURT: I guess I'll see you Thursday on the WebEx. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 6:00 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/09/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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EXHIBIT 36

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

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	June 8, 2023
	)	9:30 a.m. Docket
Reorganized Debtor.	)	
	)	HMIT'S MOTION FOR LEAVE TO
	)	FILE VERIFIED ADVERSARY
	)	PROCEEDING (3699)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Reorganized Debtor:	John A. Morris Gregory V. Demo Hayley R. Winograd PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Reorganized Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For Hunter Mountain Investment Trust:	Sawnie A. McEntire Timothy J. Miller PARSONS MCENTIRE MCCLEARY, PLLC 1700 Pacific Avenue, Suite 4400 Dallas, TX 75201 (214) 237-4303
For Hunter Mountain Investment Trust:	Roger L. McCleary PARSONS MCENTIRE MCCLEARY, PLLC One Riverway, Suite 1800 Houston, TX 77056 (713) 960-7305

APPEARANCES, cont'd.:

For Hunter Mountain Investment Trust:	Deborah Deitsch-Perez STINSON 2200 Ross Avenue, Suite 2900 Dallas, TX 75201 (214) 560-2218
For Muck Holdings, et al.:	Brent Ryan McIlwain HOLLAND & KNIGHT, LLP 300 Crescent Court, Suite 1100 Dallas, TX 75201 (214) 964-9481
For James P. Seery, Jr.:	Mark Stancil Joshua Seth Levy WILLKIE FARR & GALLAGHER, LLP 1875 K Street, NW Washington, DC 20006 (202) 303-1133
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

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DALLAS, TEXAS - JUNE 8, 2023 - 9:42 A.M.

THE CLERK: All rise. United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, The Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We are here this morning for a setting in Highland. This is on a motion of Hunter Mountain for leave to file an adversary proceeding. I will start out by getting appearances from lawyers in the courtroom.

MR. MCENTIRE: Yes, Your Honor. Sawnie McEntire along with my partner Roger McCleary and Tim Miller on behalf of Hunter Mountain Investment Trust, Ltd.

THE COURT: Thank you.

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for the Reorganized Highland, for the Highland Claimant Trust. I'm joined by Mr. Pomerantz, Mr. Demo, and Ms. Winograd.

THE COURT: Good morning.

MR. STANCIL: Good morning, Your Honor. Mark Stancil from Willkie Farr & Gallagher for Mr. Seery. I'm joined by my colleague Josh Levy.

THE COURT: Good morning.

MR. MCILWAIN: Good morning, Your Honor. Brent McIlwain from Holland & Knight here for Muck Holding, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, and

Stonehill Capital Management, LLC.

THE COURT: Thank you. All right. Is that all of our lawyer appearances? I know we have observers on the WebEx, but I assume you are just observers. We scheduled this to be a live hearing for participants.

All right. Well, we had some ground rules for how this would go forward today. We, of course, have had two -- I call them hearings on what kind of hearing we're going to have. We've had two status conferences. And so our ground rules were set. Three hours of total presentation time for each the Movant and the aggregate Respondents. We also had an order regarding what discovery would or would not be allowed.

And to my surprise, there were a flurry of pleadings. We're a few minutes late getting out here because we were trying to digest what was filed late yesterday and into the night.

So I understand we have a controversy about a couple of expert witnesses who were listed on Monday on the Movants' exhibit and witness list. And I've seen a motion to exclude the expert witnesses' testimony. And I think we need to address that right off the bat. I don't want to take too much time on this, because, again, we're going to finish today, and I won't let this housekeeping matter eat into our three hours, but I want to get going. So I'll hear from Movant, Mr. McEntire.

MR. STANCIL: Your Honor, may --

THE COURT: Go ahead.

MR. STANCIL: We moved to exclude, so I would propose that my colleague, Mr. Levy, address this motion very briefly if --

THE COURT: Well, I guess --

MR. STANCIL: Or I will do as --

THE COURT: -- that actually makes sense.

MR. STANCIL: Okay.

THE COURT: I was thinking Mr. McEntire teed up the issue, but I suppose you did with the motion to exclude. So, Counsel?

MR. LEVY: Thank you, Your Honor. Josh Levy on behalf of Mr. Seery.

So, we think our papers largely speak for themselves, but two additional points we'd like to raise. In the response filed by Hunter Mountain this morning, and this is Docket Entry 3828, in Paragraph 11, they argue that this is a bench hearing on colorability, not a trial where junk science is a concern. But junk science is precisely what they're trying to introduce here. They have raised two expert witnesses, one who purports to be an expert in compensation but has no experience whatsoever in evaluating compensation, and they provide no methodology for their conclusion.

For example, they claim to have identified red flags.

They never explain what those red flags are, why they are red flags, or how they determined they were red flags. This is junk science, precisely what the Federal Rules are designed to exclude.

But that shouldn't detract from the broader procedural point that this is the first time we're hearing about expert witnesses, at 10:00 p.m. three days before the hearing. This is a trial by ambush. This motion was filed in March, we've been litigating this motion for over two months now, and this is the first time we're hearing about any expert witnesses.

As Your Honor noted, we've had multiple conferences. We've had rules setting the ground rules for this hearing. We've had orders setting the scope of discovery. But now Hunter Mountain is trying to pull a bait-and-switch. After never mentioning any experts, after obtaining orders limiting the scope of discovery, they then wait until right before the hearing to disclose their experts, ensuring that these experts are insulated from any kind of discovery and can ambush us at the hearing.

I'm happy to answer any other questions, but we believe they should be excluded and the accompanying exhibits should also be excluded.

THE COURT: All right. Thank you. And the accompanying exhibits, I don't review exhibits before a trial or a hearing because I don't know what's going to be objected

to and admitted. So do you want to point out, were there expert reports in the proposed exhibits?

MR. LEVY: These were charts and analyses prepared by their experts, not actual expert reports.

THE COURT: Okay.

MR. LEVY: In their witness and exhibit list, Hunter Mountain included several paragraphs that I guess serves as what would be their expert reports. And then it would be Exhibits 39 through 52, which consist of CVs, materials reviewed, and then what they term "data charts" prepared by their experts.

THE COURT: 39 through 52? Oh, I'm looking at the wrong exhibit notebook. Oh.

(Pause.)

THE COURT: Okay. Here we go. All right. No questions at this time.

Mr. McEntire?

MR. MCENTIRE: Yes, Your Honor. May I proceed?

THE COURT: You may.

MR. MCENTIRE: Again, my presentation and response is subject to our objection concerning that any evidence is being admitted for any purpose, other than what we believe is the proper standard of review. So my response and our offer of these experts is subject to that objection.

With that said, Mr. Levy's argument he just presented to

the Court presupposes that my client has a duty under 9014 to provide a report, which we do not; to provide detailed disclosures, which we do not, because 9014 is specifically exempted from the scope of Rule 26. What we did, we didn't have to do. What we did, and I made the decision to provide them some disclosure and identification of who they were, their backgrounds, and --

THE COURT: Well, let me stop you.

MR. MCENTIRE: Certainly.

THE COURT: "What we did, we didn't have to do." The Local Rules, first of all, do require an exhibit and witness list. And --

MR. MCENTIRE: We've provided that.

THE COURT: I know. I know. But you -- I thought I heard you --

MR. MCENTIRE: No, no.

THE COURT: -- saying you didn't have to do that. You do have to do that.

MR. MCENTIRE: No, no, no.

THE COURT: But I guess what you're saying is --

MR. MCENTIRE: What we provided was more than what the Local Rules require.

THE COURT: How so?

MR. MCENTIRE: We provided CVs. We provided their backgrounds. We disclosed in the actual witness description

who they were and the key components of their opinions. And we refer to their data charts. That is not something that the Local Rule requires.

THE COURT: Okay. Well, let me back up. We have our Local Rules, but then we had our two status conferences --

MR. MCENTIRE: Yes.

THE COURT: -- on what the format of the hearing --

MR. MCENTIRE: Yes.

THE COURT: -- would be.

MR. MCENTIRE: Yes.

THE COURT: And, of course, there was extensive discussion, evidence or no evidence? What did the legal standard, colorability, require?

MR. MCENTIRE: Yes.

THE COURT: And I came out in the end and said, if people want to put on witnesses, they're entitled to put on witnesses. I think there may be a mixture of a fact question and law question on colorability. So, and then I set a three-hour time limit and I said, if someone wants to depose Mr. Seery and Mr. Dondero, they can, but no more discovery other than that. Okay?

MR. MCENTIRE: I understand.

THE COURT: Why then did you not say, well, wait, Judge, if it's going to be evidence, we're just letting you know, in full disclosure, we might call a couple of experts,

and this may impact your decision on what kind of discovery can happen. And this may impact your decision on whether three hours each side is enough.

MR. MCENTIRE: Well, Your Honor, in fairness, I don't think we had made a final decision to actually designate any experts. And at the time, the focus was on other witnesses. But there was no exclusion, there was no limitation at all on my right to bring an expert. And the Rules are very clear. And the Court's --

THE COURT: But I specifically limited discovery, and it was on your motion. It was on your motion we set the hearing on --

MR. MCENTIRE: Actually, --

THE COURT: You know, did you need a continuance, because if we were going to have evidence, maybe you needed a continuance. And then there was a discovery issue raised.

MR. MCENTIRE: To be clear, Your Honor, I'm looking at your orders.

THE COURT: Got them in front of me.

MR. MCENTIRE: Your order of May 26, 2023. You said, You can put on your witnesses and the Court is going to rule. You made no limitations as to who the witnesses would be. Your order did not limit the scope of witnesses to simply Mr. Seery or Mr. Dondero. In fact, any suggestion that you did limit the witnesses is contrary --

THE COURT: Now, which order are you looking at?

MR. MCENTIRE: I'm looking at the May 26, 2023 order, Page 51, Lines 3 through 14.

THE COURT: Okay.

MR. MCENTIRE: You also stated --

THE COURT: I have -- have I entered three orders on this? I've got a May 10th order. I've got a May 22nd order.

MR. MCENTIRE: And I would also point out, Your Honor, --

THE COURT: Could you answer my question? I want to look at what you're looking at.

MR. MCENTIRE: Certainly.

THE COURT: Here we -- this is the one. Okay. Aha. Okay. May 26.

MR. MCENTIRE: Page 51, Lines 3 through 14.

THE COURT: I've entered three orders on what kind of hearing we're going to have. Okay. So you're looking where?

MR. MCENTIRE: Page 51, Lines 3 through 14. "You can put on your witnesses."

THE COURT: Page 51?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Oh. You're looking at a transcript, not the order.

MR. MCENTIRE: That's right. I apologize.

THE COURT: Okay.

MR. MCENTIRE: Yeah, I'm looking at the transcript from the hearing.

THE COURT: Okay. Well, I'm looking at my order.

MR. MCENTIRE: And the order, the order also specifies no limitation at all in connection with the -- the --

THE COURT: But my order was based on what was discussed that day.

MR. MCENTIRE: And what was --

THE COURT: If you had said, hmm, Judge, if you're going to allow evidence, we may call a couple of experts, then there would have been a whole discussion about that and did I need to limit the discovery, as I did. And there would have been a whole discussion of, well, three hours, three hours each side, is that going to be enough if we have experts?

MR. MCENTIRE: The discovery ruling that you made was on my motion, and at the time I was not seeking to take any expert depositions. And you denied my request to take ample discovery. You limited my right to take only one deposition, without documents.

The issue of taking expert discovery was not even on the table. However, you made it very --

THE COURT: Well, that's my point precisely. The whole purpose of the hearing was, what kind of hearing are we going to have on June 8th?

MR. MCENTIRE: I understand. And our position --

THE COURT: We had already had one status conference on argument only versus evidence. And I allowed you all to file some briefing, which you did. And then I issued an order after the briefing, saying, I think I should allow evidence on the colorability question. I'm not forcing anyone to put on evidence, but if you want to put on evidence, you can.

And then you filed your motions and we had the next status conference on what kind of hearing we're going to have. And there was more argument: We don't think the evidence is appropriate, but if evidence is appropriate, we want you to continue the hearing to allow all kinds of discovery. I don't know what. And it was right before Memorial Day, and I hated the fact that a bunch of subpoenas were going to go out and ruin people's holidays. But there was no discussion then of, okay, but just so you know, since you have made the ruling that evidence can come in, we're going to have a couple of experts.

MR. MCENTIRE: As I've already mentioned, Your Honor, we had not made a decision to call experts at that time. We made a decision to call the experts shortly before we filed our designations.

The point here is this. The Rules do not require me to provide any more disclosure than I have. I have gone over and above the Local Rules.

If the Court believes that it would have allowed more time for this hearing, I would advise the Court that opposing counsel vehemently opposed any type of postponement or continuance. The discovery that I was requesting was discovery from fact witnesses. Experts were not at issue at that time. Experts are --

THE COURT: Because --

MR. MCENTIRE: -- at issue now.

THE COURT: -- nobody knew that experts might be called.

MR. MCENTIRE: I have a right to call experts, Your --

THE COURT: It changes the whole complexion.

MR. MCENTIRE: But I have a right to call experts, under the Rules. I have a right, a fundamental due process -- let me -- may I finish, Your Honor? A fundamental due process right to call experts. Their attempt to charge some type of *Daubert* challenge is nothing but a shotgun blast on the wall, having no meaning at all. At a minimum, I have a right to put the witnesses on the stand and we'll have a *Daubert* hearing.

If they want more time, they need to ask for it. They didn't ask for it. Their solution is to strike my experts, which is improper. It would be improper for this Court to strike my experts when they have been properly tendered under the Local Rules. They have not cited an alternative remedy.

If they want the alternative remedy, they need to ask the Court.

THE COURT: My next question is: How do you propose to get this all done in only three hours?

MR. MCENTIRE: We intend to move quickly.

THE COURT: But, see, now they, I'm guessing, prepared their case assuming there weren't going to be experts. And they, if they're good lawyers, which I know you all are, they have their script of the kind of things they were going to ask the witnesses.

MR. MCENTIRE: Well, did they have a --

THE COURT: And now they've got to carve out time for two last-minute experts?

MR. MCENTIRE: They had an option. And one of the options was they could have called me up on Tuesday and asked for their depositions and I probably would have agreed.

THE COURT: I already said no depositions except Seery and Dondero.

MR. MCENTIRE: Then they could have come and filed a different kind of motion with the Court.

Their only remedy that they're seeking is a draconian one. There are other options that are more consistent with the implementation of due process here, Your Honor, not striking my experts, which were properly identified under the Local Rules.

If the Court is going to strike my experts, note our objection. We are tendering our experts. We will put -- like to put a proffer on for the Fifth Circuit or for the appellate process. But if the Court is going to strike our experts, then it needs to do so. We object because we have done everything correctly.

THE COURT: Okay. Here's another problem. I have not had time to process their motion to exclude. Beyond the procedural issues, they are saying junk science, that there's inadequate expertise on the part of I guess at least one of them regarding executive compensation. I haven't had -- they filed their motion to exclude at 4:00-something yesterday. Okay?

MR. MCENTIRE: I understand.

THE COURT: Now, yeah, I could have stayed up all night. I stayed up pretty late anyway, by the way. But --

MR. MCENTIRE: Well, first of all, --

THE COURT: -- I haven't even had the time to process and intelligently rule on their motion --

MR. MCENTIRE: I appreciate that, and I'll respect --

THE COURT: -- as far as the --

MR. MCENTIRE: I'll respect the Court's statement.

THE COURT: -- junk science argument.

MR. MCENTIRE: I'll respect the Court's statement. Their process and the procedure they've adopted is improper,

because if you're going to have a *Daubert* hearing, that's a live hearing. Or they're going to have to have evidence to support their challenge. This is simply a conclusory shotgun blast on the wall, Your Honor.

If you even want to consider a *Daubert* challenge, the proper procedure is to put the witnesses on the stand and have an opportunity to have a proffer of evidence and a cross-examination. That's the proper procedure. Throwing something and innuendo and rhetoric and conclusions is not a proper *Daubert* motion at all. The Court could deny their *Daubert* motion just on those grounds.

THE COURT: I'm not going to rule on a motion that I've barely had a chance to read, not to mention your response that was filed at 8:00-something this morning.

MR. MORRIS: It was.

MR. MCENTIRE: It was. Well, then the option is you need to continue the proceeding to allow the experts to take the stand.

THE COURT: Well, I know you have thought on that, but here is something I'm contemplating doing. We'll go forward with the hearing in the manner my order said we would go forward with it. My, I guess, Order #3 of my three orders. And at the end of the evidence, you can argue in closing, each of you, why we should keep the evidence open to come back another day on only the experts. But time matters. If you've

all already used your three hours on each side, then are we going to come back for five minutes on each of them? I mean, I don't know.

And then, of course, I would have to, if I ruled in that way, I believe I would have to give them a chance to depose these people.

MR. MCENTIRE: I think that would be reasonable.

THE COURT: Okay. But you think you can get all of your evidence in, other than your experts, and your opening statement, if any, your closing argument, if any, in three hours?

MR. MCENTIRE: I'll do my best.

THE COURT: Well, if you -- it's not a matter of -- I'm just saying this may all be an academic argument, because I'm not increasing this to more than three hours each. We've fully vetted that.

MR. MCENTIRE: Well, what the Court is then doing by virtue of your ruling is that you're making me actually present my evidence in a shortened form today, two hours, two and a half hours, not knowing how -- whether or not you are actually going to allow experts.

So, without the certainty, I will have to abbreviate my entire presentation, giving them the advantage of putting more evidence on than I, in an effort to anticipate a positive ruling, which you're not prepared to provide yet. And so I'm

actually being penalized.

THE COURT: Counsel, we had two status conferences on what kind of hearing we were going to have.

MR. MCENTIRE: I understand.

THE COURT: Now, the fact that you had not decided your strategy for this hearing, that's not my fault. Again, we had two hearings on what kind of hearing we were going to have today. We could have fully vetted this. I could have heard about the experts, I could have decided if we were going to continue the hearing past June 8th, could have decided if we were going to allow more depositions.

MR. MCENTIRE: Your Honor, --

THE COURT: I could have fully studied the merits of the motion to exclude and decided if this is junk science or not.

MR. MCENTIRE: I would request a ruling at this time, Your Honor, on the experts. If you are not inclined to provide a ruling to me on the experts at this time, I would effectively be penalized on my time limits. I will have to set aside enough time to put the experts on, not knowing, not knowing whether you're going to give me the opportunity to do so until the end of the day. And that would be -- that would be punishment.

THE COURT: Isn't this going to be just preparing your case you would have -- I mean, going forward with your

case the way you would have?

MR. MCENTIRE: No, I don't -- really don't think so. I think there's --

THE COURT: I mean, --

MR. MCENTIRE: There's a difference.

THE COURT: -- you did not prepare your witnesses and your possible cross-examination with the expectation of I'll get my two experts in?

MR. MCENTIRE: My -- of course. But the point is, then I'm going to have to set aside a half an hour or maybe even longer from my other witness preparations, not knowing whether you'll even give me that time.

THE COURT: Isn't the other side going to have to do the very same thing?

MR. MCENTIRE: No.

THE COURT: Why not? They don't know how I'm going to rule. I don't know how I'm going to rule. I have not studied the motion to exclude the way I should.

MR. MCENTIRE: Okay. Well, Your Honor, we request a ruling now. But if the Court is not inclined to do so, please note our objection.

THE COURT: All right. I'll give the Movants the last word. And I say "Movants" plural. I'm trying to remember where I saw a joinder and when I did not. Did I see a joinder? I can't remember.

MR. MORRIS: Can we just have a moment, Your Honor?

THE COURT: Okay. Okay.

MR. MCILWAIN: Your Honor, my clients did file a joinder, but --

THE COURT: Okay.

MR. MCILWAIN: -- I'm going to let them handle this.

THE COURT: Okay.

(Pause.)

THE COURT: Counsel?

MR. LEVY: Thank you, Your Honor. Two brief points we'd like to make. The first is on the Rules. So, Hunter Mountain is focused on Rule 26(a) regarding reports. However, Rule 26(b) applies to contested matters under Rule 9014. And as we explain in Paragraph -- we explain in our brief, that -- or, in Paragraph 19 of our brief, that under Rule 26(b) we're entitled to depose the experts.

And so we agree with Your Honor's suggestion that if there's going to be any sort of experts, then we need the opportunity to depose them. This is Rule 26(b)(4)(A), which expressly does apply to contested matters under Bankruptcy Rule 9014(b).

The second point is we agree with the approach Your Honor has proposed. We think, for today, both sides can put on their full cases without expert witnesses. Both sides can have the full three hours, which should address Hunter

Mountain's concern. And if Your Honor decides at the conclusion of the hearing that expert testimony would be helpful, then we could take the opportunity to depose their experts and then come back for an additional half-hour for each side to address any expert testimony that Your Honor believes would be helpful.

THE COURT: Okay. Is your proposal that you each today would be limited to two and a half/two and a half? Or three/three, and then another hour, 30 minutes/30 minutes, if I --

MR. LEVY: Three/three.

THE COURT: -- decide to allow any experts?

MR. LEVY: Yeah. Three. Three and three for each side, the hearing contemplated by Your Honor's orders, today. And if Your Honor decides that expert testimony would be helpful, we could come back for an hour, for half an hour on each side, regarding experts.

THE COURT: All right. Mr. McEntire, what about that?

Oh, I'm sorry, did you --

MR. STANCIL: Oh, I'm sorry. Just one additional point, Your Honor. We would ask that Your Honor's ruling on the ultimate admissibility of this be limited to what they've actually put in front of us. The day for the hearing is today, so I think I'd like -- I'd suspect Your Honor would

like to avoid another raft of submissions. So we would just ask that they live or die with what they've said in the way of methodology, disclosures, and the like.

THE COURT: Okay. Mr. McEntire, this seems like the best of all worlds, maybe.

MR. MCENTIRE: Well, it may be the best of the worlds in which we're operating.

My first position is that the experts are admissible, period. And the Rules do not require anything more than what we've already done. In fact, we've done more than we were supposed to.

THE COURT: What is your argument about 26(b)(4), which --

MR. MCCLEARY: If they want to take a deposition, they could have called me up and asked for it.

MR. STANCIL: Your Honor, I was --

THE COURT: Wait a second. They were under a court order. Okay?

MR. MCENTIRE: They could have -- they could have sought --

THE COURT: They were under my order. Okay? They would have been violating my order if they had done it.

MR. STANCIL: I was also, Your Honor, I was in a --

THE COURT: Not to mention that it was --

MR. STANCIL: I was in an airplane from 9:00 a.m.

Tuesday until 9:00 p.m. Tuesday.

THE COURT: I'm surprised a lot of you got here, with the Martian atmosphere that I saw pictures of.

Yes. That's not realistic, to think that you disclose an expert on Monday for a Thursday hearing and they can call you up and --

MR. MCENTIRE: The other --

THE COURT: -- quickly put together a deposition. So, --

MR. MCENTIRE: Sure. The other option, --

THE COURT: Uh-huh.

MR. MCENTIRE: -- of course, Your Honor, as I mentioned before, and I'm not going to repeat myself, is they -- there's other forms of relief they could seek. But under the circumstances, and in light of your apparent leaning on the issue, then this is the best under the circumstances that they've suggested. We'd like an hour each.

I would also point out that -- well, anyway, that's it, Your Honor. Thank you.

THE COURT: All right. So we are going to go forward as planned, three hours/three hours. No experts today. In making your closings -- well, this is kind of awkward. I'm trying to think if we really have closing arguments, when you don't know if it's -- it doesn't seem to make sense. Like, I guess we could have closing arguments if you want, subject to

supplementing your closing arguments if we come back a second day with the experts. Okay?

And I'm not making a ruling today on the motion to exclude. I'm going to hear what I hear. And maybe what we'll do is I'll give you a placeholder hearing if we're going to come back on the experts. Then I'll go back and read the motion, the response, and make my ruling on are we coming back for another day of experts. Okay? Got it?

And with regard to the comment about not adding to, I think that's a fair point. You can't add new exhibits that the expert might talk about or that you might want me to consider between now and whenever the tentative day two is.

MR. MCENTIRE: Understand. We agree with that.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, there is one -- one exhibit that has a small typo transcription of a number on it. So we would like to substitute for that. It's a minor detail. But I'll provide opposing counsel with that. But it's very minor.

THE COURT: You have it today, I presume?

MR. MCCLEARY: Yes, we have it.

THE COURT: Okay. So as long as you hand it to them today.

MR. STANCIL: No objection, Your Honor. We do -- I think someone is back at the office working on a short reply

on our motion, which I assume we could file in support of -- I mean, we filed our motion. They filed an opposition. I assume we would be entitled under the Rules to file a short reply on the actual exclusion issue.

THE COURT: That is fair, but let's talk about timing. You said someone is back at the office working on it. Could you get it on file by Monday?

MR. STANCIL: Yes, ma'am.

THE COURT: Okay. Then that'll be allowed if it's filed by the end of the day Monday.

MR. MCCLEARY: Your Honor, I'm providing a copy of Exhibit 43 to opposing counsel, which is the substitute exhibit.

And obviously, we'd like to have an opportunity to respond to what their filing is on Monday.

THE COURT: No. I mean, motion, response, reply. That's all our Rules permit. Okay? Motion, response, reply. Okay.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: All right. Well, with that, do the parties want to make opening statements? If so, Mr. McEntire, you go first.

MR. MCENTIRE: Yes, Your Honor. We have a PowerPoint I would like to utilize, if I could.

THE COURT: You may.

MR. MORRIS: Your Honor, before we get to that, the Plaintiff has objected to virtually every single exhibit that we have. Should we deal with the evidence first, because I don't want to refer to documents or evidence in my opening that they're objecting to. They've literally objected to every single exhibit except one, although I think they're withdrawing certain of those objections.

I don't -- I don't know if the Court has had an opportunity to see the objection that was filed to the exhibits.

THE COURT: That was what was filed like at 11:00 last night or so?

MR. MORRIS: That's right.

THE COURT: Okay.

MR. MORRIS: And so at 2:00, 3:00, 4:00, 5:00 o'clock this morning, I actually typed out a response that I'd like to hand up to the Court. But we've got to resolve the evidentiary issues before we get to this.

THE COURT: Okay. Well, --

MR. MORRIS: And I don't know what their position is going to be --

THE COURT: -- as a housekeeping matter, let's do that first. And let's start with the Movants' exhibits. Do we have any stipulations on admissibility of Movants' exhibits?

MR. MORRIS: So, if I understand correctly, Your Honor, you'd like to know if we object to any of their exhibits first?

THE COURT: Yes. And --

MR. MORRIS: Okay.

THE COURT: -- we'll hold --

MR. MORRIS: Because we have very limited objections.

THE COURT: Yes. We're going to keep on hold for now your exhibits to the expert-related, --

MR. MORRIS: Yes.

THE COURT: -- your objections to the expert-related ones.

MR. MORRIS: Right. I think -- I think --

THE COURT: So let's not talk about, for this moment, --

MR. MORRIS: 39 --

THE COURT: -- 39 through 52.

MR. MORRIS: Okay.

THE COURT: But as for 1 through 38 or 53 through 80, do the Respondents have objections?

MR. LEVY: Yes, Your Honor. We have very limited objections.

THE COURT: Okay.

MR. LEVY: So, the three to which we object in their entirety are Exhibits 24, 25, and 76, all of which we object

to on relevance grounds.

Exhibits 24 and 25 are email correspondence between counsel in an unrelated state court matter where Mr. Seery is responding to a third-party subpoena regarding the preservation of his text messages on his iPhone. This has absolutely nothing to do with whether or not the Movants have stated a colorable claim for breach of fiduciary duties.

What this appears to be is related to an entirely separate motion raised by Dugaboy regarding the preservation of Mr. Seery's iPhone. So we object to Exhibits 24 and 25 because they have simply nothing to do with the issues in this hearing.

We also object to Exhibit 76, which is a filing from two years ago in a different bankruptcy matter, from *Acis*, regarding an injunction in place in that -- in that plan about issues that -- that occurred before the bankruptcy was in place. So this is just an entirely different case from issues that arose many, many years ago that, again, has nothing to do with this case.

THE COURT: This was whether the *Acis* plan injunction barred some lawsuit?

MR. LEVY: Exactly.

THE COURT: Okay. Okay. Is that all?

MR. LEVY: We also have limited objections to certain exhibits that we think are admissible for the -- for the fact

they're said, but not the truth of the matter asserted.

For example, Exhibits 1 and 2 are complaints filed in those actions. We have no objection to those coming in, but not for the truth of the matter asserted. These are advocacy pieces and pleadings. They're not actually substantive evidence.

And we would have similar -- similar objections to Exhibits 4, 6, 11, --

THE COURT: Wait. 4 is James Dondero Handwritten Notes, May 2021.

MR. LEVY: Yes.

THE COURT: Okay.

MR. LEVY: So, we have no objection to that coming into evidence.

THE COURT: Uh-huh.

MR. LEVY: But there are -- those are hearsay. They're not admissible standing by themselves for the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: And Exhibit 6 are news articles. Similarly, they're hearsay, but we have no objection to them coming in. They're admissible for the fact that they're published, but not the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: Exhibit 11, which is a motion filed by the

Debtor. Similarly, it's for -- we have no objection to anything on the docket coming in, but anything that's an advocacy piece, like a motion as opposed to an order, we think is not admissible for the truth of the matter asserted.

And that would be a similar objection, then, for Exhibit 58, which is a complaint.

Exhibits 59, 60, and 61 are -- are letters by counsel for Mr. Dondero to the U.S. Trustee's Office. We similarly have no objection to that coming in, but not for the truth of the matter asserted.

And Exhibits 62 and 63, Exhibit 62 is an attorney declaration attaching, similarly, documents that are -- that are advocacy pieces.

And Exhibit 63 appears to be an asset chart prepared by counsel. So it would be a similar objection.

And Exhibit 66 also is a declaration attaching documents.

No objections to those coming in, but not for the truth of the matter asserted.

Exhibits 72, 73, and 74 are all -- well, 72 are press articles. 73 and 74 are briefs. We don't object to that coming in, but we object to it being admitted for the truth of the matter asserted.

And similarly, Exhibit 80 is a pleading in an SDNY bankruptcy. We have no objection to that coming in, but not for the truth of the matter asserted.

And finally, Exhibits 81, 82, 83 don't specify particular documents. They appear to largely be reservations of rights. And so we would likewise reserve our right to object once we see any specific documents --

THE COURT: Okay.

MR. LEVY: -- admitted under these exhibits.

THE COURT: Okay. Mr. --

MR. LEVY: And I understand my colleague has an objection to Exhibit 5.

MR. MORRIS: Exhibit 5, which is the subject, I believe, of an unopposed sealing motion. That document has to do with purported restrictions on certain securities. Since it's subject to a sealing motion, I don't want to say too much more than that, other than that -- we don't think it should be admitted, because you can just see from the information on the document that it was created after the termination of a shared services agreement.

However, I'm hopeful that we can resolve the issue by simply stipulating that in December 2020 MGM was on a restricted list. What that means, what the consequences of it, the rest of it can be the subject of discussion. But if they're trying to get that document in for that particular fact, we would stipulate to it in order to resolve that dispute.

THE COURT: All right. Well, that's lots to respond

to, Mr. McCleary. Why don't we start with the outright objections: 24, 25. It's apparently text messages related to Mr. Seery's iPhone. I know we've got another motion pending out there that's not set today regarding Mr. Seery's iPhone.

MR. MCCLEARY: Yes, Your Honor. Well, as the Court is aware, we've attempted to get discovery from Mr. Seery in relation to the allegations in this lawsuit. And by the way, all of our exhibits that we're tendering are subject to our objections that this should not be an evidentiary hearing. I just want to make that clear.

THE COURT: Understood.

MR. MCCLEARY: Okay. Thank you. So, we're not waiving that.

The Exhibits 24 and 25 are relevant to the fact that he's -- he's not preserving information that is relevant to the claims in this lawsuit. And that also is something that is a factor in the colorability of our claims in this case.

THE COURT: How?

MR. MCCLEARY: Well, there is an effort, we believe, underway to not have information available for us to discover. And it reflects that they have been involved in providing -- we think supports -- providing material nonpublic information to other people that would be in his phone. And we want him to preserve it. And we think the fact that he is not is evidence that supports the colorability of our claims.

THE COURT: So, --

MR. MCENTIRE: Your Honor, this --

THE COURT: No. No. I'm processing that. You're wanting the Court to receive into evidence a text that may say something like, I delete messages periodically on my phone, to support your claim that you have a colorable claim that some sort of improper insider disclosure of information and insider trading is going on? He said he had an automatic delete feature on his phone; therefore, he -- that must be evidence of a colorable claim for insider trading. That's the argument?

MR. MCENTIRE: May I add to it, supplement, Your Honor? Mr. Seery, in his deposition, indicated that he did receive a text message that he had recently reviewed from Stonehill in February of 2021. To the extent, however, that is inconsistent with the fact that he has an automatic delete button, suggesting to me that certain text messages have been selectively saved and some other messages have been not selectively saved.

THE COURT: We don't have that motion set today.

MR. MCENTIRE: This is not -- that has nothing to do with the motion. It has to do with the fact that what is being presented to the Court in response, the Respondents' argument, is a selected window, a selected picture, that is -- distorts the reality of what we think has been destroyed

evidence.

Mr. Seery can't save one message that may be helpful to them and not save others that may not be. And it is inconsistent with the notion that this automatic delete button was already in effect, so why does he have one favorable message? That's why it's relevant.

THE COURT: Maybe he stopped using the automatic delete after --

MR. MCENTIRE: No, he didn't at this time, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: That's the relevance.

THE COURT: So, --

MR. MCCLEARY: And he should never have used it, Your Honor, given his role and responsibilities.

THE COURT: We don't have that motion set today. What is the content of these emails? February 16th, March 10th, 2023? What is the content, for me to really zero in --

MR. LEVY: I have --

THE COURT: -- on relevance or not.

MR. LEVY: -- copies of the emails, if that would be helpful --

THE COURT: Okay.

MR. LEVY: -- to Your Honor.

THE COURT: Well, you know, now I'm seeing them, so I

don't know what the big deal is if --

MR. LEVY: As Your Honor can see, these are emails between counsel regarding preservation, which has nothing to do with whether there are colorable claims for fiduciary duties.

I'll add that -- and to show that this has nothing to do with this case and it is an attempt to generate a fishing expedition for documents in an entirely unrelated motion, we had a meet-and-confer where we represented to the counsel bringing that motion that we have been able to recover the text messages from the iCloud.

And so this is really just a sideshow. It has nothing to do with the issues of the colorability of claims for breach of fiduciary duties. It should not be introduced into evidence in this hearing.

THE COURT: All right. I'm going to sustain the objection, but this is without prejudice to you re-urging admission of these messages at the hearing on the motion regarding Mr. Seery's phone. Okay? Now, --

MR. MCCLEARY: That's as to 24 and 25, Your Honor?

THE COURT: Correct. And let's go now to the other one, the Exhibit 76, the *Acis*-related document, the relevance of that. Statement of Interested Party in Response to Motion of NexPoint to Confirm Discharge or Plan Injunction Does Not Bar Suit, or Alternatively, for Relief from All Applicable

Injunctions.

What is the relevance for today's matter?

MR. MCCLEARY: Your Honor, this is background of pleadings and just background information generally to support the allegations made in the case and the background.

THE COURT: What do you mean, background?

MR. MCCLEARY: Kind of the history relative to the claims trading and relative to the claims of the use of insider information.

THE COURT: Okay. Be more specific, because I certainly have a background education on *Acis* litigation.

(Pause.)

MR. MCCLEARY: Yeah. Your Honor, this is a data point that is referred to in one of our experts' data charts, I believe, so --

THE COURT: All right. So let's just carry that to --

MR. MCCLEARY: Yes.

THE COURT: I'm just going to mark it as carried along with 39 through 62, related to the experts.

(HMIT's Exhibits 39 through 62 and Exhibit 76 carried.)

THE COURT: Okay. What about all of these objections that we don't object *per se* but we want it clear that the documents are not being offered for the truth of the matter asserted because there's hearsay?

MR. MCENTIRE: Your Honor, I'll let Mr. McCleary address all of those.

I want to point out one exception, and that is Exhibit #4, which are handwritten notes from Mr. Jim Dondero. Those are not -- they are being offered for the truth of the matter asserted because it's an admission of a party opponent in these proceedings, and that's Farallon. They reflect significant statements and admissions by Farallon, which are not hearsay. It's an exception to the hearsay rule. And they're being offered for more -- they are being offered for the truth of the matter asserted, because -- and it's admissible in that format.

THE COURT: But are you referring to hearsay within hearsay? Because there would be, I guess -- I guess the handwritten notes of Mr. Dondero are his hearsay, and then you're saying there's --

MR. MCENTIRE: So, this is reflecting statements made to Mr. Dondero that are admissions of a party opponent.

MR. LEVY: None of that has been established. These are not notes from anybody at Farallon or Stonehill which could potentially be a party admission. These are notes by Mr. Dondero about what was purportedly said by somebody else, and there's no evidence that these were kept in the regular course of business.

This is hearsay and hearsay within hearsay. And this

could be established in testimony, but it can't be admitted -- the document can't be admitted to speak on behalf of a third person who's not here.

MR. MCENTIRE: Well, first of all, I agree, we'd need to lay a foundation. But that's not the purpose of this discussion right now. I am simply advising the Court that once I lay a foundation, it comes in for all purposes. It comes in as an admission of a party opponent.

MR. LEVY: It is not an admission of a party opponent. It is not notes or statements by any actual defendant. These are notes by Mr. Dondero being introduced for his own benefit. It is not a party admission.

THE COURT: Okay. I'm going to carry that one. If one of the witnesses that's on the witness stand -- well, presumably Mr. Dondero will be called -- we can get context at that time and decide if it's appropriate to let it in and let you cross-examine him on them if that's going to come in. All right? So we'll carry this one.

Anything else, though, unique, or can we consider as a batch all these other objections to -- most of them being pleadings, not all of them but a lot of them -- that the Respondents just want it clear that they're not being offered for the truth of the matter asserted? Your response?

MR. MCCLEARY: They're, again, largely data points relied on by experts in the course of coming up with their

opinions and just setting the background and history of the claims trading.

THE COURT: Well, then which ones are data points? Because I just need to carry those, right? If they're not being offered for any other reason.

MR. MCCLEARY: Well, I would have to -- we would have to refer to the charts of the experts, Your Honor, to determine that on all of them.

MR. MCENTIRE: In order to facilitate this, may I make a suggestion, Your Honor? We'll agree that if we're going to offer anything that he's identified other than for the purposes indicated, we will advise the Court. Otherwise, we'll accept the limitations imposed. And as we go through, if we offer an exhibit that is more than the truth -- if we are offering it for the truth of the matter asserted, we will advise the Court, and then we could take it up then. I'm just trying to get the ball rolling.

THE COURT: Okay. Well, that's still going to be a time-consuming thing, maybe. But, okay. Just, when we start the clock here -- very shortly, I hope -- I want people clear that when you make objections, that counts against your three hours. Okay? All right?

MR. LEVY: Okay. Understood, Your Honor.

MR. MCCLEARY: Your Honor, we have certainly made objection to some of their exhibits.

THE COURT: All right. Well, shall we turn to those now?

MR. MCCLEARY: Yes, Your Honor.

MR. MORRIS: Your Honor, they objected to every single exhibit except one, so let's be clear.

THE COURT: Okay.

MR. MORRIS: If they're withdrawing them, that's fine.

MR. MCCLEARY: Well, --

MR. MORRIS: But let's be clear.

MR. MCCLEARY: -- we are not withdrawing our general objection to all the evidence, of course. Just --

THE COURT: Okay. Let me just say for the record right now, I understand and you are preserving for all purposes your ability to argue on appeal that it was error for the Court to consider any evidence. Okay? You have not waived that argument by --

MR. MCCLEARY: Thank you.

THE COURT: -- now --

MR. MCCLEARY: Thank you. We can have --

THE COURT: -- agreeing to the admission of anybody's exhibit or offering your own exhibits.

MR. MCCLEARY: And we could have a running objection on that basis, on relevance to all the witnesses and the evidence that they offer on that basis. I would request that.

THE COURT: Well, okay, let me be clear. Relevance. Your argument is that no evidence is relevant because the Court doesn't need to consider any evidence --

MR. MCCLEARY: Yes, Your Honor.

THE COURT: -- on the colorability issue. You've got a running objection. It's not destroyed for appeal purposes. Okay?

MR. MCCLEARY: Thank you, Your Honor. Then, subject to that, in terms --

MR. MORRIS: I'm sorry to interrupt, but --

MR. MCCLEARY: Sure.

MR. MORRIS: -- would it be helpful if I gave the Court my list so she can see --

MR. MCCLEARY: Sure.

MR. MORRIS: -- what the --

MR. MCCLEARY: Sure.

MR. MORRIS: Okay. May I approach, Your Honor?

THE COURT: You may. I'm not sure, if everything has been objected to, I'm not sure how --

MR. MORRIS: Because I've tried -- I've tried to organize it in a way that would be helpful.

THE COURT: Okay.

(Pause.)

MR. MCCLEARY: Okay. Your --

THE COURT: I'm ready.

MR. MCCLEARY: -- Honor, yes.

THE COURT: Uh-huh.

MR. MCCLEARY: So, we are withdrawing our objections, other than the general objections to relevance based on the evidentiary nature of the proceeding, to Exhibits 1 and 2.

With respect to 3, this is a verified petition to take deposition for suit and seek documents filed on July 22, 2021. We object on the grounds of relevance and hearsay to that. Is that --

THE COURT: Well, --

MR. MORRIS: I don't -- I don't understand this one.

THE COURT: This --

MR. MCCLEARY: Is that, I'm sorry, is that your #11?

MR. MORRIS: Yeah.

MR. MCCLEARY: All right. We withdraw our objection to #3, subject to our general objection.

On Exhibit 4, we object to relevance and hearsay on a verified amended petition to take deposition before suit and seek documents.

THE COURT: Okay. This is my time to hear your argument. And we're going to be here --

MR. MORRIS: Can I -- can I do this here? It's going to be much quicker.

THE COURT: What do you mean? Do what here?

MR. MORRIS: So, if you just follow the chart that I

gave the Court, --

THE COURT: Uh-huh.

MR. MORRIS: -- Section A is a list of exhibits that they've objected to. Those exhibits are in the right-hand column.

At the same time, they are offering the exact same exhibits into evidence on their exhibit list. I don't understand how they can offer their exhibits and object to ours.

MR. MCCLEARY: Counsel. I'm sorry. We've already told them that, subject to our general objection, we'll withdraw the objections to those exhibits.

MR. MORRIS: Right. So can we agree that all objections to Section A are withdrawn?

MR. MCCLEARY: Subject to the general objection, yes.

MR. MORRIS: Thank you.

THE COURT: Okay. So, --

MR. MORRIS: That's going to be much quicker.

THE COURT: -- 11, 34, 2, 46, 42, 38, 41, 39, 40, and various attachments to Highland Exhibits 5 are withdrawn. So, admitted by stipulation.

(Debtors' Exhibits 2, 11, 34, 38, 39, 40, 41, 42, 46 are received into evidence. Certain attachments to Debtors' Exhibit 5 are received into evidence.)

MR. MORRIS: And to make this easy, Your Honor, at

some point I hope later today, but perhaps tomorrow, we'll slap a caption on this, we'll file it on the docket, so that, you know, an appellate court, if necessary, can follow along. But I think that we've just stipulated that all of the exhibits identified in Section A of this document are -- the objections have been withdrawn.

THE COURT: Okay.

MR. MCCLEARY: Subject to the general objections.

MR. MORRIS: Right. That gets us -- I'm going to jump to Section C, because I think the same is true. Section C identifies all exhibits that each party has taken from the docket. And you can see from Footnote 4, the Court can take judicial notice under Federal Rule of Evidence 201, we've just had the discussion about whether or not any of them would be limited for purposes of the truth of the matter asserted, but all of the exhibits identified in Section C I think the Court can take judicial notice of because they're on a docket.

THE COURT: Response?

MR. MORRIS: And so I would respectfully request that they withdraw their objections to anything in Section C.

THE COURT: Response, Mr. McCleary?

MR. MCCLEARY: I understand the Court can take judicial notice of those, Your Honor, but they do contain irrelevant and hearsay information also.

MR. MORRIS: The hearsay, I think that we just had

the discussion. I mean, if there's something that he wants to really point out at this point that I can respond to. But we would agree that advocacy pieces shouldn't be offered for the truth of the matter asserted. Court orders, on the other hand, are law of the case.

THE COURT: So, I mean, it's the very same situation we just addressed with your own exhibits. You have a lot of court filings. And they didn't have a problem with it, as long as everyone knew advocacy was not being accepted for the truth of the matter asserted.

MR. MCCLEARY: Well, --

THE COURT: Isn't this the same thing?

MR. MCCLEARY: -- they're not offering it for the truth of the matter asserted. That's one thing. And certainly the Court can take judicial notice. We do object to the extent they're offering Exhibits 6 through 10 for the truth of the matter asserted.

MR. MORRIS: Well, let me check those.

THE COURT: Well, --

MR. MCCLEARY: I'm sorry. 6, 7, uh -- (pause).

THE COURT: Those are orders of --

MR. MORRIS: Yeah.

THE COURT: -- courts.

MR. MORRIS: Yeah. They're orders of the Court.

MR. MCCLEARY: The orders are not relevant, Your

Honor.

THE COURT: Explain.

MR. MCCLEARY: Well, they have not demonstrated that the orders that they seek to introduce are relevant. They have orders regarding, for example, the contempt proceedings that are irrelevant to these proceedings. And prejudicial under 403.

THE COURT: All right. Shall I take a five- or ten-minute break? Let me -- I think I've been very generous by not starting the clock yet on the three hours/three hours.

MR. MCCLEARY: Appreciate that.

THE COURT: But here's how we do things in bankruptcy court. And I don't mean to talk down to anyone. I don't know, you may appear in bankruptcy court every day of your life. But we expect counsel to get together ahead of time and stipulate to the admissibility of as many exhibits as you can. If there's a preservation of rights here and there, fine. But we --

MR. MCCLEARY: Maybe if we take --

THE COURT: You know, --

MR. MCCLEARY: We can try to --

THE COURT: -- helping everyone to understand, --

MR. MCCLEARY: Sure.

THE COURT: -- we have thousands of cases in our court.

MR. MCCLEARY: Sure.

THE COURT: And this is just something we have to do to give all parties their day in court when they need time. And so --

MR. MCCLEARY: If you'd like us to take ten minutes and try to narrow this, we certainly --

THE COURT: Okay. With everybody understanding you should have taken the ten minutes before we got here. But, again, when I say three hours, --

MR. MORRIS: Yeah.

THE COURT: -- that's what I meant. Okay?

MR. MCCLEARY: Yes, Your Honor.

THE COURT: So we'll take a ten-minute break.

THE CLERK: All rise.

(A recess ensued from 10:42 a.m. until 10:54 a.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. Have we reached agreements on some of these exhibits?

MR. MCCLEARY: Your Honor, we have agreed on the ones that we can agree on, and we announced that to the Court with respect to the Paragraph A items that the Court's already ruled on.

I would like to point out to the Court that we just got their objections handed to us right before the hearing. We filed ours last night. So we didn't --

THE COURT: At 11:00-something, right?

MR. MCCLEARY: Yes, Your Honor, but we did --

THE COURT: Okay. Well, okay. So I guess your point is you want to make sure I'm annoyed with everyone, not just selective of you.

MR. MCCLEARY: Well, --

THE COURT: I mean, exhibit lists were filed Monday. So I don't know why on Tuesday people were not on the phone saying, you know, or Wednesday morning at the latest.

MR. MCCLEARY: Sure. And we haven't had much of an opportunity, in fairness, to consider their objections and respond because we just received them right at the time of the hearing, just before the hearing started.

Your Honor, we would urge our objections to Exhibit #4. We've objected to this petition to take deposition before suit and seek documents on the basis of relevance and hearsay. They have a number of pleadings in other matters that have nothing to do with, frankly, the colorability standard in this case. And this is an example.

THE COURT: Okay. This is the time for me to hear specific objections and what the basis is, and not just --

MR. MORRIS: Can we go back --

THE COURT: -- a category.

MR. MCCLEARY: Yeah.

MR. MORRIS: Can we go back to my way? Because it's

just going to be much faster. It really will be. Right? We -- Category 1, A and C, we dealt with. Category B, --

THE COURT: Well, we dealt with A.

MR. MORRIS: Right. And --

THE COURT: All of those are withdrawn, and they are admitted by stipulation.

MR. MORRIS: Right.

MR. MCCLEARY: Subject to --

THE COURT: Category C, --

MR. MCCLEARY: -- the general objections.

THE COURT: -- I'm not sure we're to closure on.

MR. MORRIS: Um, --

THE COURT: Are we to closure on C? Are you stipulating?

MR. MCCLEARY: No. We are not stipulating on C.

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: I have not had an opportunity to -- to --

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: Have not had an opportunity to look at each and every one of these, Your Honor. Because we did just get these.

THE COURT: Okay.

MR. MCCLEARY: But generally --

THE COURT: If we have not wrapped this up in 15

minutes, we're just going to start, and you can object the old-fashioned way. But I'm telling all lawyers here, objections count against your time. Okay?

MR. MORRIS: And I'd move for the admission of all of our exhibits right now, then.

THE COURT: Okay.

MR. MORRIS: So let him -- let -- put him on the clock and let's go.

THE COURT: Okay. So, 15 minutes. Let start going through everything except Category A.

MR. MORRIS: Number 4?

MR. MCCLEARY: Number 4, Your Honor, we object on the basis of relevance and hearsay.

MR. MORRIS: Okay. My response to that, Your Honor, and this will be my response -- this is in Section B of my outline --

THE COURT: Uh-huh.

MR. MORRIS: Okay? They object to Exhibits 3, 4, 5, and 9. These are Mr. Dondero's prior sworn statements. You just heard his lawyer stand here and tell the Court that somehow his handwritten notes should be admissible as an admission. You know what he did? He testified four different times under oath. That's Exhibits 3, 4, 5, and 9. Sworn statements.

They come into evidence not as hearsay but under Federal

Rule of Evidence 801(d)(1). It's beyond -- the notion that they can prove a colorable claim and that it's not relevant that he's got diametrically different -- he's got four different statements, now five with his notes, he's got five different statements. Doesn't that go to the colorability of these claims?

We believe it does. That's the basis for the introduction of these documents into evidence.

THE COURT: Okay. Mr. McCleary, your response?

MR. MCCLEARY: Well, it's a verified amended petition, Your Honor, in another matter, to -- before suit to seek documents. Has nothing to do with the merits of this case and our motion for leave. So we object on the grounds of relevance and hearsay.

THE COURT: Well, since they're prior sworn statements of Mr. Dondero, --

MR. MCCLEARY: Well, then they might -- if they want to use it later to impeach, they can try to do that, but they have to lay the foundation.

THE COURT: What about 801(d)(1)?

MR. MCCLEARY: Again, relevance, Your Honor.

THE COURT: Okay. I overrule. Those are --

MR. MCCLEARY: And Mr. --

MR. MORRIS: Okay.

THE COURT: Those are going to be admitted.

MR. MCCLEARY: By the way, on hearsay, Mr. Dondero is not Hunter Mountain. So when he argues that these are admissions, they're not admissions by Hunter Mountain.

MR. MORRIS: Your Honor, the only piece of evidence, literally the only piece of evidence they have are the words out of Mr. Dondero's mouth. There is no evidence, there will be no evidence of a *quid*, a *pro*, or a *quo*. There will be no evidence other than what Mr. Dondero testifies to --

MR. MCCLEARY: Well, --

MR. MORRIS: -- about what he was told. There will be no evidence that there was a meaningful relationship between Mr. Seery and Ms. -- and Farallon and Stonehill. There will be no evidence, none, that Farallon and Stonehill rubber-stamped Mr. Seery's compensation package. Nothing. The only thing we have are going to be the words out of Mr. Dondero's mouth and these notes that just showed up. And these statements --

MR. MCCLEARY: Your Honor?

THE COURT: Okay. Counsel, I mean, it just feels like --

MR. MORRIS: It's --

THE COURT: -- if notes get in, then sworn statements of Mr. Dondero should get in. Right?

MR. MCCLEARY: Your Honor, he's making arguments, closing arguments, opening arguments, trying to run out the

clock. We objected to relevance, and we stand on our objection.

THE COURT: Okay.

MR. MCCLEARY: And on hearsay.

THE COURT: I'll admit 3, 4, 5, and 9.

(Debtors' Exhibits 3, 4, 5, and 9 are received into evidence.)

MR. MORRIS: Section E.

MR. MCCLEARY: I'm sorry. So our objections are overruled?

THE COURT: They are overruled.

MR. MCCLEARY: On 3, 4, 5?

THE COURT: And 9.

MR. MORRIS: Section E of my outline.

MR. MCCLEARY: What about 6?

THE COURT: That's not --

MR. MORRIS: Well, --

THE COURT: Well, I don't --

MR. MORRIS: -- it would -- it would --

THE COURT: Let's go back to C. I'm not clear if we're to closure on Section C.

MR. MORRIS: I'll let Counsel go through --

THE COURT: And 6 is within Section C.

MR. MORRIS: I'll let Counsel go through each one, one at a time.

MR. MCCLEARY: No. That's all right. If you want to go through, you have them lumped in. Yeah, I think it'd probably be quickest if, frankly, we just go down the list, Your Honor. Frankly.

THE COURT: Well, you've got ten minutes left.

MR. MCCLEARY: Okay. We object to #6, memorandum and opinion order granting Dondero's motion to remand, on the basis of relevance and hearsay.

THE COURT: Overruled. I can take judicial notice under 201 of that. So 6 is admitted.

(Debtors' Exhibit 6 is received into evidence.)

MR. MCCLEARY: We object to Exhibits 7 and 8 on the grounds of relevance. 7 on relevance and hearsay, and 8 on relevance.

MR. MORRIS: I'll take 7 first, Your Honor.

THE COURT: Okay.

MR. MORRIS: It's an order dismissing Mr. Dondero's 202 petition. That 202 petition sought discovery on the basis of the exact same so-called insider trading claims that Hunter Mountain is asserting today.

I think it's not only relevant, it's almost dispositive that a Texas state court heard the exact same -- or, actually, not the exact same, because Mr. Dondero changed his story so many times -- but heard a version, I think Versions 1, 2, and 3, of this insider trading and would not even give them

discovery.

So when the Court considers whether or not there's a colorable claim here, I think it ought to think about what a Texas state court decided on not whether or not they have colorable claims, whether or not they're even entitled to discovery. I think it's very relevant. Move for its admission right now.

MR. MCCLEARY: Your Honor, it's ironic, because at that hearing counsel for the Respondents was arguing that it ought to be this Court that considers what discovery is appropriate.

THE COURT: Okay. Well, obviously, you can argue about that, but, again, I think I can take judicial notice of this. Right?

MR. MCCLEARY: Well, we argue that it's not relevant, Your Honor, and it is the --

THE COURT: Okay.

MR. MCCLEARY: 7 is not relevant and is hearsay.

THE COURT: Okay.

MR. MORRIS: Number 8, --

THE COURT: Objection is overruled.

MR. MCCLEARY: Overruled?

THE COURT: And so 7 is admitted.

(Debtors' Exhibit 7 is received into evidence.)

MR. MCCLEARY: 8 is our verified petition. And we

object on the grounds of relevance.

MR. MORRIS: You know, Your Honor, if I really had the time and the patience to do this, I think I'd find this document attached to Mr. McEntire's affidavit that's on their exhibit list.

But to speed this up just a little bit, how could their 202 petition that sought discovery on the basis of the very same insider trading allegation not be relevant? It's a judicial order. You can take notice of it. And it's incredibly relevant that a second Texas state court heard the same allegations that they're presenting to you as colorable and said no, you're not getting discovery.

MR. MCCLEARY: We don't know why they made that order, Your Honor. They could have simply accepted the opposition's arguments that this Court had jurisdiction and should consider what discovery ought to be done.

THE COURT: Overruled.

MR. MCCLEARY: It's not relevant to our --

THE COURT: I admit 8.

MR. MORRIS: Next?

MR. MCCLEARY: Overruled?

THE COURT: Yes.

(Debtors' Exhibit 8 is received into evidence.)

MR. MCCLEARY: The declaration of James Dondero. I think we withdrew the Dondero --

THE COURT: Right.

MR. MCCLEARY: -- declarations. If it --

THE COURT: It's --

MR. MCCLEARY: Numbered -- I'm sorry, #9.

THE COURT: 9. I've already checked it as admitted.

MR. MCCLEARY: If you want to -- if you want to offer #9, they can offer it.

THE COURT: It's admitted. I've already --

MR. MCCLEARY: Okay.

THE COURT: -- said.

MR. MCCLEARY: Number 10. It's an order denying our second Rule 202 petition. And we object to it on relevance, Your Honor.

THE COURT: Same objection. It's overruled. It's admitted.

(Debtors' Exhibit 10 is received into evidence.)

MR. MCCLEARY: Number 12, 13, and -- 12 and 13 are correspondence regarding resignation letters. We object on grounds of relevance.

THE COURT: Wait. Did we skip 11 for a reason?

MR. MCCLEARY: Pardon me?

THE COURT: Did we skip 11 for a reason?

MR. MCCLEARY: We only have it --

THE COURT: Oh, wait. It's already admitted by stipulation.

MR. MCCLEARY: Yeah, and we have --

MR. MORRIS: That's the one --

MR. MCCLEARY: We have our general objection.

MR. MORRIS: That's the one exhibit that they didn't object to.

THE COURT: Okay.

MR. MCCLEARY: We only had our general objection with respect to that.

THE COURT: Okay. Thank you. Thank you.

MR. MCCLEARY: On 12 --

THE COURT: Uh-huh.

MR. MCCLEARY: -- and 13, those are correspondence regarding resignations. We object on the grounds of relevance.

MR. MORRIS: So, the relevance of that, Your Honor, is to show that when Mr. Dondero sent this email to Mr. Seery in December 2020, he had absolutely no relationship to Highland, had absolutely no duty to Highland, had absolutely no reason to send this email to Highland. He wasn't in control of Highland. He wasn't --

If they'll stipulate to this, that's fine. He wasn't in control. He had no authority to do anything. He couldn't effectuate trades. He wasn't there. And that's what these documents are intended to prove.

THE COURT: Okay. Why are we -- this is --

MR. MCCLEARY: Because there are --

THE COURT: Some of this stuff, I mean, --

MR. MCCLEARY: There are other agreements.

THE COURT: -- is no big deal. Right?

MR. MCCLEARY: Sub-advisory agreements, other agreements that he had under which he had a responsibility to make the communications regarding material nonpublic information that he made. So this is simply irrelevant, Your Honor.

THE COURT: I overrule. I mean, again, I don't --

MR. MCCLEARY: Okay.

(Debtors' Exhibits 12 and 13 are received into evidence.)

MR. MCCLEARY: Number 14, --

THE COURT: You're both giving me just a lot of background that I already have, but of course a Court of Appeals --

MR. MORRIS: That's why we --

THE COURT: -- isn't going to have it.

MR. MORRIS: Yep.

MR. MCCLEARY: Well, #14, Exhibit 14, we object on the grounds of relevance and hearsay.

THE COURT: Okay. Wait a minute. We skipped 13 because -- why? Oh, wait, that was, I'm sorry, 12 and 13 --

MR. MORRIS: Yes.

THE COURT: -- where I've overruled the objection and

admitted.

Okay. Go ahead.

MR. MCCLEARY: 14, we object on the grounds of relevance and hearsay, Your Honor.

MR. MORRIS: I'm just going to make this real quick, Your Honor. Here's the thing. This Court knows it. It's actually facts that cannot be disputed because they're subject of court orders.

As the Court will recall, beginning in late November 2020 continuing through late December 2020, Mr. Dondero was engaged in a continuous pattern of interference with Highland's business and trading. It was the subject of the TRO, which is why the TRO is relevant.

Your Honor will recall that at the end of November Mr. Dondero attempted to stop Mr. Seery from trading in Avaya stock. On December 3rd is when he sent this threatening email, text message, to Mr. Dondero [sic]. It caused us to get the TRO.

Your Honor will recall on December 16, 2020, that's when we had the hearing on Mr. Dondero's motion to try to stop Mr. Seery from trading in the CLOs that the Court dismissed as frivolous and granted the directed verdict of Highland.

So, that's December 16. He sends this email about MGM on December 17th. And what happens on December 18th? More interference with Highland's business. It's a matter of --

beyond dispute. It's law of the case at this point because that's the subject of the contempt order. And the Court found that, after -- after hours, on December 18th, Hunter Covitz told Mr. Dondero that Mr. Seery was again trying to trade in Avaya stock, and within a day or two Mr. Dondero was again interfering it, and that's what led to the second -- to the first contempt order.

So all of these documents are relevant to show motive and what was happening. This email was not sent for any legitimate purpose. The evidence is just overwhelming. And it's not -- it's not like, oh, that's an argument we're making. Between the TRO and the contempt order, it's law of the case. He was interfering with Highland's business nonstop for thirty days, including the day before he sent this email and the day after he sent the email.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, this is a lawsuit or an effort to file a lawsuit on behalf of Hunter Mountain Investment Trust, not James Dondero. And as much as Counsel wants to make this about Jim Dondero and attack him, this is a different case. So this exhibit has nothing to do with the claims in this lawsuit. It's not relevant. And hearsay.

MR. MORRIS: The only evidence is Mr. Dondero. It's -- could not be more relevant.

THE COURT: Okay. I overrule. I'm admitting this.

And so we're --

MR. MCCLEARY: Uh, --

THE COURT: It's 14. It's -- how far?

MR. MCCLEARY: 14. Exhibit 15 is where we are, Your Honor.

THE COURT: Okay.

(Debtors' Exhibit 14 is received into evidence.)

THE COURT: 15.

MR. MORRIS: Oh, that's -- that's the contempt order. And so these contain the judicial findings that are now beyond dispute that Mr. Dondero was engaged in interfering with Highland's business after the TRO was entered on December 10th.

THE COURT: Okay. Again, my own orders, --

MR. MCCLEARY: Your Honor, it's not --

THE COURT: -- I can take judicial notice of --

MR. MCCLEARY: It's --

THE COURT: -- under the Federal Rules of Evidence.

MR. MCCLEARY: It's --

THE COURT: 201.

MR. MCCLEARY: We simply object as not relevant. We object based on Federal Rule of Evidence 403. Any possible relevance is outweighed by the prejudice. And we object on the grounds of hearsay, Your Honor.

THE COURT: Prejudice? Prejudice? They're orders I

issued. I'm going to be prejudiced by my own orders?

MR. MCCLEARY: Uh, well, --

THE COURT: I don't --

MR. MCCLEARY: -- Hunter Mountain will be.

THE COURT: Okay. I'll overrule.

(Debtors' Exhibit 15 is received into evidence.)

THE COURT: I'll tell you what. We're out of our -- well, we've get probably 30 seconds left. Anything that we can maybe knock out to not have eat into your three hours? Both of you?

MR. MCCLEARY: Your Honor, we filed written objections to all of these exhibits. We urge those objections. 16.

THE COURT: I know, but this is your chance to argue why your objections have merit. I can -- we can just --

MR. MCCLEARY: Because, well, obviously, we're talking about pleadings and filings in other matters. The evidence that they're trying to use to impugn Jim Dondero, which has nothing to do with the merits of HMIT's claims and allegations of insider trades.

THE COURT: Okay. A lot of this is articles. Articles, articles, articles about MGM.

MR. MCCLEARY: On the articles, Your Honor, subject to our general objection, we'll withdraw the objections to the articles if they'll agree to the articles that we've offered.

MR. MORRIS: Your Honor, we didn't lodge an objection to their articles.

MR. MCCLEARY: Okay.

MR. MORRIS: And just so, if anybody is keeping track at home, this is Item B on the list that I created earlier this morning.

THE COURT: Okay. So, 25 through 30 are articles. Those are admitted by stipulation. Nothing is about the truth of the matter asserted. They're just articles that were out there for --

MR. MORRIS: Right. I would just --

MR. MCCLEARY: Yes.

THE COURT: -- the world.

MR. MORRIS: Just so we're clear, it's Exhibits 25, 6 -- 25, 26, 27, 28, 29, and 30.

THE COURT: Right.

(Debtors' Exhibits 25 through 30 are received into evidence.)

MR. MORRIS: And so, yes, those are all articles. They have their articles. Exhibit 72.

THE COURT: Oh, and 34 is another one. So that's admitted as well.

MR. MORRIS: Yes.

MR. MCCLEARY: Yes, Your Honor.

(Debtors' Exhibit 34 is received into evidence.)

THE COURT: Okay. Well, we're out of time, so as for the others, they can offer them the old-fashioned way if they want to, you can object the old-fashioned way, and it eats into both of your three hours.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: Okay. Let's hear opening statements. And by the way, before we wrap up today, I'm going to say out loud everything I've admitted so we're all crystal clear on what's in the record. This has been a bit chaotic.

MR. MCCLEARY: Okay. Understood.

THE COURT: So, Caroline is going to be the keeper of our time over here. And if the judge ever interrupts you, she's going to stop the timer. Okay?

MR. MCENTIRE: Thank you.

THE COURT: I hope I won't any more, but you may proceed.

MR. MCENTIRE: No, I appreciate it. Thank you. Can you see it, Your Honor?

THE COURT: I can, yes. Thanks.

MR. MCENTIRE: Can opposing counsel see it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: All right.

THE COURT: And I'm just going to ask everyone who has a PowerPoint today, can I get a hard copy --

MR. MCENTIRE: Certainly.

THE COURT: -- before we close?

MR. MCENTIRE: Certainly.

THE COURT: Okay. Thank you.

OPENING STATEMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: May it please the Court, Your Honor, at this time I'll be providing the opening statement on behalf of Hunter Mountain Investment Trust. It is a Delaware trust. Mark Patrick, who's in the courtroom, is the Administrator. He will be one of the witnesses that you'll hear today.

Hunter Mountain Investment Trust is the former 99.5 percent equity holder, currently classified as a Class 10 contingent beneficiary under the Claimant Trust Agreement. It is active in supporting various entities that in turn support charities throughout North Texas.

Your Honor, this is not an ordinary claims-trading case. I know the Court made those references in one of the hearings, and I wanted to more clearly respond. This has different indicia. An ordinary claims-trading case is normally outside the purview of the bankruptcy court. What makes this different is that we're involving, we believe and allege, breaches of fiduciary duty of the Debtor-in-Possession's CEO and the Trustee.

It involves also aiding and abetting by the entities that actually acquired the claims. And that falls into the

category of willful misconduct.

It also involves injury to the Reorganized Debtor and to the Claimant Trust. Ordinarily, a claims trade would not involve injury to the estate or the reorganized debtor. Here, we have alleged that it has. And the injury takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers.

During the course of my presentation today, I'll be referring to the Claims Purchasers as the collective of Farallon, Stonehill, Muck, and Jessup.

I would like to briefly discuss some of the issues that have already been presented to the Court, just to make sure that this record is clear.

Can you please continue?

We don't believe the *Barton* Doctrine is applicable. I believe that precedent is very clear that the *Barton* Doctrine deals with proceedings in other courts, and the various standards and requirements of *Barton* do not apply if in fact we're coming to the Court and filing the proceeding in the court where the Trustee was actually appointed.

And so I think that the law is clear. And this is Judge Houser here in the Northern District of Texas in the case *In re Provider Meds*. And she makes very clear that the standard for granting leave to sue here is actually less stringent than

a 12(b)(6) plausibility standard. So if there is any issue as to what standard this Court should be applying to the -- to this process, we believe it's a 12(b)(6) standard, confined to the four corners of the document.

If the Court wishes to consult the documents that are referred to in the four corners of the petition or complaint, it may do so.

But the standard here is even more flexible than a standard plausibility. Our evidence, though, achieves the standard of plausibility as well.

The *In re Deepwater Horizon* case is another important case. That's a Fifth Circuit case. A plaintiff's claim is colorable if it can allege standing and the elements necessary to state a claim on which relief could be granted. Defining a colorable claim as one with some possible validity. I don't have to prove my case today. I didn't have to prove my case in the prior hearings. I have to prove sufficient allegations, not evidence, but sufficient allegations to show that it has some possible basis of validity.

Possible basis of validity. We're not here talking about likelihoods. We're not here talking about *prima facie* evidence. We're not here talking about probabilities. We're talking about something less than plausibility. But, again, we achieve plausibility.

A colorable claim is defined as one which is plausible or

not without merit. These are various cases from around the country. The colorable claim requirement is met if a committee has asserted claims for relief that, on appropriate proof, would allow recovery. On appropriate proof. We're not required to put on that proof today, Your Honor.

Courts have determined that a court need not conduct an evidentiary hearing, but must ensure that the claims do not lack any merit whatsoever. We submit that our claims have substantial merit and deserve the opportunity to initiate our proceedings, have an opportunity to conduct discovery. And if they want to file a 12(b)(6) motion before this judge, before you, they can do so. If they want to file a motion for summary judgment, they can do so. But at this juncture, they cannot, and at this juncture this Court should not consider evidence in making its determination.

Standing under Delaware law. The Funds have collectively really hit the standing issue hard. I think it's easily resolved. First of all, it's clear that a beneficial owner has standing to bring a derivative action. Under Delaware law, a beneficial owner has a right to bring a derivative action on behalf of the -- against the trustee.

So the issue is, am I a beneficial owner? As a contingent beneficiary in Class 10, and that's the Court's inquiry here, do I qualify as a beneficial owner? And I think that Delaware law is clear that, by not limiting it to only vested

interests, by not limiting it only to immediate beneficiaries, they are not -- they are not extending the scope of the statute to contingent beneficiaries. And this is consistent with the laws around the country, because even Texas recognizes that an unvested contingent beneficiary has a property right to protect.

Even Mr. Seery admitted in his deposition that a unvested contingent interest is in the nature of a property right. If you have a property right, that property right can be abused. If you have a property right, that property right, whether it's inchoate or not, it can be abused, it can be misappropriated, and you could become aggrieved. And that is the constitutional standard for standing: Is Hunter Mountain Investment Trust aggrieved? And the answer is yes.

Contingent beneficiaries from around the country, in addition to Mr. Seery's admission that we have a property interest, contingent beneficiary has standing. This is the *Smith v. Clearwater* case on Slide 11. Very clearly, they say that even if it's subject to a future event. Their argument is that Mr. Seery has not certified Hunter Mountain as in the money. We believe we are in the money. That's a different issue. We believe he should certify, in the discharge of his duties. That's a different issue.

But even assuming his case -- his argument for a moment, their argument is that since he's not done that act, which we

also challenge and criticize that he's not done that act, that we can't qualify to bring this case. Well, that's not what the law is, that even an unvested interest, a contingent interest, has a right.

Slide 12. This is the State of Illinois. Despite the fact that interest is contingent and may not vest in possession, you still have a right to protect what you have. And you have standing to bring a cause of action.

The Claimant Trust Agreement, by the way, suggests that we have no vested interest, and they'll likely argue that point. But the point there is the law says that's irrelevant. If it's an inchoate interest, if it's potentially vested in the future, that's what imbues you with standing.

And in any event, the Claimant Trust Agreement is subject to Delaware trust law, and they can't get around that. They can say whatever they want to say in the agreement to try to block us from participation, but it's still subject to Delaware trust law, and Delaware trust law does not draw a distinction between vested or unvested.

The State of Missouri: There is no dispute in this case that the future -- that future beneficiaries have standing to bring an accounting action, whether they're vested or contingent. The *Bucksbaum* case. Article III standing exists, constitutional standing, including discretionary beneficiaries, have long been permitted to bring suits to

redress trustees' breaches of trust. This applies not only to our standing as an individual plaintiff, which we've brought, but also in our standing -- in our capacity seeking to bring a derivative action to benefit the Claimant Trust of the Reorganized Debtor. Both are permitted under this law under these cases.

An interest -- in the *Mayfield* case, an interest is any interest, whether legal or equitable or both, vested, contingent, defeasible, or indefeasible. So the unilateral self-serving wording of the Claimant Trust does not abrogate our right to bring the claim.

I'd like to talk briefly about fiduciary duties. We know that Mr. Seery has fiduciary duties to the estate when he was the CEO prior to the effective date. We allege that he breached those fiduciary duties, and that gives us standing to bring the claim that we have brought for breaching fiduciary duties, causing damages that are accruing post-effective date.

In the *Xtreme Power* case, again, the directors can either appear on both sides of the transaction or expect to derive any personal financial benefit. We are alleging that Mr. Seery engaged in self-dealing. We allege that he engaged in self-dealing by arriving at an understanding where he could put business allies -- whether you call them friends, business allies, close acquaintances -- on the committee, the Oversight Board that would ultimately oversee his compensation, which,

in the context of this case, makes no sense and it is excessive.

Muck is a specially -- special-purpose entity of Farallon. Farallon acquired the claims, created Muck to do the job. Muck is now on the Oversight Board.

Jessup. Jessup is a special-purpose entity, a shell created by Stonehill. Stonehill bought the claims, funneled the money through Jessup. Jessup is now on the Oversight Board. Jessup and Muck -- and by the way, the principals in Farallon are actually the representatives from Muck on the Oversight Board. So there's no suggestion that there's really a distinct corporate relationship here.

Michael Linn, who is a principal at Farallon. You'll hear his name today, throughout today. He actually is a representative of the Oversight Board, dealing with Mr. Seery and negotiating Mr. -- I put negotiation in quotes -- negotiating Mr. Seery's compensation.

I'd like to talk very briefly about background. We took Mr. Seery's deposition. I was unaware of this. I now know it. Perhaps the Court was already aware of it. This is Mr. Seery's first job as a CEO of any debtor. This is the first time Mr. Seery has ever been a chief restructuring officer. This is the first time Mr. Seery has ever been the CEO of a reorganized debtor. This is the first time that he's served as a trustee post-effective date. However, his compensation

is excessive and not market-driven, and there's a reason for that. We believe and we allege that it's a *quid pro quo* because of prior relationships with Farallon and Stonehill.

Farallon and Stonehill are hedge funds, Your Honor. They created their special-purpose entities on the eve of this transaction simply to take the title to the claims, but the money is going upstream.

Seery has a relationship with Farallon. Do we know the full extent of that relationship? No. We have been deprived of discovery. We attempted to get the discovery in the state court 202 process. We were denied for reasons not articulated in the court's order.

We attempted to get the discovery here that the Court refused under the last hearing about these relationships.

So what we do have begins to put the pieces of the puzzle together. And sufficient is more than plausible. It is more than colorable.

We know that Mr. Seery went on a meet-and-greet trip to Farallon's offices in 2017. Didn't have to. He was trying to cultivate a business relationship. Farallon was important to him.

We know that in 2019 he was no longer with Guggenheim Securities. He goes out to Farallon's offices for another meet-and-greet and he specifically meets with the two principals who are reflected in Mr. Dondero's notes, Raj Patel

and Michael Linn.

We know that in June 2020 Farallon emailed Seery. This is after Mr. Seery becomes the CEO. He says, "Congratulations. We're monitoring what you're doing."

Seery's relationship with Stonehill. These are all -- this is all before what we believe to be the events that are at issue in this case. We believe that -- represented Stonehill in the *Blockbuster* bankruptcy proceeding. There was an objection to a document. Mr. Seery was involved in the *Blockbuster* proceedings. Stonehill was one of his many clients on the committee that he represented.

We know that Stonehill is actively involved in one of Mr. Seery's charities in New York. We know that he sent text messages to Mr. Seery in February of 2021, wanting to know how to get involved in this bankruptcy.

Farallon and Stonehill were strangers to this bankruptcy. They weren't creditors. They were encouraged and they came into this process.

Farallon and Stonehill have not denied any of our allegations. They are not putting any evidence on today. We allege that these relationships was based and founded upon a *quid pro quo*. I'll scratch your back; you scratch mine. You give me some information; I want to evaluate these claims. And, by the way, we're going to be on the Oversight Board, or you're going to put us on the Oversight Board, or by default

we'll be on the Oversight Board, and we'll work out your compensation agreement.

Mr. Seery also has an established relationship with Stonehill.

I like to have a timeline of certain events. This is not all of the relevant events, but this can give you a quick picture. We know that Mr. Dondero sent an email to Mr. Seery in December of 2020 relating to MGM. It is undisputed that Mr. -- that Farallon emailed Seery, Mr. Seery, in January of 2021 if there was a path to get information regarding the claims for sales. Mr. Seery says he never responded to it, but we know that this entity, Farallon, got deeply involved in buying these claims shortly after this email.

We have the Claimant Trust Agreement suddenly being amended to not have a base fee, but now we're going to incorporate a success participation fee. As part of a plan, we're not criticizing that, but suddenly the vehicle for post-effective date bonuses is being created.

The Debtors' analysis comes out in association with the plan confirmation. It projects a 71.32 percent recovery for Class 8 and Class 9, and those are the principal classes we're talking about. 95 percent -- 98 percent of all of the claims here are in Class 8 and Class 9, until you get to us, Class 10.

71.32 percent of Class 8 means that Farallon and Stonehill

will get less than about a six percent internal rate return on their $163 million investment, which they have never denied. That is not a hedge fund investment goal. Investment -- hedge funds like these companies, they go for 38, 40, 50 percent of returns. Who would ever invest $163 million on a distressed asset that's not collateralized with only an expectation of an internal rate of turn of six percent? But that's going to be the evidence before the Court. That does not make any financial, rational wisdom at all.

The plan is confirmed. It's undisputed that Stonehill contacts Seery after the plan is confirmed to want to know how to get involved. They have phone calls after this text message. Muck is created on March 9. We know from Mr. Seery's deposition that Farallon told Seery that six days later they bought the claims. All the claims, by the way, when I say bought the claims, it's everything except UBS. To our knowledge. They may have negotiated the paperwork back then, but the claims transfers did not occur until the summer. All the other claims involved, the claims transfers were filed with this Court in mid-April and at the end of April.

Tim Cournoyer removes MGM from the restricted list. Tim Cournoyer is an employee of Highland. Well, it tells us that MGM was on the restricted list and there should be no discussion about MGM, but there was. There was discussions about MGM, and Mr. Dondero is going to testify to that.

And we also know that the HarbourVest settlement was consummated during this period of time. If it had been on the restricted list, as it was, that transaction should never have occurred. But it did occur. This Court ordered it. It approved it. And I'm not challenging -- we're not challenging that settlement. It is done. That is done. What we are challenging is the fact that Mr. Seery is actively involved in using inside material nonpublic information.

Jessup Holdings is created shortly thereafter, on April 8th. We have claims settling on April 30th. The Acis claim is transferred to Muck -- that's Farallon -- on April 16. The Redeemer and Crusader are all transferred on April 30th.

Stonehill and Farallon never deny that they did no due -- that they failed to do due diligence. We allege that there was no due diligence. And that relies in significant part upon Mr. Dondero. But now, because we have Mr. Seery's deposition, it also relies upon Mr. Seery's admissions in deposition, because he says he never opened up a data room, he doesn't know what due diligence they did. Farallon says the only due diligence they did is they talked to Jim Seery. And how do you invest $163 million, or $10 million or $50 million, whatever the part is, with an internal rate of return six percent, only on the advice of Mr. Seery, who's never been a trustee or a CEO before, unless there's something going on?

Your Honor, public announcement of MGM on May 26th. On

May 28th, two days later, Mr. Dondero calls Farallon. It took Mr. Dondero or his group a few days, a week or so, to even understand who -- that Farallon was involved, because the registrations for Muck and Jessup did not disclose their principals, did not even disclose addresses. They were shell -- they were companies that came in in the last minute to buy these claims incognito, frankly.

They found out that Farallon was involved. They had a call initially with Raj Patel, who is the principal of Farallon. He has three conversations total: One with Mr. Patel and two with Michael Linn. Michael Linn was the one responsible for these claim purchases. Patel admitted that Farallon relied exclusively on Seery and did no due diligence. Linn rejected the premium to sell. The evidence you'll hear today, that Mr. Linn rejected a premium up to 40 percent to sell the claims. He actually said he would not sell at all because he was told by Mr. Seery that the claims were too valuable.

That is evidence of insider trading. Specifically, they said they were very optimistic about MGM and they were unwilling to sell because Seery said too valuable.

We have -- these are the purchases. This is where the Class 9 claims fall. And keep in mind -- Tim, go back -- that $95 million of this upside potential is being told, at least to the publicly available information, that you're never going

to get there. Yet 95 -- $95 million is allocated to this category. So Class 8 is $275 million. Class 9 is 29 -- $95 million.

Next.

So we have the evidence that you'll hear today. Farallon admitted the timing. No due diligence, never denied by the Claim Purchasers. Based upon material nonpublic information. That's our allegation. Purchased over $160 million. This is never denied by the Claims Purchasers. They purchased claims when the return on investment was highly doubtful. Maximum expected annual rate of return, assuming publicly-available information, was approximately six percent, and that is totally atypical of what a hedge fund would seek.

Insider information. We're not talking about just MGM. The Respondents want to narrow the Court's inquiry. This is much larger than MGM. MGM is a part of it, it's a big part of it, but it's not the only part of it. It's other assets. Portfolio companies. Other invested assets. There's a lot of money out there, and it was never disclosed during the ordinary course of the bankruptcy, for reasons that the Court already knows, in terms of asset values. How does someone come in and purchase distressed assets, claims, without any understanding of what assets are backing those claims, when there's no publicly-available information there to do it and there's no evidence, no indication, no statement that actually

due diligence was done?

That right there, without anything else, makes our claims plausible. You don't have to prove insider trading by direct evidence. Nobody's going to admit that they did something wrong. You prove it circumstantially, and we've cited cases and we'll give you cases to that effect.

Next.

We have material nonpublic information. It is very clear that Mr. Dondero on December 17th sent this email, not just to Mr. Seery but to several other individuals, including lawyers. It states that he'd just gotten off a board call. A pre-board call. The update, he provides the update. Active diligencing. It's probably a first-quarter event. We can scour all of the other media documents that are in evidence, both from us and them, and you're not going to find any indication anywhere that a board member has said, guys, gals, it's going to be a probable first-quarter event. That's material nonpublic information.

THE COURT: By the way, you all objected to this exhibit.

MR. MCENTIRE: No, this is my exhibit.

THE COURT: We spent --

MR. MCENTIRE: I did not. They objected to this.

MR. MORRIS: Your Honor, we didn't object to it, and that is the one exhibit that they did not object to.

THE COURT: Oh, it is?

MR. MORRIS: Nobody objected to this exhibit.

MR. MCENTIRE: I'm not going to object to this exhibit, Your Honor.

THE COURT: Okay. It's a different version.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. It was a different email around that same time frame.

MR. MCENTIRE: So just --

THE COURT: Apologies. We stopped the clock.

MR. MCENTIRE: This -- my next exhibit is simply a demonstrative, but I just want the Court to understand that MGM is no small matter here and Mr. Seery did testify in deposition that it probably made up $450 million. He was pretty close.

MR. MORRIS: Your Honor, I object to this demonstrative. There is no evidence in the record. It's not cited to anything. We're not just going to start putting up stuff on the screen that we like.

MR. MCENTIRE: Excuse me. I'm not offering this document into evidence.

MR. MORRIS: I don't care. The Court shouldn't be seeing a demonstrative exhibit that contains matters that are never going to be in the record.

THE COURT: Okay.

MR. MCENTIRE: I disagree. I can put the data in the record.

May I proceed?

MR. MORRIS: But you didn't.

THE COURT: Okay. I'm not considering the truth of this until and unless I get evidence of this.

MR. MCENTIRE: Fair enough. But the point is this, Mr. Seery has conceded in deposition that between the institutional funds and the CLOs, there's a lot of MGM securities and stock. We're talking a lot of money. We're not talking about just Highland Capital's investment.

You can skip the next slide. Skip.

So, rumors versus material nonpublic information. They can talk all day long, and if they want to use their time doing this, they can. There's a difference between rumor and actual material nonpublic information. Rumor from undocumented sources, lack of clarity, lack of timing. There is no -- there's no debate that a lot of people knew that maybe MGM might be for sale. Maybe they wouldn't. Sometimes it falls apart, you know. But the point is a board member is telling someone that there's a probable event in the first quarter of 2021. That is definite, specific, and it comes from the highest authority. That is -- if that's not material and public information, I don't know what could be.

Classic indications of insider trading. You have to have

a tipper with access to MNPI. Here, we know that Mr. Seery, if he's the tipper, we allege he's the tipper -- and these are words of art out of case law, by the way -- he has access to information about MGM. He has access about asset values, projected values. He has a relationship. We believe he has a very strong relationship. It's more than just social acquaintances. He's giving congratulatory emails. He's getting solicitations. He's solicited. Benefits received. We know what the benefits are. They get the opportunity to invest money with huge upside.

There was a point mentioned some time ago that, well, only -- only the sellers really have the grievance. Well, Your Honor, we have a right to start our lawsuit and do some discovery, because, frankly, a lot of sellers have big-boy agreements. They say, you don't sue me if I have MNPI. I don't sue you if you have MNPI. We have mutual releases. Let's go by our way. Everybody's happy. We're not going to come back and see each other ever again.

That's one of the things we're being deprived of here. But otherwise, what we have here is a colorable plan. We've asked for the communications with the sellers. We can't get it. We have here an email.

Next.

We have here an email. This actually -- you'll hear Mr. Dondero say this actually reflects three communications. Raj

Patel, Farallon, bought it because of Seery. Mr. Dondero contacted Mr. Patel and says, Raj Patel bought it because of Seery. 50 to 70 percent's not compelling. Class 8. 50 percent, 70 percent. Give you a 30 percent to 40 percent premium. Not compelling. I ain't going to sell. Ask what would be compelling. Nothing. No offer. Bought in February/March. We now know the time frame. We know that Stonehill is communicating with them and we know that Farallon has been just communicating with Mr. Seery. Bought assets with claims. It's not just the MGM. It's not just the portfolio companies and other assets. It's also the claims.

Well, what are the claims? It's the claims against Mr. Dondero. Well, how would they know about all this if there's no due diligence and there's no evidence of any due diligence before you? 130 percent of costs, not compelling, no counter. Mr. Dondero's angry. Discovery is coming.

Atypical behaviors are also circumstantial evidence of insider trading. We have strange behaviors here, Judge. We have a vast majority of the claim value is acquired by only two entities post-confirmation. Most significant claims are only owned by two entities who were strangers to the whole process.

The removal of -- and Mr. Morris offered to stipulate. The sudden removal of MGM from the compliance list in April of 2021 -- by the way, the removal doesn't cleanse the MNPI. If

you have material nonpublic information because you received it from Mr. Dondero, the fact that Mr. Dondero's no longer employed by Highland Capital or no longer directly or formally affiliated doesn't cleanse the MNPI.

We have no due diligence, regardless of the significant nine-digit numbers, and we have no rational explanation of why this kind of money would be invested when they're projecting an actual loss, if -- a modest return at best for Class 8 and a loss for Class 9.

Insider trading can be proved by circumstantial evidence, Your Honor. No fraudster, no person who's done wrong is going to admit to it, so you look for the classic -- you look for the classic elements. And that's what we had here. And we have alleged all of this in our pleadings. Not in extraneous evidence. Within the four corners of our pleadings. And that's why we have a plausible claim.

You know, I believe it's Rule 8, Rule 9 of the Federal -- you have to require specificity in a fraud claim. Well, this is not a fraud claim. This is a different claim. But we have provided specificity that passes the smell test of colorability. We have provided specificity that would satisfy even more stringent requirements under 12(b)(6).

The plan analysis. This is a, I think, a document admitted by everyone. Mr. Seery has testified that this projection of 71.32 percent for Class 8 came out in February

of 2021 and never changed, all the way up to the effective date.

So this is what the public believed. This is what the public knew. And if this was all that Farallon and if is all that Stonehill had access to, that means that they were going to lose their entire investment on Class 9. They bought UBS at a loss to begin with. And on the other three investments, they were going to get a very, very modest, minor return, six percent over three years, or even less. That is not what hedge funds do.

Seery's excessive post-effective date compensation. We have obtained no discovery from Farallon or Stonehill in this regard, but we know that he had no prior experience. We know that the award that was given him was not market-based, even though the self-serving documents that have been produced and that are attached to their exhibit list suggests a robust negotiation. Well, they were robust without any kind of reality check in the real world about whether it was market-supported. None. Mr. Seery has admitted to that.

It was not lowered. He's making $1.8 million a year right now, with most -- a lot of the assets already sold, the reorganization done. All they're doing now is monetizing assets. He's getting $1.8 million. He's got 11 people working for him. And then he has a bonus, a bonus that is -- increases significantly with his ability to recover for Muck,

Jessup, Farallon, and Stonehill.

And in the absence of -- if we were really dealing with uncertainty and risk, then that may be another issue, but here we're dealing with entities that already know that they're going to get a payday and they already have. They've already made about a $170 million return -- 170 percent return, excuse me -- over and above the original investment, when they were projected to actually lose money.

Just so you know, we have over $534 million of cash that has been basically monetized, and out of that, $203 million in total expenses -- $277 million to Class 8 and -- and -- 1 through 7, and Class 8 distributors. Excuse me, creditors. Even if you take -- if you take out the alleged obligations of Mr. Dondero on the promissory note cases, that still leaves over $100 million available, which puts us in the money. Puts us in the money. And the fact that you have $203 million of expenses in a case of this nature is part of our claim, is that we have delay actions. We have a situation where Mr. Seery is continuing to receive $1.8 million a year on a slow pace to monetize, paying other professionals, when this could have been over a long time ago. That's part of our allegations. It's not part of any valuation motion. It's actually in our allegations.

I'm going to reserve the rest. I think that's my opening statement, Your Honor. I'm going to reserve the rest for my

closing. And let me see. Yes, that's right. And thank you for your time.

THE COURT: All right. Caroline, how much time was that?

THE CLERK: Thirty-four minutes and 27 seconds.

THE COURT: Thirty-four minutes and 37 seconds. Okay.

THE CLERK: Twenty-seven.

THE COURT: Oh, 27. Okay.

MR. MCENTIRE: Thirty-four minutes?

MR. MCCLEARY: Thirty-four minutes.

MR. MORRIS: Your Honor, I do have hard copies of my short slide presentation.

THE COURT: All right. You may approach.

And Mr. McEntire, are you going to give me your PowerPoint later, hard copies later?

MR. MCENTIRE: Yes, Your Honor. I found one typo and I'd like to fix one typo and then we'll give it to you.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for Highland Capital Management and the Claimant Trust.

I want to be fairly brief because I really want to focus on the evidence. I look forward to Your Honor hearing from

Mr. Seery so that he could clear up a lot of the misleading statements that were just made.

The Court is here today on a gatekeeper function, and we're delighted that the gatekeeper exists. We're delighted that the Court will have an opportunity, after considering evidence, to determine whether or not these claims are actually colorable.

There's -- there were a lot of conclusory statements I just heard. There were a lot of assumptions that were made. There were a lot of misleading statements that were made. At the end of the day, what the Court is going to be asked to do is to decide whether, in light of the evidence, do these claims stand up on their own? And they do not.

And let me begin by saying that I made a mistake a couple of weeks ago. If we can go to Slide 1. I told Your Honor that you were the sixth body to consider these insider trading claims. Based on Hunter Mountain's exhibit list, there is actually one more, and I'll get to that in a moment. So you're actually -- this is the seventh attempt to peddle these claims to one body or another.

The first was Mr. Dondero's 202 petition.

Everything I have here, Your Honor, is footnoted to evidence. Okay?

So, Footnote 1, you can look in the paragraphs of Mr. Dondero's petition, his amended petition, his declaration,

where he makes the same allegations. Again, I misspeak. Not the same allegations. Different versions of the allegations that are being presented today concerning insider trading.

He did it three times. The Texas state court said no discovery. In October of 2021, Douglas Draper wrote an extensive letter to the U.S. Trustee, setting forth the same allegations. You can find them at our Exhibit 5. It's attachment Exhibit A, Pages 6 through 11. Compare them to the allegations that are being made by Hunter Mountain today. The U.S. Trustee's Office took no action.

Mr. Rukavina followed up with the same thing to the same body in November of 2021. You can see where his allegations of insider trading are made and *quid pro quo* and all the rest of it. Again, they took no action.

The one that I don't have on this chart because I didn't -- I made the chart last week and then was unavailable. Mr. Rukavina sent a second letter. And you can find that at Plaintiffs' Exhibit 61. And in Plaintiffs' Exhibit 61, you'll see that Mr. Rukavina sent yet another letter to the U.S. Trustee's Office on May 11, 2022.

And these are all really important, right? The U.S. Trustee's Office has oversight responsibility for matters including claims trading. That's their job. They took three different swings at this. And these are pages of allegations. 6 to 11. 9 to 13. We think it's very important that the

Court look at what was told to the U.S. Trustee's Office. And you're going to hear Mr. Seery testify that Highland has never heard from the U.S. Trustee's Office concerning any of these allegations or any of the other allegations that are set forth in Mr. Rukavina and Mr. Draper's letter. Never. Declined to even initiate an investigation.

Hunter Mountain filed its own 202 petition. It boggles my mind that they try to create distance with Mr. Dondero, because the whole petition, like this whole complaint, is based on Mr. Dondero. He submitted a declaration alleging the same insider trading case, and a second Texas state court said I'm not even giving you discovery. We know that's the result.

But the best is the Texas State Securities Board. I think we're going to hear testimony that Mr. Dondero or somebody under his control is the one who filed the complaint with the Texas State Securities Board. Who would be the better body to assess whether or not there's insider trading than a securities board? I can't imagine there's a better body. They did an investigation. Mr. Dondero could have told them anything he wanted. I'm sure he did. And they wrote in their motion in Paragraph 37 one of the reasons they have colorable claims is the investigation is ongoing.

Much to their dismay, I'm sure, two days before our opposition was due, the Texas State Securities Board said, we've looked at the complaint, we've done our investigation,

and we're not taking any action. You can find that, Your Honor, Footnoted 5 at Exhibit 33.

You are now the seventh body who's being asked -- and you're being asked to do substantially more than any of the other prior bodies were. The Texas state courts were being asked, just let them have discovery. They said no. The U.S. Trustee's Office, charged with the responsibility of looking at claims trading, said, I'm not going to investigate. I know what you've told me. No. The Texas State Securities Board. Insider trading, insider trading. I'm not doing an investigation. I'm not doing anything. And now they want to come here and engage in, you know, in expensive, long litigation over the same claims nobody else would touch.

Can we go to the next slide?

Mr. Dondero's email. Good golly. "Amazon and Apple are in the data room." There's a hundred articles out there that they're putting into evidence that say that. "Both continue to express material interest." There's a hundred articles out there that say that. "Probably a first-quarter event. Will update as facts change."

There will not be any evidence that he ever updated anybody, because that wasn't the purpose of this, as Your Honor will recall. He had an axe to grind.

And I direct your -- I don't direct the Court to do anything -- I ask the Court to take a look at our opposition

to the motion, in Paragraphs 23 to 25, where we cite to extensive evidence, all of which is now part of the record, showing just what was happening, from the moment he got fired on October 10th until the end of the year, with the interference, with the interference, with the threats, with the TRO. It was nonstop.

Was this email sent in good faith by somebody who owed no duty to anybody? Or was it really just another attempt -- and this is why the gatekeeper is so important, because I think that's exactly what this Court is supposed to do: Is this a good-faith claim? Is this a claim that's made in good faith? It can't be. And you know why? You know what's -- you know what's -- I'll just say it now. I won't even save it for cross.

Remember the HarbourVest settlement that they're making so much, you know, about? Mr. Dondero is the tipper. According to him, he gave Mr. Seery inside information. According to him, Mr. Seery abused it by engaging in the HarbourVest transaction. But Mr. Dondero filed an extensive objection to the HarbourVest settlement and never said a word about this, because that wasn't on his mind at the time. The email was sent in order to interfere. And when that failed, he's trying to play gotcha now. It's ridiculous.

He owed no duty to Highland. It would have been a breach of his own duty to MGM to share that information at that

period of time.

The shared services agreement. They don't help him. Mr. Dondero has nothing to do with that. Highland is providing services. He's not providing services to Highland. Highland was providing. We had already given notice of termination. We had already had our plan and disclosure -- we had already had our disclosure statement approved. We were weeks away from confirmation. Please.

And the *Wall Street Journal* article on December 21st at Exhibit 27, that's not your garden-variety *Wall Street Journal* article, because it specifically says that investment bankers were engaged to start a formal process. The investment bankers are identified by name. Something has changed. Anybody could see that.

Yes, there were rumors for a long time. Nobody had ever said there was a formal process. Nobody had ever said investment bankers had ever been hired. Nobody had ever identified those investment bankers. Right? I mean, just the world changed.

If you can go to the next slide.

You know, before I get to the next slide in too much detail, *quid pro quo*. We look at it as *quid*. Did he -- is there any evidence that he actually gave anybody material nonpublic inside information? The answer is going to be no. The *quo* is the relationship. And I'm not going to spend too

much time on that now. But wait until you hear Mr. Seery testify as to the actual facts about his relationship. Because some of what we just heard is mind-boggling, that little -- that little page from the *Blockbuster* case, like, 14 years ago, where Farallon was one of a group of people who Jim Seery never met. Like, the stretch, what they're trying to do is beyond the pale. But I'm delighted to have Mr. Seery sit in the box and answer all the questions they want to ask him about his relationship with Farallon and Stonehill.

But getting to the point, the *quid pro quo*. The *quo* is they fixed his compensation? Are you kidding me? They rubber-stamped his compensation? Highland and Mr. Seery and the board are alleged to have negotiated? There's nothing alleged. There are facts. There is evidence. It is beyond dispute. If you look, just for example, right, they take issue with his salary? The salary was fixed by this Court in 2020. Without objection. He's getting the exact same salary that he ever got.

You'll hear that it's a full-time job. Your Honor knows better than anybody in this courtroom, other than me, perhaps, the litigation burden that's been placed on this man. He has no other income. He doesn't do anything else. This is a full-time job. It's the exact same job that he had when Your Honor approved his compensation package three years ago, without a raise. They didn't give him a nickel more. Not one

nickel. It's outrageous.

The balance of his compensation, of which he has not yet received a nickel, is exactly what this Court would want somebody in Mr. Seery's position to do. It aligns his interests with his constituency. Not with Stonehill. Not with Farallon. With all creditors. The greater the recovery, the greater the bonus. Outrageous, right? Remarkable, isn't it? Only in their world.

If Your Honor can go back to Mr. Rukavina's letter, because this is where it all -- that's where it all starts from. Like, excessive compensation. Mr. Rukavina, I don't know how he did this, why he did it, what it was based on. He actually told the U.S. Trustee's Office that they thought Mr. Seery made $50 million. It's in the letter. $50 million, they told the U.S. Trustee's Office he made. It's footnoted, so you can go find it. It's right there, at Page 14. Quote, Seery's success fee could approximate $50 million.

$8.8 million is what he's making. They think that's excessive? What do they think he should make? Three? Five? We're not going to hear that. But that's what this case is about. You just heard counsel in his opening statement. He literally said the only thing at issue is his compensation. And that has to be the case, because if there was -- if there was no claims trading, UBS and HarbourVest and Acis, right, the Redeemer Committee, they would all still be holding these

claims today.

When Stonehill and Farallon acquired the claims, they were all allowed. There was no debate about what the claims were. If they held the claims today, they would be worth the exact same amount of money, only a different person would be benefitting from it.

So the case actually is only about Mr. Seery's compensation. And they've moved the goalposts, as often happens in this courtroom, from rubber-stamping -- I'll give you what you want. When I hear rubber-stamp, I hear, you make a demand and I'll give it to you. And now they realize, when they see the negotiation -- because it's in evidence, it's just the documents, you can see the board minutes -- what do we, doctor the board minutes and they should get discovery because we doctored the board minutes? The board minutes show a four-month negotiation with an Independent Board member fully involved. It's mind-boggling. It's actually -- well, I'll just leave it at that.

Next slide. Last slide. Let me finish up. Three of the four sellers were former Committee members. Mr. Dondero agreed that Committee members would have access to special nonpublic inside information as part of the protocols, as part of the corporate governance settlement. He agreed to that. These are the people who got abused? These are the people who didn't know what was happening? Committee members and

HarbourVest, probably one of the biggest and most sophisticated funds in the world, didn't know what was happening? They got abused? Stonehill and Farallon took advantage of them?

If you read their pleadings closely, they actually allege, and I don't -- I don't know if there'll ever be any evidence of this -- but they actually allege that -- I forget which -- oh, somebody is an investor in Stonehill and Farallon, and so the theory is one of the sellers is an investor in Farallon. So not only did they abuse, they abused one of their own investors. Like, this is not a colorable claim. This is ridiculous.

None of the claims sellers are here. Sophisticated people who -- who -- right? Mr. Dondero could pick up the phone and say, hey, guys, you got ripped off. You sold your claims when you shouldn't have. They had an unfair advantage.

Nobody's here. Where is anybody complaining? They're not going to because they cut a deal that they thought was good for them at the time. In hindsight, maybe they have regrets. Right? We all have regrets sometimes in hindsight. But that doesn't create a claim.

We've heard so much about what hedge funds would get and how much and is this rational? The fact of the matter is, at the time Mr. Dondero had his phone call on May 28th, UBS had not been purchased, although MGM had already been announced.

So when they talk about MGM, maybe it's the fact -- and this is in evidence -- maybe it's the fact that, two days before, the MGM-Amazon deal actually was publicly announced. It actually was. So maybe when they say, hey, yeah, we like MGM, because, you know, that just -- that just got announced. Maybe that happened.

But at the end of the day, the claims that they bought, if you just look at the claims that were purchased at the time he had the conversation, all Mr. Seery had to do was meet projections and they were going to get $33 million in two years. A 30 percent return in two years. I don't know. That doesn't -- that doesn't sound crazy to me. Doesn't sound crazy to me. It certainly doesn't create a colorable claim, just because they think that Farallon or Stonehill -- there's not going to be any evidence of Farallon or Stonehill's risk profile. There's not going to be any evidence of Farallon or Stonehill's, you know, expected returns. There's not going to be any evidence at all about what due diligence they did or didn't do, other than what comes out of Mr. Dondero's mouth, as usual.

Mr. Dondero -- and let's look at what's going to come out of Mr. Dondero's mouth. He has multiple sworn statements. I'm going to take his notes and they're going to become mine. I'll put him on notice right now. Because those notes bear no relationship to the evolution of his sworn statements over

time.

The first time he mentions MGM in a sworn statement is two years after the fact in Version #5. That's a colorable claim? You want -- you want to oversee a litigation, or maybe it gets removed to the district court, maybe I get lucky to be in front of a jury, and I'll have Mr. Dondero explain how it took him five tries before he could write down the letters MGM. Not a colorable claim. No evidence against Stonehill whatsoever. Zero. Zero. Never spoke to them. There's no colorable claim here, Your Honor.

I'm going to turn the podium over to Mr. Stancil to talk about the law.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. Mark Stancil, counsel for Mr. Seery. But I'm going to just very briefly address a few legal points. And I actually mean briefly.

THE COURT: Okay.

MR. STANCIL: I'll come back to a good bit of this in closing as time permits.

I heard Mr. McEntire say *Barton* doesn't apply. I would encourage him to start with what the gatekeeping order actually says. Here it is. This is in -- it's in the plan. Your Honor has confirmed it. The question we have in terms of what standard applies is, what does this order mean? Well, we

think that's going to be clear. It's not what they think the word "colorable" would mean in other contexts. It's not what they think they should have to satisfy now that they have a theory. It's, what does this mean?

And we'll get into some of the additional evidence from Your Honor's order at the time, later in closing.

Next slide, please.

But let me just start to say I'm awfully surprised to hear him say that he doesn't believe *Barton* applies, because the order says that it does. This is Paragraph 80 of the confirmation order. It says that the Court has statutory authority to approve the gatekeeper provision under these sections of the Bankruptcy Code. The gatekeeper provision is also within the spirit of the Supreme Court's *Barton* Doctrine. The gatekeeper provision is also consistent with the notion of a pre-filing injunction to deter vexatious litigants that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures*.

So I think it is impossible, and respectfully, Your Honor, it's law of the case. This is what the order is based on. The day for objecting to what's in the confirmation order is long gone.

So let me come back, then -- first slide, please -- and I'll just very briefly give you a little legal framework for what we're going to be arguing to you later in closing.

So, *Barton* does require a *prima facie* showing. That is *Vistacare* and plenty of other cases. That is more than a 12(b)(6) standard, Your Honor. Numerous courts agree. And in fact, as you'll hear us discuss later, Judge Houser's opinion is not to the contrary, because she said explicitly, I'm not applying *Barton*. So anything that they're relying on for what *Barton* requires from that opinion is *dicta*. But we can show you case after case after case, and we will, to show that *Barton* requires evidentiary hearings.

Here's a point, this third bullet here is something I have not heard a single word in all of the briefing and ink that has been spilled and in as long as we've been here this morning, is what is a gatekeeping order doing if all it does is reproduce a 12(b)(6) standard? That's what they say. In fact, they're actually saying it's even lower. Now I think I heard them say it's even lower than a 12(b)(6) standard.

That makes no sense whatsoever. We've just shown you that this gatekeeping order was imposed consistent with *Barton* and vexatious litigant principles. Later I will walk Your Honor through factual findings that you made detailing the vexatious litigation, detailing the abuses. The notion that the gate is the same gate that every other litigant who hasn't demonstrated that record of bad faith is absurd, and it serves no purpose.

And as Mr. Morris described, Hunter Mountain woefully,

woefully violates any *prima facie* showing. And we'll get into a little bit more exactly how that works.

We are going to ask this Court, in addition to ruling that *Barton* applies and that they've failed it, we're going to ask this Court, respectfully, to please consider ruling on multiple independent grounds as well. We know there's a penchant for appeals and appeals upon appeals. So we will argue to Your Honor, although we will largely spare you another rehash of our briefs, but we will explain to Your Honor why they do lack standing to bring this claim as a matter of Delaware law. And there was a lot of fuzzing up about constitutional standing and Delaware law. Not necessary.

If -- we will be happy to rely on our pleadings here, but on Page 27 of the Claimant Trust Agreement, that's what defines their rights under Delaware law, and they were talking about how beneficial owners under Delaware law have standing. Well, are they beneficial owners? They are not. Equity holders -- this is in Paragraph C, Page 27 of the Claimant Trust Agreement -- Equity holders will only be deemed beneficiaries under this agreement upon the filing of a payment certification with the bankruptcy court, at which time the contingent trust interests will vest and be deemed equity trust interests.

They are not beneficial owners of squat. That has not

happened.

And last, Your Honor, we will -- and I will organize this for Your Honor in closing as well -- we would ask you to rule on a straight-up 12(b)(6) standard as an alternative, because we know what's coming on appeal and we think their complaint collapses under its own weight. You heard Mr. Morris detailing their own math shows significant returns. You'll also hear us describe how they have nothing but mere conclusions and naked assertions upon information and belief but unsupported.

Iqbal and *Twombly* would still apply under their 12(b)(6) standard, especially, and perhaps even more with a heightened standard under Rule 9(b), because they're essentially alleging some version of fraud, it sounds like.

They're never going to get there, Your Honor. All we would ask is for a full record to take inevitably, unfortunately, to the Court of Appeals.

And I think Mr. -- I'm not sure which of my colleagues will be speaking briefly for Holland & Knight, but I'll just turn it over to them.

THE COURT: All right. Mr. McIlwain?

OPENING STATEMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Thank you, Your Honor. I'll be even briefer. Brent McIlwain here for the Claim Purchasers.

Your Honor, Mr. McEntire stated to this Court that my

clients have never denied any of this. In fact, in his reply, he says, The Claim Purchasers do not deny that they invested over $163 million. We do not deny that we did not due diligence, we do not deny that we refused to sell our claims at any price, and we do not deny that we invested the claims at what is, at best, a low ROI.

We had no duty to answer to HMIT or Mr. McEntire. We had no duty when we bought these claims to -- we had no duties to any creditor. We had -- it was a bilateral agreement with a third party. And frankly, Your Honor, it's not Mr. Dondero's or HMIT's business what due diligence we did and what information that we obtained.

But I will tell you right now, Your Honor, we were very careful in our pleadings to not bring issues of fact, because this -- HMIT has been chasing my clients, obviously, based on the notes that were presented in the initial PowerPoint, it was a -- it's retribution. It's retribution for not agreeing to sell the claims to Mr. Dondero when he offered to purchase at a 40 percent premium.

And Your Honor, when I look at that note, it's interesting, because I hadn't seen the note, obviously, until it showed up on the exhibit list. When you look at that note, I think it's -- I think it's very interesting. To the extent it was contemporaneous, I don't know. But what it shows, it shows that if you're a hammer, everything's a nail. And Mr.

Dondero is a vexatious litigator. And what did he write down? Discovery to follow.

But my question is this. Who was trying to trade on inside information? Mr. Dondero was offering a 40 percent premium, allegedly, on the cost. What information did he have? Certainly, he had inside information.

My client owed no duty to Mr. Dondero. My client owed no duty to anybody in this estate at the time of these claims purchase.

And Your Honor, we talk a lot about -- or, it's been talked a lot of insider trading. These are claims trades. I think the Court honed in on this from the very get-go. The Court does not have a role in claims trades. There's a 3001 notice that's filed post-claims trade, but there's no requirement that there's Court approval.

And these aren't securities. It's not as if we're trading claims and it could benefit or hurt you based on some equity position that you're going to obtain. We obtained claims that had been settled, they were litigated heavily, and the most that we can obtain is the amount of the claim. And that is, as Mr. Morris stated, all that changed was the name of the claimant. That's all. Because the claims didn't increase in value based on the trade.

Your Honor, our pleadings, I think, speak for themselves in terms of you really -- you really don't have to consider

evidence, from our perspective, to determine that this proposed complaint has no merit and is not plausible and presents no colorable claims.

The gatekeeper provision, and we're going to talk a lot about that today, obviously, right, requires that Mr. Dondero establish a *prima facie* case that the claims have some plausibility. If you can simply write down allegations, file a motion for leave and attach those allegations and say, Your Honor, you have to take all these as true, the gatekeeper has no meaning. There's no point in having a gatekeeper provision.

And in summary, Your Honor, what -- and I think Mr. Morris honed in on this specifically -- this really comes down to compensation. Right? Because this -- the allegation is that my clients purchased claims, presumably at a discount, right, based on some inside information, which we obviously deny, but we don't have to put that at issue today. For what purpose? For what purpose? So we got inside information from Mr. Seery so that we could then scratch his back on compensation on the back-end?

Your Honor, there is no reason that my clients need to be involved in this litigation. If HMIT thinks that this -- that they have a claim against Mr. Seery for excessive compensation, they can -- they could have brought such a gatekeeper motion, or a motion for leave under the gatekeeper

provision, without including my clients. Why did they include my clients? They included my clients because my clients did not sell to Mr. Dondero when he called, unsolicited, to try to get information. It's retribution. And that's what a vexatious litigator does, and that's why the gatekeeper provision is in place.

I'll reserve the rest for closing, Your Honor.

THE COURT: All right. Caroline, what was the collective time of the Respondents?

THE CLERK: Twenty-eight minutes and 37 seconds.

THE COURT: Twenty-eight minutes, 37 seconds.

All right. Well, let's talk about should we take a lunch break now? I'm thinking we should, because any witness is going to be, I'm sure, more than an hour. So can you all get by with 30 minutes, or do you need 45 minutes? I'll go with the majority vote on this.

(Counsel confer.)

MR. MCENTIRE: 1:00 o'clock. 45 minutes.

MR. MORRIS: 40 minutes, whatever. 1:00 o'clock?

THE COURT: We'll come back at 1:00 o'clock.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(A luncheon recess ensued from 12:19 p.m. until 1:05 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in the Highland matter, the Hunter Mountain motion for leave to file lawsuit.

I'll just let you know that at 1:30 we're going to take probably what will be a five-minute break, maybe ten minutes at the most, because I have a 1:30 motion to lift stay docket. Just looking at the pleadings, I really think maybe one is going to be resolved and it won't be more than five or ten minutes. So whoever is on witness stand can either just stay there, because I think we won't be finished, or you can take a bathroom break or whatever. All right? So, it's video, the 1:30 docket.

All right. So, Mr. McEntire, are you ready to call your first witness?

MR. MCENTIRE: I am, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: May I proceed?

THE COURT: You may.

MR. MCENTIRE: At this time, Hunter Mountain calls Mr. James Dondero.

THE COURT: All right. Mr. Dondero, welcome. If you could find your way to the witness box, I will swear you in once you're there. It looks like you've got lots of notebooks there. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. You may be seated.

MR. MCENTIRE: I'm not familiar with your procedure. Should I approach the -- here to --

THE COURT: If you would, unless you're having --

MR. MCENTIRE: That's fine.

THE COURT: -- any kind of --

MR. MCENTIRE: That's fine. I'm not.

THE COURT: -- knee issues or, you know, sometimes people want to stay seated for that reason.

MR. MCENTIRE: Your Honor, again, my tender of Mr. Dondero as a witness is subject to our running objection on the evidentiary format.

THE COURT: Understood.

JAMES DAVID DONDERO, HUNTER MOUNTAIN INVESTMENT TRUST'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Dondero, would you state your full name for the record, please?

A James David Dondero.

Q With whom are you currently -- what company are you currently affiliated with?

A Founder and president of NexPoint.

Q All right. And I think the Court is well aware, but would

you just briefly describe your prior affiliation with -- was it Highland Capital?

A Yes.

Q What was that affiliation?

A President and founder for 30 years, and then to facilitate an expeditious resolution of the estate I handed the reins to three Independent Board members and I became a portfolio manager until October of -- I was an unpaid portfolio manager until October of '20.

Q Thank you, sir. Do you have any current official position with Hunter Mountain Investment Trust?

A No.

Q Can you describe for us, sir, any actual or control you attempt to exercise on the business affairs of Hunter Mountain Investment Trust?

A None.

Q Are you -- do you have any official legal relationship with Hunter Mountain Investment Trust where you can attempt to exercise either direct or indirect control over Hunter Mountain Investment Trust?

A I do not.

Q Did you participate -- personally participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan?

A I did not.

Q As the former CEO of Highland Capital, are you familiar with the types of assets that Highland Capital owned? On the petition date?

A Yes.

Q And have you been monitoring these proceedings and the disclosures in these proceedings since the petition date?

A Yes.

Q Okay. Can you describe generally for me the types of assets on the petition date that Highland Capital owned? The types of assets? Describe the types of assets -- companies, stocks, securities, whatever, whatever you -- however you would describe it.

A There were some securities, but it was primarily investments in private equity companies and interests in funds.

Q Okay. I've heard the term portfolio company. What is a portfolio company?

A A portfolio company would be a private equity company that we controlled a majority of the equity and appointed and held accountable the management teams.

Q Would there be separate management, separate boards, for those portfolio companies?

A Yes.

Q All right. How many portfolio companies were there on the petition date, if you're aware? If you recall?

A Half a dozen, of different sizes.
Q Can you identify the names, if you recall?
A Yes.
Q What are those names?
A Trussway, Cornerstone, some small -- Carey International, CFA, SSP Holdings. Yeah, to a lesser extent, OmniCare.
Q All right.
A Or, um, --
Q In addition to the portfolio --
A Sorry.
Q -- of companies in which Highland Capital would own interests, did Highland also have interests in various funds?
A Yes. I said OmniCare. I meant OmniMax, I think was the name.
Q What type of funds?
A I'm sorry. The funds were usually funds that we were invested in or seeded or managed. So they're things like Multistrat, Restoration, a Korea fund, PetroCap.
Q Are these managed funds by Highland Capital? Or were they?
A Yes. Pretty much, with the exception of PetroCap. We were a minority -- a minority -- a large -- a large minority investor with a sub-advisor.
Q Did Highland Capital Management on the petition date own an interest, a direct security interest in MGM?

A Yes. And I -- yes.
Q Did the various portfolio companies that you've identified, did one or more of those portfolio companies also own MGM stock?
A Yes.
Q Did the various funds that you've identified, did one or more of those funds also own MGM stock?
A Yes. Between -- yes. Between the CLOs, the funds, Highland directly, it was about $500 million that eventually got taken out for about a billion dollars.
Q Okay. $500 million is what you said?
A Approximately. Depending on what mark, what time frame. But ultimately they got taken out for about a billion dollars.
Q Okay. And as a consequence of these investments, significant investment -- first of all, how would you describe that magnitude of investments? Is that a significant investment from the perspective of MGM?
A Yes.
Q As a consequence, what role, if any, did you play in terms of MGM's governance? Were you -- did you become a member of the board of directors?
A Yes. I was a board member for approximately ten years, and myself and the president of Anchorage, between our two entities, we had a majority of the equity in MGM.
Q Okay. If there was a third party, not familiar with the

management of Highland Capital, who had been monitoring these bankruptcy proceedings as you have, was there any way that a third-party stranger to this bankruptcy proceeding could, from your perspective, actually appreciate or identify the -- all the details of the investments that Highland Capital had?

MR. MORRIS: Objection to the form of the question. It calls for speculation. He's not here as an expert today. He shouldn't be allowed to testify what a third party would or wouldn't have thought or known.

MR. MCENTIRE: Well, I'll --

THE COURT: I'll overrule.

BY MR. MCENTIRE:

Q Mr. Dondero?

A The disclosures in the Highland bankruptcy were scant. I think there was six or eight line items listed, the descriptions of which were limited. But it didn't include -- it didn't include a broad listing of all the funds, and it didn't include subsidiaries or any net value or any offsetting liabilities or risks of any of the underlying companies or investments, either.

MR. MCENTIRE: Would you put up Exhibit 3, please?

BY MR. MCENTIRE:

Q Mr. Dondero, we're going to -- do you have a screen in front of you as well?

A Yes.

Q We're going to put up Exhibit 3, and I'm going to ask you some questions about it. First of all, would you identify Exhibit 3?

A It didn't come up on my screen yet.

Q Still not up there?

A Yes. Now it is.

Q Can you identify Exhibit 3, please?

(Discussion.)

Q There we go. Mr. Dondero, would you identify Exhibit 3, please?

A This was an email I sent to Compliance and relevant people to put -- to put MGM on the restricted list.

Q It indicates it was on December 17, 2020. Did you personally author this email?

A Yes.

Q You sent it to multiple individuals, including Mr. Surgent. Was Mr. Surgent an attorney at Highland Capital at the time?

A He was head of compliance for both organizations.

Q Scott Ellington? Is he an attorney? Was he an attorney at the time?

A He's the general counsel of Highland.

Q You also sent it to someone at NexPoint Advisors, Jason Post. Who is Mr. Post?

A Mr. Post was head of compliance at NexPoint Advisors and a

subordinate of Thomas Surgent's.

Q Jim Seery. Mr. Seery, of course. You also addressed it to Mr. Seery?

A Yes.

Q It says, Trading Restrictions Re: MGM Material Nonpublic Information. What did you mean by the term "material nonpublic information"?

A Material nonpublic information is when you have material nonpublic information that the public does not have, and it essentially makes you an insider and restricts you from trading.

Q All right. It says, Just got off a pre-board call.

First of all, you generated this in the ordinary course of your business, did you not?

A Um, --

Q This email.

A Yes.

Q Okay.

A Yes.

Q And --

A Any restricted list. Restricted list items happen all the time in the normal course of business.

Q And you've maintained a copy of this email as well, have you not?

A I'm sure we have one. I don't have it personally.

Q Fair enough. But you're -- you have -- you have access and custody over emails, correct?
A Not any of my Highland emails.
Q But those were left. Right?
A Yes. Yes.
MR. MORRIS: Your Honor, I mean, he's leading the witness at this point, so I'm just --
MR. MCENTIRE: That's fine.
MR. MORRIS: I'm just --
THE COURT: Okay. Sustained.
MR. MORRIS: -- going to be sensitive to it.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q Mr. -- this is a true and accurate copy of the email that you sent, is it not?
A It appears to be.
MR. MCENTIRE: At this time, I would offer Exhibit 3 into evidence, Your Honor.
THE COURT: Okay. I'm looking through what we admitted earlier. Did we not --
MR. MCENTIRE: This already may be in evidence.
THE COURT: Yes. I'm --
MR. MCENTIRE: I don't --
THE COURT: Was there any objection?
MR. MORRIS: There wasn't. I mean, --

THE COURT: I think there was an objection that I overruled.

MR. MORRIS: No. There wasn't. I mean, unfortunately, we've gotten the short end of the stick here, because all of their documents are in evidence, and I got caught short because I'm going to have to do it the old-fashioned way. But yes, this is in evidence.

MR. MCENTIRE: Okay. Fair enough.

MR. MORRIS: Because -- actually got through all of their documents.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. All right.

BY MR. MCENTIRE:

Q So, Mr. --

THE COURT: So it's in evidence.

BY MR. MCENTIRE:

Q -- Dondero, going back to Exhibit 3, it says, Just got off a pre-board call.

Is that the MGM board, a pre-board call?

A Yes.

Q What is a pre-board call?

A It's a pre-board call that usually sets the agenda. And, again, myself and the Anchorage guys, we would move in locksteps, in a coordinated fashion, generally, in terms of agenda and company policy.

Q It says, Update is as follows. Amazon and Apple actively diligencing in the data room.

What was your understanding of -- of -- what was your intent in conveying that information to the recipients?

A The intent was really in the last sentence, or second-to-last sentence, that the transaction was likely to close. Amazon had come back. We had turned Amazon away earlier in the year at $120 a share, and they said they wouldn't be willing to pay more. And --

THE COURT: Is there an objection?

MR. MORRIS: There is an objection. None of this was shared with Mr. Seery, all of this background that we're -- that we're doing. He -- I would request that we stick with the -- only the information that was given to Mr. Seery, like -- like he's talking about his intent. Like, who cares at this point?

MR. MCENTIRE: Well, --

MR. MORRIS: This is what Mr. Seery got.

THE COURT: Okay. What is your response to that?

MR. MCENTIRE: I have a response to -- well, they've -- they've questioned his intent in sending this in his opening statement.

MR. MORRIS: Ah.

MR. MCENTIRE: And I'm trying to make it clear what his intent was.

MR. MORRIS: So, you know what, Your Honor? *Quid pro quo*. Now we're going to do a real *quid pro quo*. He can ask him about his intent, and then he can't object to all of the other documents and exhibits that I say prove that this was here only to interfere with Mr. Seery's trading activity. I'll do that *quid pro quo*.

MR. MCENTIRE: May I proceed, Your Honor?

THE COURT: You may. Objection is overruled.

BY MR. MCENTIRE:

Q Mr. Dondero, what was your intent in communicating --

A Okay.

Q -- that probably a first-quarter event? What was your understanding?

A After 30 years of compliance education: Taint one, taint all. We were all sitting together. I -- the trading desk was right outside my desk. All the employees of Highland that would eventually move to NexPoint, all the ones that would eventually move to Skyview, all the ones that eventually moved to Jim Seery, were all within 30 feet of my desk.

Q What do you mean by "Taint one, taint all"?

A That's a compliance concept that, as a professional, you have a responsibility, when you are in possession of material nonpublic information, to put something on the restricted list so that it's not traded. Okay? And you can't -- one person can't sit in their cube and say they know something and not

tell anybody else, such that the rest of the organization trades. That's not the way compliance works.

Q It says also no -- also, any sales are subject to a shareholder agreement.

What was the meaning of that or the intent of that?

A There was a stringent shareholder agreement, particularly among the board members, that no shares could be bought or sold without approval of the company.

Q The company here being MGM?

A MGM, yes.

Q What is a restricted list?

A A restricted list is when you believe as an investment professional that you have material nonpublic information, you notify Compliance, and then Compliance notifies the entire organization and prevents any trading in that security.

Q You mentioned the doctrine taint one, taint all. If an individual or -- if an individual within a company setting is found to have traded on material nonpublic information, what is the potential consequence or sanction?

MR. MORRIS: Objection, Your Honor. This is like a legal conclusion. He's not a law enforcement officer. He's not a securities officer. What are we doing?

MR. MCENTIRE: I can rephrase.

THE COURT: Okay. He's going to rephrase.

BY MR. MCENTIRE:

Q Based upon your years -- based upon your years of experience as a board member of MGM, based upon your years of experience as a CEO of Highland Capital and an executive that trades in securities and has sold securities, what is your understanding, from a non-legal perspective, of what the risks are associated with trading on material nonpublic information?
A You could be -- you would be fired from the organization if you did. You could be banned from the securities industry. The industry can shut down the -- or, the SEC can shut down the advisor or they can fine the advisor.
Q Do you know what a compliance log is?
A Yes.
Q Should MGM have been placed on a compliance log at NexPoint?
A Throughout the organization -- throughout the organization, it should -- it should and it was on all -- at all organizations, yes.
Q Should it have been placed on a -- on a compliance log to Highland Capital, from your perspective?
A Yes.
Q Can you give us any explanation of why, to your knowledge, why MGM would be taken off the restricted list in April of 2021 at Highland Capital?
A When an investment professional puts something on the restricted list, in order for it to come off the restricted

list, the material nonpublic information has to be public. So there has to be a cleansing that occurs by the company.

Q To the extent that you were no longer affiliated with Highland Capital in the early portion, the first quarter of 2021, does that somehow cleanse the material nonpublic information that you identified?

A It does not.

Q Why not?

A Because the -- it -- the company hasn't -- the company didn't come out and make public the information that we knew from a private perspective that the transaction was about to go through.

Q You sat here during opening statements when Mr. Morris referred to the various news coverage and media coverage concerning MGM and the fact that people had expressed interest in buying in the past?

A Yes. And at the board level, we had entertained numerous ones. There were rumors that had no basis in fact, and there were negotiations we had with people that were never in the news. But none of them got to this degree of certainty where it was going to close within a couple months.

Q From your perspective as an investment professional, with the years of experience that you described for the Court, what is the difference between receiving an email from a board member such as yourself and rumors or suggestions of possible

sale in the media?
A I knew with certainty from the board level that Amazon had hit our price, agreed to hit our price, and it was going to close in the next couple months.
Q That's not rumor or innuendo; that's hard information from a member of the MGM board?
A Correct.
MR. MCENTIRE: All right. You can take that down, please, Tim.
BY MR. MCENTIRE:
Q I want to talk a little bit about due diligence. When you were the chief executive officer of Highland Capital, --
A Yes.
Q -- can you tell us whether Highland Capital ever involved itself in the acquisition of distressed assets?
A Yes. We did a fair amount of investing in distressed assets.
Q What is a distressed asset?
A It's something that trades at a discount, where the certainty and the timing of realizations or contractual obligations is uncertain.
Q Is a -- well, let me back up. Has Highland -- did Highland Capital ever invest in unsecured claims in connection with bankruptcy proceedings?
A Yes.

Q And in terms of the -- on the spectrum of risk, where does an unsecured creditor claim in a bankruptcy proceeding kind of rank in terms of the uncertainties or risk, from your perspective?

A It's high risk. It's a -- yeah, it would be highly-distressed, generally.

Q Explain to us -- I know the Court is very familiar with claims trading. Explain to us from your perspective as an investment -- a seasoned investment expert or executive what those risks are. What types of risk are associated with such an investment?

A You have to evaluate the assets tied to the claim specifically. Or if it's an unsecured in general, the assets in general in the estate.

You have to handicap the realization that a distressed seller might not get full value for something. You have to handicap the likelihood around that. And then you have to handicap the timing, and then you have to handicap the expenses and the other obligations of the estate, and then handicap risk items that aren't known or that are difficult if not impossible to underwrite, like unknown litigation or last-minute litigation or claims or something.

Q And all these handicapping, this handicapping process, how does that impact the price or the investment that you're willing to make? Generally?

A Generally, you put a much higher discount rate. You know, like if you would do debt at 10 percent and a normal public equity at a 15 percent return, you would do distressed or private equity investing at a 20, 25 percent return expectation to offset the risk and the unknowns.

Q In order to handicap an investment in an unsecured creditor's claim appropriately to reach an informed decision, what type of data would you need to have access to?

MR. MORRIS: Objection to the form of the question. He's not here as an expert. He's here as a fact witness. He should -- he should limit himself to that instead of talking about what investors should be doing.

MR. MCENTIRE: Well, Your Honor, with all due respect, he's here as the former CEO of Highland Capital. He has experience, firsthand knowledge experience, and he also has expertise because of his education, his career, and training.

And again, there's no limitation here under the Rules about what type of information I can elicit from him in this proceeding. This is, whether you call it expert testimony, I call it personal knowledge, but it has some expert aspects to it, but I think that's fair and appropriate.

THE COURT: Well, I think you can ask what kind of data would you rely on, would Highland Capital or entities he's been in charge of rely on, --

MR. MCENTIRE: I understand.

THE COURT: -- but not what would people rely on. So I sustain the objection partially.

MR. MCENTIRE: All right.

BY MR. MCENTIRE:

Q Mr. Dondero, I'll rephrase the question. When you were the chief executive officer of Highland Capital before Mr. Seery took the reins, and you, your company, Highland Capital, was investing in an unsecured creditor's claims, what due diligence, what type of information would you expect your team to explore and investigate?

A Sure. Distressed investment in a trade claim would be among our thickest folders, it would be among our most diligenced items, because you have those three buckets, the value of the assets, again, and the ability and timing of monetization of those as a not strong -- as a weak seller, and then you would have the litigation or claims against those, and then you would have to also have a third section of analysis for the litigation risk of the estate overall.

Q What type of legal analysis or legal due diligence would you have required as the CEO of Highland Capital?

A At Highland, we would have had third-party law firms, in addition to our own legal staff, in addition to our own business professionals, reviewing all the analysis and the assumptions.

Q With regard to a financial analysis, what types of financial due diligence would you have required?
A It would have been a detailed -- a detailed analysis of all the cash flows on the particular underlying investments, and an evaluation and valuation of what those companies or investments were worth.
Q Why is it important to look at the underlying value of the asset?
A Because that -- those are what will be monetized in order to give you a return on the claims or securities that you buy in a distressed situation.

MR. MCENTIRE: Tim, would you please put up Exhibit 4?

MR. MORRIS: Your Honor, I don't mean to be monitoring your time, but we're at the 1:30 --

THE COURT: I was just checking the clock here. Let's do take a break. So, --

MR. MCENTIRE: All right.

MR. MORRIS: Your Honor, can we have an instruction to the witness not to --

THE COURT: Yes.

MR. MORRIS: -- look at his phone and not to confer with anybody? Because we had that incident once before.

THE COURT: Okay. Well, I don't --

THE WITNESS: I don't have my phone.

THE COURT: Okay.

THE WITNESS: My phone's at the front desk.

THE COURT: So, no discussions with your lawyers or -- I guess he doesn't have his phone -- during this break.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. So, I really think this will take five minutes, so don't go far.

(Off the record, 1:33 p.m. to 1:47 p.m.)

THE COURT: Okay. We will go back on the record, then, in the Highland matter.

MR. MCENTIRE: I'm just going to grab him right now.

THE COURT: Okay. We are, for the record, waiting on Mr. Dondero to take his place again on the witness stand.

(Pause.)

THE COURT: All right, Mr. Dondero. We're ready for you to resume your testimony.

All right. Mr. McEntire, you may proceed.

MR. MCENTIRE: Thank you, Your Honor.

DIRECT EXAMINATION, RESUMED

BY MR. MCENTIRE:

Q Mr. Dondero, when we left off, I was just putting up what I requested as Exhibit 4.

MR. MCENTIRE: And Tim, if you can put that back up, please.

BY MR. MCENTIRE:

Q Mr. Dondero, can you identify Exhibit #4, please?
A Yes. These are notes I took contemporaneous with three conversations with guys at Farallon.
Q I didn't quite hear you. Did you say contemporaneous?
A Yes.
Q So, you say with three conversations. Who were the conversations with?
A One was with Raj Patel that was fairly short, and he deflected me to Mike Linn, who was the portfolio manager in charge and had done the transactions.
Q Which transactions?
A The buying of the claim, the Highland claims.
Q All right. And what was your purpose in making these notes?
A We'd been trying nonstop to settle the case for two-plus years. We'd been counseled that it was a Kabuki dance that would just, you know, all settle at the end, and it never quite happened that way. And when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case.

The ownership was initially hidden, but we were able to find out pretty quickly that Farallon was Muck. So I reached out the Farallon guys.
Q All right. And were you ever able at that time to determine who was affiliated with Jessup, the other special-

purpose entity?

A We -- initially, we thought Farallon was all of the entities. We didn't find out about Stonehill -- it was more difficult and they had taken more efforts to hide the ownership in Stonehill. We didn't find out for two more months.

Q So your first conversation was with Mr. Patel?

A Yes.

Q And did you call him?

A Yes.

Q Your first entry, there's a 28 on the left-hand side. What does that 28 refer to, if you recall?

A That was the date, I believe.

Q Do you believe it was May 28th?

A Yes.

Q What makes you believe that?

A That's what it says.

Q Okay. Raj Patel --

THE COURT: Is there a way you can show the words that are cut off?

MR. MCENTIRE: On this particular one, I can't, Your Honor. We tried, but we can't. No.

THE COURT: If I look in the notebook, can I see it?

MR. MCENTIRE: I don't think so. I think this is -- what you see is exactly what's in the notebook. It's the same

document. This is how -- how we -- this is how we have it.

BY MR. MCENTIRE:

Q Mr. Patel. Who is Mr. Patel?

A He's Mike Linn's boss. He's head of -- I believe head of credit at Farallon.

Q Okay. And Farallon is based where, if you know?

A San Francisco.

Q And what kind of company is Farallon, if you know?

A They -- they look a lot like Highland. Well, they do real estate. They do hedge funds. They do -- they don't do as many 40 Act or retail funds, but they're -- they're an investor.

Q Mr. Patel. What did he tell you during this phone call?

A That he bought it because Seery told him to buy it and they had made money with Seery before.

Q All right. And how long did the call last?

A Not long.

Q Okay. You said he referred you to Mr. -- who was the person?

A To Mike Linn.

Q Who is Mike Linn?

A Mike Linn is a portfolio manager that works for Mr. Patel.

Q And did you call Mr. Linn?

A Yes.

Q All right. The notes here, do these reflect several

conversations?
A The first one reflects a conversation with Raj Patel, and then the rest of it reflects two conversations with Mike Linn.
Q All right. Where does the first conversation with Mike Linn start and where does it end?
A It ends -- it begins at the 50, 70 cents. We knew that they had -- that the claims had traded around 50 cents. And I said we'd be willing to pay 70 cents. We'd like to prevent the $5 million-a-month burn. We'd like to buy your claims.
Q Why 70 cents? What was -- what was that all about?
A I was trying to give them a compelling premium that was still less than I had offered the UCC three months earlier.
Q And so you have: Not compelling, Class 8. What does that mean?
A He said that was -- he just said 70 cents wasn't compelling.
Q There's a reference to: Asked what would be compelling. Was that a question you asked him?
A Yes.
Q And what was his response?
A He said he had no offer. And he -- we had heard he paid 50 cents and I offered him 70 cents and then -- but he was clear to me that he wouldn't tell me what he paid. And so the next time I called him I -- I -- instead of just making it cents on the dollar, I said I'd pay 130 percent of whatever he

did pay. You don't have to tell me what you paid, but I'll pay you 30 percent more than you paid, you know, a couple months ago. And -- or we thought they notified the Court when they just bought it, but they had actually negotiated buying it back in February. January or February. So --

Q Who told you that they bought it in February or March time frame?

A He did.

Q Okay. Was this during the first or the second phone --

MR. MORRIS: I apologize for interrupting. Who's the "he"?

MR. MCENTIRE: Mike Linn.

THE WITNESS: Mike Linn.

MR. MORRIS: Thank you so much.

MR. MCENTIRE: I'll make sure the record --

BY MR. MCENTIRE:

Q Mike Linn --

A Yes.

Q -- told you that Farallon had bought their interest in the claims back in the February or March time frame?

A Yes.

Q All right. Bought assets with claims. What does that refer to?

A He said it wasn't compelling because he said Seery told him it would be worth a lot more. He -- he confirmed what Raj

said, that -- I said, do you realize the estate is spending $5 million a month on legal fees? That, you know, you should want to sell this thing. And he said Seery told him it was worth a lot more and there were claims and litigation beyond the asset value.

Q You offered him 40 to 50 percent premium. What is that?

A That's what the 70 cents on the 50 cents represents. And then I changed the dialogue to I'll pay you 130 percent of whatever your cost was. And he said, not compelling. And then I, both -- both calls, I pressed him, what price would he offer at? And he said he had no offer, he wasn't willing to sell.

Q The 130 percent of cost, not compelling, was that in the second or the third call with Mr. Linn?

A It was at my third and final call with Farallon. My second call with Mike Linn was the 130 percent of cost.

Q And he said not compelling? You put it in quotation marks?

A Yep.

Q And then you said, no counter. What does that mean?

A He wouldn't -- he wouldn't give an offer, he wouldn't give a price at which he would sell.

Q What did Mike Linn tell you, in effect, with regard to his due diligence that Farallon had undertaken?

A When I -- when I told him about the risks and the

litigation and the burn, he said he wasn't following the case, he wasn't aware of it, he was depending on Jim Seery.

Q What, if anything, did Michael Linn tell you about MGM?

A That was more the initial Raj Patel call, where he said we bought it because he was very optimistic regarding MGM.

Q Okay. Did you have any understanding when he first got his optimism about MGM?

A No. He just said that's why they had bought it initially, they were very optimistic about MGM.

Q That's why they had bought it initially?

A Yes.

Q And they had bought it initially in the February-March time frame?

A Yes.

Q And that -- would you -- does that predate the public disclosure of the MGM sale to Amazon?

A Yes.

Q Substantially by a couple of months?

A Yes.

Q I'd like to turn your attention now to a different topic.

MR. MCENTIRE: And Tim, if you could pull up Exhibit 8, please.

I believe this document is already in evidence, Your Honor.

THE COURT: 8 is?

MR. MCENTIRE: Oh, by the way, I offer Exhibit 4 into evidence.

BY MR. MCENTIRE:

Q Let me ask you a couple quick questions.

THE COURT: Is there an objection?

MR. MORRIS: Nope.

THE COURT: Okay. 4 is admitted.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

BY MR. MCENTIRE:

Q Exhibit 8.

MR. MORRIS: I apologize, Your Honor. Just one caveat. It's not for the truth of the matter asserted; it's for what his impressions were at the time.

MR. MCENTIRE: Well, --

MR. MORRIS: This is what he wrote down. I don't --

MR. MCENTIRE: I'm offering it for the truth of the matter asserted.

MR. MORRIS: Okay. And I object to that extent. This --

MR. MCENTIRE: Let me --

MR. MORRIS: Can I *voir dire*? Can I *voir dire*? May I do --

MR. MCENTIRE: May I finish my statement that I was --

THE COURT: Let him finish, and then --

MR. MCENTIRE: Thank you.

THE COURT: -- you can.

MR. MCENTIRE: I am offering it for the truth of the matter asserted because these are documents that were prepared contemporaneously, it's an exception to the hearsay rule and reflects admissions of a -- of an adverse party. Admissions that are adverse to their interests. Declarations of interest adverse to their interest and admissions of an adverse party contemporaneously recorded. And so that's why I'm offering it.

MR. MORRIS: For all purposes?

THE COURT: Okay. Let me have you point me to the exact hearsay exception. I understand this hearsay exception you're arguing for the hearsay within the hearsay, the party opponent exception. But it's technically hearsay of Mr. Dondero, even though he's here on the stand.

MR. MCENTIRE: Well, I could lay a foundation, then.

BY MR. MCENTIRE:

Q Mr. Dondero, --

THE COURT: Well, no. I'm asking for what your --

MR. MCENTIRE: It's --

THE COURT: -- rule reference is.

MR. MCENTIRE: I don't have the Rules with me right this second. It's 803(1) --

(Discussion.)

MR. MCENTIRE: All right. Well, it's -- it's admissible under several categories. It's not hearsay because it's an admission of a party opponent. It's also an admission under 803(1), present sense impression. It's also admissible --

THE COURT: So you say it's Mr. Dondero's statement describing or explaining an event --

MR. MCENTIRE: Yes.

THE COURT: -- or admission made while or immediately after the declarant perceived it?

MR. MCENTIRE: Yes. It's also a record of a regularly-conducted activity, which is 803(6). And I think it's also not technically hearsay because it's also an admission of a party. So, this --

THE COURT: Well, that's the hearsay within the hearsay.

MR. MORRIS: Yeah.

THE COURT: But I'm -- I'm --

MR. MORRIS: That can't possibly be right. I can't go back to my hotel right now and write down that he told me that he did a bad thing and come in here tomorrow and say he admitted he did a bad thing because it's in my notes.

MR. MCENTIRE: Well, --

MR. MORRIS: That's can't possibly be the law.

MR. MCENTIRE: Well, --

MR. MORRIS: That's not the law.

MR. MCENTIRE: There are two hearsay issues here. One is whether this is a business record or otherwise qualifies as an exception to the hearsay rule, and then there's an internal hearsay issue of whether or not what Mr. Patel and Mr. --

THE COURT: You haven't established the business record exception. Okay?

MR. MCENTIRE: I'm prepared to lay the foundation right this second. At this moment.

THE COURT: You may proceed.

BY MR. MCENTIRE:

Q Mr. Dondero, is this a document that was generated by you in the ordinary course of your business?

A Yes.

Q Did you have personal knowledge when you recorded this document?

A Yes.

Q You personally recorded this document, correct?

A Yes.

Q And you have had custody of this document. Correct?

A Yes.

Q And this is --

MR. MCENTIRE: That's a -- that's a business record,

Your Honor.

MR. MORRIS: May I, Your Honor?

THE COURT: You may.

MR. MORRIS: Okay.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Where's the document now? How come it's -- how come it's cut off?

A I don't know.

Q Do you have the document today? How come we're looking at a document that's cut off?

A I'm sure we have it somewhere. I don't have it.

MR. MORRIS: So, number one, Your Honor, we don't have the actual document. We have a partial document.

Number two, let's talk about it for a second.

BY MR. MORRIS:

Q You say that you do this in the ordinary course of business. What's the purpose of taking these notes?

A When I'm starting negotiation with somebody new on something complicated and I don't know what their concerns or rationale is going to be, I take little notes like this.

Q And is it -- is it the purpose of it to capture the important things that are going on in the conversation?

A So I know next time how to address it differently, you know.

Q That's not my question. My question is, is the purpose of taking notes so that you have a written record of the important points that you discussed?
A Yes, so I know how to address it the next time.
Q Okay. And among the important points that you never put down on these notes was the letters MGM. Is that correct?
A Correct.
Q Okay. And you never put down here that Michael Linn told you he wasn't following the case, correct?
A No, I did not.
Q Okay.
A But it was --
Q And --
A Yeah. But I --
Q That --

MR. MORRIS: Your Honor, if this is --

MR. MCENTIRE: (faintly) This is *voir dire* of the witness for a business record exception.

MR. MORRIS: No, because --

THE COURT: Overruled.

MR. MORRIS: Thank you.

BY MR. MORRIS:
Q Mr. Patel wouldn't tell you how much he paid and that's why you didn't write it down, right?
A Mr. Patel told me he bought it because of Seery. My

conversation was very short with him. That was one of the few things he said. Linn said he wouldn't sell it because he didn't find it compelling.

Q Okay.

A And Linn was the one who wouldn't tell me --

Q Okay.

A -- the price.

Q But -- but even though you took these notes to write down things that you thought were important, you didn't write down MGM. Correct?

A Yes.

Q And you didn't write down that anybody was very optimistic about MGM. Correct?

A No, I did not.

Q And you didn't write down that Mr. Linn told you he wasn't following the case. Correct?

A Well, he said the same thing Patel said about he bought it because of Seery. He did confirm that. I didn't see any reason to write that again.

Q You didn't -- you never wrote it down. Not once. Not -- there's nothing about again, right. You never wrote down that --

A No, I did write --

Q -- anybody ever told you they weren't following the case. Correct?

A Correct.
Q Okay.
A But I wrote down that he bought it because of Seery.
Q Okay.

MR. MORRIS: Your Honor, no objection. It can go in.

MR. MCENTIRE: Okay.

THE COURT: Wait. Did you just say no objections?

MR. MORRIS: Except -- except for the hearsay on hearsay. It can't possibly be an admission. It's his -- it's his notes. This is what he wrote. It can come in for that purpose. It's -- it's a -- that's what he's testified to, and I can't object to that. But it can't possibly come in as an admission against Farallon.

MR. MCENTIRE: Well, I disagree.

MR. MORRIS: That's the point.

MR. MCENTIRE: Well, first of all, I disagree. This is otherwise admissible, and it can come. I think that's really, Your Honor, that's really the weight it's going to be given. It comes in. He's not making an objection to its admissibility. And if he wants to argue the weight of the document, that's a different issue.

MR. STANCIL: Your Honor, if I may.

THE COURT: You may.

MR. STANCIL: The second layer of hearsay goes to whether this is a statement by Farallon. It is a statement by

Mr. Dondero of what he heard, what he says he heard Farallon say. 801(d) refers to, when they're talking about an opposing party statement, made by the party, not made by a listener who says he heard the party. This is classic hearsay within hearsay. It's not admissible for that purpose.

THE COURT: Okay. I sustain the objection, and -- but I'm still struggling to understand what the Respondents have agreed to. Because --

MR. MORRIS: That -- that this is what he claims to have written down. I mean, right? So, so --

THE COURT: Okay.

MR. MORRIS: -- a present sense impression.

THE COURT: So, it is admitted as Mr. Dondero's present sense impression, but it's not admitted as to the truth of anything that Claims Purchasers may have said.

MR. MORRIS: And -- and the --

THE COURT: That's what you're saying?

MR. MORRIS: Yes. And the most important thing is that he's testified that the purpose of the notes was to capture the things that were important that he was told. And we've established what he wasn't told.

MR. MCENTIRE: Okay. I believe the document is in evidence, Your Honor.

THE COURT: Exhibit 4 is in evidence. But, again, there's no admission in here as to what Claims Purchasers

testified as to.

MR. MCENTIRE: Well, they haven't testified yet because --

THE COURT: This is what he --

THE DEFENDANT: I understand. I understand.

THE COURT: -- he says he remembers.

MR. MCENTIRE: Okay. So, --

THE COURT: It's sort of an --

MR. STANCIL: Your Honor, just so we're clear for our record, this is not admitted for the truth of what Farallon is purported to have said.

MR. MCENTIRE: Correct.

THE COURT: Correct.

MR. MCENTIRE: This --

MR. STANCIL: Thank you.

MR. MCENTIRE: This is offered for the truth of what Mr. -- Mr. Dondero recalls them saying.

THE COURT: Okay.

MR. MCENTIRE: In part.

THE COURT: I think -- I think we're on the same page now. I think. I think.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

MR. MCENTIRE: All right. May I proceed, Your Honor?

THE COURT: You may.

MR. MCENTIRE: Can you please put up Exhibit 8, please? And I believe this document has been put into evidence --

THE COURT: It is.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero, this document is a -- part of a -- the Court's docket. It was filed on February 1, 2021, if you could go to the top upper banner. It's Debtors' Notice of Filing of Plan Supplement of the Fifth Amended Plan of Reorganization of Highland Capital Management, as Modified.

Do you see that?

A Yes.

Q I'll direct your attention, --

MR. MCENTIRE: If you could go to Page 4, please, for me, Tim.

BY MR. MCENTIRE:

Q Page 4 has a schedule, a plan analysis and a liquidation analysis. Do you see that?

A Yes.

Q All right. For Class 8, what does it identify that is being projected for distributions to the general unsecured claims for Class 8?

A 71.3 percent.

Q What percentage is being identified that will be

distributed to Class 9?

A 9, no distribution.

Q No distribution? All right. Mr. Dondero, in Paragraph -- I'm going to give you a piece of paper.

MR. MCENTIRE: Can you just give me a piece of paper real quick?

BY MR. MCENTIRE:

Q I'm handing you a piece of paper and I'm --

A Okay. Thank you.

Q Mr. Dondero, in our complaint in this case, the proposed complaint in this case, we allege that Class 8 had a total of $270 million, the claims that were purchased by Farallon and Stonehill had a face value in Class 8 of $270 million. Would you write that number down?

And assuming that this was public information that was available in February of 2021 at 71.32 percent, --

MR. MORRIS: Objection, Your Honor. That's an assumption not in evidence. He hasn't laid a foundation for what was available in February in 2021.

BY MR. MCENTIRE:

Q Mr. Dondero, according to --

THE COURT: Wait. Are you going to respond, or are you just going to --

MR. MCENTIRE: I'll rephrase the question.

THE COURT: -- rephrase? Okay.

BY MR. MCENTIRE:

Q According to the document that is identified as Exhibit #8 that says that 71.32 percent is the anticipated projected payout on Class 8 claims, what is 71.32 percent of the face value of the claims that were purchased?

A About $192 million.

Q $192 million? And assuming for a moment that, as alleged by Hunter Mountain in this case, that $163 million was actually used to purchase the Class 8 claims, what is the difference?

A About $30 million.

Q A little less than that, isn't it? Or is the number --

A Yeah. $28 million or whatever.

Q $28 million? And based upon your years of experience in running Highland Capital, being involved in the purchase of unsecured claims, being involved in investigating and acquiring distressed assets, that return over a two-year period, is that the kind of return that a hedge fund would typically -- you would expect to receive?

MR. MORRIS: I just want to make sure that -- because the question changed a little bit in the middle. If he wants to ask him if he would have made the investment, that's fine. But he should not be permitted to testify as to what any other investor, including the ones who purchased these claims, would have done. Every -- there's different risk profiles. He can

testify to whatever he wants about himself.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q Go ahead. Based upon your experience at Highland Capital, would Highland Capital have ever acquired those claims based upon that kind of return over two years? For a distressed asset such as this?

A No.

Q Why not?

A It's below a debt level return that you could get on high-rated assets with certainty. It's --

Q What do you mean by it's below -- below a debt return that you could get on collateralized assets? What do you mean by that?

A I think in this case the debt that the Debtor put in place paid 12, 13 percent and was triple secured or whatever. So no one would buy the residual claims for an 8 percent compounded, whatever that $28 million works out to.

MR. MORRIS: I move to strike, Your Honor. He shouldn't be talking about or testifying to what other people might do.

THE WITNESS: Well, we --

THE COURT: This is --

THE WITNESS: We would never have done that.

THE COURT: This is --

MR. MCENTIRE: He would not have.

THE COURT: -- Highland, not nobody. Okay.

BY MR. MCENTIRE:

Q Mr. Dondero, and what is it about the fact that these claims are not collateralized that impacts the decision-makers, from your perspective?

A You have all the risk that the $205 million of expenses this estate has currently paid grows to $300 or $400 million. You know, you have the risk that other litigation regarding Seery violating the Advisers Act --

MR. MORRIS: I move to strike, Your Honor.

THE WITNESS: -- results in --

THE COURT: Sustained.

THE WITNESS: -- expenses.

BY MR. MCENTIRE:

Q Just respond to my question, sir. What does the fact about not being collateralized, how does that impact the decision-maker's --

A Well, I was trying to answer it. You just have all kinds of residual risk of bad acts that have happened at the estate or expenses increasing or whatever.

MR. MORRIS: I move to strike the phrase "bad acts," Your Honor.

THE COURT: Overruled.

BY MR. MCENTIRE:

Q What did you mean by that? What did you mean by "bad acts"?

A We've highlighted it in a lot of complaints. There's been several violations of the Advisers Act.

MR. MORRIS: Move to strike, Your Honor. It's a legal conclusion.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q Mr. Dondero, are you familiar with an entity known as NHF?

A Yes.

Q What is NHF?

A A NexPoint hedge fund. It was a closed-in fund that we manage still to this day at NexPoint. The name has changed to NXDT.

Q Was NHF publicly traded?

A It -- yeah, it's a publicly-traded equity. It's a closed-in fund, technically, but it's a publicly-traded security.

Q What -- what is your affiliation with NHF?

A I'm the portfolio manager.

Q And, again, what are your responsibilities as the portfolio manager?

A To optimize the portfolio and hopefully exceed investor expectations.

Q Have you become aware that Stonehill was purchasing MGM stock in the first quarter of 2021? And NHF?

A Yes. We believe -- we're able to demonstrate from Bloomberg records, on the Bloomberg terminal, they show up as holders and purchasers in the -- in the first few months of 2021.

Q What magnitude?

A I think it was one of their top equity positions. It was about six million bucks.

MR. MCENTIRE: Can you put up the chart? This is for demonstrative purposes only.

I'm not offering this chart into evidence, Your Honor. It's simply a demonstration. Or a demonstrative.

MR. MORRIS: Your Honor, there's no such thing.

MR. MCENTIRE: There is.

MR. MORRIS: A demonstrative has to be based on evidence. A demonstrative is supposed to summarize evidence. You don't put up a demonstrative until --

THE COURT: All right. What's your response to that?

MR. MCENTIRE: That I'm about to walk through some points where he can establish as a point of evidence, and then we can talk about it. Demonstratives, demonstratives are used all the time, Your Honor.

MR. MORRIS: It's to --

THE COURT: Well, they summarize evidence.

MR. MORRIS: It's to summarize evidence.

THE COURT: Yes. So, --

MR. MCENTIRE: Well, this is --

THE COURT: -- you can elicit the evidence, and then if this chart seems to summarize whatever he testifies as to, then --

MR. MCENTIRE: All right.

THE COURT: -- then I think maybe you can put it up.

MR. MCENTIRE: Mr. -- you can take it down, Tim.

BY MR. MCENTIRE:

Q Mr. Dondero, do you have an understanding of how much total distributions have been paid to date in the Highland bankruptcy?

A I believe the Class 8 -- the 1 through 7 was only about $10 million. I believe Class 8 got $260 or $270 million so far.

Q All right. And do you have an understanding of what the total amount of expenses are?

A Total expenses paid to date was $203 million. $205 million.

Q So the -- the -- there's a rough approximation between the professional expenses and the actual all proofs of claim; is that correct?

A There is, yeah, a ratio, and -- yes.

Q The total cash flow, if you add those two together, what are they? What are they approximately?

A $470 million.

Q $470 million? And do you understand that the -- that the Reorganized Debtor and the Claimant Trust would have more than sufficient assets to reach Class 10 where Hunter Mountain is currently located, even setting aside the claims against you?

A Correct. There's $57 million of cash on the balance sheet, net of a couple million today, I guess. And then there's $100 million of other assets.

MR. MCENTIRE: Reserve the rest of my questions. Reserve the rest of my questions, Your Honor.

THE COURT: Okay. Pass the witness.

MR. MCENTIRE: Could I have my time estimate?

THE COURT: Yes. Caroline?

THE CLERK: (faintly) As of right now, we are at 81 minutes, so --

MR. MCENTIRE: Thank you.

THE COURT: That was 81 minutes total?

THE CLERK: Yes.

THE COURT: Okay.

MR. MORRIS: May I proceed, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Dondero.

A Good to see you.

Q My pleasure. Do you know an attorney named Ronak

(phonetic) Patel?
A Is that Rakhee that they call --
Q Could be. Do you know an attorney named Rakhee Patel?
A There was a Rakhee Patel, I believe, early in the *Acis* case.
Q Let me try --
A I'm not -- I've never met her.
Q Let me try this differently.
A Okay.
Q Did you ever meet with the Texas State Securities Board?
A No.
Q Did anybody acting on your behalf ever file a complaint with the Texas State Securities Board?
A No.
Q Do you know if anybody's filed a complaint with the Texas State Securities Board? About Highland?
A I believe you covered it earlier. Mark Patrick.
Q Mark Patrick what?
A I guess he did, or Hunter Mountain did, or the DAF did. I don't -- I don't know.
Q Did you ever speak with Mark Patrick about a TSSB investigation of Highland?
A No.
Q Okay. Why do you think Mark Patrick knows about the TSSB investigation of Highland?

MR. MCENTIRE: Objection to form. Calls for speculation. He's just established that he's never --

THE WITNESS: I don't know.

MR. MCENTIRE: -- talked to Mark Patrick.

MR. MORRIS: Okay.

THE COURT: Okay. Sustained.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Have you ever seen the draft Hunter Mountain complaint in this case?

A No.

Q Okay. I think you testified a moment ago that Amazon had hit MGM's price by December 17th. Do I have that right?

A Yes.

Q Okay. Then how come you didn't say that in your email to Mr. Seery?

A Your best practices and typical practices, when you put it on the restricted list, is to just give as little information as possible so that the inside information isn't promulgated specifically throughout the organization and leaked --

Q So, --

A -- throughout the organization.

Q So, even though your intent was to convey information to Mr. Seery, you didn't actually tell him the truth, right? You didn't tell him that Amazon had actually hit the stock price.

Right?
A I wouldn't characterize it that way.
Q Okay. In fact, all you told him was that they were interested. Isn't that right?
A I wasn't telling him anything. I was telling Compliance, as an investment professional, that it needed to be on the restricted list because we were in possession of material nonpublic information regarding a merger that was going to go through shortly. Or in the next few months.
Q Is it your testimony that, as of December 17th, Amazon had made an offer that was acceptable to MGM?
A Yeah, we were going into -- that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with them.
Q Okay. I think you have a binder there of our exhibits. If you can go to #11.
A Which one?
MR. MORRIS: May I approach?
THE WITNESS: Sure.
(Pause.)
BY MR. MORRIS:
Q That's your email, sir, right?
A Yes.
Q Okay. It doesn't say anything about Amazon hitting the price, right?

A It doesn't need to.
Q In fact, it still mentions Apple, doesn't it? Why did you feel the need to mention Apple if Amazon had already hit the price?
A The only way you generally get something done at attractive levels in business is if two people are interested.
Q But why weren't you -- why were you creating a story for the Compliance Department when the whole idea was to be transparent so they would understand what was happening? Why would you create a story that differed from the facts?
A It didn't differ from the facts, and it's not a story. It's a, we have material nonpublic information. Please put this on the restricted list. And --
Q But that -- but you said Amazon and Apple are actively diligencing and they're in the data room. Do you see that?
A That's true.
Q So, even though -- you know what, I'll move on. But this -- this doesn't say what you testified to earlier, that Apple hit the -- that Amazon hit the price. Right? Can we just agree on that?
A Well, agree that it doesn't have to and it's not supposed to.

MR. MORRIS: I move to strike. I just want --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- you to -- I want you to just work with me here. You did not tell the Compliance Department that Apple -- that Amazon had hit the strike price. Right? Isn't that correct? That's not what this email says?

A The -- you can pull up a hundred of these type emails. They're not specific.

MR. MORRIS: I'm going to move to strike and I'm just going to ask you, --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- because you testified to one thing, and I just want to make clear that you told the Compliance Department something different. Can we just agree on that?

MR. MCENTIRE: Well, Your Honor, may I respond to his motions to strike? I think he's becoming argumentative.

THE COURT: Could you speak into the mic, --

MR. MCENTIRE: I can.

THE COURT: -- please.

THE COURT: He's becoming argumentative. And I think it's very clear that, if he asks a question, the witness has a right to respond. I think his answers are totally responsive. And I don't think anything should be struck.

THE COURT: Okay. Your question was you didn't put in there anything about it hit the strike price --

MR. MORRIS: He didn't --

THE COURT: -- or whatever?

MR. MORRIS: He didn't -- he didn't tell the Compliance Department what he just testified to. In fact, he told the Compliance Department something very different. That's all I'm asking.

THE COURT: And I think that's just a yes or no.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Yes or no? You told the Compliance Department something different than what was actually happening?

A That's not true.

Q Oh.

A Exactly what was here, what was happening. I didn't give more detail, which is more hearsay.

Q Okay. If somebody was filing -- following the Highland bankruptcy, they would have known that MGM was very important, right?

A You'd have to show me where. I don't -- I don't see it in any of the bankruptcy --

Q You don't think that that's true?

A I didn't see it in any of the public filings.

Q Do you remember we were here two years ago on this very day, June 8, 2021, for the second contempt hearing? You sat in that very witness box during the second contempt hearing? Remember that? That was two years ago.

A I remember sitting in the box. What are you asking?
Q And do you remember that that was just a few days after MGM had announced its deal with Amazon?
A I -- I don't remember -- I -- was that the day the judge was hopeful that would lead to a resolution of the case?
Q Exactly. So, --
A Okay.
Q -- Judge Jernigan certainly knew that MGM was important. Right?
A Yes.
Q And she's a bankruptcy judge, right?
A Yes.
Q And she was overseeing the bankruptcy case, right? Correct?
A Yes.
Q And the very first thing when she walked in the door two years ago on this day was, oh my goodness, MGM, they have a deal, maybe we can finally get to a settlement. Right?
A And I wish she had pushed on that.
Q Do you --
A And I remember you guys dismissing it.
Q Do you think she had material nonpublic inside information?
A No, I don't think so.
Q She probably learned it in the bankruptcy case, right?

A Yeah.
Q Okay. Do you believe Mr. Seery sold any MGM securities between the day you sent your email and the day the Amazon deal was announced on May 26th?
A I don't know.
Q Do you -- so you have no knowledge? Let's do this a different way. You have no basis to say that Mr. Seery sold any MGM securities between the moment you sent this email on December 17th and the day the Amazon deal was announced on May 26th. Correct?
A I'm sorry. Just to clarify, you're saying sold, not bought, right? You're not asking me if --
Q I'll do either way.
A Okay.
Q Fair point.
A Sure.
Q Very fair point.
A Okay.
Q Do you believe that Mr. Seery engaged in any transactions of MGM securities between those two relevant data points?
A Yes.
Q Okay. What do you think he did?
A The HarbourVest transaction.
Q Okay. So, you learned about the HarbourVest transaction when?

A When it was filed.
Q And that was on December 23rd. Do you remember that?
A Yes.
Q It was just less than a week after you sent your email, right?
A Yes.
Q And do you remember that you filed an objection to the HarbourVest settlement?
A Yes.
Q And you're the one who gave Mr. Seery this material nonpublic inside information, right?
A Yes.
Q Did you object to the HarbourVest settlement on the basis that Mr. Seery was engaging in insider trading?
A Not then, I don't think. I believe --
Q You didn't, right? Even though it was happening at the exact same moment, the very -- within a week of you giving him this information. He's announcing that he's doing this settlement and you don't say a word. Isn't that right?
A Because I delegated the responsibility to Compliance by notifying them of material nonpublic information, and Compliance should hold the organization accountable. Compliance is separate and discrete from management. Compliance reports to the SEC.
Q You filed a 15-page objection to the settlement, didn't

you?
A I don't -- I don't know.
Q Did you tell Judge Jernigan that Mr. Seery was doing bad?
A Not then. I think a month later, two months later.
Q Even though you knew what was happening, you didn't say anything, right?
A I -- I'm not responsible for all the filings. I --
Q Even though it's under your name?
A Correct.
Q How about -- how about CLO Holdco? Did CLO Holdco file an objection to the HarbourVest settlement?
A I -- I don't know which entities did, but it -- whatever entities that were in control that could did, eventually, when they found out, you know, and -- but did -- did they, within a week or contemporaneously? No. It was right around the holidays. A lot of people weren't paying attention. You guys were trying to rush the HarbourVest thing through.
Q Sir, CLO Holdco filed an objection, claiming that it was entitled to purchase the HarbourVest interests in HCLOF because it had a right of first refusal, right? Isn't that right?
A Okay. I -- what ultimately governs the --
Q Isn't that right?
A I don't -- okay.
Q It's really just yes or no.

A I don't know.

Q If you don't remember, that's fine.

A I don't remember, yeah.

MR. MCENTIRE: Your Honor, would he please give the witness an opportunity to answer? He's interrupted three times in less than five seconds. Give the witness an opportunity to respond.

MR. MORRIS: This is real easy stuff.

THE COURT: Okay.

MR. MORRIS: I'm trying to cross him here.

MR. MCENTIRE: Your Honor, with all due respect, he's making it very difficult because he's being very aggressive --

MR. MORRIS: Nah.

MR. MCENTIRE: -- and he's interrupting the witness.

MR. MORRIS: I would never.

THE COURT: Okay. I don't feel the need to do that right now, but I will -- I will consider your request.

THE WITNESS: Can I give a complete answer to his last question, or one that I'd like to be my answer on the record?

THE COURT: Go ahead.

THE WITNESS: The governing responsibility as a registered investment advisor is you're not allowed to buy back from investors fund interests or investments unless you offer it to everybody else, in writing, in that fund first.

That's the Investment Advisers Act as I understand it, and that is what was improper in the HarbourVest transaction. I mean, besides the fact that the pricing was wrong, they misled HarbourVest. And I know HarbourVest hasn't complained, but just because your investors don't complain doesn't mean you can rip them off.

MR. MORRIS: I'd really move to strike the entirety of the answer, Your Honor.

THE COURT: Granted.

BY MR. MORRIS:

Q Mr. Dondero, HC --

A I'm not going to -- I'm not answering any more questions unless I can answer that question with that answer, --

Q Mr. Dondero, do you --

A -- because I believe it's responsive.

Q Do you remember that CLO Holdco withdrew their objection?

A I --

Q To the HarbourVest settlement?

A I don't remember.

Q Do you remember that's really when Grant Scott left the scene?

A I don't --

Q He thought it was inappropriate for them to withdraw, right?

A I don't remember all the details. I know they made some

mistakes, and there's a tolling agreement against Kane's (phonetic) firm for making mistakes, and, you know, whatever. But I -- I don't remember all the details.

Q And a couple of months later, you conspired with Mr. Patrick to try to sue Mr. Seery in order to try to get that very same interest in HCLOF, right?

MR. MCENTIRE: Your Honor, I have to object. There's no foundation and it's also highly argumentative and I move to object. That's a -- that's a question asked in bad faith.

THE WITNESS: I deny any conspiring.

MR. MORRIS: Okay.

THE COURT: Sustained.

BY MR. MORRIS:

Q In April, Mr. Patrick filed a lawsuit on behalf of CLO Holdco a couple of weeks after getting appointed as the head of CLO Holdco and the DAF about the HarbourVest settlement. Isn't that right?

A I believe so.

Q Okay. And you worked with him on that, right?

A I -- I did not work with him on that. I was very just tangentially aware.

Q Okay.

MR. MORRIS: I'm just going to refer the Court -- I'm going to move for the admission into evidence of the second contempt order.

THE COURT: Exhibit what?

MR. MORRIS: Just one moment, Your Honor.

(Pause.)

MR. MORRIS: You know what, I don't know that I have it on the list. I'm just going to ask the Court to take judicial notice. We had a hearing two years ago to this day, and the Court found in the order that it entered at the conclusion of that hearing that Mr. Patrick had abdicated his responsibility to Mr. Seery. It's one of the reasons why Mr. Seery wasn't held in contempt of Court. And I'd like -- I'd like Counsel to address it now.

MR. MCENTIRE: Yeah, I'll -- you said Seery, didn't you?

MR. MORRIS: Oh, sorry. I said Seery. I meant Dondero.

MR. MCENTIRE: (faintly) Also, I believe it's entirely irrelevant. Judicial -- taking judicial --

THE COURT: Would you speak in the microphone, please?

MR. MCENTIRE: I'm sorry. Taking judicial notice of something that is utterly irrelevant is not necessary, not appropriate. What this Court did two years ago roughly to the day -- and I assume he's correct -- has no bearing on anything before the Court today. Nothing. This has zero connection, nexus, under any analysis, any fair scrutiny, dealing with the

colorability of the claim that Hunter Mountain, who was not involved in those proceedings, is trying to advance here. And it would be -- it would be improper for this Court to even take it under judicial notice.

THE COURT: Okay. Response?

MR. MORRIS: Can I respond?

THE COURT: Uh-huh.

MR. MORRIS: Okay. So, Your Honor, I'm going to move for the introduction into evidence of Exhibit 45. It is the Charitable DAF complaint that was filed in the federal district court on April 12, 2021, under the direction of Mark Patrick, who today stands here as the representative of Hunter Mountain.

This was the complaint, if Your Honor will recall, that they tried to amend and we had a hearing here about the circumstances, because that amendment was going to name Mr. Seery personally, in violation of the gatekeeper order. Right?

THE COURT: Uh-huh.

MR. MORRIS: And so it is all tied together. If you go to Paragraph 77 of this exhibit, it says, HCLOF holds equity in MGM Studio. This is the exact same transaction, right? So, so Mr. Dondero says, I gave Mr. Seery inside information, he violated all of these things in the HarbourVest transaction, even though he didn't say a word

then, and here, while it's still on the restricted list, before the Amazon deal is announced, they're actually in court saying that they should be entitled to acquire that same asset that Mr. Seery supposedly acquired improperly. He wants it for himself.

I mean, are you kidding me? It's not relevant?

THE COURT: I overrule the relevance objection. It's admitted.

MR. MORRIS: Thank you. And 45 is admitted, Your Honor?

THE COURT: 45 is admitted.

MR. MORRIS: Okay.

(Debtors' Exhibit 45 is received into evidence.)

MR. MCENTIRE: Just, Your Honor, I was identifying my objection in connection with his original request that you take something under --

THE COURT: Would you speak in the microphone? Again, we --

MR. MCENTIRE: Yes. My original objection was addressing his request of you, Your Honor, to take something under judicial notice. I want to make sure my objection is also lodged with regard to Exhibit 45, which I understand you've overruled.

THE COURT: Correct.

MR. MCENTIRE: Okay.

THE COURT: It is so noted.

MR. MORRIS: Okay.

THE COURT: You've objected and I've admitted it.

MR. MORRIS: And I think I've said this already, but the reason that we're requesting the Court take judicial notice of its order on the second contempt proceeding is because it shows that Mr. Dondero and Mr. Patrick worked together, in violation of the gatekeeper, to try to suit Mr. Seery to obtain the interest in HCLOF that he is sitting here today saying somehow that Mr. Seery wrongfully acquired, even though he didn't say a word at the time.

THE COURT: Okay. So now we're talking about not Exhibit 45 --

MR. MORRIS: Yes.

THE COURT: -- but the order that was entered --

MR. MORRIS: Correct.

THE COURT: -- regarding the filing of Exhibit 45?

MR. MORRIS: Exactly.

THE COURT: Someone is going to need to give me a docket entry number before we're done here.

MR. MORRIS: Okay.

THE COURT: I can and will take judicial notice of that, but I need to have it --

MR. MCENTIRE: So I assume, for the record, my objection is overruled?

THE COURT: Your objection is overruled.

MR. MCENTIRE: Thank you.

MR. MORRIS: All right.

BY MR. MORRIS:

Q You mentioned something about, I think, was it NXDT or NHF?

A Yes.

Q And just let me see if I can do it this way. Right? So there used to be a fund known as the NexPoint Strategic Opportunities Fund, right?

A Yes.

Q Okay. And in 2020 that was a closed-in fund. Correct?

A Yes.

Q And it traded under the ticker symbol NHF, correct?

A Yes.

Q And then late in 2021 the name of the fund was changed to NexPoint Diversified Real Estate Trust, correct?

A Yes.

Q And the ticker symbol changed from NHF to NXDT, correct?

A Yes.

Q And then it became a REIT the following year, right?

A Yes.

Q And I'm just going to refer to these letters as the Fund; is that fair?

A That's fine.

Q For purposes of these questions. And you were the Fund's portfolio manager, the president, the principal executive officer, correct?
A Yes.
Q And another entity that you controlled, NexPoint Advisors, provided advisory services to the Fund, correct?
A Yes.
Q And you controlled NexPoint Advisors at all times, correct?
A Yes.
Q Okay. And the Fund was publicly traded, right?
A Yes.
Q And the Fund owned shares of MGM at the end of 19 -- at the end of 2020, correct?
A Yes.
Q In fact, as of December 2020, MGM was one of the Fund's ten largest holdings, with -- valued at over $25 million. Isn't that right?
A Yes.
Q And by the end of 2021, MGM was the Fund's fifth largest holding, with assets -- with a value of over $40 million. Correct?
A Yes.
Q And the Fund also held MGM common stock indirectly; isn't that right?

A Yes.
Q In fact, when the Amazon deal closed at the -- in March of 2022, the Fund issued a press release disclosing that it stood to receive over $125 million on the MGM shares that it held directly and indirectly. Correct?
A We issued several press releases. I don't remember --
Q Okay. Do you remember that, that as a result of the MGM sale, the Fund was expected to receive approximately $126 million?
A Yes.
Q Okay.
A Roughly.
Q All right. In October 2020, just a few weeks before you sent your email, the Fund announced the commencement of a tender offer to acquire outstanding shares at a certain price. Correct?
A Yeah, I believe so.
Q And you authorized that, right?
A Yes.
Q And when a fund acquires shares and then retires them, the shareholders who did not tender consequently own a larger percentage of the fund than they did before the tender, correct?
A Yes.
Q Okay. And the tender was completed in January, in the

first week of January 2001 [sic], correct?
A I don't remember when it was complete.
Q It started at the end of October 2020, and it ended sometime in January '21. Is that fair?
A Okay. I don't remember. Okay.
Q Do you want me to refresh your recollection?
A I'm just saying I don't remember.
Q Yeah, okay.
A I'm not dis...
Q Okay.
A -- denying it. I just don't remember the exact dates.
(Discussion.)
MR. MORRIS: Your Honor, can I mark for identification purposes Plaintiffs' Exhibit -- I'm just going to call it 100, to see if it refreshes the witness's recollection?
THE COURT: You may mark it.
MR. MORRIS: Okay.
THE COURT: We'll see where it goes from there.
(Debtors' Exhibit 100 is marked for identification.)
BY MR. MORRIS:
Q So, I've put --
MR. MCENTIRE: Hold it. Your Honor, I think we're now marking exhibits that we haven't put on an exhibit list.
MR. MORRIS: I'm trying to refresh his recollection.

MR. MCENTIRE: Okay.

MR. MORRIS: Yeah.

MR. MCENTIRE: Well, --

THE COURT: Yes.

MR. MORRIS: Okay? I haven't offered it in -- I haven't offered it --

THE COURT: I've not admitted -- I don't know what it is. I haven't admitted it yet. I'm waiting.

MR. MORRIS: I haven't offered it into evidence. He said he doesn't remember, --

THE COURT: Okay.

MR. MORRIS: -- I've got an SEC document here, and I'm going to try and refresh his recollection.

THE COURT: Okay.

BY MR. MORRIS:

Q You're familiar with these forms, right?

A Generally.

Q In fact, in fact, you sign them in your capacity as the fund portfolio manager, right? Your signature is put on it, anyway?

A Generally.

Q Yeah. And do you see that this is the Form N-CSR that was filed with the SEC at the end of 2001 [sic] on behalf of NexPoint Diversified Real Estate Trust?

A Yes.

Q Okay. So if you just turn to Page 16. And the numbers are kind of at the bottom in the middle of the page. You'll see the notes to the consolidated financial statements.

A Yes.

Q Okay. And Note 1 discusses the organization. Do you see that?

A Yes.

Q And at the bottom of the left-hand column, it says, On January 8, 2021, the company announced the final result of its exchange offer pursuant to which the company purchased the company's outstanding -- the company's common shares in exchange for certain consideration.

Do you see that?

A Yes.

Q That's a reference to the tender offer that you authorized at the end of October, correct?

A Yes.

Q And then at the bottom it says, The company share -- company -- excuse me. I strike that. It says, quote, The common shares at a price of $12 per common share, for an aggregate purchase price of approximately $125 -- $105 million. Upon retirement of the repurchased shares, the net asset value was $152 million, or $17.41 million.

Do you see that?

A Yes.

Q Does that refresh your recollection that the tender offer was completed at the beginning of January?
A Yes.
Q And that's with all of the MGM stock that the Fund still owned at that time, right?
A Yeah. We -- we didn't -- we didn't violate --
Q You didn't --
A We didn't -- we didn't violate like Seery did. We didn't sell any shares or buy shares.
Q Okay.
MR. MORRIS: I'm going to move to strike that, Your Honor.
THE COURT: So granted.
MR. MCENTIRE: Well, Your Honor, I've actually got a response to his motion to strike. This entire inquiry is irrelevant.
MR. MORRIS: Not --
MR. MCENTIRE: This has no relevance at all in connection with the allegations that we're making in this case.
THE COURT: Your response?
MR. MORRIS: My response, Your Honor, if you ask me -- let me just get a few more questions. He personally owned shares in the Fund. The Fund owned shares in MGM. And notwithstanding the restricted material, this is the insider,

and he is benefiting from himself through the Fund's repurchase of these shares in the tender offer, and he went and he had substantial holdings. I'll get to that in a minute.

So he is actually doing something worse than what Mr. Seery -- what he accuses Mr. Seery of, because he's buying shares for his own personal benefit. Right? He's the insider. Right? And the Fund owns the shares directly. There's never going to be an allegation that HCLOF ever owned any MGM stock. Never.

THE COURT: Okay. I'm going to allow this. Obviously, on redirect, you can further question on this --

MR. MCENTIRE: Well, --

THE COURT: -- to --

MR. MCENTIRE: Well, first of all, his suggestions and his accusations are purely argumentative.

THE COURT: Would you please speak in the microphone? We --

MR. MCENTIRE: Well, he's standing in the way, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: It's irrelevant.

THE COURT: There are two. There's room for both of you.

Continue. Go ahead.

MR. MCENTIRE: It's entirely irrelevant, and it's argumentative.

THE COURT: Okay. Overruled. You can continue.

BY MR. MORRIS:

Q You did own an awful lot of the Fund's shares, didn't you?

A I owned some.

Q You owned some? You owned millions, right?

A Yes.

Q Okay. And as a result of the tender, you owned a greater interest of the Fund, right?

A Yes.

Q And therefore you owned a greater number -- a greater portion of the MGM stock, the $125 million of MGM stock that was owned directly and indirectly by the Fund, correct?

A You do know insiders weren't permitted to participate in the tender, which would have kept my percentage the same.

Q Sir, you benefitted -- you didn't stop the tender, right? You didn't say, now I know what's going to happen, I should stop it? You benefitted from the tender. Can we just agree on that?

A I did everything I was supposed to do, notifying Compliance. If they thought it was material, they would have -- it was in their hands once I notified Compliance of the material --

Q Okay.

A -- nonpublic information.
Q I appreciate that. I just want --
A It wasn't my responsibility to do Compliance's job to call you or call --
Q Okay.
A -- the SEC or call anybody else.
Q But you will agree that, even though you had material nonpublic inside information, you didn't take any steps to stop the tender, correct?
A The tender was for a relatively small amount of the stock. But I did -- I would -- it would not be my responsibility to change or adjust the tender --
Q Okay.
A -- or what was happening.
Q Okay. And then the last question is, you benefitted from the tender because the Fund repurchased shares, which increased your percentage ownership of the Fund, and therefore your percentage ownership of the MGM shares that were held directly and indirectly. Is that fair?
A Marginally, I guess. Yes.
Q Okay. From the -- from the millions of shares, you would describe it as marginal? Okay.

Let me move on. You've testified now that you spoke with representatives of Farallon in the late spring, I guess beginning on May 28th. Right?

A Yes.
Q And that was two days after the MGM deal was publicly announced, correct?
A Yes.
Q Okay. And had you ever communicated with Mr. Patel before that phone call?
A I don't believe so.
Q And then you spoke with Mr. Linn shortly after?
A Yes.
Q Had you ever spoken with Mr. Linn before that phone call with Mr. Linn?
A I don't believe so.
Q So these phone calls were the very first time that you ever spoke to either one of these gentlemen. Is that right?
A That I can remember.
Q Okay.
A If I ran into them at --
Q Uh-huh.
A -- a conference a decade ago, I don't know, but --
Q And they told you that they bought the shares in the February-March time frame, right?
A Yes.
Q And you have no reason to dispute that, correct?
A Correct.
Q Okay. And you didn't know how much they had paid for the

claims as a result of these conversations, correct?
A They did not admit a price.
Q Okay. And it's your testimony that there wasn't sufficient information in the public for them to buy -- this is your view -- that there wasn't sufficient information in the public to justify their purchases. Is that your view?
A Correct.
Q And even though you didn't think there was sufficient information in the public, you were prepared to pay 30 percent more than they did, right?
A Yes.
Q And is that because you were 30 percent more irrational than them or because you had material nonpublic inside information?
MR. MCENTIRE: Objection. Argumentative, Your Honor.
THE COURT: Overruled.
THE WITNESS: Even at a 30 percent premium, it was less than I offered the UCC several months earlier, number one.
Number two, I was still under the illusion there was a desire to resolve the place, not burn it down. You know, there was -- all the original members were happy to sell at $150 million. It was a $500 or $600 million estate. There should be $400 or $500 million of residual value. It shouldn't all be going out the door to lawyers and others.

BY MR. MORRIS:

Q You were willing to pay 30 percent more for an unknown purchase price, 30 percent more of an unknown purchase price, at a moment that you didn't believe there was sufficient information to buy the claims, correct?

A You have a couple misstatements in there. The Grosvenor piece was public. The Grosvenor piece traded at $67 million. So we knew that piece trade at around 50 cents. We knew from people in the marketplace the other pieces were trading right around that level.

So I wasn't just offering 30 percent on any willy-nilly number, 130 percent of any willy-nilly number. I knew they had paid around 50, 60 cents. And so I was offering 30 percent more than that. Thirty percent more than $150 million, call it $200 million. I had offered $230 or $240 million to resolve the whole estate before the plan went effective, and I got no response from the original UCC members.

Q So why didn't you just try to settle the case with them? Why did you try to buy the claim? Why, if you had these new people, and your good intentions were to finally get to a settlement of the case, why didn't you say, hey, guys, how do we resolve the case? Why did you want to buy the claims at a 30 percent premium over what they paid with no knowledge and no diligence, according to you? Can you explain that to Judge

Jernigan?

A Because Seery told them to hold on, don't worry, they were going to make $270 million.

Q That doesn't answer my question. Why didn't you try -- you had new owners. Why didn't you try to settle with them?

A When someone owns an asset, buying their asset is settling with them. What claim does Farallon have against us? At that point, they had no claims against us.

Q It doesn't settle the case, does it?

A But if we owned all the claims, it would settle the case. Just like if Seery had objected to the claims trading that they were supposed to give written notice to the Court, he had enough cash on the balance sheet to buy and retire all the claims.

Q All right. Let's go back, I apologize, to that Exhibit 11. No, it's not Exhibit 11. I think it's their Exhibit 4, your notes.

MR. MORRIS: Your Honor, may I have -- just have one moment?

THE COURT: You may.

MR. MORRIS: Can you tell me how long I've been going? That's really my question.

THE CLERK: So, on cross, --

MR. MORRIS: Yeah.

THE CLERK: -- you've been going for 32 minutes.

MR. MORRIS: Okay. Trying to speed this up.

BY MR. MORRIS:

Q All right. So, do we have your handwritten notes, which are Exhibit 4, in this binder? Oh.

THE COURT: Do you want to put it up again on the screen?

MR. MORRIS: Ms. Canty, if you're listening and you can do that, that would be great. If not, --

(Discussion.)

MS. CANTY: One second, John.

MR. MORRIS: All right. He -- he's got it.

THE COURT: Okay.

BY MR. MORRIS:

Q Okay. So, I just -- I just want to make -- you know, follow up on a few questions I asked you earlier on *voir dire*. So, these are your notes, right, and you said you write down the important stuff. Correct?

A I write down, yeah, the stuff I thought I would need for the next call.

Q Okay. And, you know, again, just so we have it all in one spot, it doesn't say anything about MGM. Correct?

A It does not.

Q It doesn't say anything about a *quid pro quo*, correct?

A *Quid pro*? Uh, no, it does not.

Q It doesn't say anything at all about Mr. Seery's

compensation, correct?
A It does not.
Q It doesn't say anything about the sharing of material nonpublic inside information, correct?
A When I told them discovery was coming, that was my response to I knew they had traded on material nonpublic information.
Q Okay. That -- you told them that?
A Yes.
Q Is that what you're saying now?
A Yes.
Q Oh, so that's what you told them? They didn't tell you that; that's what you told them?
A Yes.
Q And that's why you wanted discovery, right?
A I thought it would be a lot easier to get discovery on a situation like this than it has been for the last two years, yes.
Q Okay. Um, --
A In fact, I told them that it would be coming in the next few weeks. And this has been a couple years.
Q And that's exactly what you did, right?
A Well, we've been trying for two years to get --
Q Right.
A -- discovery in this.

Q Okay. So you filed your Texas 202, right?
A I don't know who filed what.
Q That was the one by Mr. Sbaiti that was filed under your name? Do you remember that?
A Generally.
Q Okay. Let's take a quick look at that document. It's #3 in our binder.
A Binder #3?
(Discussion.)
MR. MORRIS: Okay. I think #3 is in evidence, Your Honor.
THE WITNESS: Number 3 is in evidence.
THE COURT: Yes.
MR. MORRIS: Okay.
THE COURT: It is.
BY MR. MORRIS:
Q And if you can turn to the last page, Mr. Dondero. Page 8.
A Yes.
Q Okay. And that's your signature, right?
A Yes.
Q And you verified that this document was true and correct within the best of your personal knowledge, correct?
A Yes.
Q Did you read it before you signed it?

A Probably.
Q You don't recall doing that?
A Not at this moment.
Q And you may not have. Is that fair?
A No, I probably did. Do you have a question?
Q I'm just wondering if you signed it or not.
A I did sign it.
Q Okay. Good. So, can you go to Paragraph 21? Well, let's start at Paragraph 20. It says that Mr. Seery, quote, has an age-old connection to Farallon, and upon information and belief, advised Farallon to purchase the claims.

Do you see that?
A Yes.
Q And then the next paragraph you refer to the telephone call that you had with Michael Linn, right?
A Yes.
Q It doesn't refer to any phone call with Mr. Patel, correct?
A It does not.
Q And the only reason that you swore under oath you were told that Farallon purchased the claims was because of Farallon's, quote, prior dealings with Mr. Seery. Correct? In Paragraph 21, it says, Relying entirely on Mr. Seery's advice solely because of their prior dealings?
A Yes.

Q Okay. You didn't -- you didn't swear under oath at that time that you were told that they bought the claims because of MGM. Right?

A If you're asking if this is -- it seems like it's not complete, if that's what you're asking me.

Q I'm not asking you that. I'm asking you what -- I'm asking you to confirm that you swore under oath to the Texas state court, just weeks after you had these conversations, about what you were told concerning Farallon's purchase of the claims.

I'm focused on Paragraph 21. The only reason that you gave, that you told the Texas state court under oath, was that Farallon told you they bought their claims because of their prior dealings with Seery. Right?

A Yeah. And that's true. And that's consistent with what I've said.

Q Okay. You didn't say anything about MGM, correct?

A Correct.

Q You didn't say anything about a *quid pro quo*, correct?

A Correct.

Q You didn't say anything about Mr. Seery's compensation. Correct?

A I did not.

Q You didn't say anything about the sharing of material nonpublic inside information, correct?

A Different document, different purposes.
Q Well, but that's now two documents. You have your notes and you had this document, neither one of which say any of those things. Fair?
A Different documents, different purposes. I don't know if that's --
Q Is it fair that neither one of those documents say any of those things?
A It's fair that they don't all match.
Q Okay. Okay. Well, that's a fair statement. Let's go to the next one. Do you remember the next year you filed an amended petition?
A What tab?
Q That's -- I appreciate that. It's Tab 4. Do you see at the last page you've again signed a verification?
A Yep.
Q And do you see this one's filed with the Texas state court on May 2, 2022?
A Yes.
Q And you swore under oath that this statement was complete, true, and accurate to the best of your knowledge, correct?
A Yes.
Q Okay. Can you go to Page 5, please?
A Yes.
Q Directing your attention to Paragraph 23, do you see where

you say now that Farallon was relying, quote, on Mr. Seery's say-so because they had made so much money in the past when Mr. Seery told them to purchase claims.

Do you see that?

A Yes.

Q Again, you don't say anything about MGM, correct?

A Correct.

Q Again, you don't say anything about material nonpublic inside information, correct?

A Well, on 24 it does. Right? Mr. Seery had inside information on the price and value of claims. So, you've got to look at all of the bullet points.

Q But that's not the paragraph where you're talking -- that's -- it says, in other words. That's not the paragraph where you're describing your conversation with Farallon. That's your interpretation of it, correct, just as you just said?

A (no immediate response)

Q You told -- I'm sorry. I should let you finish the answer. That's your interpretation of it, correct?

A Well, I'm reading all the bullets in aggregate, and it's -- it's a picture of material information shared by Seery, not just MGM or one particular investment, but on all the other assets that aren't detailed in any of the public filings, also.

Q The only -- the only point I want to make, I think we can agree on this --
A Okay.
Q -- is that you believed that Mr. Seery gave them material nonpublic inside information. Farallon never told you that. Isn't that true? That's why you wanted discovery?
A They said they relied on him and did no diligence of their own. They were very express -- explicit about that.
Q Okay. Can you answer my question now?
A Which -- I thought -- that does, --
Q You concluded --
A -- yes.
Q -- that Mr. Seery gave them material nonpublic inside information. They never told you that. Fair?
A They said they relied on -- solely on Seery, didn't buy it for any other reason, and they did no due diligence of their own.
Q Okay. Let's go to the next one. Now, the no-due-diligence part, that's not in any version we've seen, right? That's something that you just --
A No, no, --
Q -- that you're just testifying to now? That's not in your notes, it's not in Version 1, and it's not in this version, correct?
A Well, let's go back to the Linn one, because when I was

going back and forth and he wouldn't give a price, he kept saying, Seery told us it's worth a lot more. And I kept saying, you've got to look at the burn, you've got to look at the professionals. And --

Q Okay.

A -- that's --

Q Shortly after this, you filed yet another declaration, right?

A Yes.

Q Uh-huh. Can you turn to #5? And this is another version of your recollection of what you were told, correct? In Paragraph 2?

A These are all -- I don't know why you're saying they're different. They're all the same. They're just slightly different verbiage. What's the major difference between any of them?

Q I'll ask, I'll ask you the question. The question is, you had never written in any of the prior versions that they didn't do any due diligence; isn't that right? You never -- you never talked about their due diligence in any prior version, correct?

A It's all -- it's all the same version. I don't -- some versions --

Q Can you answer my question?

A I don't know. I don't know --

Q Which --

A -- which ones included which -- I don't --

Q We've just looked at them. Do you want to look at them again?

A I just looked at one page in the other one and it was five pages. I just looked at the one page and I found two or three things --

Q Your notes --

A -- it didn't include, but --

MR. MORRIS: You know what. I don't want to argue. They say what they say, Your Honor, and I would ask the Court to look carefully at our objection to the motion because we lay all of this out.

Your Honor can -- here's the point, because I do want to finish up right now. There are five different versions of this conversation. They're laid out in the brief. And the question that you have to ask yourself, Your Honor, is, if you allow this case to go forward, how do they make a colorable claim when the story keeps changing?

And I'll just leave it at that, because, you know, the last version says MGM for the first time. Like, it comes out of nowhere. This -- his notes don't say it, he hasn't testified that that's what he was told, but somehow that's in his sworn statement.

So I'm just going to rest on the papers, because this is

-- I don't want to be argumentative.

THE COURT: Okay.

MR. MCENTIRE: Well, I'll object to the argument of counsel. He's just doing another opening statement here, and it's inappropriate and not proper.

THE COURT: Okay. I agree. This is Q and A.

MR. MORRIS: Okay.

THE COURT: So, --

BY MR. MORRIS:

Q Do you know -- do you have any knowledge or information as to how Mr. Seery's compensation was established?

A Uh, --

Q Withdrawn. I'm talking now not in his capacity as an independent director or the CEO of the Debtor. I'm only talking about in his capacity as the CEO of the Reorganized Debtor and the Claimant Trustee. Do you have any personal knowledge as to how his compensation was established?

A The knowledge I have is that the Claimant Trust gives full latitude to change it at almost any time they want. Add more to it, add more than that we've seen, double it in the future if reserves are reversed. It can do anything it wants. And I guess we've seen some redacted partial statements of his compensation, but that's all I know.

Q Okay. You have no knowledge about how Mr. Seery's compensation package was determined, correct?

A I was not involved.

Q Okay. You've never -- I'll just leave it at that.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: Okay. Pass the witness. I'm sorry, I guess I should ask, do any of the other responding parties have examination?

MR. STANCIL: No, Your Honor.

THE COURT: No? Okay. Redirect?

MR. MCENTIRE: Just very briefly, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Dondero, you remember the questions about Judge Jernigan walking into the courtroom on June 8 two years ago saying, MGM is sold, maybe we can settle this case? Do you recall those questions?

A Yes.

Q And do you remember Mr. Morris's dramatic suggestion that, well, how did Judge Jernigan know, or to that effect?

A Yes.

Q Well, that had already been announced, had it not, publicly?

A Yes.

Q Several weeks before?

A Yes.
Q I'd like to direct your attention -- do you still have Exhibit 4 that he handed you? Do you have Exhibit 4 there?
A Uh, --
Q His exhibit?
A Is that the notes?
Q No, it's -- Exhibit 4 is the verified amended petition to take deposition before suit -- take -- in the state court. To -- deposition.
A You've got to give me more of a clue. I'm sorry. There's like six binders.
MR. MCENTIRE: Mr. Morris, can you show us where the exhibit --
MR. MORRIS: Sure. Which one is it?
MR. MCENTIRE: It's Exhibit 4. I'm going to talk to him about Exhibit 4 (inaudible) that you've have used with this witness.
BY MR. MCENTIRE:
Q I assume -- Mr. Dondero, were you assuming from the tone and the substantive content of his questions that Mr. Morris is suggesting that your notes are not reliable?
A He was trying to make it seem like the versions were different. They were all 90 percent the same. Different -- it seemed like different emphasis for different purposes. And then you have to remember we learned more about Farallon and

Stonehill over time. Like, in the beginning, when I had -- when I -- we didn't even know Stonehill was involved when I --

Q Sure.

A -- first talked to -- when --

Q Well, he made the big suggestion about you never talked about due diligence before. Turn to Exhibit 4, Paragraph 23, which he did not address with you. Can you turn to Paragraph 23 of Exhibit 4? Mr. Morris omitted to refer you to this particular paragraph.

A 23? Go ahead.

Q Would you read it into the record?

A (reading) On a telephone call between Petitioner and Michael Linn, a representative of Farallon, Michael Linn informed the Petitioner Farallon had purchased the claim sight-unseen and with no due diligence, a hundred percent relying on Mr. Seery's say-so, because they had made so much in the past with Mr. -- when Mr. Seery had (overspoken).

Q Now, since you've an opportunity to see other paragraphs and other -- that he was otherwise not selecting, you did refer to the -- to what Mr. Linn had told you about in May of 2021?

A Yes. I've been very consistent. Listen, I believe Farallon tapes all their conversations. So, eventually, as this goes further, I purposefully --

Q Well, let's --

MR. MORRIS: I move to strike, Your Honor.

THE WITNESS: Okay.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q He also did not direct your attention or the Court's attention to Paragraph 27 of Exhibit 4, selecting -- presumably strategically selecting not to refer to that paragraph. Do you see Paragraph 27?

A Yes.

Q Could you read that into the record, please?

A (reading) However, Mr. Seery is privy to material nonpublic information, inside information of many of the securities that Highland deals in, as well as the funds that Mr. Seery manages through Highland. One of these assets was a publicly-traded security that Highland was an insider of, and therefore should not have traded, whether directly or indirectly, given its possession of insider information.

Q Isn't that paragraph just basically addressing MGM?

A Yeah, that's the only major position we had that that would apply to.

Q So the suggestion that you're just making this MGM stuff up is not true. It's consistent with what you've (inaudible) in other courts as well, correct?

A Yes. I believe it's disingenuous to say that there's different versions of my story.

Q Well, let's continue with Mr. Morris's strategy. Go to Exhibit 3, please. Mr. Morris suggested that there's no reference at all in any of these prior pleadings about Mr. Seery's excess conversation. Do you recall that series of questions?

A Yes. Or his statements, yes.

Q Yes. And he did not direct your --

MR. MORRIS: I move to strike. I asked him if he had any knowledge of the man's compensation package. That's what I asked him.

MR. MCENTIRE: No, sir. Your Honor, that's not what he asked him. That was one of the questions he asked. The other question was, there's nothing in here about compensation. That's what I'd like to address now.

MR. MORRIS: Oh, go right ahead.

THE COURT: Okay.

BY MR. MCENTIRE:

Q Directing your attention --

THE COURT: You can ask. I'd have to go back and check the record whether you had that second question you mentioned. I remember questions about does he have knowledge of Seery's compensation. I just can't remember if he asked, --

MR. MCENTIRE: Fair enough.

THE COURT: -- were there references to it in the --

MR. MCENTIRE: Well, --

THE COURT: -- prior pleadings.

MR. MCENTIRE: -- for the record, we'll make it clear that there is a reference.

BY MR. MCENTIRE:

Q If I could direct your attention to Paragraph 23, Exhibit -- as to --

MR. MORRIS: What exhibit is it?

MR. MCENTIRE: It's Exhibit 3.

MR. MORRIS: Hold on one second.

MS. MUSGRAVE: Your exhibit.

THE COURT: Highland's Exhibit 3.

MR. MORRIS: Give me a moment.

THE COURT: Page what?

MR. MCENTIRE: It's Paragraph 22 on Page 5.

THE WITNESS: I'm sorry. My Exhibit 3?

BY MR. MCENTIRE:

Q Could you read for me, please, Mr. --

MR. MORRIS: Hold on one second. It's my Exhibit 3 or your exhibit?

MR. MCENTIRE: It's your exhibit. This is Hunter Mountain's binder.

MR. MORRIS: Ah, I apologize.

MR. MCENTIRE: You were just using it.

MR. MORRIS: Okay. All right. Go ahead. What

paragraph were you?

BY MR. MCENTIRE:

Q I'd direct your attention, Mr. Dondero, to Paragraph 22.

MR. MORRIS: Yeah.

BY MR. MCENTIRE:

Q Would you read -- would you read Paragraph 22 into the record, please?

A (reading) Mr. Seery had much to gain by brokering a sale of the claim suggested to Muck, mainly his knowledge that Farallon as a friendly investor would allow him to remain as Highland's CEO with virtually unfettered discretion to administer Highland. In addition, Mr. Seery's written compensation package incentivized him to continue the bankruptcy for as long as possible.

Q There was also a series of questions to you about a transaction involving NexPoint -- NexPoint Diversified Real Estate Trust. Do you recall those questions?

A Yeah. Let's talk about that.

Q All right. Tell me what the transaction was.

A I'm sorry. The tender that he was asking about or --

Q Yes, the tender.

A There was -- investors wanted some shares retired, and we didn't have enough cash on the balance sheets. So we tendered in the form of giving them Preferred, which was like equity but a better dividend or a more secured dividend, and 20

percent cash. And then insiders weren't allowed to participate. But the whole tender was only for eight or ten percent of the nominal amount outstanding. And again, you've got a package of securities, so you didn't get any -- you didn't cash. And although it reduced the share count, it also increased the Preferred or the claims against the company. So it was marginally accretive, I guess.

Q All right.

A But, again, as far as inside information is concerned, Compliance is a separate party organization that reports up to the SEC. Has a dotted line to me. Reports to the SEC. They make sure everything we do is compliant.

Q Mr. Dondero, --

A Yeah. Can --

Q -- you didn't participate in the transaction, did you?

A No. Insiders weren't allowed to participate in the transaction.

MR. MCENTIRE: Reserve the rest of my questions, Your Honor.

THE COURT: Any recross?

RECROSS-EXAMINATION

BY MR. MORRIS:

Q The reference to the compensation that we just looked at, that was your own personal view, not something that anybody from Farallon ever told you, correct? You can go back and

look.
A Yeah, that --
Q I mean, it's not a trick question.
A Yeah, that was my pleading.
Q Okay. And that was your own speculation, if you will? It had nothing to do with anything Farallon ever told you, correct?
A I never discussed Seery's compensation with Farallon.
Q Okay. Thank you, sir, very much. Just one last question. The price of the tender --
A Yes.
Q -- was based in part on the value of the MGM stock, correct?
A The tender was based on market price --
Q And --
A -- of where the closed-in fund was trading. It was trading at a discount. And the discount to NAV, the NAV included MGM accurately marked at whatever time.
Q I appreciate that.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Dondero, that concludes your testimony.
THE WITNESS: Thank you.
THE COURT: You are excused from the witness box.
(The witness steps down.)

THE COURT: We probably should take a break, right?

MR. MORRIS: Okay.

THE COURT: Caroline, do you want to give them the aggregate time used?

THE CLERK: Yes. The Defendants used 91 minutes right now. And the Respondents together, 86 minutes.

THE COURT: Okay. I thought it was going to be higher than that.

(Laughter.)

MR. MCENTIRE: That's what it feels like.

MR. MORRIS: You were wishing.

THE COURT: I was wishing. Okay. A ten-minute break.

THE CLERK: All rise.

(A recess ensued from 3:17 p.m. until 3:28 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in the Highland matter. Mr. McEntire, you may call your next witness.

MR. MCENTIRE: Your Honor, Hunter Mountain would call Mr. Seery adversely.

MR. STANCIL: Your Honor, we're waiting for Mr. Morris for just 60 more seconds. I think he's on his way back to the courtroom.

THE COURT: Okay. I just noticed.

Did I hear you say you're going to call him virtually?

MR. MCENTIRE: Adversely.

THE COURT: Oh, adversely? Okay. I'm so used to hearing the word "virtually" the past few years.

Oh, and there he is. Okay.

MR. SEERY: I'm sorry, Your Honor.

THE COURT: Mr. Seery, welcome.

MR. SEERY: Good afternoon, Your Honor.

THE COURT: Please raise your right hand.

(The witness is sworn.)

THE WITNESS: I do.

THE COURT: All right. You may be seated.

JAMES P. SEERY, JR., HUNTER MOUNTAIN INVESTMENT TRUST'S ADVERSE WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Seery, would you please state your full name for the record?

A James P. Seery, Jr.

Q And you and I met for the first time I believe it was last Friday in your deposition; is that correct?

A You were by video.

Q I mean, --

A We didn't actually meet.

Q Correct. You are currently the CEO of the Reorganized

Debtor?
A That's correct.
Q Prior to your appointment as the CEO of the Reorganized Debtor, you've never served as a CEO of a reorganized debtor in the past, have you?
A I have not.
Q You previously served as the chief executive officer of Highland Capital as a Debtor-In-Possession. Is that correct?
A That's correct.
Q And that was the first time you'd ever served in a position such as that; is that correct?
A As the CEO of a debtor, yes.
Q Right. You also now currently serve as a Trustee for the Highland Claimant Trust, which was put into effect after the effective date of the plan, correct?
A Yes, I'm the Claimant Trustee.
Q All right. That's the first time --
THE COURT: Mr. McEntire, we usually require standing at the podium. I mean, do you need --
MR. MCENTIRE: That's fine. I'm totally fine.
THE COURT: Okay. That's --
MR. MCENTIRE: I forgot.
THE COURT: Okay. Thank you.
BY MR. MCENTIRE:
Q That was -- and your capacity as the Trustee for the

Claimant Trust, that's a first experience as well, correct?
A As the Claimant Trustee, yes.
Q All right. And in these various capacities as a CEO of the Reorganized Debtor, do you consider yourself to be subject to the Investment Advisers Act?
A No, I don't I'm subject to the Investment Advisers Act. I think Highland in certain capacities could be.
Q All right. But do you have any duties that -- that you are required to fulfill under the Investment Advisers Act accordingly?
A Do I?
Q Yes.
A I believe Highland does. I don't know that I have any personal duties.
Q All right, sir. Let me now talk a little bit about your duties that you did have at Highland. You agree that when you were at Highland you had fiduciary duties that you owed to the estate?
A Yes.
Q What were those duties?
A To generally treat the estate on an honest and fair matter.
Q Avoid conflicts of interest?
A Yes.
Q Not self-deal?

A Yes.
Q Do you agree with me that you would have a duty not to trade on material inside -- material nonpublic information?
A Generally, I would have a duty to not trade on material nonpublic information, yes.
Q Can you think of an exception?
A There may be. I just don't think of any one off the top of my head.
Q So, today, you would agree, for purposes of these proceedings, that you would have an obligation as the CEO of the Debtor-In-Possession not to participate in a transaction involving material nonpublic information? Agreed?
A It would depend. So, for example, if I was trading with someone else who had material nonpublic information, that might be a permissible transaction.
Q The HarbourVest transaction, you were involved in negotiating the HarbourVest settlement?
A Yes, I was.
Q Did that involve any component related to MGM stock?
A No, it did not.
Q There was no involvement at all concerning the transfer of MGM stock to any entity as a result of that transaction?
A None whatsoever.
Q Okay. And does HCLOF not have a participation at this time in MGM stock?

A We call it H-C-L-O-F.
Q Yes.
A It does not own MGM stock, and as I far as I know, never owned MGM stock.
Q Okay. You agree you received an email from Mr. Dondero in December of 2020. We've had it here before. You've seen it in the courtroom, correct?
A Yes.
Q Okay. Did you ever send -- forward that email to anyone else?
A I'm sorry. Could you repeat that?
Q Did you forward that email on to anyone else?
A I believe I did, yes.
Q To whom?
A I certainly discussed it with counsel. I believe I forwarded it to counsel, both the Pachulski firm and the WilmerHale firm. Thomas Surgent had gotten it. He was on the email. And I also forwarded it, I believe -- certainly, discussed it -- with the other independent directors.
Q Okay. I'm not going to talk about your conversations with other lawyers in-house, okay, or your outside counsel. Did you take any steps yourself personally to make sure that MGM stock was placed on a restricted list at Highland Capital after you received that email?
A No. MGM was already on the restricted list at Highland

Capital.

Q Okay. And is that because of Mr. Dondero's position on the board of MGM?

A It -- I believe that's the reason. It was on before I got to Highland.

Q Okay. And you agree, do you not, sir, that the email that you received from Mr. Dondero also contained material nonpublic information?

A I don't think so, no.

MR. MCENTIRE: Would you put up Exhibit -- our Exhibit 4, please?

MR. MORRIS: 4?

MR. MCENTIRE: 4.

BY MR. MCENTIRE:

Q Did H-C-L-O-F -- I'll refer to it as HCLOF, you refer to it as H-C-L-O-F -- did that -- did HCLOF own any funds that owned MGM stock?

A HCLOF had interest in certain Highland-managed CLOs that did own some.

Q As a result of the Highland settlement -- excuse me, the HarbourVest settlement, was there any impact on who owned some of those CLO funds?

A No.

Q Okay. How was the CLOs, the funds, handled, if at all, in the -- in the HarbourVest settlement?

A They didn't have any impact whatsoever on the HarbourVest settlement.

Q Looking at Exhibit 4 for a moment, please, did the interests, did the interests in -- HarbourVest's interests in any of those CLOs transfer?

A No, they did not.

Q Okay. And did HCLOF acquire any interest in any of those CLO's as a consequence of the HarbourVest settlement?

A No, it did not.

Q Looking at Exhibit 4. Excuse me, Exhibit 3 is what I meant to say. Exhibit 3.

THE COURT: Hunter Mountain Exhibit 3?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Okay.

MR. MCENTIRE: Yes, Your Honor. Excuse me.

BY MR. MCENTIRE:

Q This is the email that we were just referring to that you received, correct?

A Yes.

Q And you don't think -- you knew that Mr. Dondero was on the board of directors of MGM?

A Yes.

Q And he -- as a member of the board of directors, when you received this, you see where he indicated that it was probably a first-quarter event? Do you see that?

A I see what it says, yes.
Q Okay. And you did not think that that was material nonpublic information?
A No, I did not.
Q When he indicated that Amazon and Apple were actively diligencing -- are diligencing in the data room, both continue to express material interest, coming from a member of the board of directors of MGM, you did not think that was material nonpublic information?
A I did not, no.
Q You know the difference between a newspaper article or a media article that discusses rumors of a possible sale and the difference between that and a member of the board of directors saying that a sale is going to occur? You understand the difference between the two?
A Between the two things you just outlined?
Q Yes.
A Yes. One you said a sale is going to occur, and the other you said a media report. But it would depend on what's in the media report. Some media reports are pure speculation. Others have a lot of detail, and they clearly came from an inside source, and that's why the market moves on them.
Q Okay. So what you're suggesting to me, that there was some indication in the media press before you received this email suggesting that there was actually going to be a sale in

the first quarter of 2021?
A I don't know if it had a first-quarter event in it, but certainly it was clear from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction had to take place very quickly. And in fact, the transaction did not take place in the first quarter.
Q Okay. So you -- when you received this particular email, you did not think that it was requiring any additional protection at -- in any way? Is that what you're suggesting to this Court?
A That the email required additional protection?
Q That you didn't take additional steps to make sure that it was maintained on the restricted list.
A It was already on the restricted list, so there was no change.
Q Was it --
A I --
MR. MORRIS: Hold on. Let him finish.
BY MR. MCENTIRE:
A I was suspicious when I got the email, but I didn't think I had to do anything else than the steps I told you I just took.
Q Yeah, I'm not asking whether you were suspicious or not. My question's a little bit different. You understand that MGM

was taken off your restricted list in April of 2021?
A I understand that that's what you've recently shown me. I wasn't aware of that fact or I didn't have a recollection of that fact, but certainly April of 2021 would be beyond the first quarter. Mr. Dondero was not an employee, an affiliate, subject to a contractual relationship. He had no duty to Highland and Highland had no duty to him. And in fact, it was quite antagonistic by that time. So it would be appropriate to take MGM off the restricted list at the end of that time.
Q Well, hopefully you won't take this as argumentative, but I object as nonresponsive. That really wasn't my question. Okay? My question --
THE COURT: Sustained.
BY MR. MCENTIRE:
Q -- is a little bit different. As far as you were concerned, MGM was on the restricted list and stayed on the restricted list all the way until the public announcement in May of 2021?
A That's not true.
Q When did you first become aware it was taken off the restricted list?
A I didn't -- I wasn't aware that it had come off the restricted list. I would have assumed it would have been off the restricted list once Mr. Dondero had been severed from Highland.

Q I see. Now, Mr. Dondero has relayed a conversation that he had with Mr. Patel and Mr. Linn, suggesting that they were particularly optimistic about MGM based upon what you told them.

A I --

Q Let me finish. If that occurred, are you suggesting that that is a lie?

A Two things. One is I don't think he actually testified to that. I think he said he had a conversation with Mr. Patel. Then he had a different conversation with Mr. Linn, and a subsequent conversation with Mr. Linn. So the way he laid it out were multiple conversations.

Q Agreed.

A I don't -- I don't know which one you're talking about.

Q Mr. Dondero testified that Mr. Patel was particularly optimistic about the investment because of what he had learned from Mr. -- from you about MGM.

MR. MORRIS: I dispute that characterization. Why can't he just ask the question?

MR. MCENTIRE: That is my question. If that --

THE COURT: What is the question? I'm not sure I hear the question.

MR. MCENTIRE: I'm getting lost because I'm getting interrupted. I'll try to rephrase it again.

MR. MORRIS: It's my first objection.

MR. MCENTIRE: And I --

THE COURT: Go ahead.

MR. MCENTIRE: I'm just going to rephrase, Your Honor.

THE COURT: Just rephrase your question.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero has testified that Farallon advised him in May of 2021 that they were optimistic about MGM based upon what you told them. Assuming that to be the case, do you deny that happened?

A I do deny that happened. Because I can't -- I don't know what Farallon told him, but I never told Farallon anything. And a conversation on May 28th, after the May 26th announcement that MGM was going through, might make people optimistic that it could go through, but there was a very difficult FTC process that MGM would have to go through.

Q And I'm referring to that. If Farallon stated that they were optimistic about MGM based upon what you had told them, --

A That would not be true.

Q -- that would be false?

A That would not be true.

Q And is Mr. Dondero says that's what Farallon told them, that would also be false?

A That's correct.
Q So we have your statement, we have what may be Farallon's statement, and we have what Mr. Dondero believes may have been Farallon's statement, and you're saying the latter two are just not true?
A I didn't have a conversation with Farallon about MGM that -- that I recall --
Q Well, you're on the witness stand.
A -- virtually at any time.
Q You're on the witness stand.
A Oh, I'm aware of where I am sitting.
Q Yeah. Good. We've got that cleared up. Now, are you suggesting that -- that you may not specifically recall this conversation?
A No, I am not saying that at all. After May 26th, when the MGM announcement was made and it was public, I may have had conversations with a number of people about MGM.
Q Well, let's make sure the record is clear. Did you call Farallon on May 26th and say, hey, did you know that MGM just sold?
A No, I don't recall any such conversation, and I wouldn't have had to, since it was in the paper.
Q I'm not talking about what's in the paper. I'm talking about conversations between you and Farallon.
A Yeah. I don't recall having a conversation with Farallon

on May 26th.

Q How about May 27th?

A Not that I recall, no.

Q How about May 28th?

A Not that I recall off the top of my head.

Q And we understand that that's the day that Mr. Dondero actually had his conversation that he's reported, at least, with Farallon. Do you recall that?

A That's what he claims, yes.

Q You were with a company called River -- you're a lawyer, correct?

A I am. I'm in retired status.

Q Okay. I wish I was.

A It's simply retiring your license and not having to take the CLE.

Q Understood. Now, you were with a company called River Birch?

A Yes.

Q And from River Birch, you went to Guggenheim Securities?

A That's correct.

Q At Guggenheim Securities, did you go to Farallon and meet with Mr. Patel in their offices in San Francisco?

A I believe we did, yes.

Q You call it a meet-and-greet?

A I do, yes.

Q That was in 2017?
A 2017, 2018. I'm not exactly sure when it was.
Q And one of the purposes of meet-and-greet is to solicit business or to see if a business opportunity -- see if it exists?
A That's not correct, no.
Q What is a meet-and-greet for, then?
A It's to meet the people at the fund and to greet the people at the fund. Introduce them to other people in your firm.
Q Just because it's going to be fun, or does it have a business angle to it?
A Oh, it hopefully will be fun, yes, but it's done in order to build a relationship over time. You're not in there soliciting business. If you do that, you won't do very well.
Q Okay. Fair enough. So you're there trying to develop a relationship with Farallon?
A Guggenheim was, yes.
Q And you were part of it?
A That's correct.
Q And what was your job at Guggenheim?
A I was co-head of credit.
Q Is that a fairly significant position at Guggenheim?
A Not really, no.
Q It's not significant at all?

A No.
Q All right.
A Which is why --
Q Well, you left --
A Which is why they don't have that business.
Q Okay. So is that why you left Guggenheim?
A It -- I did, yeah. It wasn't a good fit for either Guggenheim or for me, because it really wasn't something --
Q When did you --
A -- that they were set up to do.
Q -- leave Guggenheim?
A In 2019.
Q And then you went back to Farallon to meet with them again, did you not?
A I met with Farallon while I was in San Francisco with my wife.
Q Okay. Did you call ahead to arrange the meeting, or was it just a --
A I --
Q -- a blind call?
A I did call ahead, yes.
Q A cold call, I guess, is the word -- the phrase that they use. Okay. So -- and was that a meet-and-greet?
A That was again, yes.
Q Again, what were you trying to do? Develop a relationship

with Farallon?
A I was trying to catch up with them after having met them previously. And that was just Raj Patel. And this one I also met Michael Linn.
Q Okay. What kind of business were you in when you met with them the second time?
A I wasn't doing anything.
Q What were you hoping to do?
A I was hoping to get back into the investing side of the business, from running a credit-type lending business at Guggenheim, which is what they tried to do and it didn't work out. And I wanted to get back to what I was doing more at River Birch, but I was looking at other opportunities, whatever came along.
Q Well, what were the different options that you were looking at?
A I was looking at potentially getting back into investing, joining potentially a restructuring firm, any options like that. I was not looking to become a lawyer again.
Q And why would meeting and greeting with Farallon fit in within that scenario, the strategic scenarios that you've just discussed?
A They're a giant hedge fund.
Q A giant hedge fund?
A Yes.

Q And so it would be good to have a relationship with a giant hedge fund, wouldn't it?
A And to know what their thinking of the markets, where the opportunity set might be, who they are dealing with and interacting with. Those are -- those are valuable things to know over time.
Q And --
A And you need to maintain those relationships in order to be --
Q Sure.
A -- part of any business.
Q Sure. These meet-and-greets can actually evolve and provide relationship benefits, correct?
A I don't -- I'm not sure what you mean by relationship benefits.
Q Sloppy words for -- on my part. They can evolve into something that is a meaningful relationship?
A They could over time, yes.
Q And we know that after you became the CEO of Highland Capital that you received a call from, was it Farallon, to congratulate you on your appointment?
A It was an email.
Q And that was in the summer of 2020, shortly after your meet-and-greet out in San Francisco?
A Your calendar's a bit off, but it was in June of 2020, so

that would have been more than shortly after, but yes.
Q Okay. And who contacted you to congratulate you on your appointment?
A This was my appointment as an independent director. I had not yet been appointed as CEO or CRO. This was in June of 2020, and it was Michael Linn.
Q Michael Linn? Was it a telephone call?
A I think 30 seconds ago I said it was an email.
Q Fair enough. Do you still have that email?
A I do, yes.
Q Okay. He contacted you again, "he" being Michael Linn, he contacted you again in January of 2021, did he not?
A That's correct, yes.
Q He wanted to see if he could get involved somehow in the Highland bankruptcy?
A Well, he congratulated -- he didn't congratulate -- he wished me a happy new year, and he basically said it looks like you're -- again, he's following the case -- it looks like you're doing good work. Is there any way for us to get involved? We're interested in claims or buying assets.
Q Okay. And Stonehill. Now, you know the founder of Stonehill, do you not?
A No, I don't know him. I've met him several times.
Q Doesn't he come by and stop in and talk with you when you're in Stonehill's offices? And that's happened recently?

A Your use of the plural is incorrect, and you know that from the deposition. I was in Stonehill's office one time, and I was in a meeting with Mr. Stern. We ended up having a board meeting from Stonehill's office with the other participants on video, and Mr. Motulsky came in and said hello.

Q All right. And who's Mr. Motulsky?

A He's the founder of Stonehill.

Q I see. And did you know Mr. Motulsky before that?

A I'd interacted with Mr. Motulsky over the years at -- mostly at industry-type functions.

Q Okay. Now, Stonehill is also a hedge fund?

A Yes.

Q Are they different than Farallon in that regard, or similar?

A I don't know as much about what their business is. They certainly do a direct lending component, so I know that they -- they will do some direct lending, which I don't think is something Farallon really does. Farallon is much bigger, as I understand it, but I don't really know the size of Stonehill.

Q Okay.

A I know they're not a $50 billion fund like Farallon.

Q And do you know Mr. Stern at Farallon?

A I now know him, yes, because he was -- he's really the representative on the -- no, he's not the representative on

the board, but he is the one who manages the Stonehill and Jessup positions for Stonehill.

Q Well, we know that after you were CEO of Highland, you also got a text message, correct, a text message from someone at Stonehill, correct?

A Mr. Stern sent me a text message reintroducing himself -- I don't know if it was re- or just introducing -- and sent me his email and asked me to contact him about the case. This was at the end of February/beginning of March 2021, after the confirmation order.

Q Okay. After the -- after the confirmation order?

A Yes.

Q I believe the confirmation order -- I may be wrong -- I thought it was like the 21st, 22nd, somewhere in there. Does that sound right to you?

A Yes.

Q Okay. So, shortly after confirmation, then, Farallon calls you to congratulate you and wants to see how they can get involved?

A No. There was no congratulations there. Shortly after the confirmation order, which I believe was at least a week to ten days after confirmation, I got the communication from Mr. Stern to try to connect about the case.

Q All right.

A He's at Stonehill, not Farallon.

Q Correct. Now, --
A You said Farallon.
Q I misspoke, then. Thank you for correcting me. Let's talk about -- you live in New York?
A I do.
Q You're involved with a charity called Team Rubicon?
A Yes.
Q And Team Rubicon is a -- is that a veterans-type charity?
A Yeah. It's a veteran-led organization, and what it does is connects veterans to disasters. And mostly in the U.S., but also all over. So if there's a flood, if there's a hurricane, if there's an earthquake, veterans who have been trained in -- by the military in ready response and really being able to handle themselves when things are bad are deployed to help the communities that are hit. So I think that Team Rubicon likes to think, you know, on your worst day they're your best friend.
Q So you're -- are you on the board?
A No, I'm not.
Q You're on the Host Committee?
A I was on the Host Committee last year, and I'll be on the Host Committee this year.
Q Okay. And you have charity events?
A We have a charity event, yes.
Q Okay. And the purpose of the charity event is to raise a

bunch of money?
A That's correct.
Q Okay. Have you been successful in the past?
A I do my best. Team Rubicon is a big organization. It's done very well raising money. It doesn't have an endowment. The founder's theory was that if people give us money, we're supposed to spend it on helping other people. And so each year it has to raise more money.
Q And Stonehill has been -- has contributed to your charity?
A I believe Stonehill, one or two years, and I should know this, and I didn't look it up after our deposition, gave $10,000.
Q Okay. Maybe once, maybe twice?
A Maybe twice.
Q Okay.
A I hope more.
Q Okay. And they also attend your -- your actual charity events, do they not?
A No.
Q All right. They just give money?
A That's right. And the Mike Stern who's on the board of Team Rubicon is not the Mike Stern who is at Stonehill. It's an older gentleman who's in Texas who just happens to give a lot of money to --
Q All right.

A -- Team Rubicon.
Q You also represented Blockbuster. Take that back. Were you the lawyer or the attorney representing the Creditors Committee, the UCC, in the *Blockbuster* bankruptcy?
A No, I was not.
Q Tell me what your capacity was.
A I represented a group of bondholders, secured bondholders. So I represented the group.
Q And was Stonehill a member of that group?
A Not that I recall, but your pleadings seem to indicate that they were. So if they were, they were a small participant. The largest participant was Carl Icahn, who owned about 30 percent of it. Then the others who were big were DK, Davidson Kempner, Monarch, Owl Creek. Those were the big players.
Q Well, --
A When Carl Icahn is in your group, you remember that.
Q Yeah, well, Carl Icahn is not here. We're talking about Stonehill right now.
A And I said I don't remember them actually being a part of it. If they were, --
Q Okay. Well, let me -- let me give you what I'm going to mark as Exhibit 80. That's your name at the top, right?
(Hunter Mountain Investment Trust's Exhibit 80 is marked for identification.)

A That's correct, yes.
Q You were at the time with Sidley & Austin?
A That's correct, yes.
Q This is *In re Blockbuster*.
MR. MCENTIRE: Scroll down, please.
BY MR. MCENTIRE:
Q And steering group of senior -- involves -- well, let's count them. Let's see. One, two, three, four, five. Five entities comprising the backstop lenders. Is that correct?
A I think that's the steering group. So, in order to represent the group, you need to try to assemble a large-enough group that it's material to the company. And then the company, if you're -- particularly if you're over 50 percent, will pay the fees of the group. And you don't represent any individual member of the group. I've never represented Carl Icahn. I represent the group. And if folks want to stay in the group, they can stay. If they want to trade out of the group, they do. And the company will generally continue to pay the fees, and you represent the group so long as you have a controlling interest in the -- whatever the issue is.
Q Well, that's interesting, because now what you're telling me is that this group right here, this is kind of like the executive committee of the group.
A No, it's called the steering group, and it doesn't necessarily --

Q That's fine.
A Well, it's not an executive committee. It doesn't necessarily include just the largest. Some large holders won't be on it. The largest holders here by a long shot were Icahn, who --
Q I'm not talking about --
A -- unloaded, as I say, over 30 percent. Monarch, Owl Creek, and I just don't recall Stonehill being a part of it.
Q I'm not really interested in Carl Icahn. I just want to establish this is a steering group in which you were the lead counsel and Blockbuster was on it. Is that correct?
A Yes.
Q Excuse me. Not Blockbuster.
A I'm sorry.
Q Stonehill.
A No, it's the Blockbuster case in 2010, and Stonehill was apparently on it, but I just don't have a recollection of their involvement.
Q All right. So when Mr. -- who sent you the text message in February of 2021 from Stonehill?
A Michael Stern.
Q And had you actually met him before?
A I think I had, but we didn't know each --
Q All right.
A You know, we certainly didn't know each other, we'd never

worked on anything together, but I --

Q Do you have all your text messages from that period of time, that first quarter of 2021?

A I believe I do, yes.

Q They're saved?

A Yes.

Q Okay. When did the automatic delete button on your cell phone start?

MR. STANCIL: Your Honor, objection. We've covered this this morning. I believe this is a motion coming down the pike, and I thought we had -- thought we had had tabled this preservation issue.

MR. MCENTIRE: This has a direct bearing on his communications with Farallon and Stonehill in this period of time, Your Honor. We have one text message that he's identified, and I have a right to examine whether there are others. Or if not, why not.

MR. STANCIL: Your Honor, he's --

MR. MCENTIRE: That's a legitimate -- I'm not finished. That's a legitimate area of inquiry in this examination.

MR. STANCIL: He's testified he has them all. Your Honor did not order document discovery. I think that's it for purposes of today's hearing, Your Honor.

THE COURT: Okay. I sustain the objection.

BY MR. MCENTIRE:

Q After this text message that you received from Stonehill in February 2021, did you have any follow-up?

A Well, his text message, I don't recall what it said other than I was -- I do recall that he gave me his email address, because I didn't have it. And we just didn't know each other well enough. But we definitely had follow -up. He wanted to talk to me, and at some point we talked.

Q And when did you talk?

A I'm sorry?

Q When did you talk?

A When? I -- it was at the, initially, end of February, beginning of March. So it would have been somewhere in that -- in that time period.

Q End of February, beginning of March? And we also know that you next talked to Farallon, according to your testimony, and they advised you they had already purchased all their claims as of March 15, correct?

A On March 15th, they sent me an email that said they had purchased an interest in claims, and --

Q So -- go ahead.

A I'm not finished. And then at some point after that, we arranged a quick discussion, because that was a curious --

Q I want to assure you I will always let you finish.

A Thank you very much.

Q Unlike others. So, with that said, Mr. Seery, can you identify -- let me back up. Was there a data room set up at Highland Capital for claims investors to come in and look at data?

A No, there was not.

Q Are you aware, sitting here today, that Farallon did any due diligence in connection with its investment in the claims it purchased that are at issue in this proceeding?

A I have indication that they did some, yes. I don't know how much they did.

Q What is the indication?

A In the email in June of 2020, Mr. Linn said that he and his associate were following the case, thought it was -- that's the one that congratulated me on being an independent director, and that they were paying attention to the case. And it -- I don't recall the exact other items in there, but it was clear that they were following the Highland matter. And then in the email in January 2021, he also indicated that they'd been following the case further, and said, Looks like you have things well in hand, or something to that effect. So --

Q Do you have that email, too? Have you saved that email?

A They're all saved, yeah.

Q Okay. So let's talk about that. But you had no data room that would allow them to come in and actually investigate the

underlying assets. Is that correct?
A Not in respect of anybody trying to buy claims. We did have a data room with respect to financing.
Q Please listen to my question. I'll get to it. Data room for claims investors. There was no data room set up on or before March 15 to allow Farallon to come in and investigate its investment in this claim?
A That's correct.
Q There was no data room set up prior to March 15 to allow Stonehill to come in and investigate its investment in the claims it purchased. Is that correct?
A That's correct.
Q Can you identify any due diligence, sitting here today -- let me back up. You heard Mr. Dondero's testimony about portfolio companies, correct?
A Yes.
Q Portfolio companies are companies in which Highland Capital has an interest that actually have separate and distinct management. Is that correct?
A Generally. And it -- I disagree with some of his testimony, but generally that's correct, yes.
Q Well, okay. Let's just take on the part that you agree with. With regard to those portfolio companies, was there anything that was disclosed in the Highland publicly-available financials that would allowed a detailed analysis of

Highland's investments in each of those portfolio companies?
A I don't know. Certainly, in the four or five sets of projections that were filed, there were financial projections. I'm not sure exactly what was included in each one or in the disclosure statement.
Q Fair enough. Well, I'll represent to you I don't think there's detailed information on each individual portfolio company.
MR. MORRIS: Your Honor, he's not here to testify. I move to strike.
MR. MCENTIRE: Okay.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q In that regard, Mr. Seery, can you identify what Farallon did to investigate the underlying asset value of any of these portfolio companies?
A I don't have any knowledge as to what Farallon did before it bought claims.
Q Can you identify what due diligence Stonehill did to investigate the underlying asset value in any of these portfolio companies?
A I don't -- I mean, in connection with claims purchasing, I have no idea what Stonehill did.
Q Now, I understand that you solicited -- perhaps I don't recall correctly. Did you solicit both Farallon and Stonehill

to participate in a bid to provide exit financing?
A I don't think that's fair. I solicited Farallon because I knew they already owned claims. Stonehill reached out to me, and that was one of the things they were interested in doing, if there was financing needs.
Q Okay.
A And at the time they reached out, which was right after confirmation -- right after confirmation and the confirmation order, we didn't know what our needs would be. We didn't really, at the early stage, think we needed exit financing. When we looked at some of the difficulty we were going to have -- for example, collecting notes and realizing on assets -- we realized that we were going to need some exit financing in order to have enough money to support the enterprise to monetize the assets.
Q And I think you used the -- I think the phrase you used, you are the straw man or a straw man bid? Is that what you called it the other day?
A We did. You set up a very typical competitive process to do exit financing.
Q And what was the --
A And what -- well, I --
Q -- suggest --
A I was going to get to your straw man. And one of the things you do is you assess what the market's going to look

like, what you think the market looks like, what you think a financing would be good for the enterprise, the flexibility you need, how you'd structure it. And then you put that out to prospective lenders and say, Here's our straw man. This is what we'd like you to consider in terms of financing. And then they do their work and come back. And they can either say, that looks great, or we have a totally different idea of what the financing might be, or some other combination of those things.

Q Mr. Seery, thank you for that answer, but I need to ask you to do me a favor. I'm on the clock, and so I'd just like to get my questions out, if you'd try to respond. Okay?

A Uh-huh.

Q Because your answers, as long as they may be, are impacting me a little bit.

So let me ask this question. In the straw man proposal that you put out for bid, what was the suggested interest rate?

A You know, you asked me that the other day, and I think I was slightly off. So it -- and I -- but I did tell you that it depended. There was -- I don't recall what the rate was, but it starts -- if everybody wants to put out money -- and I apologize for the length of the answer -- they look and they say, well, what if I get paid back in six months? Nobody wants to do that. So, duration makes a difference. So

there's an interest rate. There's upfront fees. There's often exit fees. And sometimes there's other amounts. So, our -- my recollection is that our straw man was somewhere in the low teens on the high end, and then closer to high single-digits on the low end. Something in that range.

Q And Farallon indicated to you they were not interested, correct?

A No, not exactly. What Farallon said was they didn't -- they signed an NDA because we invited them in. We invited in six folks. Five signed NDAs. Two of the -- I invited in Farallon. I invited in Stonehill. Well, Stonehill called me. I invited in Contrarian because they had bought claims. And then two lenders that I knew. And Farallon did the work and came back and said, this isn't really what we do. And the other guys, you're telling me, which I was, that other people are more competitive. And so it's not really what we do, we don't think the returns are good enough, but if you need us, because now they're already invested in the claims, call us.

Q Okay.

MR. MCENTIRE: And again, I'll object as nonresponsive. Your Honor, that was a very long answer talking about a lot of other entities. My only question was what the interest rate was.

MR. MORRIS: Your Honor, we oppose the motion to strike. I think it's --

MR. MCENTIRE: No, I didn't strike it. I said -- my objection was nonresponsive. I will now follow it up with a motion to strike his answer.

THE COURT: Overruled. Okay.

BY MR. MCENTIRE:

Q Mr. Seery, you just told us that the interest rate was in the high single digits to in the 12 and 13 percent range.

A No, I was giving you the all-in return for the lender. That's a very different --

Q All-in return?

A -- thing for the -- than an interest rate.

Q That's even better.

A And it depended on the time.

Q Fair enough.

Q So if -- the shorter the duration, the higher the effective return, because he's not getting the return for as long a period of time. If I have $100 million and I get 10 percent, I get just $10 million. But if I have that out for $3 million, I've earned $30 million. So maybe that gets squeezed in the longer it's out.

Q And Farallon said that the interest rate or the return rate was not what they were looking for?

A They indicated two things. I believe I've said this several times. One is they said, this isn't really what we do, a $50-ish million dollar loan to do an exit. But we're in

the case. If you need us, call us. Included in that was, it doesn't look attractive enough to us because you're telling me other guys are more competitive.

Q Okay. And do you know what kind of rate of return they were going to get on the investment of the -- on the claims at a 71 percent projected return rate?

A If we only hit the plan, Farallon's two purchases, based on the numbers you get -- you gave, over a two-year period, would be 38.9 percent.

Q Okay, but we're going to talk about that in a second. Okay. How much -- how much did Farallon actually invest?

A I'd have to look back at your numbers. They're in your pleading. I don't know what they actually paid. I just have it from your pleading.

Q Okay. And do you have paperwork that -- can you (inaudible) calculation here?

A I have a calculator that, when I looked at your numbers, I ran that, and I --

Q I see. All right.

A I'm able to remember certain things.

Q So, so if it's projected that the internal rate of return is only six percent, do you disagree with that?

A A hundred percent disagree. There's -- that's virtually impossible.

Q Okay.

A And that's, by the way, for hitting the plan.
Q I'm sorry?
A That's for hitting the 70 -- the 71-and-change percent.
Q I want to ask you a question about that. The 71-percent-and-change --
A Uh-huh.
Q -- that came out of the plan for Class 8, --
A Yes.
Q -- that was for Class 8, correct?
A Correct.
Q There was zero expected return to Class 9, correct?
A That's correct. They would only get upside, and I think it says in the projections, based upon our view at the time, litigation that could ensue, and that was part of the plan.
Q And as I understand it, that 71-and-some-change --
A Uh-huh.
Q -- projected return rate never changed from the date of confirmation all the way up to the effective date. Am I correct?
A The -- we didn't change the projections that we'd filed with the plan because the plan was confirmed. We didn't need to change the projections that were filed with the plan.
Q The NDAs, as you understand it, can you tell me specifically when the NDAs were signed?
A I know it's the first week of April to the second week of

April. Blue Torch may have signed -- who actually ended up doing the financing -- they may have signed it a week or so before. They'd been around offering financing a number of times in the past.

Q Fair enough. But we know that you understood as of March 15th that Farallon had already made their investments? I mean, claims?

A That's what they told me in that email, yes.

Q Okay. When did Stonehill sign the NDA?

A In and around the same time.

Q But you don't know when Stonehill actually purchased their claims?

A I don't know exactly when. I know generally that by the end of April, early May, they were -- they were the holder of the Redeemer claim. And --

(Interruption.)

A -- I can't remember whether it was from them or whether it was from --

Q Did you ever communicate with Stonehill during the time that they were doing their due diligence on the exit financing?

A Yes.

Q Okay. Did they come to your offices?

A I don't know if we were back yet. I think we were back, but I don't recall them coming to our offices. I think it was

all virtual. It's early '21, so there would have been vaccines. It would have been very -- very -- I don't recall them coming to the offices at that time.

Q But just to be clear, you don't know, you can't give the Court a date when Stonehill actually completed their investments in either Redeemer or HarbourVest?

A No, I don't. I don't know. Did -- just --

Q That was my question.

A When you say Redeemer or HarbourVest, they never bought HarbourVest.

Q It was just Redeemer?

A Correct.

Q All right. You understand that Muck is an entity, a special-purpose entity created by Farallon?

A That's my understanding, yes.

Q And you understand Jessup is a special-purpose entity created by Stonehill?

A That's my understanding, yes.

Q Muck and Jessup are both on the Oversight Committee?

A They are. They -- those entities are the --

Q Is it the Oversight Committee or the Oversight Board?

A Same thing.

Q Fair enough.

A I'll consider them the same.

Q And there's a third member, too, correct?

A That's correct.
Q Okay.
A Independent member.
Q Okay. So you have a three-person board; is that right?
A That's correct.
Q And one of their jobs is to make decisions concerning your compensation?
A The structure of the Claimant Trust Agreement provides that I'm to negotiate with the -- either the Committee or the Oversight Board. And the compensation in the Claimant Trust Agreement is a base salary of $150,000, which is -- a month, which is the same as the one in the case, plus severance, plus a success fee. And it's very specific that that will be negotiated by the -- either the Committee or then the Oversight Board.
Q And Michael Linn, who Mr. Dondero has referred to, he's actually on the Oversight Board, is he not?
A He's the Muck representative on the Oversight Board.
Q All right.
A Yes.
Q If I understand it correctly, you are currently receiving, as the Trustee, $150,000 a month. Is that correct?
A That's incorrect.
Q What are you receiving?
A I receive $150,000 a month as the Trustee and the CEO of

Highland Capital.

Q Well, --

A So I have --

Q -- fair enough.

A I have both roles. The Trustee, for example, doesn't manage the team, they actually work for Highland Capital, and I'm the CEO of Highland Capital.

Q There was some suggestion that the $150,000 was something that the Court had passed upon prior to the effective date or part of the plan. This is a separate negotiated item that you -- that you allegedly negotiated that was awarded to you post-effective date, correct?

A That's false.

Q Okay. So the $150,000 had a discount that was supposed to drop down to $75,000 after a period of time. That never happened, did it?

A The -- you seem to be mixing concepts. But the $150,000 a month was set by the plan and the -- and the Claimant Trust Agreement as the "base salary." That wasn't going to move. When we -- it never was supposed to move.

When I began negotiating with the Oversight Board for the success fee, they pushed back and said, we would like that to step down. So in our -- I did not say, oh, that's a great idea. We ended up negotiating, and they included a provision that we would renegotiate depending on the level of work.

That's one of the provisions.

Q Okay. But renegotiate down to $75,000 after a period of time, but that never happened?

A Initially, I believe it was supposed to step down to $75,000 automatic, subject to renegotiation that it go back up, not a structure that I particularly liked. And since then, we've negotiated on that point.

Q So you currently are making $150,000 a month?

A That's correct.

Q How often do you come to Dallas?

A Usually I'm here at least once a month. Usually it's between two and four days.

Q Okay. And you have a staff here in Dallas at Highland Capital, correct?

A Yes.

Q How many people?

A Eleven.

Q Eleven people?

A Uh-huh.

Q Working full-time?

A Yes.

Q And you're still making $1.8 million a year?

A Yes.

Q You also have a bonus structure, correct?

A That's correct.

Q And that's performance-based?
A That's correct.
MR. MCENTIRE: Can you pull up the agreement please? Okay.
(Pause.)
BY MR. MCENTIRE:
Q All right. Do you see --
MR. MCENTIRE: We're having technical difficulty here.
BY MR. MCENTIRE:
Q All right. Can you identify this document?
MR. MCENTIRE: What exhibit number is this?
MR. MILLER: 28.
BY MR. MCENTIRE:
Q Exhibit 28.
MR. MCENTIRE: I believe this is already in evidence.
THE COURT: Hunter Mountain Exhibit 28?
MR. MCENTIRE: Yes, Your Honor.
THE COURT: Okay.
BY MR. MCENTIRE:
Q This is the memorandum of agreement. Do you see that?
A Yes.
Q On the third line, it says -- and your name is identified here. You're the Claimant Trustee, correct?
A Claimant Trustee/CEO.

Q Engaged in robust, arm's length, and good-faith negotiations regarding the incentive compensation program.

As part of this robust, arm's length, and good-faith negotiation, did you personally conduct any independent search in the marketplace?

A I did -- what do you mean by search in the marketplace?

Q Well, did you try to do a market study? I asked that question in your deposition.

A I didn't know if you were asking a different question.

Q Same question.

A You mean market study on compensation?

Q Yes.

A No, I did not.

Q Are you aware of whether or not any member of the Oversight Board or Oversight Committee did a market study?

A On compensation?

Q On compensation.

A I'm not aware that they did one, no.

Q So this robust, arm's length, and good-faith negotiation, as far as you know, is divorced from any market study database or -- or methods. Is that correct?

A I don't believe that's correct, no.

Q I see. So did -- was any third-party consultant hired?

A Not by me or Highland or the Trust, no.

Q All right.

MR. MCENTIRE: Can you scroll down a little bit, please?

BY MR. MCENTIRE:

Q You signed this agreement, correct?

A Yes.

Q And we have Michael Linn signing on behalf of Muck, who also is with Farallon, correct?

A That's correct.

MR. MCENTIRE: Scroll down.

BY MR. MCENTIRE:

Q And by the way, this is a heavily-redacted document. The redactions deal with what?

A The redactions deal with the portion that would go to the team as opposed to going to me.

Q Are we talking about the 11-member team?

A Correct.

MR. MCENTIRE: Can you scroll down? Stop. Go back.

BY MR. MCENTIRE:

Q So we have the assumed allowed claim amounts under Section D. Do you see that?

A Yes.

Q Class 9, $98 million and some change. Class 8, $295 million and some change. Then we go into the incentive payment tiers. Do you see that?

A Yes.

Q What's the purpose of the tiers?
A The purpose of the tiers was to set additional compensation so that, the more recovery, the higher the compensation. So, below Tier 1, there was really effectively no bonus, is my recollection. And then in each tier there would be a percentage.

So the first tier is $10 million. There would be a percentage of that $10 million that could be allocated for bonus. Then in the next tier it would be $56 million. A portion of that would be allocated for bonus. And it's weighted more heavily to the higher-recovery tiers, meaning it incentivizes both me and the team to try to reach deeper into Class 8 and Class 9 and get higher recoveries.

Q Okay. So the idea is, the more difficult it is to get the recoveries, the higher percentage you should get, because if you're successful then you should be rewarded accordingly? Is that kind of how it works?
A I'm not sure if difficult is the term, but it's a combination of both expertise, difficulty, and time.

MR. MCENTIRE: All right. Can you scroll down, please? Next page.

BY MR. MCENTIRE:
Q And here are your actual tier participations. They go -- you said basically nothing Tier 1, up through 6 percent. So Tier 1 is the 71 percent, right?

A It's .72 percent, and it's of the -- that's the first piece. You have to get to Tier 1. So if we had not -- I believe it's structured is if we don't get to Tier 1, for example, we don't hit the plan, right around the plan number of 71-and-change cents, then there wouldn't -- there wouldn't be upside.

So it was very much structured in a way that you had to perform. And then the better the performance, the bigger the percentages of the tier.

Q So, in theory, Mr. Seery, by the time you get down to Tier 4 and Tier 5, it's a little bit less certain that you're ever going to get there. Is that right?

A Well, out of the gate, going deeper was uncertain. It's a question of being able to execute well on the assets and being able to control the costs and being able to make distributions. It wasn't based on what we just got for the assets. It's actually based on actual distributions --

Q I understand that.

A -- to Class 8 and 9 claimants.

Q I understand that. And the idea is, is that it take a lot more effort -- the theory was it might take a lot more effort to get all the way to the bottom of Tier 5 to pay all the Class 9 claims, right?

A And maybe a little luck.

Q Yeah. And Class 10 is not even factored into this, is it?

A No, it is not.
Q And so you didn't consider Class 10. You stopped at Tier 5?
A That's correct.
Q So your entitlement to a 6 percent return, or a 6 percent bonus on the recoveries, you say it's there to incentivize you. You didn't expect that to actually happen, did you, when you signed this? Is that your testimony?
MR. STANCIL: I object to the form of the question. It mischaracterizes the agreement.
BY MR. MCENTIRE:
Q You didn't expect it to happen, did you, sir?
THE WITNESS: Well, the six --
THE COURT: Wait. I'm sorry. Could you rephrase the question?
MR. MCENTIRE: Sure.
BY MR. MCENTIRE:
Q Are you telling the judge that you really didn't expect that to happen and that's why you were entitled to a higher percentage?
A No. We didn't expect to reach Class 9 and go deep into Class 9, but we certainly held out the possibility that we could. And it's not six percent. It's six percent of the increment. These are cumulative. So you get .72 of Tier 1. You get 1.17 of Tier 2. And you can add those, and you earn

them when you've actually made the distribution, but you don't get paid until you get all your distribution or we're relatively done or there's a renegotiation. Because the Committee wanted to make sure that I didn't say, hey, I hit Tier 3, time to go, I got a better job.

Q So, Mr. Seery, if Farallon told Mr. Dondero that they wouldn't sell basically at any price because you said it was too valuable, and they rejected a 40 or 50 percent premium, if they said that, is that -- is that a lie?

A That I -- rephrase that, please. I don't -- didn't quite understand your question.

Q Yeah. You've heard the testimony that Farallon, Michael Linn, told Mr. Dondero that they were not going to sell their claim at any amount because you had told them it was too valuable. Is that a lie?

A I think that's -- yeah, I don't think that's true.

Q Okay. And obviously, if they're not going to be willing to sell at any amount, they must be pretty certain they're going to hit Tier 5. Would that just be a lie?

A That -- that conversation was before this negotiation. That -- there's no -- they could not have had any expectation, either when they had that conversation in May or when we had this discussion that I was going to hit Tier 5 and I hadn't hit Tier 5. And the idea that they wouldn't sell at any price is complete utter nonsense, because they're capped on what

they can get.

Q So if -- sure. Okay. So, but if Farallon told --

A But that's what you said.

Q If Farallon told Mr. Dondero that they wouldn't even sell at 130 percent of the purchase price because you told them it would be too valuable, is that a lie?

A I never told them it would be too valuable. I don't -- I don't know any of the other parts that you're saying, the 130 percent of an unknown number, some guess number that Mr. Dondero had. I never told them it would be too valuable. That would be their own assessment of where we were at the end of May 2021.

Q If they said that you told them not to sell, that it was too valuable, is that a lie?

A That's untrue, yes.

Q If they told him -- if they told him that he told you -- that you told them it was too valuable because of MGM, is that a lie?

A Yes.

Q How many shares of stock did Highland Capital own?

MR. MCENTIRE: Well, one second. What is my time? How much time do I have?

THE CLERK: Right now you're at --

MR. MCENTIRE: So I'm almost two and a half hours in?

THE CLERK: Just about. A little under.

BY MR. MCENTIRE:

Q I'm going to have to speed up here, Mr. Seery.

THE COURT: A little under two and a half, you said.

BY MR. MCENTIRE:

Q Mr. Seery, I want to make sure. Highland Capital owns interests in the CLOs. What is the CLOs' stake in the MGM stock, or what was it?

A Highland Capital does not own any interest in any of the CLOs it manages. It has a fee stream, and it can have certain deferred fees that it can get, but it didn't own any interest in any of the CLOs that it managed.

Q Fair enough. How about the portfolio companies?

A Did Highland Capital own interests in the portfolio companies?

Q Yes.

A Some of the ones Mr. Dondero listed, but they weren't portfolio companies. So he said OmniMax, but we didn't have any management of OmniMax. We just had debt that converted to equity, but we didn't control the -- the thing. That was during the case, the company.

Q Did Multistrat have an interest in MGM?

A Multistrat owned MGM, yes.

Q Okay. And did your company, Highland Capital -- your company -- Highland Capital have an interest in Multistrat?

A Highland Capital owns 57 percent of Multistrat, yes.

Q And did Highland Capital have an interest in any other portfolio companies that have an interest in -- had a stake in MGM?

A RCP. Restoration Capital Partners.

Q And do you recall what the value of that was?

A It shifted over time. I don't -- I don't know what time you're talking about.

Q And isn't it true that 90 percent of all the securities that Highland Capital owned at the time that the sale went public was roughly 90 percent of all of Highland Capital's securities?

MR. STANCIL: Objection, Your Honor. I don't know what that question is asking.

THE COURT: I don't understand it, either. Could you rephrase?

MR. MCENTIRE: I'll try to.

BY MR. MCENTIRE:

Q At the time that the announcement was made about Amazon buying MGM in May of 2021, what percentage of all the securities did MGM comprise of the securities that were owned by Highland Capital?

A Of the securities that were directly owned by Highland Capital, it may have been -- I'm thinking of public or semi-public securities, the 150,000 or 170,000 that we had that were subject to the Frontier lien. Might have been almost all

of the securities that we owned. It wasn't -- it was a good position, but it wasn't a huge driver for the directly-owned shares. There was more value in the Multistrat and the RCP.

Q What percent of shares of all --

MR. STANCIL: Your Honor, I'm sorry, I'm having trouble hearing the end of Mr. Seery's answers. So I know it's not his --

THE WITNESS: I'm sorry.

THE COURT: Okay. If you could make sure you speak into the mic.

THE WITNESS: Yeah. I'm sorry.

MR. STANCIL: I'm having trouble with Mr. McEntire talking over the end of Mr. Seery's answers.

THE COURT: Ah.

MR. STANCIL: I'm having trouble following.

THE COURT: Okay.

MR. STANCIL: I apologize.

THE COURT: Okay. Could you --

MR. MCENTIRE: I didn't know I was doing that.

THE COURT: Well, --

MR. MCENTIRE: I'll try to do better.

BY MR. MCENTIRE:

Q Mr. Seery, of all the stock that Highland Capital owned in May of 2021, what percentage of that was (inaudible) stock?

A Hopefully this is clear. Highland Capital did not own a

lot of stock. Highland Capital did have a direct ownership interest in MGM, so that might have been the vast majority of the stock that Highland Capital owned. It did own interest in other entities, like its investment in RCP or its investment in Multistrat. But of the stock that it owned directly, that was probably it, and that's the one that was liened up to Frontier.

Q Mr. Seery, did Highland Capital own approximately 170,000 shares of MGM stock in May of 2021?

A Yes. You -- I'm sorry. You asked me what percentage, and I think I said roughly that amount of stock liened up to Frontier, and that that might have been almost all of the stock we owned.

Q Does Highland Capital own a direct interest in HCLOF?

A In HC --

Q HCLOF?

A HCLOF? Yes. Highland Capital owns a small direct interest, and a large indirect interest which we got through the settlement with HarbourVest.

Q And the entity in which you acquired the indirect interest, what's the name of that entity?

A I don't recall. It's a -- it's a single-shell special-purpose entity that we own all of it and it has no other assets.

Q And just to make sure that the record is clear, you deny

under oath that HCLOF has any interest -- or had any interest in MGM stock?

A HCLOF has never owned MGM stock and still doesn't own MGM stock. It's never owned it.

Q Um, --

A At least -- at least, as long as I've been in this case.

MR. MCENTIRE: One second, Your Honor, please.

(Pause.)

MR. MCENTIRE: I'm going to have to pass the witness because of time sensitivities, Your Honor, so I'll pass the witness at this time.

THE COURT: Okay. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Seery?

A Yes, sir.

Q You just covered a lot of what we would have covered, so I want to be really, really quick here. Okay? We're not covering old ground. Let's just start with the HarbourVest settlement. Do you recall that Mr. Dondero sent the email to you on December 17th?

A Yes.

Q Okay. When did you reach the agreement with HarbourVest on the settlement?

A December 10th.

Q Okay.

MR. MCENTIRE: Your Honor, I'd like to move into evidence Exhibit 31. Actually, let me lay a foundation first.

Can you give the witness --

MR. MCENTIRE: Is this a new exhibit?

MR. MORRIS: No. It's Exhibit 31.

MR. MCENTIRE: Can I see it, Tim, please?

MR. MORRIS: It's in your box.

MR. MCENTIRE: Give me a minute.

MR. MORRIS: Uh-huh.

THE COURT: Okay. We're about to focus on Highland Exhibit what?

MR. MORRIS: 31.

THE COURT: Okay.

MR. MORRIS: Do you have it, Your Honor?

THE COURT: I do.

BY MR. MORRIS:

Q Do you have it, Mr. Seery?

A I do, yes.

MR. MORRIS: Do you have it, sir?

MR. MCENTIRE: I do. Thank you.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Can you just tell the Court what this is?

A This is an email chain. It starts from me to the other

independent directors, copying counsel, to outline the terms of the HarbourVest settlement that I had just made the offer to HarbourVest to settle on these terms on December 8th. And this was the product of a number of negotiations that had taken place over the prior weeks, and this was the final offer that I was making to them to settle.

Q Directing your attention to the bottom of the first page, the first email dated December 8, 2020 at 6:46 p.m., can you just read the first sentence out loud.

A I lost -- you lost me.

Q That begins, "As discussed yesterday."

A Oh. "As discussed yesterday, after consultation with John Morris" -- that would be you -- "regarding litigation risks, this evening I made an offer" -- it says "and," but it should have said "an" -- "offer to HarbourVest to settle their claims. The following are the proposed terms."

Q Okay. Just stop right there. And you were -- this is the report that you gave to the independent directors?

A The other independent directors.

Q Right.

A I was also one.

Q Right. And did Mr. Dubel respond?

A He did, yes.

Q And can you just describe briefly what your understanding was of his response?

A Dubel responds a couple hours after I sent the original email: "Jim, this basically looks like a $10 million -- net $10 million payment to HV." That's HarbourVest. "Is that correct? Does the 72-cent recovery include the $22-1/2 million that we get from the transfer of HCLOF interests? Remind me again, post-effective date, who is managing HCLOF?"

So I think my understanding was Mr. Dubel was querying me on some of the terms that I had set forth here, including that the value of the claim in our estimation was going to be about $9.9 million, meaning they would have a $45 million senior claim, a $35 million junior claim, and we thought, based on the values we had then, it was going to pay out about $9.9 million.

Q Okay. And was this offer accepted?

A Yes, it was.

Q When was it accepted?

A I think I just said. On -- on December 10th.

Q Okay. And did the terms that you described for the other independent directors on December 8th, did they change in any way at all from that reflected in this email until the time we got to the 9019 hearing?

A Not at all, no.

Q Okay. I see that you mention in here that you -- it says, quote, "The interests have a marked value of $22-1/2 million, according to Hunter Covitz." Do you see that?

A That's correct, yes.
Q Who's Hunter Covitz?
A Hunter Covitz was a Highland employee. He ran the structured products business. So he was responsible for making sure that the CLO we managed, which was AC7, was compliant and was -- with the indentures. He also was responsible for monitoring the -- what we call the 1.0 CLOs, even though they weren't really CLOs, they were more like closed-in funds. And he also kept track of the Acis -- CLOs that HCLOF had an interest in that were managed by Acis.
Q Okay. And do you recall how he conveyed to you the NAV?
A Well, I talked to him numerous times, so this wasn't our -- I didn't just call him up at the end and say, what's the NAV? I had had discussions with him while I was negotiating with HarbourVest. And at some point, he or someone -- he told me the amount, and at some point he gave me a NAV statement that actually showed the NAV of HCLOF, which at 11/30 was roughly $45 million.
Q Okay. Can you turn to Exhibit 31-A, the next document in the binder?
A Mine's completely blacked out.
THE COURT: I'm sorry, what number?
MR. MORRIS: 31-A.
THE COURT: Oh.
MR. MORRIS: And the first two pages are redacted

just because they're not relevant and they're business information.

BY MR. MORRIS:

Q But can you turn to the last page, sir?

A Yes.

Q Can you tell the judge what this is?

A So this is a net asset value statement from HCLOF. That's Highland CLO Funding, Limited. That's the Guernsey entity that -- that held these interests. And this is a net asset amount, and it shows what the net -- what the net asset value is as of this time on a carryforward basis of $45.191 million.

Q Okay. And where did you get this document?

A I believe I got it from Covitz. It's generated by an entity called Elysium, which is the fund administrator for HCLOF, and I believe they're out of Guernsey.

Q And did you rely on this document in setting the proposal to HarbourVest?

A Well, both the conversations with Covitz and the document. And frankly, HarbourVest got the same documents because they were -- they held a membership interest in HCLOF. So he -- Michael Pugatch knew what the NAV was.

Q And would Mr. Dondero or entities controlled by him who also have interests in HCLOF, is it your understanding that they would have also had this document available?

A All members would --

MR. MCENTIRE: Excuse me. Excuse me. I object to that question, the question being "and the entities controlled by Mr. Dondero." There's no foundation for this witness to answer a question like that.

BY MR. MORRIS:

Q Who else owned --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- an interest in HCLOF?

THE COURT: Go ahead.

THE WITNESS: It would have been DAF.

BY MR. MORRIS:

Q The DAF?

A Yeah.

Q Okay. Let's just ask this question. Is it your understanding that these NAV valuation reports were made to all holders of interests in HCLOF?

A Yes. And that would include the DAF. And I did leave off that there were three former Highland employees long gone, or at least not around at this point, who also owned very small interests, and they would have gotten those statements as well.

Q And does HCLOF also produce audited financial statements?

A It does, yes.

Q Can you go to Exhibit 60, please?

A Six zero?
Q Yes, sir. A couple of questions here. Is this a document that Highland would have received in the ordinary course of business?
A Yes, it is.
Q Okay. And what is the NAV depicted on this page as of the end of the year 2020?
A Well, you have to look through it, because this document is actually dated 4/21/21, --
Q Okay.
A -- which you can see on Page 10 where it's signed. And that shows a net asset value of $50.4 million as of 12/31/21. 12/20. I'm sorry. And -- but it wasn't prepared until -- the audits aren't done and we don't get this document until after the directors sign off in April.
Q Okay.
MR. MORRIS: And Your Honor, I move for the admission into evidence of these three HarbourVest-related documents, 30, 31-A, and 60.
MR. MCENTIRE: No objection.
THE COURT: They're admitted.
MR. MORRIS: Okay.
(Debtors' Exhibits 30, 31-A, and 60 are received into evidence.)
BY MR. MORRIS:

Q Okay. Let me move on. We've seen Mr. Dondero's email today. You've seen that before, correct?

A Yes.

Q Okay. What was your reaction when you got it?

A I was highly suspicious.

Q Why is that?

A Well, not to replow too much old ground, but this came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.

It also followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski being on it.

Furthermore, Pachulski had advised Mr. Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics.

And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

In addition, that followed the termination of the shared service arrangements, the approval of the disclosure statement, and the demand to collect on the demand notes that

Mr. Dondero and his entities were liable for.

So at that point, he'd been interfering with the business, he had threatened me, he was subject to a TRO, and I got this email and I was highly suspicious.

Q Did you ever share this email with anybody at Farallon?

A No.

Q Did you ever share this email with anybody at Stonehill?

A No. And just to be clear, not just the email, the contents. Never discussed it with them.

Q That was going to be my next question. Did you ever share any information about MGM with anybody?

MR. MCENTIRE: Objection. Leading.

MR. MORRIS: I'm asking the question.

MR. MCENTIRE: No, you're leading.

MR. MORRIS: This is the whole --

MR. MCENTIRE: You're leading the witness.

THE COURT: Overruled. Finish the question.

BY MR. MORRIS:

Q Did you ever share any information concerning with MGM with anybody at Stonehill before you learned that they had purchased claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No. No, I did not.

BY MR. MORRIS:

Q Did you ever share any information with anybody at Farallon concerning MGM before you learned that they purchased their claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I did not.

THE COURT: Overruled.

THE WITNESS: I'm sorry.

(Pause.)

THE WITNESS: You know, you just asked me something about Stonehill.

THE COURT: No.

THE WITNESS: I'm sorry.

BY MR. MORRIS:

Q Yeah. No question.

A I wanted to clarify one.

Q What did you want to clarify, sir?

A Certainly didn't share anything about this email, any of the contents of it. I don't know if I ever -- I don't know exactly when Stonehill bought their claims, and they were subject to the NDA to do the financing process. So I know when Farallon told me they had bought their claims and I know we never had any discussions at all before they acquired their claims, and I don't know when Stonehill got those -- their claims, so I don't know when -- what was in the data room or what -- what might have been discussed about MGM while they

were under an NDA.
Q Okay.
A But certainly nothing -- I never shared the contents of this email, the substance of this email, the email at all. That's what I wanted to clarify.
Q What data room are you talking about, sir?
A This was the data room related to the exit financing where we sought exit financing and ultimately got exit financing from Blue Torch Capital.
Q And who put together the data room?
A DSI, which was our financial consultants, and our finance team.
Q And why did you -- did you delegate responsibility for creating the data room to DSI and the members of your team you just identified?
A Yeah, of course.
Q How come?
A I don't really know how to put together a data room.
Q Did you -- did you direct them to put anything in the data room?
A Not specifically. We had a deck that we -- that certainly I worked on and commented on, which would have been a general overview of the -- of the post-reorganized Highland and the -- and the -- and the Claimant Trust. So I certainly commented on that. But the specific information in the data room, I

don't -- I never looked at it. I don't know what it is.
Q How many -- how many entities who were participating in the exit facility process wound up making bids or offers?
A There were five that signed NDAs. Three provided substantive proposals. One was verbal. That was Bardin Hill, who'd been contacting me throughout the case, and they do this kind of financing, and they submitted a competitive bid. Stonehill in writing, and then amended, a more aggressive one, in writing. And Blue Torch probably three, and the most aggressive.
Q And did you give the -- did you give the opportunity to your age-old friends at Stonehill?
A They're not my age-old friends. And no, they lost. They were second, they were close, it was a good real proposal, but they didn't win.
Q So, --
A Blue Torch won.
Q So is it fair to say that you -- did you pick the best proposal that you thought provided the best value for the company that you were managing?
MR. MCENTIRE: Your Honor, again, for the last ten minutes, we've had nothing but leading questions. And it just is --
MR. MORRIS: Fine. Happy to --
THE COURT: Sustained. Rephrase.

BY MR. MORRIS:

Q Why did you pick Stone -- why did you pick Blue -- Blue-?

A Blue Torch.

Q Blue Torch, over the other bids?

A It was the best bid. So, structurally, it was the least expensive, although they were extremely close. I had a lot of confidence in Blue Torch because this type of financing is what they do. And while you can never have a hundred percent confidence that if somebody goes through the -- this is an LOI, right, so this is a letter of intent. When they go further, they may -- they may not complete it. But I had a high degree of confidence that they would get there, because, again, that's what they do. And they were the -- they were just the better bid.

Q Okay. Do you recall that in Mr. Dondero's notes he wrote down that he was told that Farallon had purchased their claims in February or March?

A I saw that on what he claimed, yes.

Q And is that consistent with what you were told by Farallon in March?

A They told me they acquired the claims -- they had acquired the claims on March 15th, by email. I don't know if they acquired them in February or March. Or even January. I know they said they had them on March 15.

Q Did you ever speak with Farallon about anything having to

do with the purchase of their claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: Not -- not before they sent me that email.

MR. MORRIS: I apologize. Withdrawn.

BY MR. MORRIS:

Q Before -- before learning of their purchase, had you had any discussions with them about potential claim purchases?

MR. MCENTIRE: Objection.

THE WITNESS: No.

MR. MCENTIRE: Leading.

THE WITNESS: I'm sorry.

THE COURT: Overruled.

THE WITNESS: No, I didn't.

BY MR. MORRIS:

Q Okay. Before you learned that Stonehill had purchased claims in the Highland bankruptcy, had you ever had any conversation with them about the potential purchase of claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I don't -- I don't --

THE COURT: Overruled.

THE WITNESS: I'm sorry. I don't -- I don't believe so, no.

BY MR. MORRIS:

Q Do you have any knowledge at all as to how the sellers went about selling their claims?

A I have some knowledge now, post-effective date, that I believe I have some understanding, but not a great one.

Q Did you ever communicate with any of the sellers about the potential sale of their claims prior to the time their claims were sold?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: I did have a conversation with Eric Felton who was the Redeemer representative on the Creditors' Committee. And it came out of one of the emails I got. I think it indicated that --

MR. MCENTIRE: Objection, hearsay, Your Honor. I mean, hearsay, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: It's hearsay.

THE COURT: Okay. He's about to say something that's hearsay is the objection. Any response?

MR. MORRIS: I'm not offering it for the truth of the matter asserted. I'm offering it for Mr. Seery's state of mind and the extent of his communications. How about that?

MR. MCENTIRE: I don't see how you could offer it for anything other than for the truth of the matter asserted. It's coming from a third party, so I object to hearsay.

MR. MORRIS: Okay. You know what? We --

BY MR. MORRIS:

Q Other than the one conversation --

THE COURT: Are you withdrawing the question or do I need --

MR. MORRIS: Yeah. This is just --

THE COURT: Okay. You're withdrawing the question.

MR. MORRIS: I'll withdraw the question.

THE COURT: Okay.

BY MR. MORRIS:

Q Other than the one conversation with Mr. Felton, did you ever have a conversation with any seller prior to the time you learned that Farallon or Stonehill --

MR. MCENTIRE: Objection. Leading.

BY MR. MORRIS:

Q -- purchased the claims?

THE COURT: Overruled.

THE WITNESS: No.

BY MR. MORRIS:

Q Did you play any role in facilitating or recommending to Farallon or Muck that it purchase claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No. None whatsoever.

BY MR. MORRIS:

Q Did you play any role in facilitating or recommending that Stonehill or Jessup purchase claims?
A No.
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I'm sorry.
BY MR. MORRIS:
Q All right. Let's just finish up with compensation. Can you go to Exhibit 41, please? Can you just identify that document for the Court?
A This is the -- it's a memorandum agreement that sits on top of an outline. It is the December 2 incentive compensation agreed terms for Highland Capital --
Q Okay.
A -- and the Trust.
Q And when was this signed?
A It would have been -- the date is December 6th.
Q And --
A 2021. I'm sorry.
Q Okay. And when did you and the Committee members begin discussing your compensation package?
A Shortly after the effective date, which was August 11, 2021.
Q And were there any negotiations during that intervening three- or four-month period?

A Considerable negotiations during that period, yes.
Q Can you go to the last page of Exhibit 41? Can you describe that for the Court? I know it's hard to read, but --
A I --
Q -- the numbers don't matter so much as the infor... you know, just, can you just describe --
A Yeah.
Q -- what's being conveyed?
A So it's very hard to read, but it says -- because it's small -- Seery Proposal 1, Oversight Counter 1, Seery Proposal 2, Oversight Counter 2, and then it continues down. My recollection is that we had four or five rounds of back-and-forth that were meaningful. But it -- but it even took a detour in the middle, because it started with my proposal, which was pretty robust, and their response to me that they didn't like the structure or the amount, and so then we started talking about that. And then they -- after we were kind of hitting numbers and structure at the same time, they came back to me and said, stop, we've got to agree on the structure before we agree on the amounts.

MR. MCENTIRE: Your Honor, I'm going to object as it's hearsay and move to strike. This is -- he's not talking about the document. He's talking about something outside of the four corners of the document. I object to hearsay.

MR. MORRIS: Hearsay? There's no statement.

THE COURT: There was --

MR. MORRIS: It's a description of what happened.

MR. MCENTIRE: But he's actually referring to statements in his substantive comments.

THE COURT: Overruled. Okay.

MR. MORRIS: I move for the admission into evidence of Exhibit 41.

THE COURT: Any objection?

MR. MCENTIRE: That's the memorandum agreement, Mr. Morris? Is that it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: No objection.

THE COURT: Admitted.

(Debtors' Exhibit 41 is received into evidence.)

BY MR. MORRIS:

Q Can we go backwards to Exhibit 39, please? Can you describe for the Court what that is?

A This is a redacted copy of minutes of the board meeting on August 21 -- 26, 2021.

Q And there's a lot of stuff redacted there. Do you have an understanding as to why there is redactions?

A It would have nothing to do with these issues that we're discussing or the alleged *quid pro quo*.

Q Okay. Can you just read out loud the last portion that's unredacted on the second page, beginning with "Mr. Seery

reviewed"?

A It actually says, "Mr. Seery also presented the board with an overview of his incentive compensation program proposal, which would include not only Mr. Seery but the current HCMLP team. The terms and structure of the proposal had been previewed with the board in prior operating models presented by Mr. Seery. Mr. Seery reviewed the proposal and stated his view that the proposal was market-based and was designed to align incentive between himself and the HCMLP team on the one hand and the Claimant Trust beneficiaries on the other. The board asked questions regarding the proposal and determined that it would consider the proposal and revert to Mr. Seery with a counterproposal."

Q All right. When you were -- when you were shown one of these documents before, you were asked to identify Mr. Linn, but you weren't asked about the others. Do you see Richard Katz there?

A Yes.

Q Who's that?

A He's the independent member.

Q Did he play any role in the negotiation of your compensation package?

A Yes. He was actively involved.

Q Okay. And how about Mr. Provost? Who's he?

A He is the Jessup person. Jessup is the board member.

He's their representative on the board.

Q Okay.

MR. MORRIS: And I move for admission into evidence of Exhibit 39.

MR. MCENTIRE: No objection, Your Honor.

THE COURT: Admitted.

(Debtors' Exhibit 39 is received into evidence.)

BY MR. MORRIS:

Q Let's go to Exhibit 40, please. Can you just describe for the Court what that is?

A This is a subsequent board meeting minutes, August 30, 2021.

Q And can you just read into the record -- why are there redactions?

A Again, they would -- if there are redactions, it would have nothing to do with the issues that are being brought up in this motion.

Q And can you just read into the record the paragraph beginning, "Mr. Katz"?

A "Mr. Katz began the meeting by walking the Oversight Board and Mr. Seery through the Oversight Board's counterproposal to the HCMLP incentive compensation proposal, including the review of the spreadsheet and summary of the counterproposal. Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery asked numerous questions and received detailed responses from

the Oversight Board. Mr. Seery and the Oversight Board agreed to continue the discussion and negotiations regarding the proposed incentive compensation plan for the Claimant Trustee and the -- and the HCMLP."

Q So they didn't accept your original proposal that you made in the earlier document?

A They did not.

Q Okay. And did negotiations continue?

A They did, yes.

MR. MORRIS: Before we go on, I move for admission into evidence Exhibit 40.

THE COURT: Any --

MR. MCENTIRE: No objection.

THE COURT: It's admitted.

(Debtors' Exhibit 40 is received into evidence.)

BY MR. MORRIS:

Q Can you go to Exhibit 59, please? Can you describe for the Court what this is?

A This is an email string between me and the Oversight Board regarding the compensation proposal.

Q Okay. And directing your attention to the bottom, I guess, of the second page, there is an email from Mr. Katz dated October 26. Do you see that?

A At the bottom of the second -- oh, yes, yes.

Q Okay. Can you just read the sentence at the bottom of the

page beginning "We propose"?

MR. MCENTIRE: Well, Your Honor, I would, first of all, object to him just reading from the document until it's been put into evidence.

THE COURT: I'm sorry, say again?

MR. MCENTIRE: I would object to Exhibit --

THE COURT: We can't pick things up on the record when you don't speak in a mic.

MR. MCENTIRE: I object to him simply reading from the document before the document is offered into evidence.

MR. MORRIS: Okay.

MR. MCENTIRE: Accepted into evidence.

MR. MORRIS: Sure. I'd move it into evidence.

MR. MCENTIRE: I object as hearsay.

MR. MORRIS: This is a present sense recollection -- recorded. It's a clear business record. It's a negotiation that's happening over time. Mr. Seery is here to answer any questions about authenticity.

MR. MCENTIRE: Well, first of all, it's an email string involving communications with third parties. That's hearsay in and of itself. And it's not been established that this is a business record. And Mr. Morris's statements to that effect, frankly, don't carry his burden. There's internal hearsay contained throughout the document, Your Honor, even if it is a business record.

MR. MORRIS: Your Honor, just to be clear, let me respond.

THE COURT: Uh-huh.

MR. MORRIS: Exceptions to hearsay rule. 803(1) present sense impression; (2) -- (3) existing mental impression, state of mind about motive, (5) recorded recollection, (6) records of regularly-conducted activity, or Federal Rule of Evidence 807, residual exception for trustworthy and probative evidence. I'll take any of them.

MR. MCENTIRE: None of them apply.

MR. MORRIS: Okay.

THE COURT: Okay. Overruled.

MR. MORRIS: Thank you.

THE COURT: I admit it. 59's admitted.

(Debtors' Exhibit 59 is received into evidence.)

BY MR. MORRIS:

Q Can you just read that last sentence at the bottom of that page?

A This is from Rich Katz to me.

Q Uh-huh.

A (reading) We propose doing this in two stages. First, we'd like to come to agreement on structural, underscored, elements of the ICP.

ICP means incentive compensation program or plan.

Only after we'd done that, when the board had greater

understanding of what plan they were pricing, would we haggle out the specific numbers, underscore, tier attachment points, and percentage participation in each tier.

Q Okay. And going to the right-hand part of that, do you see where it says, Salary J.S. Only?

A Yes.

Q Can you just, you know, generally describe for the Court what the debate is or the negotiation that's happening on that particular point?

A Well, this was brought up earlier. The salary was $150,000 a month. That was the same salary that I'd had during the case that was approved by the Court. It had been approved by the Committee, approved by the other independent members. That was continuing. It was also contained as an actual base salary in the plan and the Claimant Trust Agreement, and they were never amended.

The Committee came back to me and said, we'd like that to step down. And they'd like it to step down on a definitive specific schedule, because they had a view that that would incentivize me to work faster to make distributions before the stepdown and that I wouldn't linger in the role. And the yellow --

Q Can you just read the yellow out loud?

A That's --

Q Read the whole thing.

A That's my response.
Q Read the whole thing.
A (reading) Based on the required expertise, volume, and personal risk of the work today, I do not think that any formulaic reduction in base comp is appropriate. With the complexity and amount of issues that I have to manage on a daily basis, I currently do not have capacity to take on significant outside work. Of course, things can change. If they do, I am open to discussing reduction in the base. I have no interest in sitting around doing nothing, having no risk, and collecting the full base compensation. We can include prefatory language and an agreement to revisit our terms, but I do not see an avenue to set parameters to lock in an agreement for the future at this time.
And then there's another paragraph on severance.
Q You can stop there.
MR. MORRIS: I have no further questions.
THE COURT: All right. Pass the witness.
MR. MCENTIRE: Do you have any questions?
A VOICE: No.
MR. MCENTIRE: Okay. How much time do I have, please?
THE CLERK: So, the limit is at two hours and 32 minutes.
MR. MCENTIRE: All right.

REDIRECT EXAMINATION

BY MR. MCENTIRE:

Q Just a couple questions very quickly, Mr. Seery. Highland Capital Management paid HarbourVest cash as part of the settlement, correct?

A That's incorrect.

Q There was no cash component at all?

A There was not.

Q And in connection with the HarbourVest settlement, HarbourVest transferred an interest in HCLOF to Highland Capital or an entity affiliated with Highland Capital; is that not correct?

A That's correct.

Q And that -- that entity -- and HCLOF, and HCLOF had an interest in various CLOs, correct?

MR. MORRIS: Your Honor, I object. This is beyond the scope of my cross, or redirect, however you prefer.

MR. MCENTIRE: Well, you spent a lot of time on HarbourVest. I'm just trying to clear it up.

MR. MORRIS: I didn't say the word CLO. I did not say the word CLO.

THE COURT: Overruled. He can go there.

If you'd please move the mic towards your voice.

BY MR. MCENTIRE:

Q And HCLOF had an interest in various CLOs, correct?

A I believe it had an interest in five CLOs. Oh, that's not true. It had an interest in five of the 1.0 CLOs. It also owned one hundred -- basically, somewhere between 87 and a hundred percent of Acis 3, 4, 5, 6, and 7, which is about a billion dollars of CLOs to 10 (inaudible) leveraged vehicles, and they owned basically all the equity, so that was the driver of the value.

Q And various entities that were -- I mean, some of these various CLOs had an interest in MGM stock, correct?

A The 1. -- the Highland 1.0s did. The value drivers I just described -- Acis 3, 4, 5, 6, and 7 -- had no interest in MGM.

Q But one of them did have an interest in MGM?

A That's not correct.

Q What did you just say?

A 3, 4, 5, 6, and 7 did not have any interest in MGM.

Q Were there any CLOs that had an interest in MGM?

A Some of the 1.0 CLOs did, --

Q I see.

A -- yes.

MR. MCENTIRE: Pass the witness.

MR. MORRIS: No further questions.

THE COURT: Mr. Seery, I want to ask you one thing.

THE WITNESS: Yes, Your Honor.

EXAMINATION BY THE COURT

THE COURT: We dance around it a lot. The Highland

ownership of MGM stock. If think -- if you could confirm I've heard this correct -- you said Highland itself owned 170,000 shares that were subject to a Frontier Bank lien?

THE WITNESS: Yes, Your Honor. I believe that's the right amount. So, Highland directly owned about 170,000 shares. Those were liened up to Frontier. They were -- they were never transferred. Highland never sold any MGM stock.

THE COURT: Okay. So Frontier still holds it or what?

THE WITNESS: No. In fact, post-effective -- I believe it was post-effective date, and with cash generated, we -- we paid off the Frontier loan, --

THE COURT: Uh-huh.

THE WITNESS: -- released that lien, and then we held those shares in MGM until the merger was consummated.

THE COURT: Okay.

THE WITNESS: So we tendered our shares into the -- into the merger and got the merger consideration, which was cash.

THE COURT: Okay. And so there was that. But other than that, you said Highland owned 50 percent of Multistrat, which owned some MGM stock?

THE WITNESS: Multistrat had a -- I don't recall the amount, but a material amount of MGM stock. That also -- so, Highland owned 57 percent of Multistrat. Is also the manager

of Multistrat.

THE COURT: Uh-huh.

THE WITNESS: Multistrat did not sell any MGM stock. It also tendered them into the merger as well.

THE COURT: Okay. And then you said Highland owned some percentage of Restoration --

THE WITNESS: Restorations Capital Partners.

THE COURT: -- Capital Partners, which owned some MGM stock?

THE WITNESS: Similarly, Highland is the manager of what we call RCP. RCP owned a material amount of MGM stock. RCP did not sell any MGM stock. However, in 2019, you'll recall that Mr. Dondero sold $125 million of stock postpetition out of RCP. It was MGM stock. He sold it back to MGM. We had a -- we had a hearing on it, because subsequently the Independent Board learned about it, the Committee learned about it, they had not -- it had not been disclosed, but there was a -- what we thought was a binding agreement with MGM, and MGM indicated that they were going to hold us to it, and so we had a hearing about approving that transaction. The Committee was not happy.

THE COURT: Okay. I'm fuzzy on when that was. You said?

THE WITNESS: That would have been in early 2020, probably April-ish timeframe.

THE COURT: Okay.

MR. MORRIS: Your Honor?

THE WITNESS: The transaction was in November, I believe.

MR. MORRIS: If it's helpful, Your Honor, you can find it at Docket 487.

THE COURT: Okay.

MR. MORRIS: I think that's the objection from the Committee where the issue was -- comes up at least at one time.

THE COURT: Okay. And then I think this is the last category I heard, that HCM and its specially-created sub owned just over 50 percent of HCLOF, and it in turn owns interest in a lot of CLOs, and a few of those, what you call the 1.0 CLOs, did own some MGM stock?

THE WITNESS: That's correct. So if you look on the audited financials that we had introduced into evidence, you'll see actually every asset that HCLOF owns. There's no MGM in there. It does own interest. There were minority interests in five or six of the 1.0 CLOs. Grayson, Greenbrier, Gleneagles, Brentwood, Liberty, and one other. And it had interest in those, but it never owned any MGM stock and it never traded any MGM stock. It didn't own any.

THE COURT: All right. Did I cover the universe of what MGM stock was owned by Highland or something Highland had

an interest in?

THE WITNESS: Yeah. So, the ones that HCLOF had an interest in that I just listed, those -- Jasper was the other one. I apologize. The -- they owned -- they owned MGM stock among their other -- they had a lot of other assets. The other CLOs, the 1.0 CLOs that Highland had, every one of them owned MGM stock. None of them sold or bought any stock. Those all tendered into the merger as well. Highland did not own any interest in any of those entities.

THE COURT: Uh-huh.

THE WITNESS: It just managed them.

THE COURT: Okay. And this is my last question. Someone brought up or it came up today that exactly two years ago today -- I didn't remember we were on an anniversary of that -- but was when we had a hearing, and I think it was a contempt hearing, but I had, I guess, read in the media, like many other human beings, an article about the MGM-Amazon transaction, and I had said I had hope in my heart and brain that this could be an impetus or a triggering event for maybe a settlement. And that was kind of quickly pooh-poohed, if you will.

Remind me why I was quickly persuaded, oh well, I guess that's not going to happen. I just can't remember what I heard that day.

THE WITNESS: Well, it was widely known that

Highland, meaning not the 171,000 --

THE COURT: Uh-huh.

THE WITNESS: -- but the entities that Highland or related entities, including DAF, the other Dondero entities, controlled a lot of Highland stock, as even Mr. Dondero said between Anchorage --

THE COURT: You mean MGM?

THE WITNESS: MGM, I'm sorry. Between -- there were only five major holders. There was the two we just mentioned and Davidson Kempner and Monarch and Owl Creek, and just a few other big holders.

And so Your Honor would have learned it from the case, but you also would have learned it from the paper, that any time a holder is mentioned, it's first Anchorage, because they owned the biggest piece, and Kevin Ulrich, who was the chairman of Anchorage, was also the chairman of MGM. And then Highland was always mentioned.

The reason that it didn't have some great amount of capital that went on to Highland, although there was money from RCP and there was money from MGM, is Highland doesn't own the stock that's -- or interests in the 1.0 CLOs that owned all of it. We just manage it.

THE COURT: Uh-huh.

THE WITNESS: And that goes to various other entities, including, in large part, to Dondero entities. So

there wasn't a big windfall to Highland from that.

The possibility of some upside from HCLOF, because it owned small interests in those five, there was some value in that, but a lot of it got tied up in the litigation that other entities, Dondero entities, are bringing against U.S. Bank and Acis, which has tied up everything in that -- those distributions.

THE COURT: Okay. All right. Thank you. You are excused from the stand.

THE WITNESS: Thank you, Your Honor.

MR. STANCIL: I owe you a docket number, Your Honor. You said don't let us leave before we give you a docket number for that second contempt order. We promised to come back. It was #2660.

THE COURT: Okay. Got it.

MR. STANCIL: Which -- did we move that into evidence?

MR. MORRIS: No. We asked the Court to take judicial notice.

THE COURT: I will take judicial notice of 2660, --

MR. STANCIL: Thank you, Your Honor.

THE COURT: -- I already said. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

(The witness steps down.)

THE COURT: All right. Are you going to have any other evidence, Mr. McEntire?

MR. MCENTIRE: Your Honor, as I respond to your question, I think we have 30 -- approximately 30 minutes left.

THE CLERK: Twenty-six, yes.

MR. MCENTIRE: Twenty-six. We do have another witness. We also have a closing final argument. And we also have an opportunity -- we want to reserve an opportunity for our experts that is still under advisement.

So my first action would be to ask for an extension of time, or we would like to add to our time limit. Instead of just three hours, we'd like to increase the time so we can accomplish all these things.

I mean, if the Court is unwilling to give us additional time, then I will be forced not to call another witness. I will move to a very short final argument. I need to preserve some time for my experts, should you allow them to testify.

THE COURT: Well, --

MR. MORRIS: May I respond?

THE COURT: -- you don't have to preserve time. I'm either going to allow you to put on your experts, and we said 30 minutes/30 minutes, --

MR. MORRIS: That was what I was going to say, Your Honor.

THE COURT: Okay.

MR. MORRIS: There's no prejudice here. Nobody's being harmed. There's no appellate issue. I thought we were really clear. Everybody gets their three hours today. We will file our reply brief on Monday. The Court will determine both whether it needs to hear expert testimony and whether or not our motion should be sustained. If the Court denies the motion, we'll take a couple of depositions and each side will get whatever period of time the Court orders.

But, you know, the attempts to create an appellate record are just -- you know, that's not -- there's no issue here. He can -- he's got 26 minutes. He can put on his witness, he can make his closing in the 26 minutes that they've always had.

THE COURT: All right. Well, we have --

MR. MCENTIRE: May I caucus? May I caucus very quickly, Your Honor?

THE COURT: Okay. Uh-huh. And while you're caucusing, we have our game plan on the experts. We know how that's going to happen. And I'm not extending the three hours.

MR. MORRIS: (sotto voce) We have 62 minutes?

(Pause.)

MR. MCENTIRE: Your Honor, accordingly, I'll just -- we'll move into a final argument at this time.

THE COURT: Okay. So you rest?

MR. MCENTIRE: I rest.

THE COURT: All right.

MR. MORRIS: We call Mark Patrick.

THE COURT: All right. Mr. Patrick, you've been called to the witness stand.

MR. MORRIS: I just need to find my examination notes. Just give me one moment, please.

THE COURT: All right. Please raise your right hand. Could you remain standing, please.

(The witness is sworn.)

THE COURT: All right. You may be seated.

MARK PATRICK, DEBTORS' WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Hi, Mr. Patrick.

A Hello.

Q Did you ever meet with anybody at the Texas State Securities Board?

A No.

Q Do you know if -- do you know anybody who ever met with anybody at the Texas State Securities Board concerning Highland?

A Yes.

Q And who met with the Texas State Securities Board concerning Highland?

A Ronnie (phonetic) Patel.

Q And is that a lawyer?
A Yes.
Q Do you know who retained Mr. -- that lawyer?
A Yes.
Q Who retained that lawyer?
A The DAF, the Charitable DAF Fund. Or one of its entities.
Q Okay. And is it your understanding that the DAF Fund or one of its charitable entities filed a complaint with the Texas State Securities Board?
A Yes.
Q Okay. Thank you very much. Does Hunter Mountain owe any money to Mr. Dondero?
A No.
Q Is there a promissory note that's outstanding that Mr. Dondero has pursuant to which Hunter Mountain owes him $60-plus million?
A No.
Q Who created Hunter Mountain?
A Well, I don't recall specifically. I just recall the facts that, when Hunter Mountain was created, Thomas Surgent, the chief compliance officer of Highland Capital Management, who was representing the Dugaboy Investment Trust as well as Highland Capital legally with respect to that transaction, requested to Rand that the Hunter Mountain Investment Trust be created for purposes of Highland filing its ADV with the SEC.

It was my understanding that when the ADV would be filed, sort of the ownership change would -- chain would stop at Hunter Mountain.

Q Okay. Dugaboy is Mr. Dondero's family trust, correct?

A No. But I'll help you along. Just please use the full name of the trust.

Q If I refer to the Trust, will you know that that's -- is that for the Hunter Mountain Investment Trust, or do you want me to use trust --

A There's no entity called Dugaboy. Just Dugaboy. There's not.

Q Okay.

A It's a shorthand. I'm --

Q Okay. I'll refer to Dugaboy then, okay?

A What are we referring to?

Q The trust known as Dugaboy.

A Okay. Fair enough. Go ahead.

Q Okay. Did Dugaboy contribute a portion of its ownership interest in Highland to the Highland -- to the Hunter Mountain Investment Trust?

A Contribute? No.

Q Did it transfer?

A Yes.

Q And did it receive in exchange a promissory note from Hunter Mountain?

A Yes, it did.
Q Okay. And Mr. Dondero is the lifetime beneficiary of Dugaboy, correct?
A Yes and no. It's a placeholder -- a placeholder provision that's never been used.
MR. MCCLEARY: Your Honor, pardon me. Pardon me. Objection, relevance, Your Honor.
THE COURT: Relevance?
MR. MORRIS: This is -- we've been told so many times that Mr. Dondero has no interest in this case, he has nothing to do with Hunter Mountain. He's the lifetime beneficiary of Dugaboy. And if I --
THE WITNESS: That provision has never been invoked. He's received no money through that provision.
THE COURT: Okay. Just wait. We're resolving --
MR. MORRIS: Right.
THE COURT: -- an objection at the moment.
BY MR. MORRIS:
Q Can we turn to Exhibit 51?
THE COURT: I'm still working on the objection.
MR. MORRIS: I'm going to try and lay a foundation. Okay?
THE COURT: Okay. So he's withdrawing the question.
MR. MCCLEARY: He's withdrawing the question? Okay.
THE COURT: Okay.

BY MR. MORRIS:

Q You have a binder in front of you, sir. Can you go to Exhibit 51?

THE COURT: And this is Highland's Exhibit 51?

MR. MORRIS: Yeah.

THE COURT: Okay.

BY MR. MORRIS:

Q And is that a promissory note that was made --

A Yes, it is.

Q -- that was made by Hunter Mountain in favor of Dugaboy back in 2015?

MR. MCCLEARY: Objection, relevance, Your Honor.

MR. MORRIS: I'm trying to connect Mr. Dondero to Hunter Mountain.

THE COURT: Okay. Overruled.

THE WITNESS: Yeah. It's a secured promissory note with the amount of approximately $62.6 million signed by Beacon Mountain, LLC, --

MR. MORRIS: Uh-huh.

THE WITNESS: -- as administrator for Hunter Mountain Investment Trust.

BY MR. MORRIS:

Q Okay. And as the -- what's your role with Hunter Mountain today?

A And it's in favor, just to answer your question, it's in

favor of the Dugaboy Investment Trust. That's where I was just being a little stickler --

Q I appreciate that.

A -- previously. Sorry.

Q I do.

A Okay. What is your question?

Q What's your role with Hunter Mountain today?

A I am the administrator.

Q When did you become the administrator?

A On or about August of 2022.

Q Okay. How did you become the administrator?

A Through the acquisition of Rand Advisors.

Q And does Hunter Mountain have any employees?

A No.

Q Does it have any operations?

A No.

Q Does it generate any revenue?

A Not -- not currently.

Q Okay. Did it generate any revenue in 2022?

A No.

Q Does it own any assets?

A Yes.

Q What does it own?

A It has -- it's my understanding it has a contingent beneficiary interest in the Claimants Trust.

Q And that's the only asset it has, right?
A Correct.
Q So that if it -- if that interest has no value, then Hunter Mountain has no ability to pay the Dugaboy note. Fair?
A (sotto voce) If that interest has no value?
That is correct.
Q Okay.
MR. MORRIS: I move Exhibit 51 into evidence.
MR. MCCLEARY: Your Honor, relevance. Objection.
THE COURT: Your response?
MR. MORRIS: Mr. Dondero desperately needs Hunter Mountain to win in this lawsuit because otherwise his family trust will get nothing on this $63 million note.
THE COURT: Okay. Overrule the objection. It's admitted.
(Debtors' Exhibit 51 is received into evidence.)
BY MR. MORRIS:
Q Neither you or any representative of Hunter Mountain has ever spoken with any representative of Farallon, correct?
A Correct.
Q Neither you nor any representative of Hunter Mountain has ever spoken with anybody at Stonehill, correct?
A Correct.
Q You have -- neither you nor Hunter Mountain have any personal knowledge about a *quid pro quo*, correct?

A (sotto voce) Nor Hunter Mountain have any personal knowledge about a *quid pro quo*.

Correct.

Q Neither you nor anybody at Hunter Mountain have any personal knowledge about how Mr. Seery's compensation package was determined, correct?

A Correct.

Q Neither you nor anybody at Hunter Mountain had any knowledge about the terms of Mr. Seery's compensation package until the Highland parties voluntarily disclosed that in opposition to the Hunter Mountain motion, correct?

A No. I --

MR. STANCIL: Objection, relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: No. I seem to -- I seem to have an awareness that the performance fee was amended at a certain time post-confirmation, or, you know, around the confirmation time period. And so that's with respect to the compensation. I -- just myself.

BY MR. MORRIS:

Q Can you tell Judge Jernigan everything you know or everything you knew before receiving Highland's opposition to this motion about Mr. Seery's compensation as the CEO of the Reorganized Debtor at the Claimant Trustee?

MR. MCCLEARY: Objection, Your Honor. That's

overboard and an unclear question.

THE COURT: Overruled. He's gone through some specific things now. I guess he's just trying to encompass anything we haven't covered.

THE WITNESS: Yeah. I had a -- I personally had a general understanding that Mr. Seery's compensation changed after the claims trading to put in a performance-based-type measure. But I do recall that it was always very -- it was unclear exactly the terms.

BY MR. MORRIS:

Q Okay. Did you learn anything else?

A Such as?

Q Just, did you ever learn anything else about Mr. Seery's compensation package that you haven't testified to yet?

MR. STANCIL: Your Honor, objection. Vague.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. MORRIS:

Q Okay. Neither you nor Hunter Mountain has any personal knowledge whatsoever about any due diligence that Stonehill did in connection with the purchase of claims, correct?

MR. MCCLEARY: Your Honor, he's getting into allegations in the complaint which involve attorney work product, so we object on the basis of invading the attorney work product.

THE COURT: Overruled.

THE WITNESS: Can you restate the question again?

BY MR. MORRIS:

Q Yes, sir. Neither you nor Hunter Mountain have any personal knowledge as to what due diligence Stonehill did before purchasing its claims in this case, correct?

MR. MCCLEARY: Objection. Attorney work product. Invasion of that. Could I --

THE COURT: I just ruled.

MR. MCCLEARY: I understand.

THE COURT: I just --

MR. MCCLEARY: Could I have a running objection to this line of questioning on that basis, Your Honor, invasion of attorney work product?

THE COURT: Why don't you explain why it's attorney work product. I'm missing --

MR. MCCLEARY: Because they might -- he would have knowledge from the efforts and investigation through attorneys in the case. I assume he's not asking -- you can't separate that, potentially. So he's getting into attorney work product.

MR. MORRIS: I'm asking for facts.

THE COURT: He's asking for facts. I overrule.

BY MR. MORRIS:

Q Can you answer the question, sir?

A Yeah. I'm not aware -- I'm not personally aware of how much work Farallon did, or Stonehill.
Q You have no knowledge whatsoever about the diligence Stonehill did before purchasing its claims, correct?
A Well, I would generalize now is that they did nothing.
Q And that's on the basis of Mr. Dondero's testimony, correct?
A I would just call it on a basis of our general inquiry, which would be including, in part, Mr. Dondero's testimony.
Q What else are you relying upon for your conclusion that you just described other than Mr. Dondero's? What other facts?
A Yeah, we -- yeah, we have not uncovered any facts that indicated that they did conduct any due diligence of any sort.
Q Okay. And are you -- do you have any personal knowledge as to what Farallon did in connection with its due diligence prior to buying its claim?
A Yeah. We have not been able to find any facts that would suggest that Farallon conducted any due diligence of any kind.
Q Okay.

MR. MORRIS: One second, Your Honor.

(Pause.)

BY MR. MORRIS:
Q Who's paying Hunter Mountain's legal fees?
A Hunter Mountain is paying -- is legally obligated and

paying its own legal fees.

Q If it generates no income and its only assets is the interest in Highland, where is it getting the funds to pay legal fees?

MR. MCCLEARY: Objection, Your Honor. This is irrelevant and invades the attorney-client privilege.

MR. STANCIL: Your Honor, I'm happy to read a Fifth Circuit case that says the identity of a third-party payer of attorneys' fees is not privileged. I would refer them to *In re Grand Jury Subpoena*, 913 F.2d 1118, a 1990 Fifth Circuit case. I can read from Judge Jones' opinion, but you tell me how much you want to hear on this.

THE COURT: Okay. I overrule your objection. He can answer.

THE WITNESS: There is a settlement agreement by Hunter Mountain Investment Trust as well as the Dugaboy Investment Trust that provides for the payment of attorney fees.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Okay. Cross?

MR. MCCLEARY: Yes, Your Honor, briefly.

CROSS-EXAMINATION

BY MR. MCCLEARY:

Q Mr. Patrick, how would you describe Mr. Dondero's relationship with Hunter Mountain Investment Trust today?

A None.

Q You were asked some -- let me ask you about litigation, and litigation involving the sub-trust. Has Hunter Mountain been involved in litigation with Mr. Kirschner?

A Yes.

Q Okay. And what is your understanding of Mr. Kirschner's role?

MR. MORRIS: Your Honor, while I would love for them to continue --

MR. MCCLEARY: He's the --

MR. MORRIS: -- to use their time, I object that it's beyond the scope of my examination. They passed on the witness. They rested their case. He should be limited to the scope of my inquiry.

THE COURT: Okay. How does this tie to direct?

MR. MCCLEARY: Your Honor, it -- just very generally. This is --

THE COURT: Okay. I need to know how it ties to the direct.

MR. MCCLEARY: This doesn't tie directly to the direct, Your Honor.

THE COURT: Then it's beyond the scope, you acknowledge?

MR. MCCLEARY: Yes, Your Honor.

THE COURT: Okay. Sustained, then.

MR. MCCLEARY: Okay.

BY MR. MCCLEARY:

Q Mr. Patrick, has Hunter Mountain Investment filed any litigation as a plaintiff other than its efforts to be a plaintiff in this lawsuit and its action as a petitioner in the Rule 201 matter earlier this year in Dallas state court?

A The 202.

Q 202, yes.

A No, it has not.

Q All right. And then it's -- has it been a party, then, to any other litigation other than the efforts to file this action, the Rule 202 action, and has it been a defendant in any lawsuits?

A To my understanding, no.

Q Is it involved as a defendant in the Kirschner litigation?

A Yes.

Q Mr. Kirschner is suing Hunter Mountain; is that correct?

A That is correct.

Q Okay. So, is Hunter Mountain a vexatious litigant?

MR. MORRIS: Objection, Your Honor. This is now really beyond the scope. We're not doing -- this is -- we're not doing it. I'm not letting -- because there's a vexatious litigant motion pending now in the district court right now before Judge Starr. This has nothing to do with anything I asked.

THE COURT: Okay.

MR. MCCLEARY: They're trying to draw --

THE COURT: You've already asked him is it a party in any other litigation besides the 202 and this attempted one, so where are we going with this?

MR. MCCLEARY: Well, they're just trying to draw Mr. Dondero into this and -- this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed -- attempting to file this action and a Rule 202 proceeding. So they're not involved in a lot of litigation and they're not a vexatious litigant.

THE COURT: Okay. I think I'll sustain that and we can just move on.

MR. MCCLEARY: Okay. Then I'll pass the witness. Thank you, Your Honor.

THE COURT: Okay. Any redirect?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right. You are excused, Mr. Patrick.

(The witness steps down.)

THE COURT: Anything else?

MR. MORRIS: Just a time check for both sides and let's get to closings.

THE COURT: Okay. Caroline?

THE CLERK: Movant has 23 minutes left and the Respondents have 47.

THE COURT: 23 and 47. Any other evidence from the Respondents?

MR. MORRIS: That is a fair question.

(Discussion.)

MR. MCCLEARY: Your Honor, I just want to confirm that all the exhibits that they did not object to have been admitted into evidence.

THE COURT: All right. Well, let me --

MR. MCCLEARY: We do offer them.

MR. MORRIS: Oh.

THE COURT: Hang on.

MR. MORRIS: Did I get Exhibit 45, Your Honor?

THE COURT: Just a moment. I'm doing two things at once here. 45 is in.

MR. MORRIS: Okay.

THE COURT: All right. On HMIT's exhibits, okay, first, as we all know, 29 through 52 are carried until -- if we have another hearing with the experts.

(HMIT's Exhibits 29 through 52 carried.)

THE COURT: I'm showing we have -- and speak up if anyone questions this -- I show that we have Hunter Mountain Exhibits 3 and 4, and then 7 through 10, 12 through 23, and 26 through 38, and 53 through 57, 64, 65, and then 67 through seventy --

(HMIT's Exhibits 3, 4, 7-10, 12-23, 26-38, 53-57, 64, 65,

67-70 are received into evidence.)

MR. MCCLEARY: Your Honor, I apologize. From 36 -- 26 to 32 are in?

THE COURT: I believe that was part of the stipulation, Mr. Morris, right?

MR. MCCLEARY: Yes.

MR. MORRIS: I think that's right.

THE COURT: Okay.

MR. MORRIS: We really didn't object to very many.

THE COURT: Yes.

MR. MCCLEARY: That would be 25, too. That would include 25?

MR. STANCIL: No. Objection. 25 is not --

THE COURT: It's not admitted.

MR. STANCIL: It's not in evidence.

THE COURT: 25 and 24 were not admitted.

MR. MORRIS: Correct. Those are my emails.

THE COURT: Okay. So --

MR. MCCLEARY: 25 is an article.

THE COURT: Your 25 was John Morris Email Re: Text Messages dated March 10, 2023.

MR. MCCLEARY: Okay.

THE COURT: Okay. I can't remember where I left off. I think I left off -- I'll just repeat after the expert exhibits that are carried. I've admitted 53 through 57. I

have admitted 64, 65, 67 through 71.

(HMIT's Exhibit 71 is received into evidence.)

Now, I'm not sure if I ended up admitting 72. That was the articles. I can't remember if you stipulated on that finally.

MR. MORRIS: I said they --

MR. MCCLEARY: They had no objection.

MR. MORRIS: -- they come in --

THE COURT: Not for the truth of the matter asserted.

MR. MORRIS: -- self -- exactly.

THE COURT: Okay.

MR. MORRIS: Self-authenticating.

THE COURT: So 72 is in.

MR. MCCLEARY: Okay.

(HMIT's Exhibit 72 is received into evidence.)

THE COURT: Then we had some pleadings. I think 73, 74, 75 are in, but again, not for the truth of the matter asserted in any advocacy on 73 and 74. And then 77, 78, 79 are in. And that's it.

(HMIT's Exhibits 73, 74, 75, 77, 78, and 79 are received into evidence.)

MS. DEITSCH-PEREZ: Your Honor, I didn't make an appearance, but I was taking notes (inaudible).

MR. MCCLEARY: Your Honor, I believe 80 should be in.

MR. MORRIS: No objection to 80. It's on our -- it's

part of our Exhibit 5.

THE COURT: Okay. 80 is in. Admitted.

(HMIT's exhibit 80 is received into evidence.)

MR. MORRIS: Yeah. That's really Section A of that thing that I gave you this morning.

THE COURT: If Ms. Deitsch-Perez wants to consult with the Hunter Mountain lawyers, she can. I don't know --

MR. MORRIS: Can I go through quickly mine, Your Honor? Because we actually never had the opportunity to put our exhibits in.

THE COURT: Okay. Let's make sure we're to --

MR. MORRIS: Okay. I'm sorry. I'm sorry.

THE COURT: -- closure on the Hunter Mountain exhibits.

MR. MORRIS: I'm sorry.

THE COURT: Anything I said that you disagree with? I don't think --

(Pause.)

THE COURT: Okay. Let's hurry up. What is the controversy?

A VOICE: Roger? The Court's addressing you.

MR. MCCLEARY: Oh. Excuse me, Your Honor. So, just a little unclear of whether you have Exhibits 21 through 25 admitted.

THE COURT: I have 21, 22, and 23. Not 24. Not 25.

Okay. Anything else?

MR. MCCLEARY: Okay. Then we do offer 24 and 25.

THE COURT: You offered them. I did not admit them.

MR. MCCLEARY: Okay. 76. I believe -- was that -- you're carrying?

MS. DEITSCH-PEREZ: Carried.

MR. MCCLEARY: You're carrying that?

THE COURT: Okay. I carried that and --

MR. MCCLEARY: It's part of the expert issue.

THE COURT: Okay. Yes, part of the expert. So it's carried.

(HMIT's Exhibit 76 is carried.)

(Pause.)

MR. MCCLEARY: I understand you've admitted 53 through 83, although some of them have now not been approved.

THE COURT: All right. Well, we need to clarify. 58 through 63, you think you offered them and I admitted them, but not for the truth? I remember that being discussed for 58 through 63. Are you actually offering them?

MR. MCCLEARY: Yes. 58 through 63.

THE COURT: All right. And Mr. Morris, you ultimately agreed that yes, but not for the truth of the matter asserted?

MR. MORRIS: That's right, Your Honor.

THE COURT: Okay. So they are admitted. Okay.

(HMIT's Exhibits 58 through 63 are received into evidence.)

THE COURT: And then there was an objection to the Mark Patrick declaration for the same thing, not for the truth of the matter asserted.

MR. MORRIS: Exactly.

THE COURT: But you agree as long as it's --

MR. MORRIS: Correct.

THE COURT: Okay. So what that means is, to recap, 53 through 75 are admitted, although some of those are only -- they're not for the truth of the matter asserted. And then 77 through 80 are admitted. Okay?

MR. MCCLEARY: And 76? We offered 76.

THE COURT: That's -- we carried it. We carried it. It relates to the expert.

MR. MCCLEARY: Carried it.

(Pause.)

MR. MCCLEARY: Thank you, Your Honor.

THE COURT: Okay. Now let's straighten out Highland's exhibits. So, I'm showing 1 through 16 have been admitted, and then 25 through 31-A?

MR. MORRIS: 25 through 31-A?

THE COURT: I'm sorry. Yes. 25 through 31-A.

MR. MORRIS: Okay.

THE COURT: And then 34. And then 39, 40, 41, and

then 45. 51, 59, and 60.

MR. MORRIS: Okay. So I'm going to do my best not to burden the Court. I'm trying to focus. We move for the admission into evidence of Exhibit 32, which is Mr. Dondero's objection to the HarbourVest settlement. And the reason that we're offering it is because he made no mention of any concern at all that the settlement implicated material nonpublic inside information.

THE COURT: All right. Any objection?

MR. MCCLEARY: 32?

THE COURT: Uh-huh.

MR. MCCLEARY: Yes, Your Honor. Relevance and hearsay.

THE COURT: Overruled. And I can take judicial notice of it in any event.

(Debtors' Exhibit 32 is received into evidence.)

MR. MORRIS: We move for the admission into evidence of Exhibit 33, which is the recent letter from the Texas State Securities Board declining to take any action after conducting an investigation of the Dugaboy complaint.

THE COURT: Okay. Any objection?

MR. MCCLEARY: We object on the grounds of relevance, 403, hearsay, and authenticity, Your Honor.

And I also, I think it's important that the decision by a regulatory body has no bearing on this cause of action or the

colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry, Your Honor.

THE COURT: Okay. I overrule the relevance objection. Certainly, it goes to colorability. It's some evidence. It's some evidence. A regulatory body did not choose to go forward --

MR. MCCLEARY: But that could be for --

THE COURT: -- on the complaint.

MR. MCCLEARY: That could be for reasons entirely unrelated.

THE COURT: True, true. It's some evidence.

MR. MORRIS: That's speculation.

MR. MCCLEARY: Not for this.

THE COURT: But what is the authenticity objection?

MR. MCCLEARY: Well, there's no demonstration. I don't believe they sponsored that with anyone.

THE COURT: Pardon? Say again?

MR. MCCLEARY: They didn't sponsor that with anyone.

MR. MORRIS: Your Honor, I actually -- if they really put me to it, because I was reading the Rules of Evidence in the wee hours of the morning, I am certain that there's an exception for government documents and government statements and government decisions.

MR. STANCIL: Your Honor, as to its authenticity, I

could produce a witness from Highland who said they got it, if that's really what we're doing. That it's the letter, they got it from the TSSB, if we're really doing authenticity.

MR. MCENTIRE: Well, first of all, it's hearsay and there is no authenticity issue and it's irrelevant. I understand --

MR. STANCIL: What is the authenticity issue, Mr. McEntire?

THE COURT: I'm trying to understand the authenticity issue. You think this is a --

MR. STANCIL: Do you think it's a real letter or a fake letter?

MR. MCENTIRE: Well, first of all, I'm going to address the Court and not you, okay?

Your Honor, --

THE COURT: Well, address by speaking in a --

MR. MCENTIRE: Yeah. Thank you.

THE COURT: Okay. I'm just saving the court reporter from grief, okay?

MR. MCENTIRE: It is hearsay, and it is hearsay that is calculated to be misrepresented or mischaracterized because it's utter speculation as to the basis for their decision. And if it's -- utter speculation is the basis of your decision, it has no reason to come in. There's no --

THE COURT: What you're telling me, it goes to the

weight of the evidence. Okay?

MR. MCENTIRE: Your Honor, --

THE COURT: Okay. You're not telling me it's inadmissible hearsay.

MR. MCENTIRE: Well, it is inadmissible hearsay.

MR. MORRIS: Can I just, for one second?

THE COURT: Please.

MR. MORRIS: Paragraph 34 of their motion, Your Honor. Quote, "The Court also should be aware that the Texas State Securities Board opened an investigation into the subject matter of the insider tradings at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached adversary proceeding are plausible and certainly far more than merely colorable."

They used the investigation to try to convince you that their claims are colorable, and now we have a letter saying there's nothing.

THE COURT: Okay. You want to explain that to me?

MR. MCENTIRE: Well, we put no evidence in, in this proceeding --

THE COURT: You put what?

MR. MCENTIRE: We have put no evidence in, in this proceeding, --

THE COURT: You filed a pleading under Rule 11

suggesting this was highly relevant, right?

MR. MCENTIRE: We filed a motion. Yes, we did.

THE COURT: Under Rule 11.

MR. MCENTIRE: Yes. Of course we did.

THE COURT: Okay.

MR. MCENTIRE: Of course we did.

THE COURT: Suggesting this Texas State Securities Board complaint and investigation was highly relevant.

MR. MCENTIRE: The fact that it had opened an investigation and was conducting an investigation is irrelevant. Its decision to stop the investigation without further elaboration or clarification, this is why it calls for utter speculation.

MR. MORRIS: Your --

THE COURT: Okay. Do you have the hearsay exception that applies? I'm looking at my evidence rules right now for the government record or public record. Is it 803(8) that we need to have addressed here?

MR. STANCIL: 803(8), Your Honor.

A VOICE: Yeah, public records.

THE COURT: Okay.

MR. STANCIL: Public record. Sets out --

THE COURT: Public records, 803(8), hearsay exception. Moreover, you pled allegations suggesting this investigation was really relevant. So I overrule your

objection, and so that means 33 is admitted.

(Debtors' Exhibit 33 is received into evidence.)

MR. MORRIS: Thank you, Your Honor. I continue. Exhibit 36 --

MR. MCENTIRE: Which one was that?

MR. MORRIS: That was 33.

So now we're up to 36, Your Honor. I'm going to skip some of these.

THE COURT: Okay.

MR. MORRIS: But this is just the Court's order approving Mr. Seery's original --

THE COURT: I'm waiting for any objection for the record. Do we have an objection, Mr. McCleary?

MR. MCCLEARY: 36, relevance, Your Honor.

MR. MORRIS: The relevance is that this Court approved without objection Mr. Seery's compensation package in an amount that included a base salary of $150,000, which the Claimant Purchasers and the independent director saw fit to continue.

THE COURT: Objection overruled. It's admitted.

(Debtors' Exhibit 36 is received into evidence.)

MR. MORRIS: I think 38 may be on their list. Yeah, 38 is in as their 26, right? So that should be admitted.

THE COURT: Admitted.

(Debtors' Exhibit 38 is received into evidence.)

MR. MCCLEARY: If it's on our list, we agree.

THE COURT: Okay. It's admitted.

MR. MORRIS: That's it, Your Honor.

THE COURT: Okay. Do you all need a five-minute break before we do closing arguments?

MR. MORRIS: I'd be grateful.

THE COURT: Okay.

MR. MCCLEARY: Yes, Your Honor. Thank you.

THE COURT: Will do.

THE CLERK: All rise

(A recess ensued from 5:49 p.m. to 5:57 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated.

We're back on the record in the Highland matter. Closing arguments. Just for everyone's benefit, time -- you said 47 minutes and 23 minutes back several minutes ago, and then we had all the housekeeping stuff. So I'm not sure if that's where we are right now or if --

MR. MCENTIRE: I'm waiting for my monitor guy to be here.

THE COURT: Okay. Okay.

So Caroline, is it still 47 and 23?

THE CLERK: Yes.

THE COURT: That's when we started the housekeeping stuff.

MR. MCENTIRE: So 27 minutes?

THE COURT: Twenty-three.

THE CLERK: Twenty-three.

MR. MCENTIRE: Twenty-three? Can I get a five-minute warning, please? Would you pull up the PowerPoint? And let's go to Slide 39.

May I proceed, Your Honor?

THE COURT: You may.

CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: So, before I go to the PowerPoint, I'd like to kind of give a high-altitude overview of the situation as I see it from the evidence perspective. We don't believe this should have been an evidentiary hearing. Evidence has been allowed.

We had a situation where, if you believe Mr. Dondero's testimony as contrasted with Mr. Seery's testimony, you have a credibility issue. So the Court is now conducting an inquiry presumably on the basis in part on the credibility of witnesses. And if you engage -- and if you want to indulge that type of inquiry, the credibility of witnesses, without allowing the Plaintiff in this case or the Movant in this case to conduct some level of meaningful discovery, I would suggest we have been deprived of due process, because without documents to test Mr. Seery's statements, we are being deprived of something that's basically very fundamental in our

judicial process.

And therefore, it underscores our argument and our rationale why this shouldn't be an evidentiary hearing, because I don't believe the Court can consider credibility issues.

We have, on the one hand, unequivocal notes from Mr. Dondero prepared contemporaneously that would suggest that someone admitted to him and stated to him that they did in fact obtain material nonpublic information. Mr. Seery says that didn't happen. I specifically said, is that a lie? Yes, it's not true. Well, that's a real problem, because that's not the criteria that this Court should use for determining whether we have a colorable claim. A colorable claim is whether there is some possibility. It's something less, even less stringent than a 12(b)(6) standard, plausibility. We have that.

If you look at our pleadings, we have set forth all of the facts we need, all the elements we need to establish a trade on material inside information, nonpublic information. We have evidence -- we have allegations that there was no due diligence. And Farallon's lawyer stood up here -- well, I'm not going to really address that today. But if there was any day to address it, it was today. We have no evidence to suggest they did do due diligence. Even Mr. Seery said, I don't know what due diligence they did. We have evidence to

suggest that the only due diligence they did was to talk to Mr. Seery, who has told -- who told them that this is very valuable, don't -- this is a really good -- a good investment here, it's a lot better than the 71 percent that's on our disclosures.

And Judge, that evidence supports the colorability of the claim. And if you go down the pathway of saying, well, I'm not sure about Mr. Dondero because he had been held in contempt two years ago, that's a real problem. That's a problem for this Court. And I'm going to suggest that's why this should have been a four-corners deliberation. Even Farallon and Stonehill suggest this should be a four-corners deliberation.

We have evidence now of no due diligence. We have evidence before you that suggests that they did learn about MGM before the announcement date. We have evidence that Mr. Seery did trade on -- did -- was aware and received information of material nonpublic information. And for him, a CEO of his reputed stature, to sit here and say that was not material and that was nonpublic defies common sense. It defies reasonableness. That goes to credibility.

Mr. Dondero's notes speak volumes. The trades themselves speak volumes. Mr. Dondero established that the interest -- return of interest here is to be less than one -- it's in the one digits, and hedge funds trade in the 30, 40, 50 percent

range. Well, if that's the case, we have Farallon walking away from a return on the exit financing of 13 percent, and that wasn't good enough for him. How could six percent be good enough for him? There's something missing here. There's something not right.

And we're entitled to get our lawsuit on file and do some discovery. And if they want to do a 12(b)(6), they do a 12(b)(6). If they want to do a Rule 56 after discovery, they could do a Rule 56, all in this Court. But to address this threshold issue now based upon this, what happened here today, is a fundamental denial of due process.

I'd like to go to my pleadings.

Can you go to Slide 39, please?

First of all, let there be no doubt -- 39. Slide 39. 38. 38, please.

We can plead on information and belief. We have a right to plead on information and belief. And the Fifth Circuit -- that is an acknowledged procedural practice in the Fifth Circuit. And if some of our allegations are based upon information and belief, so be it. The test here is not at this stage. The test here is whether I have sufficient factual allegations, whether on information and belief or otherwise, to satisfy at most a plausibility standard. That's it.

And if they want to challenge us at a later date, they

can. Rule 56. 12(b)(6). Or standing. But we have standing. We have standing. We have standing under Delaware law. We're a contingent beneficial interest that has standing under Delaware law and all other law. All -- even Texas agrees that a contingent interest has standing, an inchoate interest as Mr. Seery described. A property interest. You have property interest, you have standing.

THE COURT: Let me ask you.

And Caroline, turn the clock off when the Court interrupts.

Just so you know, I mean, my analysis here is standing first. Does your client have standing? Because we all know that's a subject matter jurisdiction inquiry and I have to explore that first. And then I've said many times the legal standard question for colorability. That's kind of the second place I go --

MR. MCENTIRE: Sure.

THE COURT: -- if I find there's standing. But can you tell me, have there been appellate decisions that are relevant today on standing? Contrary to what people may expect, I don't follow every appellate decision from every appeal in the Highland case. Okay? I wait until I get a mandate --

MR. MCENTIRE: Sure.

THE COURT: -- to where I have to act on something.

MR. MCENTIRE: Sure.

THE COURT: So I feel like I've learned at some point that some either district judge or Fifth Circuit said some party didn't have standing. And I don't know if it was Hunter Mountain or some other trust.

MR. MCENTIRE: Not --

THE COURT: And is there anything they said that, if it wasn't Hunter Mountain, could be relevant here?

MR. MCENTIRE: I hope somebody kicks me if I'm wrong, what I'm about to say. I'm not aware of any such issue --

THE COURT: Okay.

MR. MCENTIRE: -- dealing with Hunter Mountain Investment Trust. I am not.

THE COURT: But any other party that might somehow bear on this case?

MR. MORRIS: I apologize, Your Honor, I was distracted. For which issue?

THE COURT: Standing. Because I was saying my first thing I've got to tackle in ruling on this is standing of Hunter Mountain. And I seem to remember learning that either the district court on an appeal or the Fifth Circuit on some appeal from Highland --

MR. MORRIS: Correct.

THE COURT: -- said some party didn't have standing.

MR. MORRIS: Correct.

THE COURT: And I don't know if it was --

MR. MORRIS: Dugaboy on the 2015.3, for sure, was a Fifth Circuit standing decision.

THE COURT: Okay.

MR. MORRIS: I think there was a district court order that preceded that.

THE COURT: Okay.

MR. MORRIS: That was the subject of the appeal.

THE COURT: The Dugaboy --

MR. MORRIS: 2015.3.

THE COURT: -- motion to require those --

MR. MORRIS: Yeah.

THE COURT: -- 2015.3 statements. Okay.

MR. MCENTIRE: So what we have here -- we can go back on the clock if you'd like.

THE COURT: Yes, please.

MR. MCENTIRE: How much time do I have?

THE CLERK: You have just under 16 minutes.

MR. MCENTIRE: Sixteen? Okay. Give me a two-minute warning. Sorry.

Your Honor, what we have here --

THE COURT: I don't think the U.S. Supreme Court justices will give you a two-minute warning, but maybe I'm wrong.

MR. MCENTIRE: Would you give me a two-minute

warning, please?

THE COURT: And I'm sure not a Supreme Court justice.

MR. MCENTIRE: What we have here is we have a 99.5 percent equity interest that has now been relegated to a category of contingent interest, which we don't believe we should be, and that's part of our declaratory judgment relief we're asking for, which we have standing to do that at a minimum because we want to be treated like a Class 9.

If they want to treat us like a Class 10, I have an argument for that, and it's more than colorable. It's persuasive. It's -- it is a winning argument. And that is we do have standing in our individual capacity, and we have given you a whole bunch of cases in our PowerPoint, or we will give you a whole bunch of cases in our PowerPoint and in our briefing to support that.

We also have given you Delaware case law that says we have standing under Delaware trust law to bring a derivative action against the Trustee. We have done everything appropriate here.

We have the -- a demand upon Seery obviously would be futile to prosecute the claim. A demand upon the Oversight Board would be futile to make a demand on Muck and Jessup, because they're Defendants and they're SPEs of Farallon and Stonehill. And a demand upon Mr. Kirschner would be futile. They suggest that there's an assignment of some sort, but that

would be a modification -- of the claims over to the Litigation Trust, but that would be a modification of the plan.

There's been no assignment of this claim, or these claims, to the Litigation Trust Trustee. But even if there had been, we pled that in the alternative as well. And it would be futile to make a demand on Mr. Kirschner because he's suing Hunter Mountain.

So we are an appropriate party. The only, then, issue becomes whether or not we have standing under Delaware law to bring a derivative action. And we have briefed that and we -- and that's included in our PowerPoint. The answer is yes.

I'd like to go briefly to Page -- next slide.

In our factual section, we set forth why this investment would defy any kind of rational economic sense in the absence of material nonpublic information as a factual allegation supported by data, supported by dates, supported by time.

Based upon that, we also have allegations that are framed around the admissions that Mr. Michael Linn provided. We have allegations that he turned down a 30 or 40 percent premium in our petition. We have allegations that they admitted that they did no due diligence. We have allegations that they admitted that they got material -- basically information about MGM.

And again, it's not all about MGM. It's about the values

of all the portfolio companies. They want to make it about MGM. If they do, we win. But it's much broader than that.

And we have standing to bring this claim because if we're right Mr. Seery will have to return excess compensation and the Claims Purchasers will have to disgorge. And that's going to help not just Hunter Mountain. That's going to help other creditors who haven't been paid yet.

So this is not exclusively -- Hunter Mountain would substantially benefit. I'm not suggesting otherwise. But it also benefits innocent stakeholders other than Hunter Mountain. And that's why we are an appropriate party. We don't have a conflict of interest to bring this. Everybody on their side of the table does. There's no one else who could bring this.

Your Honor, it's very clear when the trades took place. We give dates and times. It's very clear that -- next slide, 40. It's very clear that their investment was over $160 million. If it isn't, I don't see any denials. All we got today was a lame statement from the lawyer saying we're not here today to deny this.

MR. MORRIS: I'm offended.

THE COURT: He's offended by being called lame.

MR. MCENTIRE: Not you lame personally.

MR. MORRIS: Oh, thanks for the clarification.

THE COURT: Okay.

MR. MCENTIRE: A lame statement by you. In fact, it wasn't even you, so --

In any event, Your Honor, --

MR. MORRIS: I've been called worse.

MR. MCENTIRE: -- the point being is that there was no -- there's not -- never been an attempt to deny the factual allegations in our pleadings dealing with Farallon and Stonehill. None at all.

And so -- not that that's ultimately relevant, because that's an evidentiary issue outside of the four corners of our pleading, but it does -- it just stands out and screams. It screams. And it screams volumes.

So right, now based upon our pleadings -- we even plead in Paragraph 42, Paragraph 42, exactly what they invested. This is what you have before you. No one has disputed it. It's in the four corners of our pleading. We've got dates, times, amounts. We have admissions to Mr. -- well, we have admissions from Michael Linn, Paragraph 47. We have -- we do plead upon information and belief the *quid pro quo* on compensation. And frankly, the evidence here today is that the compensation is excessive. And the experts will further confirm that it is excessive. $1.8 million with a bonus program in place to pay him another $8, $9, $10 million, when in fact the risks don't exist and there's no uncertainty and therefore the percentages make no sense. That's --

THE COURT: What do you mean, the risks don't exist and there is no uncertainty?

MR. MCENTIRE: If Mr. Seery is telling Farallon and Stonehill don't sell, this could be really valuable, it's inconsistent with the notion that the schedule and the performance -- performance schedule in the compensation agreement is rationally justified. Because if it's really certain or it's likely you're going to make a lot of money, there's no reason to give him six percent to incentivize him because it's already a done deal.

And the whole point here is that I scratch your back, you scratch mine. They make a lot of money on their deal and he gets a lot of money on the backside post-effective date. Post-effective date.

Next slide, 49.

It would have been impossible, based upon the publicly-available information in Paragraph 49, impossible for Stonehill and Farallon, in the absence of inside information, to forecast any significant profit when they made their investments. It's not possible. Because given the amount of the Claim 8 and Claim 9 claims -- they actually invested in Claim 9 with a zero return. It's projected to be a negative result. On Claim 8, even if you allocate their entire purchase price to Claim 8, they're going to get something less than a 10 percent return paid out over a couple years. Nobody

invests that kind of money in an unsecured creditor asset that hasn't been collateralized. There's something wrong here.

And we have a right to have our day in court to show that. We have our right to take a true deposition of Mr. Seery with documents. We have a right to take Farallon and Stonehill's deposition with documents. And we have tried to get information and we have been turned down at every turn. We have a right to have our day in court, Your Honor.

We have allegations of excessive compensation. I know Mr. Morris suggested the other day that we didn't have any such allegations. They're here. The whole idea here is that Mr. Seery would really profit on the backside. And, you know, he actually testified, I believe -- I won't do that because that's outside the four corners of our pleading. But the -- there is a *quid pro quo*. We allege there's a *quid pro quo* upon information and belief. And we also allege willfully and knowingly, we allege conduct that falls clearly within the exceptions.

None of this -- none of these claims were released. Mr. Seery's not an exculpated party in the context of how we -- proposing to sue him here. None of the protected parties, to the extent that Muck and Jessup claim to be protected parties, they're not protected here, because all of the claims we're making are on the basis of willful misconduct and bad faith, which are the standards that they used and incorporated in the

plan and in the gatekeeper provisions.

How much time do I have?

THE CLERK: Right now you have --

MR. MCENTIRE: Thirty seconds?

THE CLERK: -- seven minutes left.

MR. MCENTIRE: Okay. Next slide, please.

Mr. Seery has admitted that he has a duty to avoid self-dealing. We allege that he did self-deal. There is clearly a relationship. We have a right to explore the depths of that relationship. Well, already we know there is a relationship. We have investments in charities, contributions to charities, meet-and-greets, congratulatory emails. It's not as if Farallon and Stonehill are strangers, or Mr. Seery's a stranger to them. It's not like that at all. They contacted him to get involved.

And by placing -- by acquiring these claims -- and by the way, this is the most significant trading activity in your bankruptcy, in this bankruptcy proceeding. Post-confirmation. Post-confirmation. By acquiring these claims, they were guaranteed to be put onto the Oversight Board. By acquiring these claims, they were guaranteed to be put in a position -- into a position where they would adjust, monitor, compensate Mr. Seery. That's the terms of the Claimant Trust. Those are the terms.

And it's interesting, because one of the amendments that's

in evidence to the plan, I think it's either the third or the fourth amendment, that came out of nowhere right before confirmation, they changed the structure of the Claimant Trust to go off a standard base pay and added in a bonus structure at the last minute. That's evidence.

Mr. Seery has acknowledged, we have alleged he had duties to avoid self-dealing, to always look out for the best interests of the estate, to avoid conflicts of interest. Well, here, to the extent that there is a *quid pro quo*, he is self-dealing and he has injured the Reorganized Debtor and he's injured the Claimant Trust, because that's just less money.

And we also allege, Your Honor, it's also an allegation that --

THE COURT: And let me ask, the sole injury here is compensation was more than it would have been if not for the sale of the claims to Farallon and Stonehill --

MR. MCENTIRE: That's one of the injuries.

THE COURT: -- and therefore less money at the end of the day for creditors and ultimately Hunter Mountain?

MR. MCENTIRE: Yes. And we also allege that, as part of this arrangement, conspiracy, as we allege conspiracy, we have seen over $200 million flow out of the coffers of this estate in the form of --

THE COURT: What do you mean, as a result of the

alleged conspiracy? What do you mean?

MR. MCENTIRE: A delay, a postponement, making long-term payouts, keeping the litigation alive. They actually suggested to Mr. Linn, don't settle these claims, don't sell out, because this is asset-backed, and we also have claims. And so --

THE COURT: Wait, what? Say again?

MR. MCENTIRE: One of the things that Mr. Linn told Mr. Dondero, according to Mr. Dondero's notes, is we have -- this is very valuable, we're buying assets and we're buying into claims, the litigation claims that are being asserted in this bankruptcy proceeding.

THE COURT: Yes. Got it.

MR. MCENTIRE: Yeah. And so the whole idea here is, is that people are funneling money in and taking money out of the coffers of this estate to fuel future litigation in order to have a bigger payday at the end for Class 8 and Class 9. That's exactly what those notes suggest.

THE COURT: I don't understand the correlation. What correlation are you making? Because of the claims being purchased, what?

MR. MCENTIRE: The claims being purchased allow Muck and Jessup to be in a position to award compensation. We've talked about that.

THE COURT: I got that.

MR. MCENTIRE: That's one type of injury. The other injury is, and we have alleged it, is the fact that these claims become very valuable not only because they're asset-backed but because also the litigation claims that Mr. Kirschner is prosecuting.

THE COURT: But how does the purchase of the claims impact that? They were allowed claims at certain amounts before, and after the purchase they're still allowed claims.

MR. MCENTIRE: Mr. Seery is telling them that, basically, this is our plan, this is what we're doing, this is --

THE COURT: That was the plan of reorganization that was confirmed by the Court. I don't get how something changed. I'm trying to get to what are the injuries that your client has suffered. And I get the compensation argument you're making, but I don't get the rest of it.

MR. MCENTIRE: If Mr. Dondero had been in a position, or one of his entities had been in a position, or even Hunter Mountain, and I'm not sure why Hunter Mountain -- be in a position to have acquired the claims, then we would -- this bankruptcy wouldn't even be in existence anymore. It'd be over. All creditors would be paid. It would be done. Be over. And that is an allegation we have made --

THE COURT: How do I know that?

MR. MCENTIRE: Because all the creditors would have

been paid off.

THE COURT: How do I know, if he would have purchased the claims, that's what would have happened?

MR. MCENTIRE: Well, that's what he testified to today here. I don't want to get off on a rabbit trail.

THE COURT: I'm trying to understand the injury, --

MR. MCENTIRE: Sure. I understand.

THE COURT: -- because that's part of my analysis here.

MR. MCENTIRE: The focus, the focus is on the compensation. And once they aid and abet, once they aid and abet a breach of fiduciary duties, they are subject to disgorgement, and disgorgement of all of their ill-gotten gains. And the ill-gotten gains are now well over -- approaching over $100,000 million.

THE COURT: How do you get to that number?

MR. MCENTIRE: Easily. We know how much they purchased, which has never been denied. We know how much has been distributed to Class 8. And we know what percentage of Class 8 they own. They own about 95 percent of all Class 8 claims. So if $270,000 million has been distributed to Class 8, they got 90 percent of that, 95 percent of it has already gone to them, Farallon and Stonehill.

THE COURT: But it would have gone to the sellers of the claims as well. I'm trying to make the connection.

MR. MCENTIRE: That's not the injury. The injury is what -- that is a consequence of their conduct. The injury is the compensation. All right? That's a distinct injury. They are subject to disgorgement as a consequence because they have done wrong, and the law should not tolerate -- should not tolerate and allow wrongdoers to get away. And that's where the unjust enrichment and disgorge --

THE COURT: And what are your best cases for that, that they would have to disgorge --

MR. MCENTIRE: We have cited --

THE COURT: -- the Purchasers would have to disgorge --

MR. MCENTIRE: We have cited cases in our brief.

THE COURT: I'm asking you now to --

MR. MCENTIRE: I don't have them in front of me right this second. But an aider and abettor --

THE COURT: The *CVC* case, is that your best case?

MR. MCENTIRE: I don't have the cases in front of me. I can say this, that the case law is robust, and I can supply you --

THE COURT: It is not robust. That's why I'm asking you to zero in. I read your *CVC* case from the Third Circuit, and I'm wondering, is that your strongest case?

MR. MCENTIRE: No. I think we -- I think we have a lot of strong cases. I'm not sure that it is the strongest.

THE COURT: Tell me which ones, so I --

MR. MCENTIRE: Ma'am, I just said I don't have it in front of me. If you'll look --

THE COURT: Okay. Well, this is closing argument where you present law in support of your position.

MR. MCENTIRE: Well, actually, I'm arguing facts right now. But Your Honor, what I want to tell you is if you'd like me to submit a letter brief on that, I will.

THE COURT: No.

MR. MCENTIRE: Okay. Then I won't. It's in my brief. All of our authorities are in the brief.

In conclusion, --

THE COURT: Okay. So that was the *CVC* case from the Third Circuit which dealt with an insider who purchased claims, statutory insider, a board member, a 28-percent equity owner, who purchased claims during the case to be in a position to file a competing plan and didn't disclose to the board or file a 3001(e) notice. Okay. There was -- claims shouldn't be allowed at more than what the purchaser paid for it.

MR. MCENTIRE: Okay.

THE COURT: Okay. I'm asking you, is that your best case? Because you also cited *Adelphia*, which seemed kind of factually off the mark. And so I really --

MR. MCENTIRE: I -- I'm sorry, --

THE COURT: I need to know, because I've made clear from the beginning, --

MR. MCENTIRE: Yes.

THE COURT: -- I'm struggling with how is there a cause of action related to claims trading.

MR. MCENTIRE: (chuckles)

THE COURT: I don't know why you're giggling. This is --

MR. MCENTIRE: No, I'm not. But --

THE COURT: -- serious stuff. Okay?

MR. MCENTIRE: Agreed. Agreed.

THE COURT: A bankruptcy estate is being charged ka-ching, ka-ching -- not bankruptcy estate -- the post-confirmation trust. Ka-ching, ka-ching, ka-ching. So this is serious stuff.

MR. MCENTIRE: Agreed.

THE COURT: I need to, you know, colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Even if plausibility is the standard, which I've expressed my doubt about that, how do you have a plausible claim? What is your best case?

MR. MCENTIRE: Okay. This --

THE COURT: Just to recap what I'm focused on,

purchaser and seller, okay? I can see where breach of contract, maybe some sort of torts between those two. Okay. I can see where the U.S. Trustee, the SEC, I don't know, the Texas State Securities Board, they might get concerned about allegations of insider trading and there might be a regulatory action. But the estate? Again, the post-confirmation trust --

MR. MCENTIRE: Okay.

THE COURT: -- and a contingent beneficiary. I'm trying to understand what is the best legal authority that might support a colorable claim. And we talked about the *CVC* case and *Adelphia*. I'm trying to figure out what are other cases you think I should really hone in on to understand this.

MR. MCENTIRE: All right. At the very beginning this morning, during my opening statement, I had said this is not your typical claims-handling case, because I recall from our last conference you asked that question a couple of times. This is not your typical claims-handling case. And it's not a typical claims-handling case because we have a fiduciary that we claim breached his duties that were owed to the estate. And he self-dealt. And he -- this has nothing to do with the plan. This has something to do with what Mr. Seery did outside the corners of the plan. Perhaps he used the plan expediently. He self-dealt.

That's why this is not just between a seller and a buyer

of a claim. That's number one.

We have been denied an opportunity to discover the communications between the sellers and the buyers, and my guess is we have big boy agreements that prevent the sellers from ever coming back at anybody for fraud. My expectation, that's the case. We should have a right to go explore that. So that's why they're not here.

THE COURT: Why? I mean, what would that tell you? What would that tell you?

MR. MCENTIRE: That --

THE COURT: If there's a big boy agreement, if there's not, what --

MR. MCENTIRE: It would tell us --

THE COURT: -- consequence would that have for this --

MR. MCENTIRE: It would tell us --

THE COURT: -- proposed lawsuit?

MR. MCENTIRE: It would answer Mr. Morris's question that he's raised several times, this is the seller's issue, this is not -- this is not the Hunter Mountain's issue. It is Hunter Mountain's issue. Hunter Mountain as an equity interest-holder should be in a position to be certified as a Class 9 beneficiary now pursuant to our declaratory judgment action. That's number one.

Number two. As a contingent beneficiary, it is entitled

to protect its interests and bring suits if it sees that something has happened that is incorrect and is a tort involving the Reorganized Debtor and the Claimant Trust. That is the nature and the essence of our claim.

And as a consequence, the aiders and abettors should not be allowed to walk away unharmed. They should be required to disgorge their ill-gotten profits. And that calculation is easily done, as I've just demonstrated.

Your Honor, that's all I have. Thank you very much.

THE COURT: Thank you.

MR. MCENTIRE: And we talked -- we'd need an opportunity to argue on the issue of experts, because -- whether you're just going to take it under advisement, I'm not sure how you're going to handle that.

THE COURT: I'm going to read the pleadings and then I'm going to let you all know are we coming back for another day.

MR. MCENTIRE: Thank you.

THE COURT: All right. Who is making the closing argument -- do we have three closing arguments?

MR. STANCIL: Yes.

MR. MCILWAIN: We're going to do it in reverse order.

MR. MORRIS: Reverse order in.

THE COURT: Okay. Reverse order of --

MR. STANCIL: Keep it interesting.

MR. MORRIS: I think I was last on the opening.

THE COURT: -- importance?

(Laughter.)

THE COURT: No. Just kidding. Just kidding.

MR. MORRIS: We're assuming you remember what the original order was.

MR. STANCIL: Yeah, right, right.

MR. MORRIS: It was so many hours ago.

THE COURT: Okay. Oh, so many hours ago.

MR. MCILWAIN: I think I was referred to earlier as the lame lawyer.

THE COURT: Oh, you were. I think --

MR. MCILWAIN: So I'll start. I think --

THE COURT: I think you --

MR. MCILWAIN: Or maybe it was the lame argument, whatever. Whatever.

THE COURT: I think you were the lame one.

CLOSING ARGUMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Your Honor, Brent McIlwain here for the Claim Purchasers.

Let me start, I guess, by saying I understand now why Hunter Mountain did not want to put on evidence, because the evidence that they put on, frankly, made their case much worse.

As we argued or we stated in the opening statement, our

position is that you can look within the four corners of this document and determine that there is no plausible or colorable claim. What the evidence showed is that Mr. Dondero allegedly had a call with one -- with Farallon, not with Stonehill, with Farallon, Farallon wouldn't tell him what they paid, Farallon did not accept an offer of 130 or 140 percent of whatever they paid for the claim, and he thinks they did no due diligence, right? He had nothing in his notes about MGM. So he can say that he thought that they were positive because of MGM, but it's certainly not -- I don't think the Court should take that evidence with any credibility.

But interestingly, what Mr. Dondero says is, well, how do you know how much they paid for these claims? He goes, well, there was a market for the claims, right? They were all trading at 50 or 60 cents. But yet no one would ever buy these claims without any due diligence because the projections in the plan indicate that they wouldn't -- they wouldn't get a return.

Well, if there's a market for the claims and he's willing to pay 30 or 40 percent more than whatever someone purchased, certainly there is a market for the claims. And he is the only one, frankly, that had inside information. That's why he was willing to maybe pay more.

Or, alternatively, the case that you were describing before, Mr. Dondero maybe wanted to buy the claims so he could

control the case, right, so he could dismiss any litigation that was pending against himself so he could avoid the ire of the estate that is aimed at him.

It also -- the Court's inquiry as to what the injury is I think is precisely on point. The only injury offered at this point really is that somehow my client's agreed-to higher compensation that is reasonable or appropriate in return for some inside information on claims that were allegedly trading at 50 or 60 cents in any instance. And what the evidence showed is that, one, Mr. Dondero never had any information about that, about the compensation that Seery is receiving when this complaint was filed, when this motion for leave was filed.

And so if you judge the complaint within the four corners, there is no -- there is no *quid pro quo*, right? Because he says, well, there's obviously something up here because they wouldn't have bought these claims without due diligence, and they must have agreed to higher compensation, and that's why it all happened. And if we throw all this out here, then we'll get to do the discovery that we wanted to do.

Importantly, if you look at his notes, right, the first thing that's written down is discovery to follow, because that's how he operates. That's how a serial litigator operates. Discovery to follow so that I can pay you back for not selling your claim to me. Right? So I can't control the

world, so I can't control this case, you're going to pay. And we're all paying. Every one of us here. Right? There's 15 lawyers in the courtroom and probably 10 on the phone, right? We're all paying.

And so when Mr. McEntire says I'm not getting my day in court, we've had an entire day in court. We've had three hearings to decide what this hearing is going to be. And he's gotten more than his day in court for, frankly, what is word salad. This complaint doesn't pass any test, whether it's 12(b)(6) or under the *Barton* Doctrine. It's simply allegations that are thrown out there, and they're saying, so that we can do more discovery to determine if we actually have allegations. Because they want to continue to harass people, they want to continue to be a thorn in everyone's side, so that perhaps they can avoid further litigation against Mr. Dondero or they can convince somebody to settle with Mr. Dondero.

It doesn't make any sense, Your Honor, and this is exactly why there is a gatekeeper provision, right. That's why the Court imposed this.

And you ask yourself, why would someone sell these claims? Obviously, the sellers of the claims have not shown up. Whether they're big boy, it doesn't matter, because the Court and this estate had nothing to do with those sales. But they haven't shown back up. I can -- I can venture a guess why, if

I was involved with Mr. Dondero, I would sell my claim, right? Because I wouldn't have to be here. And that's exactly why the Court should not authorize this complaint to be filed and the gatekeeper provision of the order should prevent it. And frankly, this should be shut down and we should not have to have continued litigation over experts, or anything else, for that matter. And frankly, we should just be able to go on and let Mr. Seery do his job.

Because I think the evidence was pretty clear that his compensation is reasonable and it was in line, frankly, with what he was making before. And candidly -- and maybe it's because Mr. McEntire is not involved in bankruptcy cases, but this is similar compensation that I see in numerous cases, and it's tiered to incentivize Mr. Seery to do his job, and he's doing his job.

So, with that, Your Honor, I'll cede the rest of the time to the other parties.

THE COURT: Okay. Thank you.

CLOSING ARGUMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. I'm going to focus -- and I'm going to put my little clock up so Mr. Morris doesn't, you know, give me the hook here.

THE COURT: Okay.

MR. STANCIL: But first --

THE COURT: Next time we're all here, maybe I'll have

one of those red, what do you call them, the buzzer.

MR. STANCIL: Oh, the big light?

THE COURT: The red light.

MR. STANCIL: We used to joke that the judge I clerked for wished he had a trapdoor and he could just pull the lever when it was done.

THE COURT: Okay.

(Laughter.)

MR. STANCIL: Maybe I shouldn't have put that in your head.

THE COURT: Who was that? Are we going to say who that was?

MR. STANCIL: So Your Honor, I'm going to try to set the legal framework. I'm going to ask you -- and I think we have our -- we have the deck. It's the little -- if we could put that up and start on Slide 2.

I'd like to address what standard applies, and then I'd like to spend a few minutes asking Your Honor again not only to rule on multiple alternative grounds, but also I'd like to walk through what if you did this on a pure 12(b)(6), because it's going to collapse.

So, well, we'll just jump in. I said at the beginning that we know that the question here is not what does the word colorable mean in isolation. We wouldn't do that in any context. We would always look and see what the operative

language here is in the Court's confirmation order. So the question is, what did the Court mean, it must represent a colorable claim?

So we mentioned before Paragraph 80 of the confirmation order. That cites *Barton*. It cites the vexatious litigant cases. I've not heard one word from Mr. McEntire answering how it can be that we're here on a sub-12(b)(6) standard he now says when the Court articulated this legal authority and this legal basis in the confirmation order. If he believed that, the time to make that argument was on the confirmation appeal, and that's over.

But let me then say, how did we get, how did the Court get to Paragraph 80? Well, that came after a series of factual findings in the confirmation order -- in fact, actually, Josh, do you have the hard copy of this?

MR. LEVY: Yeah.

MR. STANCIL: If I could hand that to the Court.

May I approach, Your Honor?

THE COURT: You may. Thanks.

MR. STANCIL: And I don't propose to go through every slide, Your Honor.

THE COURT: Okay.

MR. STANCIL: But if you could turn to Slide #5. This is Paragraph 77 of the Court's confirmation order. Factual support for gatekeeper provision.

MR. MCENTIRE: Excuse me. May I have a copy? I can't see it.

THE COURT: Oh.

MR. LEVY: Oh, yeah, sure, sure.

MR. STANCIL: And can we get a copy of yours as well, --

MR. MCENTIRE: Sure.

MR. STANCIL: -- while we're at it? Thanks.

The facts supporting the need for the gatekeeper provision are as follows. I will not read them all, but if you scroll about eight lines down, it says, During the last several months, Mr. Dondero and the Dondero-related entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. And then there are six separate enumerated examples of that.

Paragraph 78 on the next slide. Findings regarding Dondero postpetition litigation. The Bankruptcy Court finds that the Dondero postpetition litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted he would, quote, burn down the place.

Next slide. This is Paragraph 79. Necessity of the

gatekeeper provision. If you would just skim to the bottom of that first column, it says, Approval of the gatekeeper provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtors' assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.

And then came Paragraph 80, which we've just discussed. With respect, Your Honor, the question is, what is the meaning of Paragraph 80? And in context, following those paragraphs regarding vexatious litigation and abuse of litigation, it is simply implausible to suggest that colorability is a sub-12(b)(6) standard.

And that is Mr. McEntire's contention today, that the gatekeeping order is actually lower than the threshold that every other litigant faces. Everyone else has to file a claim, pass a 12(b)(6), and on they go to get to discovery. Mr. McEntire believes that the gatekeeping order imposes less than that on him, and then he's treated just like everybody else. It makes no sense whatsoever.

So I'll skip Slides 8 and 9, Your Honor, but that's where the Fifth Circuit described the gatekeeping orders, affirmed them in relevant part, citing *Barton*. There is no mystery here.

If you could flip, Your Honor, to Slide 10 very briefly. We've talked about this case a little bit in one of our status hearings, *In re Vistacare Group*. This is the leading case that describes what it is that one does under a *Barton* analysis, and it says that the trustee must make a -- pardon me -- a party seeking leave to sue a trustee must make a *prima facie* case against the trustee, showing that its claim is not without foundation. A *prima facie* case is more than a 12(b)(6).

And I would direct Your Honor to the language in the third bullet. It involves a greater degree of flexibility than a Rule 12(b)(6) motion to dismiss because the bankruptcy court, which, given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit. Boy howdy, are we -- I'm sorry. My kids are going to tease me for that.

But this -- no case has ever proved the wisdom of that statement, Your Honor. We are here, and the Court is all too familiar with the facts and the parties of this case. And we're not here on an adversary proceeding. We're here on a contested matter. And Your Honor has the authority on any contested matter to take evidence, and a broad, broad discretion as to what evidence is appropriate to meet that standard.

So we have laid out briefly in Slide 11 what -- why we

believe that -- or how we believe that the *prima facie* showing would work. And in short -- and maybe this will help us going forward -- we believe that if they make -- if a party seeking relief under the gatekeeping order says things, we have the right to rebut them, like in a burden-shifting or a burden of production -- pardon me -- analysis. So you can say that the sun rises in the west, but we can bring in evidence to say it doesn't, it rises in the east. And that's the plausibility threshold.

And here, and if Your Honor would flip to the next slide, I'm not sure it's entirely fair to say, even after they have purported to withdraw their evidence, that they've really done so. And we disagreed with Mr. McEntire, and advised him of such leading up to this hearing, that we do not agree that his redactions fully excise all of the evidentiary assertions from his motion.

And I'll just pick one example here on Slide 12. On the left is Paragraph 32 of the motion for leave prior to the purported withdrawal. On the right is Paragraph 32 after the withdrawal. Your Honor will see all they've withdrawn are the citations. It's verbatim. It's the same allegations. And they have argued various facts and put them in evidence. So even if it were true, and it's not, but even if it were true that all you get here is a 12(b)(6) ruling in the ordinary case if you put no evidence in dispute, they forfeited that

right by putting these facts and evidence in dispute in their motion.

The fact that they have withdrawn evidentiary support for their evidentiary assertions does not relieve them of the reality that they have made all sorts of factual arguments in their motion for leave, and as a contested matter we have the right to address it.

I'm proposing, Your Honor, unless you have questions on the cases on 13, 14, those are the cases where we have described the hearings that have been held under *Vistacare* and *Foster*, and I know more about the down-in-the-weeds of *Foster* than I ever cared to, but I don't want to repeat what's in our briefs.

If Your Honor is willing to flip to Page 15, this is an argument I've alluded to briefly, but boy, we don't hear -- we have not heard a single thing as to what function the gatekeeper serves, particularly in context of Your Honor's factual findings in the confirmation order, if all it means is 12(b)(6) or lower. It just, it's an unanswerable point that they just persist in ignoring.

But I'd like to address very briefly that third bullet, because at various times and in their brief they have cited, Hunter Mountain has cited, down here we call it *Louisiana World*, I think in the Second Circuit we call it *STN*, but this UCC derivative standing. There are, in fact, two elements one

has to pass for that, and that's a different context. The first is colorability as it's used in that context, and that is often a 12(b)(6) standard in that context. But still to have standing, to bring that claim on behalf of the estate, you have to show a cost-benefit analysis. As we've heard today, we've probably spent more in legal fees today, or over the last three months, than the purportedly excessive compensation to Mr. Seery. And so I would respectfully submit, if we were here on a *Louisiana World* or *STN* hearing, this would be an open-and-shut case just as well.

So if I could, Your Honor, if you are willing to jump ahead to Slide 17, I'd like to ask you -- and I do want to address the standing jurisdictional question a little bit.

THE COURT: Okay.

MR. STANCIL: Not to get into the weeds of standing, because I think we have briefed that out the wazoo in our papers, and I read this morning -- I think it was this morning -- from the Claimant Trust Agreement, which says they're not a beneficial interest.

But my understanding is that Article III standing, whether there is a theoretical injury in any way, that is -- that goes to Your Honor's subject matter jurisdiction under Article III, but that is not true of statutory standing under Delaware law or prudential standing. Those are -- those go to basically whether they state a claim.

So, Your Honor, I believe, can -- and I've confessed to my colleague that the only way I remember this is I screwed it up really, really badly when I was clerking years ago -- but I believe Your Honor can, and in this case should, rule on the standing ground in the alternative. Not on the Article III. Article III is binary. They either have it or they don't. But on the statutory standing, you can say -- I think you can hold that they do not have standing under Delaware law to pursue the claim, but even if they do have standing, and then reach the remainder.

And we know we're headed for appeal. We've heard -- pretty much two-thirds of the time this morning has been laying the groundwork for an appeal. And we would only like -- we would like to make sure that we give the Fifth Circuit a fulsome record.

So I would like to ask Your Honor to flip to Page 19. And this is really the end of, I think, what we need to do. So, Your Honor, what if we were here just on 12(b)(6)? So we've got a *quid*, we've got a *pro*, we've got a *quo*. They fail at each turn. Let me spend most of my time on the *quid*. I'll let the documents of which the Court can take judicial notice speak for themselves. I will let the bare-bones nature of the assertion -- and it's okay to put in a complaint something on information and belief, but you still have to pass *Iqbal* and *Twombly*. I can't say upon information and belief that I was

denied a starting position on the Knicks, right? I would like to believe that's the case, but it still has to be a plausible allegation.

Let's look at this chart. And this chart is taken right out of our brief. These are their numbers. This is at the bottom. And I want to -- I would like to take head-on this proposition that this is not a rational investment on their numbers.

So let's take the Stonehill purchase of Redeemer. They paid $78 million to earn a projected profit, according to the November 30 disclosure statement, of $19.71 million. By my arithmetic, that is a return of 25.27 percent. Even by Mr. Dondero's lights, that's a pretty good return.

I'm going to come back to why that's not the end of the return, but let's look at the Farallon purchase of Acis. Spent $8 million. Projected profit, $8.4 million. I'll take 105 percent return any day.

Let's look at the Farallon purchase of HarbourVest. Purchase price, $27 million. Projected profit, $5.09 million. That is -- oh, I can't read my own writing anymore -- I think that is 18.85 percent. I would again gladly take that every day of the week, whether it's a distressed asset or otherwise.

But let me make one really important point that Mr. Dondero obfuscated, Mr. McEntire does not acknowledge, and it is just a fact. These are projected profits if all Mr. Seery

does is hit the plan. November 30, 2021. If he does no better than what he thought these assets were worth then, this is the expected return. So for those trades that we've talked about, that's a slam dunk even on that.

But let's look about -- we'll talk about upside. Because, as Your Honor knows from doing bankruptcy cases, upside, it's all about upside for people who are purchasing claims. So it isn't just that their returns were capped at these already-ample percentages. If Class 8, for example, of Redeemer paid out in full, they would be making not -- oh, gosh, I'm not sure I should do this on the fly -- but they'd be recovering $137 million on the Class 8 claim, not the $97.71 million. So there's another $40 million of upside.

Even if it's a low-probability event, that's a -- hedge funds do that all day every day.

Same here with Acis. Paid $8 million, expected $16.4 million, but they could get up to $23 million.

Now, we've heard so much about how Class 9 was worthless, worthless, worthless. No, it's not. There's always the potential for upside. Paid $27 million. Could recover $45 million just on Class 8. Could recover another $35 million on Class 9. They could recover $80 million on a $27 million purchase. Now, the probability of that is complicated, but it's not zero. We know that it's not zero. All we've heard from them today is that Mr. Seery is -- could pay off 8 and 9

in full. So I don't think that is even remotely plausible.

Let's talk briefly about UBS. They like to talk about UBS for the projected profit of $3.61 million in loss. But that was -- that's in August, and that claim trades.

So a couple of things that happened between the November 30 disclosure statement setting that projected value and the purchase of the UBS claim in August. Number one is we are nine, ten months past the worst of COVID. And Your Honor could take judicial notice of massive market movements just if you do nothing.

We don't need to get to that, because we talked all morning about MGM. May 26th, it's announced publicly. May 26, 2021.

So the notion that a purchaser of a UBS claim in the summer of 2021, after this MGM transaction is announced, would think, you know what, I think these claims are only worth what they were worth back in November, is not plausible.

And so this is why the comparisons to the debt, the exit financing, well, 12 percent. That's a 12 percent capped return. We're talking here about returns of 25 percent, 105 percent, 18.85 percent, just based on projections at the -- sort of in the darkest days post-COVID.

So it's not plausible. If a court were looking at this just under the 12(b)(6) standard, we would be -- we'd be dismissing this claim as well. And we really -- respectfully,

Your Honor, we need that ruling. We think we need that ruling so that whatever the -- whatever they may say the standard is in the Fifth Circuit, we only have to go one time. And we really believe that we're entitled to that.

I'll let Your Honor -- I will just stand on the deck and our briefs on the *pro* and the *quo*. But meet-and-greets, these are just conclusory allegations in the complaint. He says they worked -- that he worked for them 10 or 15 years ago, which some of that's not even true, but even if it were all true, if I were beholden to every client I've met at a schmooze fest or everybody I worked for in a group 20 years ago or 15 years ago, you know, I would be incapable of operating without a conflict of interest. And it's just not plausible. This is something that needs to go.

Unless the Court has questions, I will cede the remainder of our time to Mr. Morris.

THE COURT: No questions. Thank you.

CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

MR. MORRIS: Thank you so much, Your Honor, for your patience. It's been a very long day. I am very grateful that we're going to finish today.

As I said at the beginning, I believe this exercise, as difficult as it may have been, is so important and so vital, preserving this estate and what's left of it.

The gatekeeper exists for very important reasons. Your

Honor made those findings in her order that has been upheld on appeal. And we're here to make sure that frivolous litigation is not commenced against my clients, or, frankly, against Stonehill and Farallon, given their capacity as Claimant Oversight Board members.

Hunter Mountain confuses argument with facts. There's no facts here to support anything, and that's what the gatekeeper is about. The gatekeeper is making sure that there's a good-faith basis to pursue claims. And as Mr. Stancil points out, it is certainly acceptable to state things upon information and belief. But the point of the gatekeeper is if somebody says -- not somebody says -- somebody offers proof that those beliefs are wrong, you no longer have a plausible claim. And that's why we thought it was so important to go through this exercise today. Because the facts show that their beliefs are simply wrong, and the entire complaint is based on their beliefs.

There is zero evidence concerning the compensation other than their belief that the compensation is excessive. The case is over. Like, you could stop there. I'm going to go through a bunch of things that -- you could stop there.

I want to actually begin backwards, though, in time, with the HarbourVest settlement. Right? After two years of litigation and re-litigation and re-litigation of the HarbourVest settlement, the claims of insider trading, finally

the Court has before it admissible indisputable evidence that Mr. Seery negotiated the terms of the HarbourVest settlement before he ever got this notorious email from Mr. Dondero. That should be a finding of fact in Your Honor's order and it should never be -- nobody should ever make that allegation again. It's over. You have the documents. You have the email from Mr. Seery to the board, here are the terms, and those are the terms Your Honor approved.

And there's more. Because this is so important for us, because we're tired of being accused of wrongdoing. We're tired of being falsely accused of wrongdoing.

$22-1/2 million. That's the valuation Mr. Seery put on it. You can see that he's doing it to his Independent Board colleagues, copying his lawyers. He's telling them where he got it, from Hunter Covitz. The evidence is now in the record. It came from a regularly-published NAV report from November 30th. It was seven days old. It can never be disputed again that $22.5 million was a fair value, not based on some subjective view of Mr. Seery but based on the person who gave him the report that everybody relies upon that Mr. Dondero got.

And it was ratified yet again in the audited financial statements that came out, and it shows for the period ending -- this is Exhibit 60, I believe -- for the period ending December 31, 2020, $50 million. Okay, so it went up a few

million dollars in December.

This is their case? This is the case? Your Honor I know is still working on the motion to dismiss. That's Mark Patrick, right? That's the complaint that he brought. That's what this is about. I don't mean to confuse the issue, but it's time to put this stuff to rest, because it's wrong. Mr. Dondero has lost and he's got to get over it at some point.

But here's the best piece of evidence about this whole shenanigans about MGM being inside information. Mr. Dondero filed a 15-page objection to the HarbourVest settlement and didn't say a word about it. How is that possible? Six days before the settlement, he sends this email. Two weeks later, in January, he files a 15-page objection and doesn't mention anything about insider trading, MGM, or any wrongdoing by Mr. Seery. In fact, he argues the exact opposite, that Mr. Seery cut a bad deal. How is that possible? This is a plausible claim?

It gets better, or worse, depending on your point of view. CLO Holdco filed an objection and they said they're entitled to buy the asset. This is Mr. Dondero's, you know, operating arm of the DAF. They lost -- they actually had an honorable person who concluded, I don't really have that right. But these are the claims that Mr. Patrick is asserting, and he asserted them on April -- in April, before the MGM deal was announced. Right? And Your Honor found, and that's why it

was so important for the Court to take judicial notice of the second contempt order, because Mr. Dondero was intimately involved in bringing those claims and in bringing those claims against -- or trying to bring those claims against Mr. Seery, in violating of the gatekeeper. This is all tied together.

I have to tell you, I don't know why we're not doing Rule 11. Forget about colorable claims. This is a fraud on the Court. It really is. And I don't know when it's going to stop. I'd love to move on with my life, to be honest with you.

The tender offer. He's out there doing a tender offer benefitting as the fund that he manages acquires more shares and his interest goes up and the value goes up with all these MGM holdings. Really? And he's going to accuse Mr. Seery of wrongdoing?

There was one point of Mr. Dondero's testimony that made my heart skip a beat. It's when he referred to the need to get discovery. And why did it skip a beat? Because he actually had a moment of candor where he admitted that the notion that Mr. Seery gave them material nonpublic inside information was his thought. It's not anything that Farallon ever told him. And then it spins and it spins and it spins, and finally when he gets to the fifth version of his sworn statement MGM suddenly appears. It's not right. Colorable claims? Fraudulent claims.

What's the undisputed evidence right now? I'll take Mr. Dondero at his word that Mr. Patel told him that Farallon bought the claims in February or March. How did they reconcile that with the undisputed testimony that Mr. Seery thereafter invited Farallon to participate in the exit financing? And they signed an NDA in early April. Why would you sign an NDA if you already got inside information? Who would do that? What would be the purpose of that?

How do you reconcile the fact that, according to Mr. Dondero, the claims were already in Farallon's pocket when they signed an NDA to get information for an exit facility. Is that plausible?

We've heard Mr. McEntire say a bunch of times it's much broader than MGM. Not only not a scintilla of evidence, but no substantive allegation. Again, confusing argument with facts. Because he had -- yes, Mr. Seery had access to inside information relative to Highland. He's the CEO. But where is the evidence that he shared anything with anybody? There is nothing.

Mr. Dondero admitted in his motion -- in a moment of candor, he said that's what he concluded based on the fact that Mr. Patel supposedly told him, I bought because Seery told me to. He made the inference. No evidence. Nothing.

They're bringing this case for the benefit of innocent parties? These people have told you time and again that

assets exceed liabilities. What innocent parties? Where are they and how come they're not -- let's get to that point, too. Because they're saying, oh, Mr. Seery is, like, just not declaring the end of this. Seriously? How much do they think Mr. Seery should reserve for indemnification claims as we do trials like this with a mountain of lawyers billing $800, $1,500 an hour? Seriously? Mr. Seery is somehow acting in bad faith by not declaring the end of this case? How much is he supposed to reserve? They keep skipping over that. We'll talk about that in the mediation motion. We'll talk about that in the Hunter Mountain motion in July. Who's prosecuting that? Mr. Dondero's lawyer. I know there's a really big separation between Hunter Mountain and Mr. Dondero, but Stinson is prosecuting that claim on behalf of Hunter Mountain when they're seeking information.

And they complain about the legal fees? We've put our pens down. Kirschner put his pens down. We put down the claim objection. What we're doing is defense at this point.

We're awaiting the ruling on the notes litigation, and we will very much prosecute the vexatious litigant motion if Judge Starr grants the pending motion to exceed the page limit that's been out there for months. I'm not sure what's happening there. We'll do that for sure. But otherwise, we're just playing defense.

We're here today because they've made a motion, a motion

that lacks any good-faith basis whatsoever. And that's why today was so important, so the Court could hear the witnesses. They could -- the Court -- I mean, think about it. Texas State Securities Board. The audacity of saying that somehow a letter from the Texas State Securities Board saying they're taking no action after conducting an investigation of Dugaboy's claim of insider trading is irrelevant? Like, what?

I've told you before, all we do is play Whack-A-Mole. Whack-A-Mole. They make an argument, we prove it's frivolous, so they just make a new argument. Their pleading says their claims are colorable because there's an open investigation. Now there's no investigation and they say that's irrelevant. How can they say that with a straight face? I couldn't.

I want to talk about Mr. Seery. I want to finish with my Mr. Seery. I may not use all my time. We can go home early.

(Laughter.)

THE COURT: It's past early.

MR. MORRIS: But this guy has worked doggedly, Your Honor, and I will defend him until the end of time. He's a man who has so far exceeded expectations. And they're saying he's not -- he's overpaid? The guy is overpaid? When he's into Class 9? When he's being pursued with these frivolous claims? Every day he's being attacked. How much do they think he should be paid? I would have loved to -- I hope -- no, I don't hope. I don't think there's any reason to hear

expert testimony. I think Your Honor should exercise -- the Court should exercise its discretion and say there's no need, the Court doesn't need to hear expert testimony.

But if we do, I'll be delighted to hear their expert's view on what Mr. Seery -- if it's not $8.8 million for all these years, what should it be, after he takes an estate from 71 percent on the 8s to, according to them, assets exceed liabilities, 9s are paid in full?

You know what? If they put their pens down, maybe there would be a conversation. But as long as we keep doing this ridiculous, baseless, frivolous litigation, Mr. Seery is going to conserve resources, because he's got to pay people like me to defend him and to defend the estate. This is a preview of what we'll talk about at the mediation motion. He's doing a great job. He's devoting his life to it. He has no other income. He's got no other job. It's wrong.

The claims are not only not colorable, they are frivolous. I ask the Court to stop this in its tracks right now.

Thank you very much.

THE COURT: Thank you.

All right. Is there any time for the Movant to have the last word, which we usually give the Movant the last word.

THE CLERK: The Movant, I think, has a little under -- maybe about a minute left.

THE COURT: Anything you want to say in a minute?

MR. MCENTIRE: Yes, just I'll take 30 seconds. How is that?

THE COURT: Okay.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN

MR. MCENTIRE: I just want to direct your attention to our reply brief, specific paragraphs that address your question about authorities. We do cite several cases on Page 41, 40 and 41, dealing with the issue of unjust enrichment. That's it.

Thank you, Your Honor, very much.

THE COURT: Okay. Thank you. Unjust enrichment?

MR. MCENTIRE: Disgorgement.

THE COURT: Okay. But I was really, you know, claims trading in the bankruptcy context, just your best --

MR. MCENTIRE: Well, I think the cases that you identified were our best cases. The --

THE COURT: Okay.

MR. MCENTIRE: -- *Adelphia* and the other cases.

THE COURT: All right. Well, --

MR. MCENTIRE: There are other cases, Your Honor, in different contexts. There's also the *Washington Mutual* case dealing with equitable disallowance. There's also the *Mobile Steel* case, a Fifth Circuit --

THE COURT: *Mobile Steel*? Oh, my goodness. Okay.

MR. MCENTIRE: Okay. All right.

THE COURT: 1968? Or no. That doesn't mean it isn't still quoted often, but --

MR. MCENTIRE: Those would also be relevant.

THE COURT: Equitable subordination --

MR. MCENTIRE: Yes, ma'am.

THE COURT: -- when there's bad acts.

MR. MCENTIRE: And Footnote #10 in the *Mobile Steel* case. That is relevant, too. Just, --

THE COURT: Okay.

MR. MCENTIRE: Thank you.

THE COURT: All right. So I gave a deadline of Monday, right, --

MR. STANCIL: Yes.

THE COURT: -- to reply to the response to the motion in limine?

MR. STANCIL: Yes, Your Honor. Do you want time before you leave for the day? I mean, it's not going to be that long, so 4:00 o'clock Monday? Does that work for you?

THE COURT: I don't care. I probably won't start looking at it until the next day.

MR. STANCIL: But I will -- I'll just reserve and so I don't have my associates --

THE COURT: Yes. I think these days midnight, 11:59 p.m., is what lawyers tend to want.

MR. STANCIL: Oh, not this lawyer.

THE COURT: Oh, well, okay. Okay. So I'll just have to look at this, and probably by Friday of next week I will reach out through Traci and let you know what my decision is on whether we're going to have another day of just 30 minutes, 30 minutes of experts.

MR. MCENTIRE: Your Honor, another housekeeping matter. You'd wanted a copy of our PowerPoint, --

THE COURT: Yes.

MR. MCENTIRE: -- which I'm pleased to give you. We found a typo that we can correct electronically on the version I showed.

THE COURT: Uh-huh.

MR. MCENTIRE: I likely will send that to you and I can copy opposing counsel. Is that --

THE COURT: Okay. Send it to Traci Ellison, my courtroom deputy.

MR. MCENTIRE: All right.

THE COURT: And she'll --

MR. MCENTIRE: We'll do that first thing in the morning.

THE COURT: Okay.

MR. MCENTIRE: So you'll have a copy --

MR. STANCIL: Can we get the hard copy that -- from today, though?

MR. MCENTIRE: No, that had a typo on it. I really

don't want to share it. We fixed it.

THE COURT: What? I'm sorry, what?

MR. MORRIS: That's fine.

MR. STANCIL: Never mind.

THE COURT: Do I not need to know?

MR. STANCIL: Let's all go home.

THE COURT: Okay. And then my last question is -- and there was a mention of the CLO Holdco lawsuit, where there's a pending motion to dismiss. There's an opinion I'm writing well underway. I just keep getting sidetracked by other things. Imagine that. So I know that people are wanting to get an answer to that. So, trust me, it's going to get done here pretty soon.

You mentioned Brantley Starr. I mean, it is not my role to pick up the phone and call him and say hey, --

MR. MCENTIRE: No, I wasn't suggesting that.

THE COURT: -- District Judge, get busy on that.

MR. MCENTIRE: Yeah.

THE COURT: But I'll at least tell you, I know the man seems to have more jury trials than any judge I've seen in this building, so I suspect he's working late hours trying to get things done.

MR. MCENTIRE: Yeah.

THE COURT: What do we have upcoming? We have what you called the mediation motion. When is that set?

MR. MORRIS: June 26.

THE COURT: June 26th. Be here before we know it.

MR. MORRIS: Yeah. And just to keep the Court informed, the Movant's reply was due today. We gave them a week extension. They asked earlier today. I saw in my email we gave them. So I think you should expect the reply on the 15th. The hearing is the 26th, and that's not in person.

THE COURT: Okay. Well, I'm very interested to dive into those pleadings. I knew the motion was coming because one of the lawyers said at a prior hearing it would be coming. So I haven't read any of those pleadings, but, well, I'm just very interested to hear how this plays out. I mean, I've said it before.

MR. MORRIS: Uh-huh.

THE COURT: We had global mediation in summer of 2020. We had two very fine mediators. We had a heck of a lot settled, to my amazement. But we're now way down the road and whole lot of money has been eaten up fighting lots of stuff. I mean, it would have to be pens down. There's an enormous amount out there that would have to be part of it, and I just don't know if everyone is fully appreciating that. I hope they are. Anyone listening. We're really, really far down the road now, and there's just how many appeals? Someone at one time told me there were 26. I bet it's more than that by now.

MR. MORRIS: I think that's right. I think we argued on Monday, what is it, the sixth of nine appeals in the Fifth Circuit. And we've got, you know, a cert petition that we're waiting to hear from on the Supreme Court. And yeah, there's still a couple dozen matters in the district court.

THE COURT: Okay.

MR. MORRIS: Not one of them, not one of them we're prosecuting, with the exception of waiting on the Court to rule on the Report and Recommendation on the notes litigation and vexatious litigant. We are not the plaintiff, movant, in anything.

THE COURT: We've got adversaries. The Reports and Recommendations. That's just made everything go a lot slower. But all right. So we have that. And anything else coming up?

MR. MORRIS: I think on July 11th maybe there is a hearing scheduled on Hunter Mountain. If you recall, Hunter Mountain had that valuation motion last year that you denied on the grounds that they didn't have a legal right to valuation information. They made a motion earlier this year for leave to file an adversary proceeding to assert an equitable claim and some other declaratory relief, is my recollection.

While we filed an opposition, we didn't oppose the relief requested, so that motion got resolved. They have filed an adversary proceeding. And I think, if I remember correctly,

our response to the complaint, maybe that's what due. Oh, the 11th is a status conference. It could be a status conference, maybe to set a scheduling order.

THE COURT: Okay.

MR. MORRIS: But that's it. I think that's the only thing on the calendar.

THE COURT: That's a lot.

MR. MCENTIRE: Thank you.

THE COURT: Anything else? Okay.

MR. STANCIL: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 7:18 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/12/2023**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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EXHIBIT 37

REMITTANCE AGREEMENT

This Remittance Agreement (the "Agreement") is entered into as of January 10, 2025 (the "Effective Date") by and between NREA SB II Holdings, LLC (together with its successors and assigns in such capacities, "NexPoint Small Bay."), Charitable DAF Holdings Corp. (together with its successors and assigns in such capacities, "Charitable DAF"), and Liberty CLO Holdco, Ltd. (together with its successors and assigns in such capacities, "Liberty CLO"). NexPoint Small Bay, Charitable DAF, and Liberty CLO are each referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Charitable DAF and Liberty CLO jointly previously provided temporary bridge funding and equity to NexPoint Small Bay, with repayment required in accordance with the Limited Liability Company Agreement of NexPoint Small Bay (the "DAF Bridge Equity"); and

WHEREAS, NexPoint Small Bay currently owes $8,265,050.74 to Charitable DAF and Liberty CLO, jointly, as repayment for the DAF Bridge Equity;

THEREFORE, for and in consideration of the payment, promises, covenants, conditions, stipulations, benefits, and obligations described and provided herein, the sufficiency and adequacy of which is expressly hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Payment to DAF.** On or before January 14, 2025, NexPoint Small Bay shall pay to Charitable DAF and Liberty CLO, jointly, the amount of $8,265,050.74 (the "DAF Bridge Equity Payment").

2. **Satisfaction and Release of Claims.** Charitable DAF and Liberty CLO each stipulates and agrees that the DAF Bridge Equity Payment will fully and completely satisfy all obligations arising out of or relating to the DAF Bridge Equity, that they each, upon receipt of the DAF Bridge Equity Payment, automatically and forever release and discharge NexPoint Small Bay and its affiliates, members, successors, and assigns, of and from all claims, demands, damages, liability, and responsibility, of any type or kind arising from or relating to the DAF Bridge Equity and/or their membership in NexPoint Small Bay, and Charitable DAF and Liberty CLO shall cease to be Members of NexPoint Small Bay and cease to have any rights under the Limited Liability Company Agreement of NexPoint Small Bay. Charitable DAF and Liberty CLO hereby provide any consent that is required by them under the Limited Liability Company Agreement of NexPoint Small Bay.

3. **Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law provisions. Each Party to hereby consents and agrees that the courts located in Texas shall have sole and exclusive jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Agreement or to any matter arising out of or relating to this Agreement. Each Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens*.

4. **Amendments; Waivers.** No amendment, modification, or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each Party, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Party making such waiver or the obligations of the other Party in any other respect or at any other time.

5. **Binding Effect.** Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors, assigns, executors, representatives, and administrators.

6. **Entire Agreement.** The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the Parties acknowledge have been merged into this Agreement.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile or other similar electronic transmission shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Remittance Agreement as of the Effective Date set forth above and in the capacities set forth below.

NREA SB II Holdings, LLC,
a Delaware limited liability company

By: _____
Name: Anthony Scavo
Title: Authorized Signatory

CHARITABLE DAF HOLDINGS CORP.

By: _____
Name: _____
Title: _____

LIBERTY CLO HOLDCO, LTD.

By: _____
Name: _____
Title: _____

REMITTANCE AGREEMENT

This Remittance Agreement (the "Agreement") is entered into as of January 10, 2025 (the "Effective Date") by and between NREA SB II Holdings, LLC (together with its successors and assigns in such capacities, "NexPoint Small Bay."), Charitable DAF Holdings Corp. (together with its successors and assigns in such capacities, "Charitable DAF"), and Liberty CLO Holdco, Ltd. (together with its successors and assigns in such capacities, "Liberty CLO"). NexPoint Small Bay, Charitable DAF, and Liberty CLO are each referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Charitable DAF and Liberty CLO jointly previously provided temporary bridge funding and equity to NexPoint Small Bay, with repayment required in accordance with the Limited Liability Company Agreement of NexPoint Small Bay (the "DAF Bridge Equity"); and

WHEREAS, NexPoint Small Bay currently owes $8,265,050.74 to Charitable DAF and Liberty CLO, jointly, as repayment for the DAF Bridge Equity;

THEREFORE, for and in consideration of the payment, promises, covenants, conditions, stipulations, benefits, and obligations described and provided herein, the sufficiency and adequacy of which is expressly hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Payment to DAF.** On or before January 14, 2025, NexPoint Small Bay shall pay to Charitable DAF and Liberty CLO, jointly, the amount of $8,265,050.74 (the "DAF Bridge Equity Payment").

2. **Satisfaction and Release of Claims.** Charitable DAF and Liberty CLO each stipulates and agrees that the DAF Bridge Equity Payment will fully and completely satisfy all obligations arising out of or relating to the DAF Bridge Equity, that they each, upon receipt of the DAF Bridge Equity Payment, automatically and forever release and discharge NexPoint Small Bay and its affiliates, members, successors, and assigns, of and from all claims, demands, damages, liability, and responsibility, of any type or kind arising from or relating to the DAF Bridge Equity and/or their membership in NexPoint Small Bay, and Charitable DAF and Liberty CLO shall cease to be Members of NexPoint Small Bay and cease to have any rights under the Limited Liability Company Agreement of NexPoint Small Bay. Charitable DAF and Liberty CLO hereby provide any consent that is required by them under the Limited Liability Company Agreement of NexPoint Small Bay.

3. **Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law provisions. Each Party to hereby consents and agrees that the courts located in Texas shall have sole and exclusive jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Agreement or to any matter arising out of or relating to this Agreement. Each Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens*.

4. **Amendments; Waivers.** No amendment, modification, or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each Party, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Party making such waiver or the obligations of the other Party in any other respect or at any other time.

5. **Binding Effect.** Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors, assigns, executors, representatives, and administrators.

6. **Entire Agreement.** The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the Parties acknowledge have been merged into this Agreement.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile or other similar electronic transmission shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Remittance Agreement as of the Effective Date set forth above and in the capacities set forth below.

NREA SB II Holdings, LLC

By:_____
Name:_____
Title:_____

CHARITABLE DAF HOLDINGS CORP.

By:_____
Name:_____
Title:_____

LIBERTY CLO HOLDCO, LTD.

By:_____
Name:_____
Title:_____

EXHIBIT 38

INTERCREDITOR AND PARTICIPATION AGREEMENT

This Intercreditor and Participation Agreement (the "Agreement") is entered into as of January 10, 2025 (the "Effective Date") by and between Highland CLO Management, Ltd. (together with its successors and assigns in such capacities, "HCLOM Ltd.") and Hunter Mountain Investment Trust (together with its successors and assigns in such capacities, "HMIT"). HCLOM Ltd. and HMIT are each referred to herein individually as a "Party" and jointly as the "Parties."

RECITALS

WHEREAS, on September 22, 2020, Highland Capital Management, L.P. filed a Notice of Filing of Debtor's Amended Schedules in its pending Chapter 11 Case No. 19-34054-sgj11 (the "Bankruptcy Case") in which it, among other things, scheduled a creditor's claim by HCLOM Ltd. (the "HCLOM Claim"); and

WHEREAS, on December 27, 2024, the Bankruptcy Court entered a Stipulated and Agreed Order Resolving (A) HCLOM, Ltd.'s Scheduled Claims 3.65 and 3.66; and (B) Highland Capital Management, L.P.'s (1) Objection and (2) Motion for a Bad Faith Finding and an Award of Attorneys' Fees Against HCLOM, Ltd. and James Dondero in Connection Therewith [Docket Nos. 3657, 4176] in the Bankruptcy Case (the "Stipulation and Agreed Order"); and

WHEREAS, the Stipulation and Agreed Order converted the HCLOM Claim to a Class 10 interest/claim (as such is defined in Article III.H. ¶ 10 of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) in the Bankruptcy Case) (the "Plan") in the amount of $10,140,633.26; and

WHEREAS, the Parties have agreed to certain rights and priorities solely as between themselves regarding HCLOM Ltd.'s participation in the payment of Class 10 interests/claims;

THEREFORE, for and in consideration of the promises, covenants, conditions, stipulations, benefits, and obligations described and provided herein, the sufficiency and adequacy of which is expressly hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **HMIT Payment Obligation to HCLOM Ltd.** Upon HMIT's receipt of distributions on account of its Class 10 interest/claim (the "Distributions"), HMIT will pay to HCLOM Ltd. an amount equal to five percent (5%) of the funds received by HMIT within two (2) business days after receipt of indefeasible funds by HMIT (the "HMIT Payment Obligation"). HMIT shall be entitled to deduct from the Distributions the fees and expenses billed by Kelly Hart Hallman, LLP which directly relate to the Stipulation and Agreed Order or this Agreement (the "HMIT Expenses") until all HMIT Expenses are paid in full.

2. **No Additional Duties to HCLOM Ltd.** HMIT shall retain and have the sole discretion to act with respect to its Class 10 interest/claim, and shall owe no additional duties to HCLOM Ltd. or any other person or entity, including without limitation, with respect to (i) the amount of Distributions or recovery by HMIT on account of its Class 10 interests/claims,

(ii) the amount of Distributions that could be received by any holder of Class 10 interests/claims, (iii) the rights of any holder of Class 10 interests/claims, or (iv) any pleading or document that could or should be filed in any way related to the Bankruptcy Case, the Plan, or the HMIT Class 10 interests/claims.

3. **No Liens or Encumbrances**. HMIT will not take any action that could reasonably be expected to encumber HMIT's Class 10 interests/claims, limit or affect HMIT's right or ability to fulfil and perform the HMIT Payment Obligation, or limit or affect HCLOM Ltd.'s right to receive the Distributions.

4. **This Agreement Supersedes the Effects of the Stipulated and Agreed Order Among the Parties**. HCLOM acknowledges and agrees that, notwithstanding the Stipulated and Agreed Order, the terms of this Agreement amends and supersedes the effect of the Stipulation and Agreed Order as between the Parties and HCLOM's rights to payment under the Plan are limited solely to the HMIT Payment Obligation.

5. **Non-Interference; No Cause of Action**. Notwithstanding Paragraph 3, HCLOM will not have any rights to object to or otherwise interfere with the rights of HMIT as a holder of Class 10 interest to reach a settlement with Highland Capital Management, LP ("Highland"). HCLOM acknowledges that it shall have no right to notice or approval of such a settlement nor will it have any cause of action against HMIT arising out of any such settlement.

6. **Remittance Agreement**. The Parties acknowledge that contemporaneously herewith NREA SB II Holdings, LLC (together with its successors and assigns in such capacities, "NexPoint Small Bay."), Charitable DAF Holdings Corp. (together with its successors and assigns in such capacities, "Charitable DAF"), and Liberty CLO Holdco, Ltd. (together with its successors and assigns in such capacities, "Liberty CLO") have entered into that certain Remittance Agreement effective January 10, 2025 (the "Remittance Agreement"). HCLOM agrees that if NexPoint Small Bay fails to make the DAF Bridge Equity Payment (as defined in the Remittance Agreement) pursuant to the terms of the Remittance Agreement, HMIT will have no obligations to make the HMIT Payment Obligation, and HMIT shall not receive any distribution from HMIT or any other party related to any Class 10 interest/claim. Notwithstanding any failure of NexPoint Small Bay to adhere to the terms of the Remittance Agreement, HCLOM acknowledges that by executing this Agreement, it shall have no other recourse or rights to payment under the Plan other than the terms of this Agreement.

7. **Choice of Law; Jurisdiction; Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law provisions. Each Party to hereby consents and agrees that the courts located in Texas shall have sole and exclusive jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Agreement or to any matter arising out of or relating to this Agreement. Each Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens*.

8. **Amendments; Waivers**. No amendment, modification, or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each Party, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Party making such waiver or the obligations of the other Party in any other respect or at any other time.

9. **Binding Effect**. Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors, assigns, executors, representatives, and administrators.

10. **Entire Agreement**. The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into this Agreement.

11. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile or other similar electronic transmission shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Intercreditor and Participation Agreement as of the Effective Date set forth above and in the capacities set forth below.

HIGHLAND CLO MANAGEMENT, LTD.

By: _____
Name: James Dondero
Title: President

HUNTER MOUNTAIN INVESTMENT TRUST

By: _____
Name: Mark Patrick
Title: Administrator

EXHIBIT 39

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed June 27, 2025

United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	**Re: Docket No. 4231**

STIPULATION WITHDRAWING OBJECTION OF THE DALLAS FOUNDATION AND CROWN GLOBAL LIFE INSURANCE, LTD TO MOTION FOR ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY RULE 9019 AND 11 U.S.C. § 363 APPROVING SETTLEMENT WITH THE HMIT ENTITIES AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

‘ This stipulation (the "Stipulation") is made by and among Hunter Mountain Investment Trust ("HMIT"), Beacon Mountain LLC ("Beacon Mountain"), Rand Advisors, LLC ("Rand Advisors"), Rand PE Fund I, LP ("Rand PE Fund"), Rand PE Fund Management, LLC ("Rand

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

1934054250627000000000002

GP"), Atlas IDF, LP ("Atlas IDF"), and Atlas IDF GP, LLC ("Atlas GP" and together with HMIT, Beacon Mountain, Rand Advisors, Rand PE Fund, Rand GP, and Atlas IDF, the "HMIT Entities"); The Dallas Foundation (the "Foundation"), Empower Dallas Foundation ("EDF"), the Okada Family Foundation ("Okada Family Foundation"), and Crown Global Life Insurance, Ltd. ("Crown," and with the Foundation, EDF, and the Okada Family Foundation, the "Foundation Parties"); Highland Capital Management, L.P., the reorganized debtor (the "Debtor" or "Highland," as applicable) in the above-captioned chapter 11 case (the "Bankruptcy Case"), the Highland Claimant Trust (the "Claimant Trust"), and the Highland Litigation Sub-Trust (the "Litigation Sub-Trust," and together with Highland and the Claimant Trust, the "Movants"), by and through their respective undersign counsel.

RECITALS

WHEREAS, on May 19, 2025, the Movants filed that certain *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Dkt. No. 4216] (the "9019 Motion");

WHEREAS, on June 9, 2025, the Foundation Parties filed that certain *Objection* [Dkt. No. 4231] to the 9019 Motion (the "Foundation Objection");

WHEREAS, on June 24, 2025, the Foundation Parties and the HMIT Entities entered into that certain *Settlement Term Sheet* which is annexed hereto as Attachment 1 to this Stipulation (the "Term Sheet");

NOW, WHEREFORE, IT IS HEREBY JOINTLY STIPULATED AND AGREED as follows:

1. The Foundation Parties withdraw the Foundation Objection with prejudice in accordance with the terms of the Term Sheet annexed hereto as **Attachment 1**.

2. The Foundation Parties, the HMIT Entities, and the Movants agree that the following language shall be contained in the proposed order on the 9019 Motion:

Notwithstanding anything in the Settlement Agreement or the 9019 Order to the contrary, none of the Dallas Foundation, EDF, Okada Family, or Crown (the "Foundation Parties") are or will be included in the definitions of HMIT Releasors or Highland Releasors. For the avoidance of doubt, however, any attempt by the Foundation Parties to assert a Claim against a HMIT Released Party by, through, or under, including derivatively, a Highland Entity, or against a Highland Released Party by, through, or under, including derivatively, a HMIT Entity is barred by this Order and the Settlement Agreement.

Respectfully Submitted:

KELLY HART PITRE

/s/ Louis M. Phillips
Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com
Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
Telephone: (504) 522-1812
Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com
Counsel for the HMIT Entities

and

OKIN ADAMS BARTLETT CURRY LLP
By: /s/ David L. Curry
Matthew S. Okin
Texas Bar No. 00784695
David L. Curry, Jr.
Texas Bar No. 24065107
1113 Vine Street, Suite 240
Houston, Texas 77002
Telephone: (713) 28-4100
Facsimile: (346)247-7158

Email: mokin@okinadams.com
dcurry@okinadams.com
ATTORNEYS FOR THE DALLAS FOUNDATION AND CROWN GLOBAL LIFE INSURANCE, LTD.

and

PACHULSKI STANG ZIEHL & JONES LLP

/s/John A. Morris _____
Jeffrey N. Pomerantz (admitted pro hac vice)
John A. Morris (admitted pro hac vice)
Gregory V. Demo (admitted pro hac vice)
Jordan A. Kroop (admitted pro hac vice)
Hayley R. Winograd (admitted pro hac vice)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jkroop@pszjlaw.com
hwinograd@pszjlaw.com
- and -

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110
Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

and

QUINN EMANUEL URQUHART & SULLIVAN LLP
/s/ Robert S. Loigman
Deborah J. Newman (admitted pro hac vice)
Robert S. Loigman (admitted pro hac vice)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
-and SIDLEY AUSTIN LLP
Paige Holden Montgomery
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Co-Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that a copy of the forgoing was served on all parties receiving notice in this chapter 11 case through this Court's CM/ECF System on this June 25, 2025.

/s/ Louis M. Phillips
Louis M. Phillips (#10505)

Attachment 1

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

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

BINDING TERM SHEET

This Summary of Terms and Conditions (this "Term Sheet") outlines certain agreements by and between the HMIT Entities,[1] on the one hand, and The Dallas Foundation (the "Foundation"), Empower Dallas Foundation ("EDF"), the Okada Family Foundation ("Okada Family Foundation"), and Crown Global Life Insurance, Ltd. ("Crown," and with the Foundation, EDF, and the Okada Family Trust, the "Foundation Parties") resolving that Objection (the "Objection") of The Dallas Foundation and Crown Global Life Insurance, Ltd to Motion for Enry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement With the HMIT Entities and Authorizing Actions Consistent Therewith [ECF No. 4216] (the "9019 Motion").

Clarification of 9019 Settlement Releases:	The parties have agreed to include language in any order granting the 9019 Motion clarifying the scope of releases as to the Foundation Parties.
Initial Settlement Payments to HMIT:	The HMIT Parties agree that the Cash Payment and the Initial Interim Distribution (the "Initial Settlement Payments") shall be made as provided in the Settlement Agreement and shall be held in accordance with the terms of this agreement. The HMIT Entities agree that the Initial Settlement Payments shall only be used to pay ordinary expenses of the HMIT entities in the nature of legal expenses and ordinary customary general expenses (the "Expenses"). At the Dallas Foundation Meeting (defined below), the HMIT Parties shall provide a projected quarterly expense budget to the Foundation Parties and shall continue to provide expense reporting reflecting the paid Expenses every forty-five (45) days, commencing August 5, 2025 (relating to Expenses paid June 15, 2025 to July 31, 2025). Such Expenses and the reports are "Information" within the meaning of this Agreement subject to the restrictions herein. Notwithstanding the foregoing, the HMIT Parties shall hold, in accordance with this Agreement, not less than $7,500,000.00 of the Initial Settlement

[1] Capitalized terms not defined herein shall have the meanings set forth in the 9019 Motion or 9019 Order.

	Payments actually received for a period of not less than thirty (30) calendar days following receipt of the Initial Settlement Payments. The HMIT Parties agree that the Initial Settlement Payments (less Expenses) shall be held in an account held by HMIT or CLO HoldCo LLC to be identified by the HMIT Parties. In identifying such account, the HMIT Parties shall provide the account number, the account name, and account location (institution name and location).
HMIT Meeting with The Dallas Foundation:	Mr. Shawn Raver, as representative of HMIT, will, as soon as is practicable, but no later than July 7, 2025 meet in person at a location mutually agreed upon (the "DF Meeting") with the Dallas Foundation and will review the current "DAF" structure, with an eye to commencing negotiations with DF about the use of current support organization(s) or the creation of new support organizations to support the DF and as appropriate the other Foundations mentioned above (the "Resolution"). Mr. Mark Patrick may attend the DF Meeting either in person or virtually. As used herein, the term "DAF" shall mean the historical corporate structure of Charitable DAF Holdco, LTD, its parents and subsidiaries, in existence as of January 1, 2024, and any changes thereto, including any changes described in that matter before the Grand Court of the Cayman Island – Financial Services Division, Cause No: FSD 99 of 2025 (JAJ). At the DF Meeting, which will be a confidential settlement meeting covered by any and all state, federal, and international confidentiality statutes, laws, customs, etc., with all parties to agreeing that no information ("Information") shared at the meeting can be shared further by any person or entity outside of the group participating at the meeting, except as otherwise provided herein. Prior to the Initial Meeting, the HMIT Parties and Foundation Parties may, but shall not be required as a pre-condition of the Initial Meeting, enter into such confidentiality agreements as may be agreed upon by the parties. Nothing in this agreement shall, however, preclude a party from disclosing Information pursuant to a subpoena, or other such legal compulsion or seeking information through subpoena within a proceeding in a tribunal of competent jurisdiction. At the DF Meeting, Mr. Raver will show and present the participants with a balance sheet for the DAF as of 9/30/2024, 12/31/2024, and 3/31/2025. For the avoidance of doubt, such accounting shall include an accounting of any transfer assets from an entity within the DAF structure during the periods covered by the balance sheets to any another entity, including another entity within the DAF structure.

	At any time after the DF Meeting, either the HMIT Parties or Foundation Parties may declare an impasse (an "Impasse") in negotiations in writing delivered to the parties. Unless an Impasse is declared following the DF Meeting, Mark Patrick agrees to meet with the Dallas Foundation and the other Supporting Organizations, or the Foundations they support, with an eye to furthering negotiations on the proposed Resolution. If an acceptable Resolution is agreed upon, Mr. Patrick, the Supporting Organization, and Dallas Foundation shall jointly request a meeting with the JOLs and the DF, with a view toward winding up the liquidation proceedings of Charitable DAF Holdco, Ltd., including not seeking any equitable wind up of Charitable DAF Fund, LP., all of which should be able to be accomplished expeditiously in the event of agreements hoped to be achieved upon the meeting described above.
Resolution of the Objection:	In return for the foregoing, TDF and Crown Global agree to withdraw their objection to the 9019 Motion, in all capacities in which their objection has been filed, and to withdraw the notice of deposition of Mark Patrick. The parties further agree that this Term Sheet shall be included as an attachment to the 9019 Order, and the terms of this Agreement enforceable in the Bankruptcy Court and the Bankruptcy Court shall maintain concurrent jurisdiction to resolve any dispute arising therefrom.

Dated: June 24, 2025

The Dallas Foundation

Julie Diaz, Chief Executive Officer

The HMIT Entities

Mark Patrick

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

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

BINDING TERM SHEET

This Summary of Terms and Conditions (this "Term Sheet") outlines certain agreements by and between the HMIT Entities,[1] on the one hand, and The Dallas Foundation (the "Foundation"), Empower Dallas Foundation ("EDF"), the Okada Family Foundation ("Okada Family Foundation"), and Crown Global Life Insurance, Ltd. ("Crown," and with the Foundation, EDF, and the Okada Family Foundation, the "Foundation Parties") resolving that Objection (the "Objection") of The Dallas Foundation and Crown Global Life Insurance, Ltd to Motion for Enry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement With the HMIT Entities and Authorizing Actions Consistent Therewith [ECF No. 4216] (the "9019 Motion").

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[1] Capitalized terms not defined herein shall have the meanings set forth in the 9019 Motion or 9019 Order.

	Payments actually received for a period of not less than thirty (30) calendar days following receipt of the Initial Settlement Payments. The HMIT Parties agree that the Initial Settlement Payments (less Expenses) shall be held in an account held by HMIT or CLO HoldCo LLC to be identified by the HMIT Parties. In identifying such account, the HMIT Parties shall provide the account number, the account name, and account location (institution name and location).
HMIT Meeting with The Dallas Foundation:	Mr. Shawn Raver, as representative of HMIT, will, as soon as is practicable, but no later than July 7, 2025 meet in person at a location mutually agreed upon (the "DF Meeting") with the Dallas Foundation and will review the current "DAF" structure, with an eye to commencing negotiations with DF about the use of current support organization(s) or the creation of new support organizations to support the DF and as appropriate the other Foundations mentioned above (the "Resolution"). Mr. Mark Patrick may attend the DF Meeting either in person or virtually. As used herein, the term "DAF" shall mean the historical corporate structure of Charitable DAF Holdco, LTD, its parents and subsidiaries, in existence as of January 1, 2024, and any changes thereto, including any changes described in that matter before the Grand Court of the Cayman Island – Financial Services Division, Cause No: FSD 99 of 2025 (JAJ). At the DF Meeting, which will be a confidential settlement meeting covered by any and all state, federal, and international confidentiality statutes, laws, customs, etc., with all parties to agreeing that no information ("Information") shared at the meeting can be shared further by any person or entity outside of the group participating at the meeting, except as otherwise provided herein. Prior to the Initial Meeting, the HMIT Parties and Foundation Parties may, but shall not be required as a pre-condition of the Initial Meeting, enter into such confidentiality agreements as may be agreed upon by the parties. Nothing in this agreement shall, however, preclude a party from disclosing Information pursuant to a subpoena, or other such legal compulsion or seeking information through subpoena within a proceeding in a tribunal of competent jurisdiction. At the DF Meeting, Mr. Raver will show and present the participants with a balance sheet for the DAF as of 9/30/2024, 12/31/2024, and 3/31/2025. For the avoidance of doubt, such accounting shall include an accounting of any transfer assets from an entity within the DAF structure during the periods covered by the balance sheets to any another entity, including another entity within the DAF structure.

	At any time after the DF Meeting, either the HMIT Parties or Foundation Parties may declare an impasse (an "Impasse") in negotiations in writing delivered to the parties. Unless an Impasse is declared following the DF Meeting, Mark Patrick agrees to meet with the Dallas Foundation and the other Supporting Organizations, or the Foundations they support, with an eye to furthering negotiations on the proposed Resolution. If an acceptable Resolution is agreed upon, Mr. Patrick, the Supporting Organization, and Dallas Foundation shall jointly request a meeting with the JOLs and the DF, with a view toward winding up the liquidation proceedings of Charitable DAF Holdco, Ltd., including not seeking any equitable wind up of Charitable DAF Fund, LP., all of which should be able to be accomplished expeditiously in the event of agreements hoped to be achieved upon the meeting described above.
Resolution of the Objection:	In return for the foregoing, TDF and Crown Global agree to withdraw their objection to the 9019 Motion, in all capacities in which their objection has been filed, and to withdraw the notice of deposition of Mark Patrick. The parties further agree that this Term Sheet shall be included as an attachment to the 9019 Order, and the terms of this Agreement enforceable in the Bankruptcy Court and the Bankruptcy Court shall maintain concurrent jurisdiction to resolve any dispute arising therefrom.

Dated: June 24, 2025

The Dallas Foundation	The HMIT Entities
_____	_____
Julie Diaz, Chief Executive Officer	Mark Patrick

EXHIBIT 40

E-filed in the Office of the Clerk
for the Business Court of Texas
7/13/2025 5:09 PM
Accepted by: Alexis Jennings
Case Number: 25-BC01B-0027

NEW YORK
LONDON
SINGAPORE
PHILADELPHIA
CHICAGO
WASHINGTON, DC
SAN FRANCISCO
SILICON VALLEY
SAN DIEGO
LOS ANGELES
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HOUSTON
DALLAS
FORT WORTH
AUSTIN

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PARTNER
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PERSONAL FAX: +1 214 853 9480
E-MAIL: JMCox@duanemorris.com

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NORTH JERSEY
LAS VEGAS
SOUTH JERSEY
SYDNEY
MYANMAR

ALLIANCES IN MEXICO

July 11, 2025

Mr. Brian Shaw
Carrington, Coleman, Sloman, & Blumenthal
901 Main Street, Suite 5500
Dallas, Texas 75202
bshaw@ccsb.com

Sent via email

Re: The Highland Dallas Foundation, Inc, et al v. Mark Patrick, et al,
Cause No. 25-BC01B-0027
Rule 11 Agreement

Dear Mr. Shaw:

Pursuant to Texas Rule of Civil Procedure 11, the parties in this matter The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc. (collectively "Plaintiffs"), and Mark Patrick, DFW Charitable Foundation, CDMCFAD, LLC, and CDH GP, Ltd. (collectively "Defendants"), agree to the following:

(1) The "Covered Entities" as referred to herein is defined to include collectively Charitable DAF Fund, LP and/or any of its subsidiaries, the DFW Charitable Foundation and/or any of its subsidiaries, CDMCFAD, LLC and/or any of its subsidiaries, and/or any of its subsidiaries, and CDH GP, Ltd. and/or any of its subsidiaries.

(2) Defendants shall have until Monday, July 14, 2025, to file a challenge to the court's jurisdiction (the "Plea").

(3) Plaintiffs shall have until Monday, July 21, 2025, to file a response to the Plea.

(4) Defendants shall have until Thursday, July 24, 2025, to file a reply to the Plea.

(5) The Parties agree to the following limits on discovery prior to any hearing on Plaintiffs' application for temporary injunction/appointment of receiver (the "Temporary Injunction")

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in this matter (these limits shall have no effect on any discovery conducted after the Temporary Injunction is decided):

a. Plaintiffs and Defendants each (not per party) may serve 25 requests for production to the other, may serve 5 interrogatories, may serve 10 requests for admission, and may take 3 depositions (2 of which shall be limited to 3 hours, and one of which shall be limited to 6 hours, the selection of the witness for the six hour deposition to be determined by the party seeking the deposition).

b. The Parties shall serve all discovery requests no later than Wednesday, July 16, 2025.

c. Responses to the written discovery and substantial completion of related any related document production shall be served as follows: (1) if the Court denies the Plea as to any Defendant, seven business days after the Court order denying the Plea is entered; (2) if the Court grants the Plea as to all Defendants, then responses to written discovery shall not be due, if at all, until seven business days after the Court's order granting the Plea is reversed or overturned.

Depositions shall take place within seven days after the written discovery responses and documents are served as set forth in c. above.

(6) If the Court denies the Plea, the Temporary Injunction shall be heard as reasonably practicable after the ruling, unless stayed by an appellate court. If the Plea is granted, but is later reversed or overturned, the same timelines for discovery provided in (5) above shall be followed and the Parties shall then seek to expeditiously set a hearing before the Court.

(7) Pending the Court's decision on the Temporary Injunction or grant of the Plea relating to the Temporary Injunction or Plea), the Covered Entities and their respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for any Covered Entity, agree:

a. not to transfer, conceal, withdraw, alienate, redeem, expend, encumber, disperse, or otherwise dispose of any and all funds, assets, receivables, or shares outside of the ordinary course of business;

b. not take any action to increase the compensation paid to any employee of the Covered Entities;

c. not to take any action to dissolve, winddown, liquidate, or otherwise alter the corporate standing of Covered Entities;

d. not to take any action to modify or alter the corporate governance of the Covered Entities, including but not limited to any amendment to their respective bylaws or organizational documents;

e. not to take any action to sell, exchange, or dispossess any asset of one of the Covered Entities unless (i) the sale is to a bona third party purchaser for reasonably equivalent value, (ii) except in the case of marketable securities, the bona fide

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DuaneMorris

purchaser is made aware of this Rule 11 Agreement, and (iii) the proceeds from that sale, exchange, or disposition remain owned by the Covered Entities;

f. not to alter, conceal, or destroy any business records concerning the Defendants, including any transfers of funds, assets, receivables, or shares to the Defendants;

(8) This Agreement shall be filed with the Court and, as provided in the first sentence of this letter, constitutes an enforceable agreement pursuant to Texas Rule of Civil Procedure 11. This Agreement shall expire and be of no force or effect on the earlier of (a) thirty days after a final order of the Court dismissing this case or (b) the Court's ruling on Plaintiffs' current request for a temporary injunction (or as subsequently amended). This does not prevent a party from requesting that a court of appeals issue an order to keep this Rule 11 Agreement in place during the pendency of such appeal or any objection to such request.

If the terms above accurately reflect our agreement, please acknowledge your agreement by signing below.

Best regards.

Sincerely,

Joseph M. Cox

AGREED TO FORM AND CONTENT:

Brian Shaw, Counsel for Defendants

JMC/kr
cc: (all via email)
Darren McCarty, Esq.
Craig Warner, Esq.
Clients

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Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Craig Warner on behalf of Craig Warner
Bar No. 24084158
CMWarner@duanemorris.com
Envelope ID: 103064824
Filing Code Description: Notice
Filing Description: Rule 11 Agreement
Status as of 7/14/2025 9:38 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Darren McCarty	24007631	darren@mccartylawpllc.com	7/13/2025 5:09:31 PM	SENT
Monica G.Gaudioso		mgaudioso@ccsb.com	7/13/2025 5:09:31 PM	SENT
Jason E.Boatright		JEBoatright@duanemorris.com	7/13/2025 5:09:31 PM	SENT
Brian P.Shaw		bshaw@ccsb.com	7/13/2025 5:09:31 PM	SENT
Angie Barrera		abarrera@ccsb.com	7/13/2025 5:09:31 PM	SENT
Craig M.Warner		CMWarner@duanemorris.com	7/13/2025 5:09:31 PM	SENT
Judy Garrison		jgarrison@ccsb.com	7/13/2025 5:09:31 PM	SENT
Sherry Stewart		sstewart@ccsb.com	7/13/2025 5:09:31 PM	SENT
Joseph MCox		JMCox@duanemorris.com	7/13/2025 5:09:31 PM	SENT
Benjamin Warden		BWarden@duanemorris.com	7/13/2025 5:09:31 PM	SENT
Andrea Reed		areed@ccsb.com	7/13/2025 5:09:31 PM	SENT
Katherine Ramos		KRamos@duanemorris.com	7/13/2025 5:09:31 PM	SENT
James Billingsley		JBillingsley@duanemorris.com	7/13/2025 5:09:31 PM	SENT
Dylan JAnderson		DJAnderson@duanemorris.com	7/13/2025 5:09:31 PM	SENT
Rhonda LThomas		rthomas@ccsb.com	7/13/2025 5:09:31 PM	SENT
Emily Owen		eowen@ccsb.com	7/13/2025 5:09:31 PM	SENT
Business Court 1B		BCDivision1B@txcourts.gov	7/13/2025 5:09:31 PM	SENT

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EXHIBIT 41

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 (RPJ)

IN THE MATTER OF THE GRAND COURT ACT

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

CONSENT ORDER

UPON the Plaintiff's Summons dated 15 July 2025 (the "**Injunction Summons**")

AND UPON the First, Third, Fifth, and Sixth Defendants' Summons of dated 21 July 2025 (the "**Directions Summons**")

AND UPON the parties listed therein giving to the Court the undertakings recorded in Schedule A to this Order

AND UPON the Injunction Summons and the Directions Summons being listed for hearing on 31 July 2025 before the Honourable Justice Parker

IT IS ORDERED BY CONSENT that:

1 The Injunction Summons shall be adjourned and listed for hearing on the first available date after 18 September 2025 (the "**Hearing**").

2 The time estimate for the Hearing shall be 2 days.

3 Directions for evidence in the Injunction Summons shall be as follows:

(a) The Defendants shall file and serve any evidence in answer by 4.30pm on 28 August 2025;

(b) The Plaintiff shall (if so advised) serve any evidence in reply by 4.30pm on 11 September 2025.

4 The Plaintiff shall file an agreed hearing bundle for the Hearing in electronic form by 4pm on the date which is 12 days before the date of the hearing (once listed).

5 The parties shall file and exchange skeleton arguments by 4pm on the date which is 7 days before the date of the hearing (once listed).

6 Costs of the Injunction Summons and the Directions Summons are reserved.

7 Liberty to apply.

DATED this 31 day of July 2025

FILED this 31 day of July 2025

THE HONOURABLE JUSTICE PARKER
JUDGE OF THE GRAND COURT

Approved as to form and content:

Maples and Calder (Cayman) LLP

Maples and Calder (Cayman) LLP

Attorneys for the Plaintiff

Campbells LLP

Campbells LLP

Attorneys for the First, Third, Fifth and Sixth Defendants

Kobre & Kim (Cayman)

Kobre & Kim

Attorneys for the Second Defendant

Baker & Partners (Cayman) Limited

Baker & Partners LLP

Attorneys for the Fourth Defendant

Schedule A

Undertakings given by the Defendants

1 Pending the determination of the JOLs' Summons, the Defendants[1], and the related entities listed in Schedule B hereto (the "**CDM Entities**") and their respective agents, servants, employees, and representatives, agree and undertake to:

(a) not to transfer, conceal, withdraw, alienate, redeem, expend, encumber, disperse, or otherwise dispose of any and all funds, assets, receivables, or shares of the CDM Entities outside of the ordinary course of business;

(b) not to take any action to increase the remuneration paid to any employee, manager or director of the CDM Entities;

(c) not to take any action to dissolve, wind-down, liquidate, or otherwise alter the corporate standing of the CDM Entities;

(d) not to take any action to modify or alter the corporate governance of the CDM Entities, including but not limited to any amendment to their respective bylaws or organizational documents;

(e) not to take any action to sell, exchange, or dispossess any asset of one of the CDM Entities unless (i) the sale is to a bona fide third-party purchaser for reasonably equivalent value, (ii) except in the case of marketable securities, the bona fide purchaser is made aware of this undertaking, and (iii) the proceeds from that sale, exchange, or disposition remain owned by the CDM Entities; and

(f) not to alter, conceal, or destroy any business records concerning the Defendants or the CDM Entities, including any transfers of funds, assets, receivables, or shares to or from the Defendants or CDM Entities.

2 Further, and to the extent not addressed by the foregoing, the Defendants and the CDM Entities undertake and agree that:

[1] Being the First Defendant, Mark Patrick; the Second Defendant, Paul Murphy; the Third Defendant, CDMCFAD, LLC; the Fourth Defendant, DFW Charitable Foundation; the Fifth Defendant, CDH GP, Ltd. as general partner for and on behalf of Charitable DAF Fund, LP, and in its capacity as general partner; and the Sixth Defendant, CLO HoldCo, Ltd.

(a) they will preserve and will not in any way dispose of, deal with, encumber, transfer or diminish the value of (as applicable) their or any interest (of whatsoever nature), whether held directly or indirectly, in Charitable DAF Fund, LP (the "**Fund**"), and/or the CDM Entities and/or any assets of the Fund other than in the ordinary course of business; and

(b) they shall not do anything to cause, procure, incite, promote or assist a breach by any other party of this undertaking.

3 From the date of this undertaking to the date of the determination of the JOLs' Summons, the Third, Fourth, Fifth and Sixth Defendants (the "**CDM Defendants**") and the CDM Entities will give 7 days' written notice to the JOLs of any payment or transaction of any nature (or series of related payments or transactions) they propose to make at or above US$50,000. Such notice must include full supporting information and documentation as well as an explanation of the rationale for the transaction.

4 From the date of this undertaking to the date of the determination of the JOLs' Summons, the First Defendant and the Second Defendant will give 7 days' written notice to the JOLs of any payment or transaction of any nature (or series of related payments or transactions) they propose to make at or above US$100,000. Such notice must include full supporting information and documentation as well as an explanation of the rationale for the transaction.

5 If the JOLs have any queries regarding a transaction (or series of related payments or transactions) and whether it is in the ordinary course of the CDM Defendants' or the CDM Entities' business, the CDM Defendants and the CDM Entities undertake to consult with the JOLs and to provide clarification. For the avoidance of doubt, nothing in this undertaking shall prohibit the Defendants and the CDM Entities from making payments to any attorney, lawyer, third party consultant, accountant, or external professional services advisor which is required, either in the ordinary course of business, or in respect of their reasonable legal fees and expenses in connection with these proceedings or the official liquidation of Charitable DAF Holdco, Ltd (In Official Liquidation) [FSD 116 of 2025 (JAJ)], or the Chapter 15 Case (defined below). All such transactions of the CDM Defendants and the CDM Entities will be provided for in the monthly transactions report pursuant to paragraph 6 of this undertaking. However, the Defendants agree that the issue of whether

they are permitted to use funds that derive directly or indirectly from the limited partner interest in the Fund to pay their legal fees and other service providers will be determined at the Hearing (as defined in paragraph 1 of the consent order to which these undertakings are appended).

6 From the date of this undertaking to the date of the determination of the JOLs' Summons, the CDM Defendants and the CDM Entities will disclose to the JOLs, at the end of each calendar month: (i) a full listing of payments or other transactions undertaken by them below US$50,000 in the calendar month just passed; and (ii) copies of all existing and up to date balance sheets and financial statements or records prepared in relation to the CDM Defendants or the CDM Entities for the period 30 June 2024 onwards. Any information of whatever nature relating to any member of the Defendants or the CDM Entities which is provided to the JOLs pursuant to this paragraph 5, shall not be disclosed to or shared with Mr James Dondero, the Supporting Organisations (being Highland Santa Barbara Foundation, Highland Dallas Foundation, and Highland Kansas City Foundation), or any known affiliates or service providers of these individuals / entities, subject to where the JOLs' are required to disclose any such information in the discharge of their duties to the Court or as otherwise required by law.

7 With respect to the chapter 15 case, *In re Charitable DAF Holdco, Ltd (In Official Liquidation)*, United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), Case No. 25-11376 (BLS) (the "**Chapter 15 Case**"), (i) The First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities consent to the entry of an order, in the form and substance appended hereto at Schedule C, in the Chapter 15 Case, recognising and enforcing the above undertakings in the United States; (ii) the JOLs agree to adjourn the hearing to recognise the Cayman Islands liquidation of Charitable DAF Holdco, Ltd. (the "**Company**") as a foreign main proceeding from 14 August 2025, to a date as soon as practicable, based on the Bankruptcy Court's availability, following the conclusion of inter parties hearing regarding the JOL's Summons (such, date, the "**Adjourned Recognition Hearing Date**"); (iii) the JOLs and the First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities agree that the deadline to object to recognition of the Cayman Islands liquidation of the Company shall be the date that is 21 days before the Adjourned Recognition Hearing Date and the deadline for JOLs to reply to objections, if any, shall be the date that is 7 days before the Adjourned Recognition Hearing Date. For

the avoidance of doubt, (i) the First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities reserve their rights regarding any relief sought in the Chapter 15 Case, including the relief sought in the *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative and (II) Related Relief Under Chapter 15 of the Bankruptcy Code*, other than with respect to matters expressly addressed in this undertaking; and (ii) the JOLs reserve their right to seek provisional relief against parties as they deem necessary or appropriate in furtherance of their duties as official liquidators, including in furtherance of their ongoing investigation of the business and affairs of the Company from the date hereof through the Adjourned Recognition Hearing Date.

Schedule B

List of CDM Entities

(i) CDH GP, Ltd. (Cayman Islands)

(ii) CDMCFAD, LLC (Delaware)

(iii) Charitable DAF Fund 2, LP (Cayman Islands)

(iv) Charitable DAF Fund, LP (Cayman Islands)

(v) CLO HoldCo, Ltd. (Cayman Islands)

(vi) Liberty CLO HoldCo, Ltd. (Cayman Islands)

(vii) HCT Holdco 2, Ltd. (Cayman Islands)

(viii) MGM Studios Holdco, Ltd. (Cayman Islands)

(ix) Liberty CLO HoldCo, LLC (Delaware)

(x) Liberty Sub, Ltd. (Delaware)

(xi) Charitable DAF Holdings Corp. (Delaware)

(xii) DST Investco, LLC (Delaware)

(xiii) Allanon Capital Management LLC (Texas)

(xiv) DFW Charitable Foundation (Delaware)

(xv) CLO HoldCo LLC (Delaware)

(xvi) Rand Advisors LLC (Delaware)

(xvii) CDHC Royse City Land LLC (Texas)

(xviii) Royse City Land Company LLC (Texas)

(xix) CDHC Assets LLC (Texas)

(xx) CDHC Fort Worth Land LLC (Texas)

(xxi) CDHC Stewart Creek LLC (Texas)

(xxii) BVP Property LLC (Delaware with CA registration)

Schedule C

Draft form of Chapter 15 order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
CHARITABLE DAF HOLDCO, LTD (In Official Liquidation),[2]	Case No. 25-11376 (BLS)
Debtor in a foreign proceeding.	

ORDER GRANTING PROVISIONAL RELIEF PURSUANT TO BANKRUPTCY CODE SECTIONS 105(A) AND 1519 TO RECOGNIZE AND ENFORCE AN ORDER ENTERED BY THE CAYMAN COURT IMPLEMENTING AN ASSET PRESERVATION PROTOCOL WITH RESPECT TO THE CDM ENTITIES

Upon consideration of [a certification of counsel] with respect to the entry by the Cayman Court[3] of an Order Implementing an Asset Preservation Protocol in the Cayman Litigation, dated [July __, 2025] and attached hereto as **Exhibit 1** (the "Asset Preservation Protocol") and it being understood that the JOLs and the First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities agree to the terms and form of this order (the "Order") and its entry by the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Asset Preservation Protocol is hereby recognized by this Court and all undertakings as they relate to the First, Third, Fourth, Fifth and Sixth Defendants and the CDM

[2] The Debtor is incorporated in the Cayman Islands as an exempted company and registered with registration number 263805. The Debtor's registered office is located at HSM Corporate Services Limited, P.O. Box 31726, 68 Fort Street, George Town, Grand Cayman, KY1-1207, Cayman Islands.

[3] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* [D.I. 3] (the "Verified Petition").

Entities, set forth therein are fully enforceable in the United States, including, but not limited to, each of the following:

a. the First, Third, Fourth, Fifth and Sixth Defendants (as defined in the Asset Preservation Protocol) and the related entities listed in and attached hereto as **Exhibit 2** (the "CDM Entities") and their respective agents, servants, employees, and representatives, agree and undertake to:

   i. not transfer, conceal, withdraw, alienate, redeem, expend, encumber, disperse, or otherwise dispose of any and all funds, assets, receivables, or shares of the CDM Entities outside of the ordinary course of business;

   ii. not take any action to increase the remuneration paid to any employee, manager or director of the CDM Entities;

   iii. not take any action to dissolve, wind-down, liquidate, or otherwise alter the corporate standing of the CDM Entities;

   iv. not take any action to modify or alter the corporate governance of the CDM Entities, including but not limited to any amendment to their respective bylaws or organizational documents;

   v. not take any action to sell, exchange, or dispossess any asset of one of the CDM Entities unless (i) the sale is to a bona fide third party purchaser for reasonably equivalent value, (ii) except in the case of marketable securities, the bona fide purchaser is made aware of this undertaking, and (iii) the proceeds from that sale, exchange, or disposition remain owned by the CDM Entities;

vi. not alter, conceal, or destroy any business records concerning the First, Third, Fourth, Fifth and Sixth Defendants or the CDM Entities, including any transfers of funds, assets, receivables, or shares to or from the First, Third, Fourth, Fifth and Sixth Defendants or CDM Entities;

b. Further, and to the extent not addressed by the foregoing, the First, Third, Fourth, Fifth and Sixth and the CDM Entities undertake and agree that:

i. they will preserve and will not in any way dispose of, deal with, encumber, transfer or diminish the value of (as applicable) their or any interest (of whatsoever nature), whether held directly or indirectly, in Charitable DAF Fund, LP (the "Fund"), and/or the CDM Entities and/or any assets of the Fund other than in the ordinary course of business; and

ii. they shall not do anything to cause, procure, incite, promote or assist a breach by any other party of this Order;

c. From the date of the Asset Preservation Protocol to the date of the determination JOLs' Summons (as defined in the Asset Preservation Protocol), the CDM Defendants (as defined in the Asset Preservation Protocol) and the CDM Entities will give 7 days' written notice to the JOLs of any payment or transaction of any nature (or series of related payments or transactions) they propose to make at or above US$50,000. Such notice must include full supporting information and documentation as well as an explanation of the rationale for the transaction;

d. From the date of the Asset Preservation Protocol to the date of the determination of the JOLs' Summons (as defined in the Asset Preservation

Protocol), the First Defendant (as defined in the Asset Preservation Protocol) will give 7 days' written notice to the JOLs of any payment or transaction of any nature (or series of related payments or transactions) he proposes to make at or above US$100,000. Such notice must include full supporting information and documentation as well as an explanation of the rationale for the transaction;

e. If the JOLs have any queries regarding a transaction (or series of related payments or transactions) and whether it is in the ordinary course of the CDM Defendants' or the CDM Entities' business, the CDM Defendants and CDM Entities undertake to consult with the JOLs and to provide clarification. For the avoidance of doubt, nothing in this undertaking shall prohibit the First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities from making payments to any attorney, lawyer, third party consultant, accountant, or external professional services advisor which is required, either in the ordinary course of business, or in respect of their reasonable legal fees and expenses in connection with the Cayman Litigation, the Cayman Proceeding or this Chapter 15 Case. All such transactions of the CDM Defendants and the CDM Entities will be provided for in the monthly transactions report pursuant to paragraph 1(f) of this Order. However, the First, Third, Fourth, Fifth and Sixth Defendants agree that the issue of whether they are permitted to use funds that derive directly or indirectly from the limited partner interest in the Fund to pay their legal fees and other service providers will be determined at the Hearing (as defined in the Asset Preservation Protocol);

f. from the date of the Asset Preservation Protocol to the date of the determination of the JOLs' Summons (as defined in the Asset Preservation Protocol), the CDM Defendants and the CDM Entities will disclose to the JOLs, at the end of each calendar month: (i) a full listing of payments or other transactions undertaken by them below US$50,000 in the calendar month just passed; and (ii) copies of all existing and up to date balance sheets and financial statements or records prepared in relation to the CDM Defendants or the CDM Entities for the period 30 June 2024 onwards. Any information of whatever nature relating to any member of the First, Third, Fourth, Fifth and Sixth Defendants or the CDM Entities which is provided to the JOLs pursuant to this paragraph 1(e), shall not be disclosed to or shared with Mr James Dondero, the Supporting Organizations (being Highland Santa Barbara Foundation, Highland Dallas Foundation, and Highland Kansas City Foundation), or any known affiliates or service providers of these individuals or entities, subject to where the JOLs' are required to disclose any such information in the discharge of their duties to the Cayman Court or as otherwise required by law;

2. Notwithstanding any provision in the Bankruptcy Rules to the contrary (i) this Order shall be effective immediately and enforceable upon entry; (ii) the JOLs are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (iii) the JOLs are authorized and empowered, and may, in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

3. Each of the First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities reserve their rights regarding any relief sought in the Chapter 15 Case, including the relief sought

in the Verified Petition, other than with respect to matters expressly addressed in paragraph 1 of this Order. For the avoidance of doubt, the First, Third, Fourth, Fifth and Sixth Defendants (as defined in the Asset Preservation Protocol) and the CDM Entities hereby consent to the recognition and enforcement of the Asset Preservation Protocol in the United States through and including the date of determination of the JOLs' Summons (as defined in the Asset Preservation Protocol) and shall not oppose the continuation of such relief at any hearing for recognition of the Cayman Proceeding. By agreeing to the entry of this order, the First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities have not consented to jurisdiction in this Court. All parties' rights are reserved with respect to jurisdiction

4. This Order is a Final Order within the meaning of 28 U.S.C. § 158(a) and is effective immediately upon entry.

5. This Order shall be binding on and inure to the benefit of the Debtor, the JOLs, the First, Third, Fourth, Fifth and Sixth Defendants, and the CDM Entities.

6. To the extent there is any inconsistency between the terms of this Order and the Asset Preservation Protocol, the terms of the Asset Preservation Protocol as they relate to the First, Third, Fourth, Fifth and Sixth Defendants and the CDM Entities shall control.

7. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order, any request for additional relief or any adversary proceeding brought in and through this Chapter 15 Case, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

Dated: [July __], 2025
Wilmington, Delaware

_____

Honorable Brendan L. Shannon
United States Bankruptcy Judge

Exhibit 1

[Asset Preservation Protocol]

FILED BY Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403.02/83824743)

EXHIBIT 42

FILED IN
BUSINESS COURT OF TEXAS
BEVERLY CRUMLEY, CLERK
ENTERED
9/18/2025

The Business Court of Texas,
1st Division

THE HIGHLAND DALLAS FOUNDATION, INC.; THE HIGHLAND KANSAS CITY FOUNDATION, INC.; and THE HIGHLAND SANTA BARBARA FOUNDATION, INC., *Plaintiffs*	§	
v.	§	Cause No. 25-BC01B-0027
MARK PATRICK and DFW CHARITABLE FOUNDATION; CDMCFAD, LLC; CHARITABLE DAF GP, LLC; and CDH GP, LTD., *Defendants*	§	

ORDER

Before the court are

1. Defendants' July 14, 2025, Motion to Dismiss and Plea to the Jurisdiction;

2. Plaintiffs' July 21, 2025, Response to Defendants' Motion to Dismiss and Plea to the Jurisdiction;

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3. Defendants' July 25, 2025, Reply in Support of their Motion to Dismiss and Plea to the Jurisdiction;

4. Plaintiffs' July 30, 2025, Surreply to Defendants' Motion to Dismiss and Plea to the Jurisdiction;

5. Defendants' August 11, 2025, Supplemental Brief and Alternative Motion to Abate;

6. Plaintiffs' August 18, 2025, Response to Defendants' Supplemental Brief and Alternative Motion to Abate;

7. Defendants' August 21, 2025, Reply in Support of their Supplemental Brief and Alternative Motion to Abate; and

8. Plaintiffs' August 25, 2025, Sur-reply to Defendants' Supplemental Brief and Alternative Motion to Abate.

Having considered the pleadings, motions, party submissions, and oral arguments, the court makes the following findings and conclusions:

1. Plaintiffs have constitutional standing to assert their claims because they allege an injury to themselves. Additionally, the court has statutory jurisdiction under Texas Government Code § 25A.004(b). Therefore, Defendants' Motion to Dismiss and Plea to the Jurisdiction based on those premises is denied. These are not rulings on (i) the validity of plaintiffs'

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causes of action; (ii) whether plaintiffs are proper parties to assert those causes of action; or (iii) whether all necessary parties are before the court.

2. The court does not at this time decide whether plaintiffs have the legal capacity to assert their causes of action because defendants have not filed a verified denial raising a lack of capacity defense. *See* TEX. R. CIV. P. 93(1).

3. Charitable DAF HoldCo, Ltd.'s joint official liquidators (JOLs) are necessary parties under Texas Rule of Civil Procedure 39(a), they are not parties to this case, and the court cannot provide complete relief in their absence. Accordingly, this case should be abated until when the JOLs become parties, voluntarily or involuntarily.

4. Any further filings must be made by leave of court.

So ORDERED.

BILL WHITEHILL
Judge of the Texas Business Court,
First Division

SIGNED: September 18, 2025

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Automated Certificate of eService

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Darren McCarty	24007631	darren@mccartylawpllc.com	9/18/2025 4:45:45 PM	SENT
Brent M.Rubin		brubin@ccsb.com	9/18/2025 4:45:45 PM	SENT
Monica G.Gaudioso		mgaudioso@ccsb.com	9/18/2025 4:45:45 PM	SENT
Joshua D.Kipp		jkipp@ccsb.com	9/18/2025 4:45:45 PM	SENT
Jason E.Boatright		JEBoatright@duanemorris.com	9/18/2025 4:45:45 PM	SENT
Elizabeth Perez		EPerez@duanemorris.com	9/18/2025 4:45:45 PM	SENT
Craig M.Warner		CMWarner@duanemorris.com	9/18/2025 4:45:45 PM	SENT
Angie Barrera		abarrera@ccsb.com	9/18/2025 4:45:45 PM	SENT
Benjamin Warden		BWarden@duanemorris.com	9/18/2025 4:45:45 PM	SENT
Dylan JAnderson		DJAnderson@duanemorris.com	9/18/2025 4:45:45 PM	SENT
Brian P.Shaw		bshaw@ccsb.com	9/18/2025 4:45:45 PM	SENT
Andrea Reed		areed@ccsb.com	9/18/2025 4:45:45 PM	SENT
Judy Garrison		jgarrison@ccsb.com	9/18/2025 4:45:45 PM	SENT
Joseph MCox		JMCox@duanemorris.com	9/18/2025 4:45:45 PM	SENT
James Billingsley		JBillingsley@duanemorris.com	9/18/2025 4:45:45 PM	SENT
Business Court 1B		BCDivision1B@txcourts.gov	9/18/2025 4:45:45 PM	SENT
Rhonda LThomas		rthomas@ccsb.com	9/18/2025 4:45:45 PM	SENT
Emily Owen		eowen@ccsb.com	9/18/2025 4:45:45 PM	SENT
Sherry Stewart		sstewart@ccsb.com	9/18/2025 4:45:45 PM	SENT

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EXHIBIT 43

Execution Version

THIRTEENTH AMENDMENT TO SENIOR SECURED TERM LOAN CREDIT AGREEMENT

THIRTEENTH AMENDMENT TO SENIOR SECURED TERM LOAN CREDIT AGREEMENT, dated September 30, 2025 (this "Amendment"), is by and among MIDWAVE WIRELESS, INC. (f/k/a TERRESTAR CORPORATION) (the "Borrower"), MIDWAVE WIRELESS COMMUNICATIONS, LLC (F/K/A MOTIENT COMMUNICATIONS LLC), MIDWAVE WIRELESS HOLDINGS, INC. (F/K/A MOTIENT HOLDINGS INC.), MIDWAVE WIRELESS HOLDINGS I, INC. (F/K/A MVH HOLDINGS I INC.), 2014 AWS SPECTRUM PARTNERSHIP, LP, 2014 AWS SPECTRUM BIDCO CORPORATION, as guarantors (each a "Guarantor" and, collectively, the "Guarantors" and together with the Borrower, the "Loan Parties"), the Lenders party hereto (in such capacity, the "Consenting Lenders"), and NEXBANK, FKA NEXBANK SSB, as agent for the Lenders (in such capacity, the "Administrative Agent").

W I T N E S S E T H :

WHEREAS, the Loan Parties, Administrative Agent and the Lenders have entered into that certain Senior Secured Term Loan Credit Agreement, dated as of February 27, 2015, as amended and restated pursuant to that certain First Amendment, dated as of October 25, 2017, and as amended and restated pursuant to that certain Second Amendment, dated as of March 19, 2018, and as amended by that certain Third Amendment, dated as of August 1, 2018, that certain Fourth Amendment, dated May 15, 2019, that certain Fifth Amendment, dated as of May 15, 2020, that certain Sixth Amendment, dated as of December 29, 2020, that certain Seventh Amendment, dated as of July 6, 2021, that certain Eighth Amendment, dated as of August 5, 2021, that certain Ninth Amendment, dated as of June 30, 2023, that certain Tenth Amendment, dated as of November 7, 2024, that certain Eleventh Amendment, dated as of January 31, 2025, and that certain Twelfth Amendment, dated as of May 14, 2025 (as further amended, supplemented or otherwise modified prior to the date hereof, the "Existing Credit Agreement" and as amended by this Amendment, the "Credit Agreement"), pursuant to which the Lenders have made and may make loans and advances and provide other financial accommodations to the Borrower as set forth in the (x) Existing Credit Agreement and (y) other Loan Documents;

WHEREAS, pursuant to the Existing Credit Agreement, the Financing Fee Effective Date is October 1, 2025;

WHEREAS, pursuant to the Existing Credit Agreement, the Borrower agreed to pay to each Tenth Amendment Consenting Lender (other than the Specified Lender) a financing fee equal to 9.0% of the principal amount of the Loans held by such Tenth Amendment Consenting Lender on such Financing Fee Effective Date, which shall be payable in kind, capitalized, compounded and added to the unpaid principal amount of the Tranche J Loans held by such Tenth Amendment Consenting Lender on the Financing Fee Effective Date (the "Existing Financing Fee Requirement");

WHEREAS, the Borrower has requested that the Consenting Lenders agree to amend the timing and mechanics of the Existing Financing Fee Requirement with respect to the Loans held by such Consenting Lender on the terms and subject to the conditions set forth herein and in the Credit Agreement;

WHEREAS, the Consenting Lenders are willing to agree to such amendments to the Existing Credit Agreement on the terms and subject to the conditions set forth herein; and

WHEREAS, by this Amendment, the undersigned parties desire and intend to evidence such amendments;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein and in the Credit Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Consents; etc. Each of the Consenting Lenders and the Loan Parties consents to and approves this Amendment, the amendments to the Existing Credit Agreement effected hereby, and the Credit Agreement as amended by this Amendment.

2. Amendment to Existing Credit Agreement.

(a) Section 1.1 of the Existing Credit Agreement is hereby amended to add thereto, in alphabetical order, the following definitions which shall read in full as follows:

"*Financing Fee PIK Interest*" means PIK Interest applicable to 9.0% of the principal amount of the Loans held by a Tenth Amendment Consenting Lender for the period beginning on October 1, 2025, and ending on the Financing Fee Effective Date.

(b) Section 1.1 of the Existing Credit Agreement is hereby amended by amending and restating the definition of "Financing Fee Effective Date" in its entirety as follows:

"*Financing Fee Effective Date*" means December 15, 2025.

(c) Section 2.9(c) of the Existing Credit Agreement is hereby amended and restated in its entirety as follows:

"(c) *Financing Fee.* The Borrower agrees to pay to each Tenth Amendment Consenting Lender (other than the Specified Lender) on the Financing Fee Effective Date a financing fee equal to (i) 9.0% of the principal amount of the Loans held by such Tenth Amendment Consenting Lender on the Financing Fee Effective Date (after adding Financing Fee PIK Interest to the principal amount of the Loans held by such Tenth Amendment Consenting Lender) *plus* (ii) Financing Fee PIK Interest (collectively, the "*Financing Fee*"), which shall be payable in kind, capitalized, compounded and added to the unpaid principal amount of the Tranche J Loans held by such Tenth Amendment Consenting Lender on the Financing Fee Effective Date; provided, that any assignment of Loans by any Tenth Amendment Consenting Lender effected following the Tenth Amendment Effective Date shall be deemed to include an assignment of the right to receive any Financing Fee on account of such Loans."

3. Interpretation. For purposes of this Amendment, all terms used herein which are not otherwise defined herein, including but not limited to, those terms used in the recitals hereto, shall have the respective meanings assigned thereto in the Existing Credit Agreement as amended

by this Amendment.

4. Representations and Warranties by Loan Parties. The Borrower and the Guarantors, jointly and severally, represent and warrant to the Administrative Agent and the Lenders as follows, which representations and warranties shall survive the execution and delivery hereof:

(a) no Default or Event of Default has occurred and is continuing as of the date hereof before and after giving effect to this Amendment;

(b) the Borrower and each Guarantor has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Amendment, and this Amendment has been duly executed and delivered by the Borrower and each Guarantor, and constitutes a legal, valid and binding obligation of the Borrower and each Guarantor, enforceable against such Borrower or Guarantor in accordance with its terms, except as enforceability may be limited by applicable domestic or foreign bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(c) the execution, delivery and performance of this Amendment by the Borrower or any Guarantor will not violate any Requirement of Law or Contractual Obligation of such Borrower or Guarantor in any respect that has or could reasonably be expected to have a Material Adverse Effect; and

(d) all of the representations and warranties set forth in the Existing Credit Agreement and the other Loan Documents, as amended hereby, are true and correct in all material respects (or, with respect to any representation or warranty that is itself modified or qualified by materiality or "Material Adverse Effect" standard, such representation or warranty shall be true and correct in all respects) on and as of the date hereof, as if made on the date hereof, except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all material respects as of such date.

5. Conditions Precedent. The amendments contained herein shall only be effective on the date on which each of the following conditions precedent are satisfied or waived (the "Thirteenth Amendment Effective Date"):

(a) the Administrative Agent shall have received counterparts of this Amendment, duly authorized, executed and delivered by each of the Loan Parties;

(b) the Administrative Agent shall have received counterparts of this Amendment, duly authorized, executed and delivered by the Consenting Lenders constituting each of the Lenders;

(c) no Default or Event of Default shall exist or have occurred and be continuing (after giving effect to the provisions of this Amendment); and

(d) the representations and warranties of each of the Loan Parties contained in this Amendment and each other Loan Document shall be true and correct in all material respects

(or, if such representation or warranty is subject to a materiality or Material Adverse Effect qualification, in all respects) on and as of the Thirteenth Amendment Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, if such representation or warranty is subject to a materiality or Material Adverse Effect qualification, in all respects) as of such earlier date.

6. Reaffirmation of the Guaranty and Collateral Documents.

(a) Each Loan Party (i) confirms, ratifies and reaffirms its respective obligations under the guaranty described in Article XI of the Credit Agreement (the "Guaranty"), (ii) agrees that the Guaranty remains valid, binding and enforceable in all respects against such Loan Party and that the Guaranty shall continue to be in full force and effect, with the same force, effect and priority in effect immediately prior to the Thirteenth Amendment Effective Date, and (iii) agrees to continue to comply with, and be subject to, all of the terms, provisions, conditions, covenants, agreements and obligations applicable to it as set forth in the Guaranty;

(b) Each Loan Party confirms, ratifies and reaffirms (i) its respective obligations under the Collateral Documents to which it is a party and (ii) the security interest granted in all of its right, title and interest in, to and under the Collateral under each Collateral Document to which it is a party;

(c) Each Loan Party agrees that each Collateral Document to which it is a party remains valid, binding and enforceable in all respects against such Loan Party and the security interests granted by it therein shall continue to be in full force and effect, with the same force, effect and priority in effect immediately prior to the Thirteenth Amendment Effective Date; and

(d) Each Loan Party agrees, acknowledges and reaffirms all the covenants and agreements contained in each Collateral Document to which it is a party.

All of the Collateral described therein do and shall continue to secure the payment of all Obligations of the Loan Parties under the Credit Agreement and the other Loan Documents, in each case, as amended by this Amendment.

7. Effect of this Amendment; No Novation. Except as expressly set forth herein, no other amendments, changes or modifications to the Loan Documents are intended or implied, and in all other respects the Loan Documents are hereby specifically ratified, reaffirmed and confirmed by each Loan Party as of the Thirteenth Amendment Effective Date and the Loan Parties shall not be entitled to any other or further amendment by virtue of the provisions of this Amendment or with respect to the subject matter of this Amendment. To the extent of conflict between the terms of this Amendment and the other Loan Documents, the terms of this Amendment shall control. The Credit Agreement and this Amendment shall be read and construed as one agreement. On and after the Thirteenth Amendment Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import, and each reference in the other Loan Documents to the Credit Agreement, shall mean and be a reference to the Credit Agreement as amended by this Amendment. The parties hereto acknowledge and agree that this Amendment and the other Loan Documents, whether executed and delivered in connection

herewith or otherwise, do not constitute a novation, satisfaction, payment, re-borrowing or termination of the "Obligations" under the Existing Credit Agreement or the other Loan Documents, and that all such "Obligations" under the Existing Credit Agreement or the other Loan Documents are in all respects continued and outstanding as "Obligations" under the Credit Agreement, except to the extent such obligations are modified from and after the Thirteenth Amendment Effective Date as provided in this Amendment or otherwise paid in full on the Thirteenth Amendment Effective Date.

8. Governing Law. This Amendment and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York without giving effect to any provision thereof that would require the application of the law of another jurisdiction.

9. Binding Effect. This Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

10. Further Assurances. The Borrower and the Guarantors shall execute and deliver such additional documents and take such additional action as may be reasonably requested by the Administrative Agent to effectuate the provisions and purposes of this Amendment.

11. Entire Agreement. This Amendment represents the entire agreement and understanding concerning the subject matter hereof among the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

12. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment.

13. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or other electronic method of transmission shall have the same force and effect as delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by facsimile or other electronic method of transmission shall also deliver an original executed counterpart of this Amendment, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Amendment.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Limited Waiver to be duly executed and delivered by their authorized officers as of the day and year first above written.

MIDWAVE WIRELESS, INC., as the Borrower

By: _____
Name: Douglas Brandon
Title: Secretary

MIDWAVE WIRELESS COMMUNICATIONS LLC, as a Guarantor

By: _____
Name: Douglas Brandon
Title: Secretary

MIDWAVE WIRELESS HOLDINGS INC., as a Guarantor

By: _____
Name: Douglas Brandon
Title: Secretary

MIDWAVE WIRELESS HOLDINGS I INC., as a Guarantor

By: _____
Name: Douglas Brandon
Title: Secretary

2014 AWS SPECTRUM BIDCO CORPORATION, as a Guarantor

By: _____
Name: John Dooley
Title: President and Chief Executive Officer

2014 AWS SPECTRUM PARTNERSHIP, LP, as a Guarantor

By: Jarvinian AWS3 LLC, its General Partner

By: _____
Name: John Dooley
Title: Manager

NEXBANK, FKA NEXBANK SSB, as Administrative Agent

By: _____

Name: Rhett Miller

Title: EVP - Chief Banking Officer

CONSENTING LENDERS:

CEDARVIEW OPPORTUNITIES MASTER FUND, LP, as Consenting Lender

By: _____

Name: Burton Weinstein

Title: Managing Partner

CONSENTING LENDERS:

JAMES PALLOTTA, as Consenting Lender

By: /s/ Pallotta
Name: James J. Pallotta
Title:

CONSENTING LENDERS:

L-BAND FUND II, LP, as Consenting Lender

By: _____
Name: Thomas P. Eddy
Title: Member of L-Band Fund II GP LLC, the General Partner of L-Band Fund II, LP

L-BAND TARGET FUND, LP, as Consenting Lender

By: _____
Name: Thomas P. Eddy
Title: Member of L-Band Target Fund GP, LLC, the General Partner of L-Band Target Fund, LP

CONSENTING LENDERS:

SIC I LLC FKA SOLUS INVESTMENT CO LLC, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLA LTD, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLUS ADVISORS LLC, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLUS LONG-TERM OPPORTUNITIES FUND MASTER LP, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLUS OPPORTUNITIES FUND 1 LP, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLUS OPPORTUNITIES FUND 4 LP, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLUS OPPORTUNITIES FUND 5 LP, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLUS OPPORTUNITIES IDF SERIES INTERESTS OF THE SALI MULTI-SERIES FUND, L.P., as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

SOLUS CORE OPPORTUNITIES LP, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

ULTRA MASTER LTD., as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

ULTRA NB LLC, as Consenting Lender

By: _____
Name: Gordon J. Yeager
Title: Authorized Signatory

CONSENTING LENDERS:

CLO HOLDCO, LTD., as Consenting Lender



By: _____
Name: Mark Patrick
Title: Director

CONSENTING LENDERS:

TRUST UNDER THE KODAK RETIREMENT PLAN TRUST, as Consenting Lender

By: _____
Name: Chris Klapinsky
Title: Partner, NEPC, LLC

Case 1:26-cv-01652-JSR Document 1-1 Filed 02/27/26 Page 19 of 20

CONSENTING LENDERS:

THE IBS OPPORTUNITY FUND, LTD., as Consenting Lender

By: _____
Name: James S. Horne
Title: CFO, IBS Capital LLC, its Investment Manager

THE IBS TURNAROUND FUND (QP) (A LIMITED PARTNERSHIP), as Consenting Lender

By: _____
Name: James S. Horne
Title: CFO, IBS Capital LLC, its General Partner

THE IBS TURNAROUND FUND, L.P., as Consenting Lender

By: _____
Name: James S. Horne
Title: CFO, IBS Capital LLC, its General Partner

Docusign Envelope ID: D7B64C7D-69B6-4889-8251-7CBE2838E54E

CONSENTING LENDERS:

OCM TRSTR Holdings, LLC as Consenting Lender

By: Oaktree Fund GP, LLC
Its: Manager

By: Oaktree Fund GP I, L.P.
Its: Managing Member

By: Signed by: Sherman Lau 905F93179F544D7...
Name: Sherman Lau
Title: Authorized Signatory

By: DocuSigned by: David Nicoll 80EF4EE2BE4F41F...
Name: David Nicoll
Title: Authorized Signatory

CONSENTING LENDERS:

WARANA SP USA VI-A LLC, as Consenting Lender

By: Grant Gillespie (Sep 26, 2025 10:31:46 EDT)
Name: Grant Gillespie
Title: Authorized Signatory

EXHIBIT 44

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LIBERTY CLO HOLDCO, LTD.	§	
	§	
***Plaintiff*,**	§	
	§	
v.	§	**Case No. 1:25-cv-00236-JLH**
	§	
NANCY DONDERO, as Trustee of The Dugaboy Investment Trust, GRANT JAMES SCOTT as Trustee of The SLHC Trust, NEXPOINT ADVISORS, L.P., NEXPOINT ADVISORS GP, LLC, NEXPOINT REAL ESTATE ADVISORS IV, L.P. and NEXPOINT REAL ESTATE ADVISORS GP, LLC,	§	
	§	
***Defendants*.**	§	

STIPULATION AND [PROPOSED]
ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, on February 28, 2025, Plaintiff Liberty CLO HoldCo, Ltd. ("Plaintiff") commenced the above-captioned action and filed its Complaint and supporting documents (D.I. 1); and

WHEREAS, on March 25, 2025, Defendants Nancy Dondero, as Trustee of The Dugaboy Investment Trust, Grant Scott, as Truste of the SLHC Trust, NexPoint Advisors, L.P., NexPoint Advisors GP, LLC, NexPoint Real Estate Advisors IV, L.P., and NexPoint Real Estate Advisors GP, LLC (collectively, "Defendants") filed their Answers (D.I. 19-23);

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, through their undersigned counsel and subject to approval of the Court, that:

1. The Complaint in the above-captioned action is dismissed with prejudice.

2. Upon the Court's approval of this Stipulation and [Proposed] Order of Dismissal with Prejudice, the above-captioned action shall hereby be closed.

Dated: December 3, 2025

DORSEY & WHITNEY (DELAWARE) LLP

By: */s/ Eric Lopez Schnabel*
Eric Lopez Schnabel (DE Bar No. 3672)
300 Delaware Avenue, Suite 1010
Wilmington, Delaware 19801
Telephone: (302) 425-7171
Facsimile: (302) 425-7177
E-mail: *schnabel.eric@dorsey.com*

-and-

Brian Shaw (*admitted pro hac vice*)
Texas Bar No. 24053473
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
901 Main St., Suite 5500
Dallas, TX 75202
Telephone: (214) 855-3003
E-mail: bshaw@ccsb.com

Monica Gaudioso (*admitted pro hac vice*)
Texas Bar No. 24084570
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
901 Main St., Suite 5500
Dallas, TX 75202
Telephone: (214) 855-3088
E-mail: mgaudioso@ccsb.com

ATTORNEYS FOR PLAINTIFF LIBERTY CLO HOLDCO, LTD.

HOGAN MCDANIEL

By: */s/ Daniel K. Hogan*
Daniel K. Hogan
DE Bar No. 2814
1311 Delaware Avenue, Ste. 1
Wilmington, Delaware 19806
Telephone: (302) 656-7540
Facsimile: (302) 656-7599
Email: dkhogan@dkhogan.com

STINSON LLP

Deborah Deitsch-Perez
Texas Bar No. 24036072
deborah.deitschperez@stinson.com
(*admitted pro hac vice*)

Jeffrey T. Prudhomme
Texas Bar No. 24053696
jeff.prudhomme@stinson.com
(*admitted pro hac vice*)

2200 Ross Ave, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Telecopier: (214) 560-2203

ATTORNEYS FOR DEFENDANTS

IT IS SO ORDERED THIS __ day of _____, 2025

_____
The Honorable Jennifer L. Hall

EXHIBIT 45

FILED IN
BUSINESS COURT OF TEXAS
BEVERLY CRUMLEY, CLERK
ENTERED
12/8/2025

ATLAS IDF, LP, Plaintiff, v. NEXPOINT REAL ESTATE PARTNERS, LLC f/k/a HCRE PARTNERS, LLC, and NANCY DONDERO, as Trustee of The Dugaboy Investment Trust, Defendants.	§ § § § § § § § § § § § § §	THE BUSINESS COURT OF TEXAS FIRST DIVISION Cause No. 25-BC01B-0004

AGREED FINAL JUDGMENT

The Court considered the Traditional Motion for Summary Judgment (the "Motion").[1] filed by Plaintiff Atlas IDF, LP ("Atlas") on September 29, 2025, the response and reply, the admitted summary-judgment evidence, the pleadings in this case, and the agreement of the parties reflected by this Agreed Final Judgment.

The Court concludes that the Motion should be granted and the parties' agreement honored, such that Atlas is entitled to final judgment against Defendant NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("NexPoint") as set forth below.

[1] All defined terms in the Motion are incorporated herein.

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Accordingly, the Court therefore RENDERS final judgment in favor of Atlas on its claims for breach (1) of the $2.3M Note, and (2) the $5M Note against NexPoint.

It is ORDERED, Adjudged, and Decreed that Atlas shall recover the following amounts from NexPoint:

1. Damages on the $2.3M Note, calculated as follows: $4,583,477.85 in accrued but unpaid principal and interest due as of October 27, 2025; with pre-judgment interest on that amount at the rate of 8.00% annually, accruing at $967.71 per day beginning on October 27, 2025, until the day before the date of this Agreed Final Judgment;

2. Damages on the $5M Note, calculated as follows: $9,955,549.91 in accrued but unpaid principal and interest due as of October 27, 2025; with pre-judgment interest on that amount at the rate of 8.00% annually, accruing at $2,105.25 per day beginning on October 27, 2025, until the day before the date of this Agreed Final Judgment;

3. Atlas's reasonable and necessary pre-judgment attorneys' fees in the amount of $136,834.50;

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4. Conditional post-judgment and appellate fees as follows:

a. $19,791.75 if NexPoint files an unsuccessful motion for new trial;

b. $118,750.50 if NexPoint files an unsuccessful appeal to the Court of Appeals;

c. $59,375.25 if NexPoint files an unsuccessful petition for review to the Supreme Court of Texas if a response to the petition for review is filed;

d. $118,750.50 if NexPoint files an unsuccessful petition for review to the Supreme Court of Texas if a brief on the merits is also filed; and

e. $79,167.00 if NexPoint files an unsuccessful appeal to the Supreme Court of Texas if the petition for review is granted and oral argument is presented;

5. Costs of court; and

6. Post-judgment interest on all amounts due under this Agreed Final Judgment at the contractual rate of 8.00% pursuant to Texas Finance Code § 304.002, beginning on the date this Agreed Final Judgment is rendered.

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It is ORDERED, Adjudged, and Decreed that NexPoint shall pay to Atlas the net proceeds due to NexPoint from the sale of any of its assets to satisfy this Agreed Final Judgment until paid in full.

It is ORDERED, Adjudged, and Decreed that Atlas shall have all writs of process and orders necessary to execute on and enforce this Agreed Final Judgment.

This Agreed Final Judgment finally disposes of all claims, all causes of action, and all parties before the Court in this case. To the extent not addressed herein or in a prior order of the Court, all other relief requested by the parties is denied. This final judgment is appealable.

NexPoint waives all rights to appeal this Agreed Final Judgment.

It is SO ORDERED.

BILL WHITEHILL
Judge of the Texas Business Court,
First Division

SIGNED: December 8, 2025

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AGREED AS TO FORM, ENTRY, AND AS A CONSENT/AGREED JUDGMENT:

By: _____*/s/ Brian P. Shaw*_____
Brian P. Shaw, counsel for
Plaintiff Atlas IDF, LP

By: _____*/s/ Deborah Deitsch-Perez*_____
Deborah Deitsch-Perez, counsel
for Defendant NexPoint Real
Estate Partners f/k/a HCRE
Partners, LLC

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Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 108824009
Filing Code Description: No Fee Documents
Filing Description: Agreed Final Judgment
Status as of 12/8/2025 10:48 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Deborah Deitsch-Perez		deborah.deitschperez@stinson.com	12/8/2025 10:43:10 AM	SENT
Deborah Deitsch-Perez		deborah.deitschperez@stinson.com	12/8/2025 10:43:10 AM	SENT
Jeff Prudhomme		jeff.prudhomme@stinson.com	12/8/2025 10:43:10 AM	SENT
Jeff Prudhomme		jeff.prudhomme@stinson.com	12/8/2025 10:43:10 AM	SENT
Monica E.Gaudioso		mgaudioso@ccsb.com	12/8/2025 10:43:10 AM	SENT
Brian P.Shaw		bshaw@ccsb.com	12/8/2025 10:43:10 AM	SENT
Andrea C.Reed		areed@ccsb.com	12/8/2025 10:43:10 AM	SENT
Business Court 1B		BCDivision1B@txcourts.gov	12/8/2025 10:43:10 AM	SENT
Team Email		DAL.LSSTeam2@stinson.com	12/8/2025 10:43:10 AM	SENT
Jacob Gaslin		jacob.gaslin@stinson.com	12/8/2025 10:43:10 AM	SENT
Rhonda LThomas		rthomas@ccsb.com	12/8/2025 10:43:10 AM	SENT

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EXHIBIT 46

efile Public Visual Render | ObjectId: 202523219349325902 - Submission: 2025-11-17 | TIN: 45-3961755

Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2024

Open to Public Inspection

A For the 2024 calendar year, or tax year beginning 01-01-2024 , and ending 12-31-2024

B Check if applicable:
- ☐ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Final return/terminated
- ☐ Amended return
- ☐ Application pending

C Name of organization
HIGHLAND DALLAS FOUNDATION INC

Doing business as

Number and street (or P.O. box if mail is not delivered to street address) | Room/suite
2101 CEDAR SPRINGS SUITE 1200

City or town, state or province, country, and ZIP or foreign postal code
DALLAS, TX 75201

D Employer identification number
45-3961755

E Telephone number
(214) 276-6300

G Gross receipts $ 4,709,490

F Name and address of principal officer:
JAMES DONDERO
2101 CEDAR SPRINGS SUITE 1200
DALLAS, TX 75201

H(a) Is this a group return for subordinates? ☐ Yes ☑ No

H(b) Are all subordinates included? ☐ Yes ☐ No
If "No," attach a list. See instructions.

H(c) Group exemption number

I Tax-exempt status: ☑ 501(c)(3) ☐ 501(c) ( ) (insert no.) ☐ 4947(a)(1) or ☐ 527

J Website: N/A

K Form of organization: ☑ Corporation ☐ Trust ☐ Association ☐ Other

L Year of formation: 2011

M State of legal domicile: TX

Part I Summary

1 Briefly describe the organization's mission or most significant activities:
TO SUPPORT AND BENEFIT THE DALLAS FOUNDATION, A TEXAS NONPROFIT CORPORATION.

2 Check this box ☐

Activities & Governance	**3** Number of voting members of the governing body (Part VI, line 1a)	**3**	3
	4 Number of independent voting members of the governing body (Part VI, line 1b)	**4**	1
	5 Total number of individuals employed in calendar year 2024 (Part V, line 2a)	**5**	0
	6 Total number of volunteers (estimate if necessary)	**6**	0
	7a Total unrelated business revenue from Part VIII, column (C), line 12	**7a**	0
	b Net unrelated business taxable income from Form 990-T, Part I, line 11	**7b**	0

		Prior Year	Current Year
Revenue	**8** Contributions and grants (Part VIII, line 1h)	0	0
	9 Program service revenue (Part VIII, line 2g)	0	0
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	32,787,503	4,709,490
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	0	0
	12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	32,787,503	4,709,490
Expenses	**13** Grants and similar amounts paid (Part IX, column (A), lines 1–3)	2,284,137	3,839,918
	14 Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	0	0
	16a Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	b Total fundraising expenses (Part IX, column (D), line 25) 0		
	17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	103,570	677,824
	18 Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	2,387,707	4,517,742
	19 Revenue less expenses. Subtract line 18 from line 12	30,399,796	191,748

		Beginning of Current Year	End of Year
Net Assets or Fund Balances	**20** Total assets (Part X, line 16)	139,632,832	82,073,527
	21 Total liabilities (Part X, line 26)	0	405,413
	22 Net assets or fund balances. Subtract line 21 from line 20	139,632,832	81,668,114

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

	which the organization is licensed to issue qualified health plans	13b			
c	Enter the amount of reserves on hand	13c			
14a	Did the organization receive any payments for indoor tanning services during the tax year?		14a		No
b	If "Yes," has it filed a Form 720 to report these payments? *If "No," provide an explanation in Schedule O*		14b		
15	Is the organization subject to the section 4960 tax on payment(s) of more than $1,000,000 in remuneration or excess parachute payment(s) during the year? If "Yes," see the instructions and file Form 4720, Schedule N.		15		No
16	Is the organization an educational institution subject to the section 4968 excise tax on net investment income? If "Yes," complete Form 4720, Schedule O.		16		No
17	**Section 501(c)(21) organizations.** Did the trust, or any disqualified or other person engage in any activities that would result in the imposition of an excise tax under section 4951, 4952, or 4953? If "Yes," complete Form 6069.		17		

Part VI **Governance, Management, and Disclosure.** *For each "Yes" response to lines 2 through 7b below, and for a "No" response to lines 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.*

Check if Schedule O contains a response or note to any line in this Part VI ☑

Section A. Governing Body and Management

				Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year	1a	3		
	If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.				
b	Enter the number of voting members included in line 1a, above, who are independent	1b	1		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		2		No
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person?		3		No
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?		4		No
5	Did the organization become aware during the year of a significant diversion of the organization's assets?		5		No
6	Did the organization have members or stockholders?		6		No
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?		7a		No
b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?		7b		No
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:				
a	The governing body?		8a	Yes	
b	Each committee with authority to act on behalf of the governing body?		8b	Yes	
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? *If "Yes," provide the names and addresses in Schedule O*		9		No

Section B. Policies (*This Section B requests information about policies not required by the Internal Revenue Code.*)

			Yes	No
10a	Did the organization have local chapters, branches, or affiliates?	10a		No
b	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	10b		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	11a	Yes	
b	Describe on Schedule O the process, if any, used by the organization to review this Form 990.			
12a	Did the organization have a written conflict of interest policy? *If "No," go to line 13*	12a		No
b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	12b		
c	Did the organization regularly and consistently monitor and enforce compliance with the policy? *If "Yes," describe on Schedule O how this was done*	12c		
13	Did the organization have a written whistleblower policy?	13		No
14	Did the organization have a written document retention and destruction policy?	14		No
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?			
a	The organization's CEO, Executive Director, or top management official	15a		No
b	Other officers or key employees of the organization	15b		No
	If "Yes" to line 15a or 15b, describe the process on Schedule O. See instructions.			

16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?	**16a**		No
b	If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?	**16b**		

Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed

18 Section 6104 requires an organization to make its Form 1023 (1024 or 1024-A, if applicable), 990, and 990-T (section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.

☐ Own website ☐ Another's website ☑ Upon request ☐ Other (explain in Schedule O)

19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, address, and telephone number of the person who possesses the organization's books and records:
TORREY LITTLETON 3000 PEGASUS PARK STE 930 DALLAS, TX 75247 (214) 741-9898

Part VII Compensation of Officers, Directors,Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII ☐

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See the instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee or key employee) who received reportable compensation (box 5 of Form W-2, box 6 of Form 1099-MISC, and/or box 1 of Form 1099-NEC) of more than $100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, or highest compensated employees who received more than $100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than $10,000 of reportable compensation from the organization and any related organizations.

See the instructions for the order in which to list the persons above.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
(1) JAMES DONDERO PRESIDENT, DIRECTOR	1.00 0.00	X		X				0	0	0
(2) JULIE DIAZ VICE PRESIDENT	0.50 40.00	X		X				518,549	0	13,576
(3) ANGELA WOODSON SECRETARY	0.50 40.00			X				182,830	0	19,002
(4) TORRREY LITTLETON TREASURER	0.50 40.00			X				260,781	0	29,957

efile Public Visual Render | ObjectId: 202523219349325902 - Submission: 2025-11-17 | TIN: 45-3961755

SCHEDULE A (Form 990)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ **Attach to Form 990 or Form 990-EZ.**
▶ **Go to www.irs.gov/Form990 for instructions and the latest information.**

OMB No. 1545-0047

2024

Open to Public Inspection

Name of the organization
HIGHLAND DALLAS FOUNDATION INC

Employer identification number
45-3961755

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

1 ☐ A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i).**

2 ☐ A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E (Form 990).)

3 ☐ A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**

4 ☐ A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state:

5 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II.)

6 ☐ A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**

7 ☐ An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi).** (Complete Part II.)

8 ☐ A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)

9 ☐ An agricultural research organization described in **170(b)(1)(A)(ix)** operated in conjunction with a land-grant college or university or a non-land grant college of agriculture. See instructions. Enter the name, city, and state of the college or university:

10 ☐ An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2).** (Complete Part III.)

11 ☐ An organization organized and operated exclusively to test for public safety. See **section 509(a)(4).**

12 ☑ An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2).** See **section 509(a)(3).** Check the box on lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.

a ☑ **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**

b ☐ **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**

c ☐ **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**

d ☐ **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**

e ☐ Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.

f Enter the number of supported organizations 1

g Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1- 10 above (see instructions))	(iv) Is the organization listed in your governing document? Yes	(iv) No	(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
(A) THE DALLAS FOUNDATION	752890371	7	Yes		3,839,918	0
Total 1					3,839,918	0

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization failed to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

*If "Yes," explain in **Part VI** what controls the organization put in place to ensure such payments were not received by those persons.*

		3c		
4a	Was any supported organization not organized in the United States ("foreign supported organization")? *If "Yes" and if you checked box 12a or 12b in Part I, answer lines 4b and 4c below.*	4a		No
b	Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? *If "Yes," describe in **Part VI** how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.*	4b		
c	Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? *If "Yes," explain in **Part VI** what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.*	4c		
5a	Did the organization add, substitute, or remove any supported organizations during the tax year? *If "Yes," answer lines 5b and 5c below (if applicable). Also, provide detail in **Part VI,** including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).*	5a		No
b	**Type I or Type II only.** Was any added or substituted supported organization part of a class already designated in the organization's organizing document?	5b		
c	**Substitutions only.** Was the substitution the result of an event beyond the organization's control?	5c		
6	Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? *If "Yes," provide detail in **Part VI.***	6		No
7	Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? *If "Yes," complete Part I of Schedule L (Form 990) .*	7		No
8	Did the organization make a loan to a disqualified person (as defined in section 4958) not described on line 7? *If "Yes," complete Part I of Schedule L (Form 990).*	8		No
9a	Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons, as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? *If "Yes," provide detail in **Part VI.***	9a		No
b	Did one or more disqualified persons (as defined on line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? *If "Yes," provide detail in **Part VI.***	9b		No
c	Did a disqualified person (as defined on line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? *If "Yes," provide detail in **Part VI.***	9c		No
10a	Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? *If "Yes," answer line 10b below.*	10a		No
b	Did the organization have any excess business holdings in the tax year? *(Use Schedule C, Form 4720, to determine whether the organization had excess business holdings).*	10b		

Part IV Supporting Organizations (continued)

			Yes	No
11	Has the organization accepted a gift or contribution from any of the following persons?			
a	A person who directly or indirectly controls, either alone or together with persons described on lines 11b and 11c below, the governing body of a supported organization?	11a		No
b	A family member of a person described on 11a above?	11b		No
c	A 35% controlled entity of a person described on line 11a or 11b above? *If "Yes" to 11a, 11b, or 11c, provide detail in **Part VI**.*	11c		No

Section B. Type I Supporting Organizations

			Yes	No
1	Did the officers, directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? *If "No," describe in **Part VI** how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.*	1	Yes	
2	Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? *If "Yes," explain in **Part VI** how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised or controlled the supporting organization.*	2		No

Section C. Type II Supporting Organizations

			Yes	No
1	Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? *If "No," describe in **Part VI** how control or management of the*			

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Schedule J (Form 990)

(Rev. January 2025)

Department of the Treasury
Internal Revenue Service

Compensation Information

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

▶ **Complete if the organization answered "Yes" on Form 990, Part IV, line 23.**
▶ **Attach to Form 990.**
▶ **Go to www.irs.gov/Form990 for instructions and the latest information.**

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND DALLAS FOUNDATION INC

Employer identification number
45-3961755

Part I Questions Regarding Compensation

			Yes	No
1a	Check the appropiate box(es) if the organization provided any of the following to or for a person listed on Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.			
	☐ First-class or charter travel	☐ Housing allowance or residence for personal use		
	☐ Travel for companions	☐ Payments for business use of personal residence		
	☐ Tax idemnification and gross-up payments	☐ Health or social club dues or initiation fees		
	☐ Discretionary spending account	☐ Personal services (e.g., maid, chauffeur, chef)		
b	If any of the boxes on Line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain	**1b**		
2	Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, officers, including the CEO/Executive Director, regarding the items checked on Line 1a?	**2**		
3	Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.			
	☐ Compensation committee	☐ Written employment contract		
	☐ Independent compensation consultant	☐ Compensation survey or study		
	☐ Form 990 of other organizations	☐ Approval by the board or compensation committee		
4	During the year, did any person listed on Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:			
a	Receive a severance payment or change-of-control payment?	**4a**		No
b	Participate in, or receive payment from, a supplemental nonqualified retirement plan?	**4b**		No
c	Participate in, or receive payment from, an equity-based compensation arrangement?	**4c**		No
	If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.			
	Only 501(c)(3), 501(c)(4), and 501(c)(29) organizations must complete lines 5-9.			
5	For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:			
a	The organization?	**5a**		No
b	Any related organization?	**5b**		No
	If "Yes," on line 5a or 5b, describe in Part III.			
6	For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:			
a	The organization?	**6a**		No
b	Any related organization?	**6b**		No
	If "Yes," on line 6a or 6b, describe in Part III.			
7	For persons listed on Form 990, Part VII, Section A, line 1a, did the organization provide any nonfixed payments not described in lines 5 and 6? If "Yes," describe in Part III	**7**		No
8	Were any amounts reported on Form 990, Part VII, paid or accured pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If "Yes," describe in Part III	**8**		No
9	If "Yes" on line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)?	**9**		

For Paperwork Reduction Act Notice, see the Instructions for Form 990. Cat. No. 50053T **Schedule J (Form 990) (Rev. 1-2025)**

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.

Note. The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		**(B)** Breakdown of W-2, 1099-MISC compensation, and/or 1099-NEC			**(C)** Retirement and other deferred compensation	**(D)** Nontaxable benefits	**(E)** Total of columns (B)(i)-(D)	**(F)** Compensation in column (B) reported as deferred on prior Form 990
		(i) Base compensation	**(ii)** Bonus & incentive compensation	**(iii)** Other reportable compensation				
1 JULIE DIAZ VICE PRESIDENT	(i)	473,549	45,000	0	13,100	476	532,125	0
	(ii)	0	0	0	0	0	0	0
2 TORRREY LITTLETON TREASURER	(i)	231,741	29,040	0	10,027	19,930	290,738	0
	(ii)	0	0	0	0	0	0	0
3 ANGELA WOODSON SECRETARY	(i)	178,504	4,326	0	7,072	11,930	201,832	0
	(ii)	0	0	0	0	0	0	0

Part III Supplemental Information

Provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

Return Reference	Explanation
PART I, LINE 3	COMPENSATION PROCESS FOR TOP OFFICIAL - A SELECT INDEPENDENT GROUP OF THE BOARD ESTABLISHES THE COMPENSATION PACKAGE FOR THE CEO. COMPENSATION SURVEYS, INDICATING NATIONAL INDUSTRY STANDARDS FOR COMPENSATION OF SIMILAR ORGANIZATIONS, ARE CONSULTED IN SETTING THE COMPENSATION PACKAGE FOR THIS POSITION. COMPENSATION PROCESS FOR OFFICERS - THE BOARD HAS DESIGNATED COMPENSATION DECISIONS FOR OTHER OFFICERS AND KEY EMPLOYEES TO THE ORGANIZATION'S CEO. COMPENSATION SURVEYS, INDICATING NATIONAL INDUSTRY STANDARDS FOR COMPENSATION OF SIMILAR ORGANIZATIONS, ARE CONSULTED IN SETTING COMPENSATION PACKAGES FOR THESE POSITIONS.

Additional Data Return to Form

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SCHEDULE O
(Form 990)
(Rev. January 2025)
Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.
Attach to Form 990 or 990-EZ.
Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND DALLAS FOUNDATION INC

Employer identification number
45-3961755

Return Reference	Explanation
FORM 990, PART VI, SECTION A, LINE 1A	PURSUANT TO SECTION 2.2 OF THE ORGANIZATION'S BYLAWS, THE INSTITUTIONAL MEMBER SHALL BE ENTITLED TO TWO (2) VOTES UPON EACH MATTER SUBMITTED TO A VOTE OF THE MEMBERS, AND THE INDIVIDUAL MEMBER SHALL BE ENTITLED TO ONE (1) VOTE UPON EACH MATTER SUBMITTED TO A VOTE OF THE MEMBERS.
FORM 990, PART VI, SECTION B, LINE 11B	MANAGEMENT, INCLUDING THE DIRECTORS, WORKS DILIGENTLY TO COMPLETE THE FORM 990 AND ATTACHED SCHEDULES IN A THOROUGH MANNER. MANAGEMENT PRESENTS THE FORM TO THE BOARD FOR REVIEW AND COMMENTS. PRIOR TO FILING THE RETURN, ALL BOARD MEMBERS ARE PROVIDED THE FORM 990 AND MANAGEMENT TEAM MEMBERS ARE AVAILABLE TO ANSWER ANY BOARD MEMBERS' QUESTIONS.
FORM 990, PART VI, SECTION C, LINE 19	THE ORGANIZATION'S GOVERNING DOCUMENTS, CONFLICT OF INTEREST POLICY, AND FINANCIAL STATEMENTS ARE MADE AVAILABLE UPON REQUEST.
FORM 990, PART XI, LINE 9:	LIABILITY PAYABLE -405,413.

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SCHEDULE R (Form 990)

(Rev. January 2025)

Department of the Treasury
Internal Revenue Service

Related Organizations and Unrelated Partnerships

Complete if the organization answered "Yes" on Form 990, Part IV, line 33, 34, 35b, 36, or 37.
Attach to Form 990.
Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND DALLAS FOUNDATION INC

Employer identification number
45-3961755

Part I Identification of Disregarded Entities. Complete if the organization answered "Yes" on Form 990, Part IV, line 33.

(a) Name, address, and EIN (if applicable) of disregarded entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Total income	(e) End-of-year assets	(f) Direct controlling entity

Part II Identification of Related Tax-Exempt Organizations. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related tax-exempt organizations during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Exempt Code section	(e) Public charity status (if section 501(c)(3))	(f) Direct controlling entity	(g) Section 512(b)(13) controlled entity? Yes	(g) Section 512(b)(13) controlled entity? No
(1)THE DALLAS FOUNDATION 3000 PEGUSAS PARK DRIVE SUITE 930 DALLAS, TX 75247 75-2893071	COMMUNITY FOUNDATION	TX	501(C)(3)	LINE 7: 170(B)(1)(A)	N/A		No

For Paperwork Reduction Act Notice, see the Instructions for Form 990. Cat. No. 50135Y **Schedule R (Form 990) (Rev. 1-2025)**

Part III Identification of Related Organizations Taxable as a Partnership. Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a partnership during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Predominant income(related, unrelated, excluded from tax under sections 512-514)	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproprtionate allocations? Yes	(h) Disproprtionate allocations? No	(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner? Yes	(j) General or managing partner? No	(k) Percentage ownership

Part IV Identification of Related Organizations Taxable as a Corporation or Trust. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Type of entity (C corp, S corp, or trust)	(f) Share of total income	(g) Share of end-of-year assets	(h) Percentage ownership	(i) Section 512(b)(13) controlled entity? Yes	(i) Section 512(b)(13) controlled entity? No

Part V **Transactions With Related Organizations.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, 35b, or 36.

Note. Complete line 1 if any entity is listed in Parts II, III, or IV of this schedule.

		Yes	No
1	During the tax year, did the orgranization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?		
a	Receipt of **(i)** interest, **(ii)**annuities, **(iii)** royalties, or **(iv)** rent from a controlled entity	1a	No
b	Gift, grant, or capital contribution to related organization(s)	1b	Yes
c	Gift, grant, or capital contribution from related organization(s)	1c	No
d	Loans or loan guarantees to or for related organization(s)	1d	No
e	Loans or loan guarantees by related organization(s)	1e	No
f	Dividends from related organization(s)	1f	No
g	Sale of assets to related organization(s)	1g	No
h	Purchase of assets from related organization(s)	1h	No
i	Exchange of assets with related organization(s)	1i	No
j	Lease of facilities, equipment, or other assets to related organization(s)	1j	No
k	Lease of facilities, equipment, or other assets from related organization(s)	1k	No
l	Performance of services or membership or fundraising solicitations for related organization(s)	1l	No
m	Performance of services or membership or fundraising solicitations by related organization(s)	1m	Yes
n	Sharing of facilities, equipment, mailing lists, or other assets with related organization(s)	1n	No
o	Sharing of paid employees with related organization(s)	1o	No
p	Reimbursement paid to related organization(s) for expenses	1p	No
q	Reimbursement paid by related organization(s) for expenses	1q	No
r	Other transfer of cash or property to related organization(s)	1r	No
s	Other transfer of cash or property from related organization(s)	1s	No

2 If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds.

(a) Name of related organization	(b) Transaction type (a-s)	(c) Amount involved	(d) Method of determining amount involved
(1)THE DALLAS FOUNDATION	B	3,839,918	CASH
(2)THE DALLAS FOUNDATION	M	500,000	CASH

Part VI **Unrelated Organizations Taxable as a Partnership.** Complete if the organization answered "Yes" on Form 990, Part IV, line 37.

Provide the following information for each entity taxed as a partnership through which the organization conducted more than five percent of its activities (measured by total assets or gross revenue) that was not a related organization. See instructions regarding exclusion for certain investment partnerships.

(a) Name, address, and EIN of entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Predominant income (related, unrelated, excluded from tax under sections 512-514)	(e) Are all partners section 501(c)(3) organizations?		(f) Share of total income	(g) Share of end-of-year assets	(h) Disproprtionate allocations?		(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner?		(k) Percentage ownership
				Yes	No			Yes	No		Yes	No	

Part VII **Supplemental Information**

Provide additional information for responses to questions on Schedule R. See instructions.

Return Reference	Explanation

Additional Data Return to Form

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Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2024

Open to Public Inspection

A For the 2024 calendar year, or tax year beginning 01-01-2024 , and ending 12-31-2024

B Check if applicable:
- ☐ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Final return/terminated
- ☐ Amended return
- ☐ Application pending

C Name of organization
HIGHLAND KANSAS CITY FOUNDATION INC

Doing business as

Number and street (or P.O. box if mail is not delivered to street address) | Room/suite
2101 CEDAR SPRING ROAD 1200

City or town, state or province, country, and ZIP or foreign postal code
DALLAS, TX 75201

D Employer identification number
45-3961865

E Telephone number
(214) 276-6300

G Gross receipts $ 1,103,223

F Name and address of principal officer:
JAMES DONDERO
2101 CEDAR SPRING ROAD 1200
DALLAS, TX 75201

H(a) Is this a group return for subordinates? ☐ Yes ☑ No

H(b) Are all subordinates included? ☐ Yes ☐ No
If "No," attach a list. See instructions.

H(c) Group exemption number

I Tax-exempt status: ☑ 501(c)(3) ☐ 501(c) ( ) (insert no.) ☐ 4947(a)(1) or ☐ 527

J Website: N/A

K Form of organization: ☑ Corporation ☐ Trust ☐ Association ☐ Other

L Year of formation: 2011

M State of legal domicile: TX

Part I Summary

1 Briefly describe the organization's mission or most significant activities:
TO SUPPORT AND BENEFIT THE GREATER KANSAS CITY COMMUNITY FOUNDATION, A MISSOURI NONPROFIT CORPORATION.

2 Check this box ☐

Activities & Governance	**3** Number of voting members of the governing body (Part VI, line 1a)	**3**	3
	4 Number of independent voting members of the governing body (Part VI, line 1b)	**4**	1
	5 Total number of individuals employed in calendar year 2024 (Part V, line 2a)	**5**	0
	6 Total number of volunteers (estimate if necessary)	**6**	0
	7a Total unrelated business revenue from Part VIII, column (C), line 12	**7a**	0
	b Net unrelated business taxable income from Form 990-T, Part I, line 11	**7b**	0

		Prior Year	Current Year
Revenue	**8** Contributions and grants (Part VIII, line 1h)	0	0
	9 Program service revenue (Part VIII, line 2g)	0	0
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	19,810,435	1,103,223
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	0	0
	12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	19,810,435	1,103,223
Expenses	**13** Grants and similar amounts paid (Part IX, column (A), lines 1–3)	2,000,000	500,000
	14 Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	0	0
	16a Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	b Total fundraising expenses (Part IX, column (D), line 25) 0		
	17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	9,508	9,508
	18 Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	2,009,508	509,508
	19 Revenue less expenses. Subtract line 18 from line 12	17,800,927	593,715

		Beginning of Current Year	End of Year
Net Assets or Fund Balances	**20** Total assets (Part X, line 16)	91,007,570	88,214,035
	21 Total liabilities (Part X, line 26)	0	0
	22 Net assets or fund balances. Subtract line 21 from line 20	91,007,570	88,214,035

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

a	Is the organization licensed to issue qualified health plans in more than one state? **Note.** See the instructions for additional information the organization must report on Schedule O.			**13a**	
b	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans	**13b**			
c	Enter the amount of reserves on hand	**13c**			
14a	Did the organization receive any payments for indoor tanning services during the tax year?			**14a**	No
b	If "Yes," has it filed a Form 720 to report these payments? *If "No," provide an explanation in Schedule O*			**14b**	
15	Is the organization subject to the section 4960 tax on payment(s) of more than $1,000,000 in remuneration or excess parachute payment(s) during the year? If "Yes," see the instructions and file Form 4720, Schedule N.			**15**	No
16	Is the organization an educational institution subject to the section 4968 excise tax on net investment income? If "Yes," complete Form 4720, Schedule O.			**16**	No
17	**Section 501(c)(21) organizations.** Did the trust, or any disqualified or other person engage in any activities that would result in the imposition of an excise tax under section 4951, 4952, or 4953? If "Yes," complete Form 6069.			**17**	

Part VI **Governance, Management, and Disclosure.** *For each "Yes" response to lines 2 through 7b below, and for a "No" response to lines 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.*

Check if Schedule O contains a response or note to any line in this Part VI ☑

Section A. Governing Body and Management

				Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year	**1a**	3		
	If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.				
b	Enter the number of voting members included in line 1a, above, who are independent	**1b**	1		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?				No
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person?				No
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?				No
5	Did the organization become aware during the year of a significant diversion of the organization's assets?				No
6	Did the organization have members or stockholders?			Yes	
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?			Yes	
b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?			Yes	
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:				
a	The governing body?			Yes	
b	Each committee with authority to act on behalf of the governing body?			Yes	
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? *If "Yes," provide the names and addresses in Schedule O*				No

Section B. Policies (*This Section B requests information about policies not required by the Internal Revenue Code.*)

			Yes	No
10a	Did the organization have local chapters, branches, or affiliates?	**10a**		No
b	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	**10b**		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	**11a**	Yes	
b	Describe on Schedule O the process, if any, used by the organization to review this Form 990.			
12a	Did the organization have a written conflict of interest policy? *If "No," go to line 13*	**12a**	Yes	
b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	**12b**		No
c	Did the organization regularly and consistently monitor and enforce compliance with the policy? *If "Yes," describe on Schedule O how this was done*	**12c**	Yes	
13	Did the organization have a written whistleblower policy?	**13**		No
14	Did the organization have a written document retention and destruction policy?	**14**		No
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?			
a	The organization's CEO, Executive Director, or top management official	**15a**		No

b	Other officers or key employees of the organization.	**15b**		No
	If "Yes" to line 15a or 15b, describe the process on Schedule O. See instructions.			
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?	**16a**		No
b	If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?	**16b**		

Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed

18 Section 6104 requires an organization to make its Form 1023 (1024 or 1024-A, if applicable), 990, and 990-T (section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.

☐ Own website ☐ Another's website ☑ Upon request ☐ Other (explain in Schedule O)

19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, address, and telephone number of the person who possesses the organization's books and records:
DEBORAH WILKERSON 1055 BROADWAY BLVD STE 130 KANSAS, MO 64105 (816) 842-0944

Part VII **Compensation of Officers, Directors,Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors**

Check if Schedule O contains a response or note to any line in this Part VII . . . . . ☐

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See the instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee or key employee) who received reportable compensation (box 5 of Form W-2, box 6 of Form 1099-MISC, and/or box 1 of Form 1099-NEC) of more than $100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, or highest compensated employees who received more than $100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than $10,000 of reportable compensation from the organization and any related organizations.

See the instructions for the order in which to list the persons above.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
(1) JAMES DONDERO PRESIDENT, DIRECTOR	1.00 0.00	X		X				0	0	0
(2) BRENDA CHUMLEY DIRECTOR	0.50 40.00	X						0	256,661	43,745
(3) DEBORAH L WILKERSON SECRETARY, TREASURER	2.00 40.00	X		X				0	490,724	59,189

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SCHEDULE A (Form 990)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ **Attach to Form 990 or Form 990-EZ.**
▶ **Go to *www.irs.gov/Form990* for instructions and the latest information.**

OMB No. 1545-0047

2024

Open to Public Inspection

Name of the organization
HIGHLAND KANSAS CITY FOUNDATION INC

Employer identification number
45-3961865

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

1 ☐ A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i).**

2 ☐ A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E (Form 990).)

3 ☐ A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**

4 ☐ A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state:

5 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II.)

6 ☐ A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**

7 ☐ An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi).** (Complete Part II.)

8 ☐ A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)

9 ☐ An agricultural research organization described in **170(b)(1)(A)(ix)** operated in conjunction with a land-grant college or university or a non-land grant college of agriculture. See instructions. Enter the name, city, and state of the college or university:

10 ☐ An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2).** (Complete Part III.)

11 ☐ An organization organized and operated exclusively to test for public safety. See **section 509(a)(4).**

12 ☑ An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2).** See **section 509(a)(3).** Check the box on lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.

a ☑ **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**

b ☐ **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**

c ☐ **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**

d ☐ **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**

e ☐ Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.

f Enter the number of supported organizations 1

g Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1- 10 above (see instructions))	(iv) Is the organization listed in your governing document? Yes	(iv) No	(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
(A) GREATER KANSAS CITY COMMUNITY FOUNDATION	431152398	8	Yes		500,000	0
Total 1					500,000	0

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization failed to qualify under the tests listed below, please complete Part III.)

	*If "Yes," explain in **Part VI** what controls the organization put in place to ensure such use.*	3c		
4a	Was any supported organization not organized in the United States ("foreign supported organization")? *If "Yes" and if you checked box 12a or 12b in Part I, answer lines 4b and 4c below.*	4a		No
b	Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? *If "Yes," describe in **Part VI** how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.*	4b		
c	Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? *If "Yes," explain in **Part VI** what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.*	4c		
5a	Did the organization add, substitute, or remove any supported organizations during the tax year? *If "Yes," answer lines 5b and 5c below (if applicable). Also, provide detail in **Part VI,** including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).*	5a		No
b	**Type I or Type II only.** Was any added or substituted supported organization part of a class already designated in the organization's organizing document?	5b		
c	**Substitutions only.** Was the substitution the result of an event beyond the organization's control?	5c		
6	Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? *If "Yes," provide detail in **Part VI.***	6		No
7	Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? *If "Yes," complete Part I of Schedule L (Form 990) .*	7		No
8	Did the organization make a loan to a disqualified person (as defined in section 4958) not described on line 7? *If "Yes," complete Part I of Schedule L (Form 990).*	8		No
9a	Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons, as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? *If "Yes," provide detail in **Part VI.***	9a		No
b	Did one or more disqualified persons (as defined on line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? *If "Yes," provide detail in **Part VI.***	9b		No
c	Did a disqualified person (as defined on line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? *If "Yes," provide detail in **Part VI.***	9c		No
10a	Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? *If "Yes," answer line 10b below.*	10a		No
b	Did the organization have any excess business holdings in the tax year? *(Use Schedule C, Form 4720, to determine whether the organization had excess business holdings).*	10b		

Part IV **Supporting Organizations** (continued)

			Yes	No
11	Has the organization accepted a gift or contribution from any of the following persons?			
a	A person who directly or indirectly controls, either alone or together with persons described on lines 11b and 11c below, the governing body of a supported organization?	11a		No
b	A family member of a person described on 11a above?	11b		No
c	A 35% controlled entity of a person described on line 11a or 11b above? *If "Yes" to 11a, 11b, or 11c, provide detail in **Part VI**.*	11c		No

Section B. Type I Supporting Organizations

			Yes	No
1	Did the officers, directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? *If "No," describe in **Part VI** how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.*	1	Yes	
2	Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? *If "Yes," explain in **Part VI** how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised or controlled the supporting organization.*	2		No

Section C. Type II Supporting Organizations

			Yes	No
1	Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of			

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SCHEDULE O
(Form 990)
(Rev. January 2025)
Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.
Attach to Form 990 or 990-EZ.
Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND KANSAS CITY FOUNDATION INC

Employer identification number
45-3961865

Return Reference	Explanation
FORM 990, PART VI, SECTION A, LINE 1A	PURSUANT TO SECTION 2.2 OF THE ORGANIZATION'S BYLAWS, THE INSTITUTIONAL MEMBER SHALL BE ENTITLED TO TWO (2) VOTES UPON EACH MATTER SUBMITTED TO A VOTE OF THE MEMBERS, AND THE INDIVIDUAL MEMBER SHALL BE ENTITLED TO ONE (1) VOTE UPON EACH MATTER SUBMITTED TO A VOTE OF THE MEMBERS.
FORM 990, PART VI, SECTION A, LINE 6	THE CORPORATION SHALL HAVE TWO CLASSES OF MEMBERS AND ONE MEMBER IN EACH SUCH CLASS: THE INSTITUTIONAL MEMBER, WHICH SHALL BE THE GREATER KANSAS CITY COMMUNITY FOUNDATION, AND THE INDIVIDUAL MEMBER, WHICH SHALL BE JAMES DONDERO OR AN INDIVIDUAL DESIGNATED AS THE INDIVIDUAL MEMBER IN ACCORDANCE WITH THE BYLAWS.
FORM 990, PART VI, SECTION A, LINE 7A	TWO (2) DIRECTORS (THE "INSTITUTIONAL DIRECTORS") SHALL BE ELECTED ANNUALLY BY THE INSTITUTIONAL MEMBER AND ONE (1) DIRECTOR (THE "INDIVIDUAL DIRECTOR") SHALL BE ELECTED ANNUALLY BY THE INDIVIDUAL MEMBER.
FORM 990, PART VI, SECTION A, LINE 7B	ONLY THE MEMBERS, BY THE AFFIRMATIVE UNANIMOUS VOTE OF THE MEMBERS ENTITLED TO VOTE, MAY ADOPT, AMEND, OR REPEAL THE BYLAWS, AND ALTERATIONS OR AMENDMENTS OF THE BYLAWS MADE BY THE MEMBERS SHALL NOT BE ALTERED OR AMENDED BY THE BOARD OF DIRECTORS TO THE EXTENT SUCH ALTERATION OR AMENDMENT EXPRESSLY STATES THAT IT CAN ONLY BE ALTERED OR AMENDED BY THE MEMBERS.
FORM 990, PART VI, SECTION B, LINE 11B	MANAGEMENT, INCLUDING THE DIRECTORS, WORKS DILIGENTLY TO COMPLETE THE FORM 990 AND ATTACHED SCHEDULES IN A THOROUGH MANNER. MANAGEMENT PRESENT THE FORM TO THE BOARD FOR REVIEW AND COMMENTS. PRIOR TO FILING THE RETURN, ALL BOARD MEMBERS ARE PROVIDED THE FORM 990 AND MANAGEMENT TEAM MEMBERS ARE AVAILABLE TO ANSWER ANY BOARD MEMBERS' QUESTIONS.
FORM 990, PART VI, SECTION B, LINE 12C	NO CONTRACT OR AGREEMENT MAY BE ENTERED INTO BY AND BETWEEN THE CORPORATION AND ANY OF THE FOLLOWING: (A) A DIRECTOR, OFFICER, OR EMPLOYEE OF THE CORPORATION (HEREINAFTER AN "INSIDER"); OR (B) ANY CORPORATION, PARTNERSHIP, TRUST, SOLE PROPRIETORSHIP OR ANY OTHER ENTITY (HEREINAFTER AN "ENTITY") IN WHICH AN INTEREST IS OWNED OR HELD, DIRECTLY OR INDIRECTLY, BY OR FOR THE BENEFIT OF AN INSIDER, UNLESS (I) THE TRANSACTION IS APPROVED IN ACCORDANCE WITH SECTION 144 OF THE DELAWARE GENERAL CORPORATION LAW TO THE EXTENT SUCH PROVISION IS APPLICABLE TO THE TRANSACTION; AND (II) IF ONE OR MORE OF THE PARTIES TO THE CONTRACT OR TRANSACTION IS A "DISQUALIFIED PERSON" WITH RESPECT TO THE CORPORATION WITHIN THE MEANING OF SECTION 4958 OF THE CODE, EITHER (X) SUCH TRANSACTION IS REVIEWED AND APPROVED IN ACCORDANCE WITH THE "REBUTTABLE PRESUMPTION SAFE HARBOR" PROVISIONS SET FORTH IN THE REGULATIONS PROMULGATED UNDER SECTION 4958 OF THE CODE OR (Y) THE BOARD OF DIRECTORS DETERMINES THAT SUCH PROCEDURES ARE NOT NECESSARY FOR THE TRANSACTION INVOLVED AND RECORDS ITS SPECIFIC FINDINGS FOR MAKING SUCH DETERMINATION; PROVIDED, HOWEVER, THAT THE FOLLOWING CONTRACTS AND AGREEMENTS SHALL NOT BE SUBJECT TO THE FOREGOING PROHIBITION: A GRATUITOUS TRANSFER OF ASSETS OR PROMISE TO TRANSFER ASSETS TO THE CORPORATION OF ANY KIND, INCLUDING BUT NOT LIMITED TO, (I) A GIFT ANNUITY, CHARITABLE REMAINDER TRUST, CHARITABLE LEAD TRUST OR SIMILAR SPLIT-INTEREST ARRANGEMENT WHICH BENEFITS BOTH THE INSIDER AND THE CORPORATION; OR (II) A LOAN, LEASE, AGREEMENT OF SALE OR PURCHASE, PLEDGE, GUARANTEE, ASSUMPTION OF LIABILITY, BAILMENT, OR CONSIGNMENT. ALL INSIDERS SHALL, AS A CONDITION OF QUALIFYING AND CONTINUING TO QUALIFY AS A DIRECTOR, OFFICER, AND/OR EMPLOYEE OF THE CORPORATION, ABIDE BY SUCH CONFLICT OF INTEREST POLICIES AS THE BOARD OF DIRECTORS MAY ADOPT FROM TIME TO TIME.
FORM 990, PART VI, SECTION C, LINE 19	THE ORGANIZATION'S GOVERNING DOCUMENTS, CONFLICT OF INTEREST POLICY, AND FINANCIAL STATEMENTS ARE MADE AVAILABLE UPON REQUEST.

Additional Data

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SCHEDULE R (Form 990)

(Rev. January 2025)

Department of the Treasury
Internal Revenue Service

Related Organizations and Unrelated Partnerships

Complete if the organization answered "Yes" on Form 990, Part IV, line 33, 34, 35b, 36, or 37.
Attach to Form 990.
Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND KANSAS CITY FOUNDATION INC

Employer identification number
45-3961865

Part I Identification of Disregarded Entities. Complete if the organization answered "Yes" on Form 990, Part IV, line 33.

(a) Name, address, and EIN (if applicable) of disregarded entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Total income	(e) End-of-year assets	(f) Direct controlling entity

Part II Identification of Related Tax-Exempt Organizations. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related tax-exempt organizations during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Exempt Code section	(e) Public charity status (if section 501(c)(3))	(f) Direct controlling entity	(g) Section 512(b)(13) controlled entity? Yes	(g) Section 512(b)(13) controlled entity? No
(1)GREATER KANSAS CITY COMMUNITY FOUNDATION 1055 BROADWAY KANSAS CITY, MO 64105 43-1152398	COMMUNITY FOUNDATION	MO	501(C)(3)	LINE 7: 170(B)(1)(A)	N/A		No

For Paperwork Reduction Act Notice, see the Instructions for Form 990. Cat. No. 50135Y **Schedule R (Form 990) (Rev. 1-2025)**

Part III Identification of Related Organizations Taxable as a Partnership. Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a partnership during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Predominant income(related, unrelated, excluded from tax under sections 512-514)	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproprtionate allocations? Yes	(h) Disproprtionate allocations? No	(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner? Yes	(j) General or managing partner? No	(k) Percentage ownership

Part IV Identification of Related Organizations Taxable as a Corporation or Trust. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Type of entity (C corp, S corp, or trust)	(f) Share of total income	(g) Share of end-of-year assets	(h) Percentage ownership	(i) Section 512(b)(13) controlled entity? Yes	(i) Section 512(b)(13) controlled entity? No

Part V **Transactions With Related Organizations.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, 35b, or 36.

Note. Complete line 1 if any entity is listed in Parts II, III, or IV of this schedule.

				Yes	No
1	During the tax year, did the orgranization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?				
a	Receipt of **(i)** interest, **(ii)**annuities, **(iii)** royalties, or **(iv)** rent from a controlled entity	1a			No
b	Gift, grant, or capital contribution to related organization(s)	1b		Yes	
c	Gift, grant, or capital contribution from related organization(s)	1c			No
d	Loans or loan guarantees to or for related organization(s)	1d			No
e	Loans or loan guarantees by related organization(s)	1e			No
f	Dividends from related organization(s)	1f			No
g	Sale of assets to related organization(s)	1g			No
h	Purchase of assets from related organization(s)	1h			No
i	Exchange of assets with related organization(s)	1i			No
j	Lease of facilities, equipment, or other assets to related organization(s)	1j			No
k	Lease of facilities, equipment, or other assets from related organization(s)	1k			No
l	Performance of services or membership or fundraising solicitations for related organization(s)	1l			No
m	Performance of services or membership or fundraising solicitations by related organization(s)	1m		Yes	
n	Sharing of facilities, equipment, mailing lists, or other assets with related organization(s)	1n			No
o	Sharing of paid employees with related organization(s)	1o			No
p	Reimbursement paid to related organization(s) for expenses	1p			No
q	Reimbursement paid by related organization(s) for expenses	1q			No
r	Other transfer of cash or property to related organization(s)	1r			No
s	Other transfer of cash or property from related organization(s)	1s			No

2 If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds.

(a) Name of related organization	(b) Transaction type (a-s)	(c) Amount involved	(d) Method of determining amount involved

Part VI **Unrelated Organizations Taxable as a Partnership.** Complete if the organization answered "Yes" on Form 990, Part IV, line 37.

Provide the following information for each entity taxed as a partnership through which the organization conducted more than five percent of its activities (measured by total assets or gross revenue) that was not a related organization. See instructions regarding exclusion for certain investment partnerships.

(a) Name, address, and EIN of entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Predominant income (related, unrelated, excluded from tax under sections 512-514)	(e) Are all partners section 501(c)(3) organizations?		(f) Share of total income	(g) Share of end-of-year assets	(h) Disproprtionate allocations?		(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner?		(k) Percentage ownership
				Yes	No			Yes	No		Yes	No	

Part VII **Supplemental Information**

Provide additional information for responses to questions on Schedule R. See instructions.

Return Reference	Explanation

Additional Data Return to Form

Software ID:

Software Version:

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Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2024

Open to Public Inspection

A For the 2024 calendar year, or tax year beginning 01-01-2024 , and ending 12-31-2024

B Check if applicable:
- ☐ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Final return/terminated
- ☐ Amended return
- ☐ Application pending

C Name of organization
HIGHLAND SANTA BARBARA FOUNDATION INC

Doing business as

Number and street (or P.O. box if mail is not delivered to street address) | Room/suite
2101 CEDAR SPRINGS ROAD 1200

City or town, state or province, country, and ZIP or foreign postal code
DALLAS, TX 75201

D Employer identification number
45-3962008

E Telephone number
(214) 276-6300

G Gross receipts $ 1,087,722

F Name and address of principal officer:
JAMES DONDERO
2101 CEDAR SPRINGS ROAD 1200
DALLAS, TX 75201

H(a) Is this a group return for subordinates? ☐ Yes ☑ No

H(b) Are all subordinates included? ☐ Yes ☐ No
If "No," attach a list. See instructions.

H(c) Group exemption number

I Tax-exempt status: ☑ 501(c)(3) ☐ 501(c) ( ) (insert no.) ☐ 4947(a)(1) or ☐ 527

J Website: N/A

K Form of organization: ☑ Corporation ☐ Trust ☐ Association ☐ Other

L Year of formation: 2011

M State of legal domicile: TX

Part I Summary

1 Briefly describe the organization's mission or most significant activities:
TO SUPPORT AND BENEFIT THE SANTA BARBARA FOUNDATION, A CALIFORNIA NONPROFIT CORPORATION.

2 Check this box ☐

Activities & Governance	**3** Number of voting members of the governing body (Part VI, line 1a)	**3**	3
	4 Number of independent voting members of the governing body (Part VI, line 1b)	**4**	1
	5 Total number of individuals employed in calendar year 2024 (Part V, line 2a)	**5**	0
	6 Total number of volunteers (estimate if necessary)	**6**	0
	7a Total unrelated business revenue from Part VIII, column (C), line 12	**7a**	0
	b Net unrelated business taxable income from Form 990-T, Part I, line 11	**7b**	0

		Prior Year	Current Year
Revenue	**8** Contributions and grants (Part VIII, line 1h)	0	0
	9 Program service revenue (Part VIII, line 2g)	0	0
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	18,296,113	1,087,722
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	0	0
	12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	18,296,113	1,087,722
Expenses	**13** Grants and similar amounts paid (Part IX, column (A), lines 1–3)	250,000	250,000
	14 Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	0	0
	16a Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	b Total fundraising expenses (Part IX, column (D), line 25) 0		
	17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	245,186	244,007
	18 Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	495,186	494,007
	19 Revenue less expenses. Subtract line 18 from line 12	17,800,927	593,715

		Beginning of Current Year	End of Year
Net Assets or Fund Balances	**20** Total assets (Part X, line 16)	91,007,570	88,214,035
	21 Total liabilities (Part X, line 26)	0	0
	22 Net assets or fund balances. Subtract line 21 from line 20	91,007,570	88,214,035

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

b	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans	**13b**			
c	Enter the amount of reserves on hand	**13c**			
14a	Did the organization receive any payments for indoor tanning services during the tax year?		**14a**		No
b	If "Yes," has it filed a Form 720 to report these payments? *If "No," provide an explanation in Schedule O* . .		**14b**		
15	Is the organization subject to the section 4960 tax on payment(s) of more than $1,000,000 in remuneration or excess parachute payment(s) during the year? . . . . . If "Yes," see the instructions and file Form 4720, Schedule N.		**15**		No
16	Is the organization an educational institution subject to the section 4968 excise tax on net investment income? . . If "Yes," complete Form 4720, Schedule O.		**16**		No
17	**Section 501(c)(21) organizations.** Did the trust, or any disqualified or other person engage in any activities that would result in the imposition of an excise tax under section 4951, 4952, or 4953? . . If "Yes," complete Form 6069.		**17**		

Part VI **Governance, Management, and Disclosure.** *For each "Yes" response to lines 2 through 7b below, and for a "No" response to lines 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.*

Check if Schedule O contains a response or note to any line in this Part VI . . . . . ☑

Section A. Governing Body and Management

				Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year	**1a**	3		
	If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.				
b	Enter the number of voting members included in line 1a, above, who are independent	**1b**	1		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		**2**		No
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person? .		**3**		No
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed? .		**4**		No
5	Did the organization become aware during the year of a significant diversion of the organization's assets? .		**5**		No
6	Did the organization have members or stockholders?		**6**	Yes	
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?		**7a**	Yes	
b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?		**7b**	Yes	
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:				
a	The governing body?		**8a**	Yes	
b	Each committee with authority to act on behalf of the governing body?		**8b**	Yes	
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? *If "Yes," provide the names and addresses in Schedule O*		**9**		No

Section B. Policies (*This Section B requests information about policies not required by the Internal Revenue Code.*)

			Yes	No
10a	Did the organization have local chapters, branches, or affiliates?	**10a**		No
b	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	**10b**		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	**11a**	Yes	
b	Describe on Schedule O the process, if any, used by the organization to review this Form 990.			
12a	Did the organization have a written conflict of interest policy? *If "No," go to line 13*	**12a**	Yes	
b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	**12b**		No
c	Did the organization regularly and consistently monitor and enforce compliance with the policy? *If "Yes," describe on Schedule O how this was done*	**12c**	Yes	
13	Did the organization have a written whistleblower policy?	**13**		No
14	Did the organization have a written document retention and destruction policy?	**14**		No
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?			
a	The organization's CEO, Executive Director, or top management official	**15a**		No
b	Other officers or key employees of the organization	**15b**		No

If "Yes" to line 15a or 15b, describe the process on Schedule O. See instructions.

If "Yes" to line 15a or 15b, describe the process on Schedule O. See instructions.

16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?	**16a**		No
b	If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?	**16b**		

Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed

18 Section 6104 requires an organization to make its Form 1023 (1024 or 1024-A, if applicable), 990, and 990-T (section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.

☐ Own website ☐ Another's website ☑ Upon request ☐ Other (explain in Schedule O)

19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, address, and telephone number of the person who possesses the organization's books and records:
JACQUELINE CARRERRA 1111 CHAPALA STREET STE 200 SANTA BARBARA, CA 93101 (805) 963-1873

Part VII **Compensation of Officers, Directors,Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors**

Check if Schedule O contains a response or note to any line in this Part VII ☐

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See the instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee or key employee) who received reportable compensation (box 5 of Form W-2, box 6 of Form 1099-MISC, and/or box 1 of Form 1099-NEC) of more than $100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, or highest compensated employees who received more than $100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than $10,000 of reportable compensation from the organization and any related organizations.

See the instructions for the order in which to list the persons above.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
(1) JAMES DONDERO DIRECTOR, PRESIDENT	1.00	X		X				0	0	0
(2) JACQUELINE CARRERRA DIRECTOR, SECY/TREASURER	2.00 42.00	X		X				0	457,442	83,862
(3) TODD YUBA DIRECTOR	1.00 42.00	X						0	297,791	56,674

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SCHEDULE A (Form 990)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ **Attach to Form 990 or Form 990-EZ.**
▶ **Go to www.irs.gov/Form990 for instructions and the latest information.**

OMB No. 1545-0047

2024

Open to Public Inspection

Name of the organization
HIGHLAND SANTA BARBARA FOUNDATION INC

Employer identification number
45-3962008

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

1 ☐ A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i).**

2 ☐ A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E (Form 990).)

3 ☐ A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**

4 ☐ A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state:

5 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II.)

6 ☐ A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**

7 ☐ An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi).** (Complete Part II.)

8 ☐ A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)

9 ☐ An agricultural research organization described in **170(b)(1)(A)(ix)** operated in conjunction with a land-grant college or university or a non-land grant college of agriculture. See instructions. Enter the name, city, and state of the college or university:

10 ☐ An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2).** (Complete Part III.)

11 ☐ An organization organized and operated exclusively to test for public safety. See **section 509(a)(4).**

12 ☑ An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2).** See **section 509(a)(3).** Check the box on lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.

a ☑ **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**

b ☐ **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**

c ☐ **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**

d ☐ **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**

e ☐ Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.

f Enter the number of supported organizations 1

g Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1- 10 above (see instructions))	(iv) Is the organization listed in your governing document? Yes	(iv) No	(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
(A) SANTA BARBARA FOUNDATION	951866094	7	Yes		250,000	0
Total 1					250,000	0

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization failed to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

	*If "Yes," explain in **Part VI** what controls the organization used to ensure that all support...*	3c		
4a	Was any supported organization not organized in the United States ("foreign supported organization")? *If "Yes" and if you checked box 12a or 12b in Part I, answer lines 4b and 4c below.*	4a		No
b	Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? *If "Yes," describe in **Part VI** how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.*	4b		
c	Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? *If "Yes," explain in **Part VI** what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.*	4c		
5a	Did the organization add, substitute, or remove any supported organizations during the tax year? *If "Yes," answer lines 5b and 5c below (if applicable). Also, provide detail in **Part VI,** including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).*	5a		No
b	**Type I or Type II only.** Was any added or substituted supported organization part of a class already designated in the organization's organizing document?	5b		
c	**Substitutions only.** Was the substitution the result of an event beyond the organization's control?	5c		
6	Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? *If "Yes," provide detail in **Part VI.***	6		No
7	Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? *If "Yes," complete Part I of Schedule L (Form 990) .*	7		No
8	Did the organization make a loan to a disqualified person (as defined in section 4958) not described on line 7? *If "Yes," complete Part I of Schedule L (Form 990).*	8		No
9a	Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons, as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? *If "Yes," provide detail in **Part VI.***	9a		No
b	Did one or more disqualified persons (as defined on line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? *If "Yes," provide detail in **Part VI.***	9b		No
c	Did a disqualified person (as defined on line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? *If "Yes," provide detail in **Part VI.***	9c		No
10a	Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? *If "Yes," answer line 10b below.*	10a		No
b	Did the organization have any excess business holdings in the tax year? *(Use Schedule C, Form 4720, to determine whether the organization had excess business holdings).*	10b		

Part IV Supporting Organizations (continued)

			Yes	No
11	Has the organization accepted a gift or contribution from any of the following persons?			
a	A person who directly or indirectly controls, either alone or together with persons described on lines 11b and 11c below, the governing body of a supported organization?	11a		No
b	A family member of a person described on 11a above?	11b		No
c	A 35% controlled entity of a person described on line 11a or 11b above? *If "Yes" to 11a, 11b, or 11c, provide detail in **Part VI**.*	11c		No

Section B. Type I Supporting Organizations

			Yes	No
1	Did the officers, directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? *If "No," describe in **Part VI** how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.*	1	Yes	
2	Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? *If "Yes," explain in **Part VI** how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised or controlled the supporting organization.*	2		No

Section C. Type II Supporting Organizations

			Yes	No
1	Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? *If "No," describe in **Part VI** how control or management of the*			

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Schedule J (Form 990)
(Rev. January 2025)
Department of the Treasury
Internal Revenue Service

Compensation Information

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees
▶ **Complete if the organization answered "Yes" on Form 990, Part IV, line 23.**
▶ **Attach to Form 990.**
▶ **Go to www.irs.gov/Form990 for instructions and the latest information.**

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND SANTA BARBARA FOUNDATION INC

Employer identification number
45-3962008

Part I Questions Regarding Compensation

			Yes	No
1a	Check the appropiate box(es) if the organization provided any of the following to or for a person listed on Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.			
	☐ First-class or charter travel	☐ Housing allowance or residence for personal use		
	☐ Travel for companions	☐ Payments for business use of personal residence		
	☐ Tax idemnification and gross-up payments	☐ Health or social club dues or initiation fees		
	☐ Discretionary spending account	☐ Personal services (e.g., maid, chauffeur, chef)		
b	If any of the boxes on Line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain	**1b**		
2	Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, officers, including the CEO/Executive Director, regarding the items checked on Line 1a?	**2**		
3	Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.			
	☐ Compensation committee	☐ Written employment contract		
	☐ Independent compensation consultant	☐ Compensation survey or study		
	☐ Form 990 of other organizations	☐ Approval by the board or compensation committee		
4	During the year, did any person listed on Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:			
a	Receive a severance payment or change-of-control payment?	**4a**		No
b	Participate in, or receive payment from, a supplemental nonqualified retirement plan?	**4b**		No
c	Participate in, or receive payment from, an equity-based compensation arrangement?	**4c**		No
	If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.			
	Only 501(c)(3), 501(c)(4), and 501(c)(29) organizations must complete lines 5-9.			
5	For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:			
a	The organization?	**5a**		No
b	Any related organization?	**5b**		No
	If "Yes," on line 5a or 5b, describe in Part III.			
6	For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:			
a	The organization?	**6a**		No
b	Any related organization?	**6b**		No
	If "Yes," on line 6a or 6b, describe in Part III.			
7	For persons listed on Form 990, Part VII, Section A, line 1a, did the organization provide any nonfixed payments not described in lines 5 and 6? If "Yes," describe in Part III	**7**		No
8	Were any amounts reported on Form 990, Part VII, paid or accured pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If "Yes," describe in Part III	**8**		No
9	If "Yes" on line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)?	**9**		

For Paperwork Reduction Act Notice, see the Instructions for Form 990. Cat. No. 50053T **Schedule J (Form 990) (Rev. 1-2025)**

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.
Note. The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		**(B)** Breakdown of W-2, 1099-MISC compensation, and/or 1099-NEC			**(C)** Retirement and other deferred compensation	**(D)** Nontaxable benefits	**(E)** Total of columns (B)(i)-(D)	**(F)** Compensation in column (B) reported as deferred on prior Form 990
		(i) Base compensation	**(ii)** Bonus & incentive compensation	**(iii)** Other reportable compensation				
1 JACQUELINE CARRERRA DIRECTOR, SECY/TREASURER	(i)	0	0	0	0	0	0	0
	(ii)	412,296	43,856	1,290	57,500	26,362	-541,304	0
2 TODD YUBA DIRECTOR	(i)	0	0	0	0	0	0	0
	(ii)	277,711	11,000	9,080	29,919	26,755	-354,465	0

Part III Supplemental Information

Provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

Return Reference	Explanation
PART I, LINE 3	THE COMPENSATION FOR THE RELATED ORGANIZATION WAS ESTABLISHED BY A COMPENSATION STUDY AND APPROVAL OF THE BOARD. ADDITIONALLY, STARTING WITH THE RECOMMENDATIONS OF THE CEO, THE COMPENSATION COMMITTEE ASSESSES, DETERMINES, AND DOCUMENTS THE REASONABLENESS OF THE TOTAL COMPENSATION RANGES, AND THE TERMS OF ANY EMPLOYMENT AGREEMENTS, SEVERANCE AND/OR RETENTION AGREEMENTS, OF THE V.P., FINANCE & ADMINISTRATION AND ALL EMPLOYEES WITH REPORTABLE COMPENSATION (W-2) RANGES AT OR OVER $150,000. WHEN APPROPRIATE, THE COMMITTEE SELECTS AND ENGAGES PROFESSIONALS TO GATHER AND REVIEW IN ADVANCE, APPROPRIATE MARKET COMPARABILITY DATA ON THE AMOUNT AND FORM OF COMPENSATION PAID FOR COMPARABLE POSITIONS BY OTHER COMPARABLE EMPLOYERS.

Additional Data Return to Form

Software ID:

Software Version:

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SCHEDULE O
(Form 990)
(Rev. January 2025)
Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.
Attach to Form 990 or 990-EZ.
Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND SANTA BARBARA FOUNDATION INC

Employer identification number
45-3962008

Return Reference	Explanation
FORM 990, PART VI, SECTION A, LINE 1A	PURSUANT TO SECTION 2.2 OF THE ORGANIZATION'S BYLAWS, THE INSTITUTIONAL MEMBER SHALL BE ENTITLED TO TWO (2) VOTES UPON EACH MATTER SUBMITTED TO A VOTE OF THE MEMBERS, AND THE INDIVIDUAL MEMBER SHALL BE ENTITLED TO ONE (1) VOTE UPON EACH MATTER SUBMITTED TO A VOTE OF THE MEMBERS.
FORM 990, PART VI, SECTION A, LINE 6	THE CORPORATION SHALL HAVE TWO CLASSES OF MEMBERS AND ONE MEMBER IN EACH SUCH CLASS: THE INSTITUTIONAL MEMBER, WHICH SHALL BE THE SANTA BARBARA FOUNDATION, AND THE INDIVIDUAL MEMBER, WHICH SHALL BE JAMES DONDERO OR AN INDIVIDUAL DESIGNATED AS THE INDIVIDUAL MEMBER IN ACCORDANCE WITH THE BYLAWS.
FORM 990, PART VI, SECTION A, LINE 7A	TWO (2) DIRECTORS (THE "INSTITUTIONAL DIRECTORS") SHALL BE ELECTED ANNUALLY BY THE INSTITUTIONAL MEMBER AND ONE (1) DIRECTOR (THE "INDIVIDUAL DIRECTOR") SHALL BE ELECTED ANNUALLY BY THE INDIVIDUAL MEMBER.
FORM 990, PART VI, SECTION A, LINE 7B	ONLY THE MEMBERS, BY THE AFFIRMATIVE UNANIMOUS VOTE OF THE MEMBERS ENTITLED TO VOTE, MAY ADOPT, AMEND, OR REPEAL THE BYLAWS, AND ALTERATIONS OR AMENDMENTS OF THE BYLAWS MADE BY THE MEMBERS SHALL NOT BE ALTERED OR AMENDED BY THE BOARD OF DIRECTORS TO THE EXTENT SUCH ALTERATION OR AMENDMENT EXPRESSLY STATES THAT IT CAN ONLY BE ALTERED OR AMENDED BY THE MEMBERS.
FORM 990, PART VI, SECTION B, LINE 11B	MANAGEMENT, INCLUDING THE DIRECTORS, WORKS DILIGENTLY TO COMPLETE THE FORM 990 AND ATTACHED SCHEDULES IN A THOROUGH MANNER. MANAGEMENT PRESENT THE FORM TO THE BOARD FOR REVIEW AND COMMENTS. PRIOR TO FILING THE RETURN, ALL BOARD MEMBERS ARE PROVIDED THE FORM 990 AND MANAGEMENT TEAM MEMBERS ARE AVAILABLE TO ANSWER ANY BOARD MEMBERS' QUESTIONS.
FORM 990, PART VI, SECTION B, LINE 12C	NO CONTRACT OR AGREEMENT MAY BE ENTERED INTO BY AND BETWEEN THE CORPORATION AND ANY OF THE FOLLOWING: (A) A DIRECTOR, OFFICER, OR EMPLOYEE OF THE CORPORATION (HEREINAFTER AN "INSIDER"); OR (B) ANY CORPORATION, PARTNERSHIP, TRUST, SOLE PROPRIETORSHIP OR ANY OTHER ENTITY (HEREINAFTER AN "ENTITY") IN WHICH AN INTEREST IS OWNED OR HELD, DIRECTLY OR INDIRECTLY, BY OR FOR THE BENEFIT OF AN INSIDER, UNLESS (I) THE TRANSACTION IS APPROVED IN ACCORDANCE WITH SECTION 144 OF THE DELAWARE GENERAL CORPORATION LAW TO THE EXTENT SUCH PROVISION IS APPLICABLE TO THE TRANSACTION; AND (II) IF ONE OR MORE OF THE PARTIES TO THE CONTRACT OR TRANSACTION IS A "DISQUALIFIED PERSON" WITH RESPECT TO THE CORPORATION WITHIN THE MEANING OF SECTION 4958 OF THE CODE, EITHER (X) SUCH TRANSACTION IS REVIEWED AND APPROVED IN ACCORDANCE WITH THE "REBUTTABLE PRESUMPTION SAFE HARBOR" PROVISIONS SET FORTH IN THE REGULATIONS PROMULGATED UNDER SECTION 4958 OF THE CODE OR (Y) THE BOARD OF DIRECTORS DETERMINES THAT SUCH PROCEDURES ARE NOT NECESSARY FOR THE TRANSACTION INVOLVED AND RECORDS ITS SPECIFIC FINDINGS FOR MAKING SUCH DETERMINATION; PROVIDED, HOWEVER, THAT THE FOLLOWING CONTRACTS AND AGREEMENTS SHALL NOT BE SUBJECT TO THE FOREGOING PROHIBITION: A GRATUITOUS TRANSFER OF ASSETS OR PROMISE TO TRANSFER ASSETS TO THE CORPORATION OF ANY KIND, INCLUDING BUT NOT LIMITED TO, (I) A GIFT ANNUITY, CHARITABLE REMAINDER TRUST, CHARITABLE LEAD TRUST OR SIMILAR SPLIT-INTEREST ARRANGEMENT WHICH BENEFITS BOTH THE INSIDER AND THE CORPORATION; OR (II) A LOAN, LEASE, AGREEMENT OF SALE OR PURCHASE, PLEDGE, GUARANTEE, ASSUMPTION OF LIABILITY, BAILMENT, OR CONSIGNMENT. ALL INSIDERS SHALL, AS A CONDITION OF QUALIFYING AND CONTINUING TO QUALIFY AS A DIRECTOR, OFFICER, AND/OR EMPLOYEE OF THE CORPORATION, ABIDE BY SUCH CONFLICT OF INTEREST POLICIES AS THE BOARD OF DIRECTORS MAY ADOPT FROM TIME TO TIME.
FORM 990, PART VI, SECTION C, LINE 19	THE ORGANIZATION'S GOVERNING DOCUMENTS, CONFLICT OF INTEREST POLICY, AND FINANCIAL STATEMENTS ARE MADE AVAILABLE UPON REQUEST.

Additional Data

Return to Form

Software ID:

Software Version:

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SCHEDULE R (Form 990)

(Rev. January 2025)

Department of the Treasury
Internal Revenue Service

Related Organizations and Unrelated Partnerships

Complete if the organization answered "Yes" on Form 990, Part IV, line 33, 34, 35b, 36, or 37.
Attach to Form 990.
Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

Open to Public Inspection

Name of the organization
HIGHLAND SANTA BARBARA FOUNDATION INC

Employer identification number
45-3962008

Part I Identification of Disregarded Entities. Complete if the organization answered "Yes" on Form 990, Part IV, line 33.

(a) Name, address, and EIN (if applicable) of disregarded entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Total income	(e) End-of-year assets	(f) Direct controlling entity

Part II Identification of Related Tax-Exempt Organizations. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related tax-exempt organizations during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Exempt Code section	(e) Public charity status (if section 501(c)(3))	(f) Direct controlling entity	(g) Section 512(b)(13) controlled entity? Yes	(g) Section 512(b)(13) controlled entity? No
(1)SANTA BARBARA FOUNDATION 1111 CHAPALA STREET SUITE 200 SANTA BARBARA, CA 93101 95-1866094	COMMUNITY FOUNDATION	CA	501(C)(3)	LINE 7: 170(B)(1)(A)	N/A		No
(2)WYATT FAMILY FOUNDATION 1111 CHAPALA STREET SUITE 200 SANTA BARBARA, CA 93101 93-1503406	TO SUPPORT THE CHARITABLE ACTIVITIES OF THE SANTA BARBARA FOUNDATION	CA	501(C)(3)	LINE 12A, I	SANTA BARBARA FOUNDATION		No
(3)ERIC AND KELLY SCHWARTZ CHARITABLE TRUST 1776 PLEASANT PLAIN ROAD FAIRFIELD, IA 52556 47-4959497	TO SUPPORT THE CHARITABLE ACTIVITIES OF THE SANTA BARBARA FOUNDATION	IA	501(C)(3)	LINE 12A, I	SANTA BARBARA FOUNDATION		No

For Paperwork Reduction Act Notice, see the Instructions for Form 990. Cat. No. 50135Y **Schedule R (Form 990) (Rev. 1-2025)**

Part III Identification of Related Organizations Taxable as a Partnership. Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a partnership during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Predominant income(related, unrelated, excluded from tax under sections 512-514)	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproportionate allocations? Yes	(h) Disproportionate allocations? No	(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner? Yes	(j) General or managing partner? No	(k) Percentage ownership

Part IV Identification of Related Organizations Taxable as a Corporation or Trust. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.

(a) Name, address, and EIN of	(b) Primary activity	(c) Legal	(d) Direct controlling	(e) Type of entity	(f) Share of total	(g) Share of end-	(h) Percentage	(i) Section 512(b)(13)

related organization		(state or foreign country)		(C corp, S corp, or trust)	income	of-year assets	ownership	controlled entity? Yes	No

Schedule R (Form 990) (Rev. 1-2025)

Part V Transactions With Related Organizations. Complete if the organization answered "Yes" on Form 990, Part IV, line 34, 35b, or 36.

Note. Complete line 1 if any entity is listed in Parts II, III, or IV of this schedule.

		Yes	No
1	During the tax year, did the orgranization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?		
a	Receipt of **(i)** interest, **(ii)**annuities, **(iii)** royalties, or **(iv)** rent from a controlled entity	1a	No
b	Gift, grant, or capital contribution to related organization(s)	1b	Yes
c	Gift, grant, or capital contribution from related organization(s)	1c	No
d	Loans or loan guarantees to or for related organization(s)	1d	No
e	Loans or loan guarantees by related organization(s)	1e	No
f	Dividends from related organization(s)	1f	No
g	Sale of assets to related organization(s)	1g	No
h	Purchase of assets from related organization(s)	1h	No
i	Exchange of assets with related organization(s)	1i	No
j	Lease of facilities, equipment, or other assets to related organization(s)	1j	No
k	Lease of facilities, equipment, or other assets from related organization(s)	1k	No
l	Performance of services or membership or fundraising solicitations for related organization(s)	1l	No
m	Performance of services or membership or fundraising solicitations by related organization(s)	1m	Yes
n	Sharing of facilities, equipment, mailing lists, or other assets with related organization(s)	1n	No
o	Sharing of paid employees with related organization(s)	1o	No
p	Reimbursement paid to related organization(s) for expenses	1p	No
q	Reimbursement paid by related organization(s) for expenses	1q	No
r	Other transfer of cash or property to related organization(s)	1r	No
s	Other transfer of cash or property from related organization(s)	1s	No

2 If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds.

(a) Name of related organization	(b) Transaction type (a-s)	(c) Amount involved	(d) Method of determining amount involved
(1)SANTA BARBARA FOUNDATION	B	250,000	CASH PAID
(2)SANTA BARBARA FOUNDATION	M	234,499	CASH PAID

Schedule R (Form 990) (Rev. 1-2025)

Part VI Unrelated Organizations Taxable as a Partnership. Complete if the organization answered "Yes" on Form 990, Part IV, line 37.

Provide the following information for each entity taxed as a partnership through which the organization conducted more than five percent of its activities (measured by total assets or gross revenue) that was not a related organization. See instructions regarding exclusion for certain investment partnerships.

(a) Name, address, and EIN of entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Predominant income (related, unrelated, excluded from tax under sections 512-514)	(e) Are all partners section 501(c)(3) organizations? Yes	(e) No	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproprtionate allocations? Yes	(h) No	(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner? Yes	(j) No	(k) Percentage ownership

Part VII **Supplemental Information**

Provide additional information for responses to questions on Schedule R. See instructions.

Return Reference	Explanation

Additional Data Return to Form

Software ID:

Software Version:

EXHIBIT 47

Digitally signed by Advance Performance Exponents
Date: 2025.04.16 08:46:46 -05:00
Reason: Apex Certified
Location: Apex

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2025 ( )

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD

WINDING UP PETITION

TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of the **Supporting Organisations** (as defined below) (the ***Petitioners***), in their capacity as members of Charitable DAF Holdco, Ltd (the ***LP***) (and indirectly by way of separate petition the Charitable DAF Fund, LP (the ***Fund***)) shows that:

A INTRODUCTION

1. The Petitioners respectfully seek:

   (a) an order pursuant to section 92(e) of the Companies Act (2025 Revision) (the ***Act***) that the LP be wound up on the basis that it is just and equitable to do so; and

   (b) the appointment of Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands as joint official liquidators (the ***JOLs***) of the Fund; and/or

   (c) such other orders as the Court considers to be appropriate.

B THE FUND

2. The Fund is a Cayman Islands limited partnership formed on 28 October 2011 (registration number 53083) whose registered office is Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

3. The Fund is governed by the Amended and Restated Limited Partnership Agreement dated 7 November 2011 (the ***ARLPA***).

4. The Fund invests in securities for the purpose of benefiting, directly and indirectly, its Supporting Organisations (as defined below) which support various charitable causes in the U.S., including education, veteran and first responder welfare, medical research, economic and community initiatives, and youth and family programs.

5. The LP is the sole limited partner of the Fund and is a Cayman Islands exempt company incorporated on 27 October 2011 (registration number 263805) whose registered office is Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

6. The LP is governed by the Amended and Restated Memorandum and Articles of Association of the LP dated 19 January 2015 (the ***Articles***).

7. The general partner of the Fund is (or at least was at the time of the Fund's formation and pursuant to the ARLPA) Charitable DAF GP, LLC (the ***GP***), a Delaware company incorporated on 25 October 2011, whose registered office is Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

Ownership and Management

8. The Fund was formed to "*make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code (the **Code**) … for the economic benefit of the Limited Partner and its Indirect Charitable Owners*" (ARLPA, Recitals).

9. The Petitioners understand that exempt entities under section 501(c)(3) of the Code, commonly referred to as charitable organisations, must be operated exclusively for charitable purposes and not for the benefit of private interests. 'Supporting organizations' under section 509(a)(3) of the Code must carry out such exempt purposes by supporting *other* charities.

10. In this context:

    (a) The LP holds ninety-nine percent (99%) of the economic interest in the Fund. The other one per cent (1%) in the Fund is held by the GP or its successor as GP.

(b) The LP issued 305 participation shares (the ***Participation Shares***) that are held by four Delaware corporate entities, namely: The Highland Dallas Foundation, Inc. (***HDF***), The Highland Kansas City Foundation, Inc. (***HKCF***), The Highland Santa Barbara Foundation, Inc. (***HSBF***), and The HCMLP Charitable Fund (***HCMLP***) (together, the ***Supporting Organisations***).

(c) Each Supporting Organisation provides funding to its respective U.S. charitable foundation (together, the ***Charities***) which are the ultimate beneficial owners of the Fund's entire economic interest.

(d) The LP also issued 100 management shares (the ***Management Shares***) which attach the only voting rights for all shareholders of the LP. The terms of the ARLPA and the Articles together grant complete management control of the Fund to the holder of the Management Shares, and the holder of the entire issued share capital in the GP (the ***Membership Interest***).

11. The Management Shares and the Membership Interest have at all material times been held by a single individual who, as a result, has sole control of the Fund structure (the ***Control Position***).

C THE PETITIONERS

12. As stated above, the Petitioners (the Supporting Organisations) are non-profit charitable entities exempt from taxation under section 501(c)(3) of the \ Code and through the LP hold 99% of the economic interest in the Fund.

13. The Supporting Organisations provide funding directly to the Charities as follows:

(a) HDF holds 32.87% of the Participating Shares. HDF provides funding to The Dallas Foundation, a charitable entity established in Texas in 1929, which has awarded over $1 billion in grants and manages over $500 million in assets.

(b) HKCF holds 32.87% of the Participating Shares. HKCF provides funding to the Greater Kansas City Community Foundation, a charitable entity established in Kansas in 1978 which has awarded over $7 billion in grants and currently manages over $5 billion in assets.

(c) HSBF holds 32.787% of the Participating Shares. HSBF provides funding to the Santa Barbara Foundation, a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million.

(d) HCMLP holds 1.639% of the Participating Shares. HCMLP provides funding to the North Texas Community Foundation, which manages assets totaling $513 million and donated $38.9 million to local nonprofits in 2023.

14. Since the Fund's inception in 2011, through profits generated by the Fund the Supporting Organisations have granted over $42 million to charitable foundations and have funded $32 million in total commitments, including donations to 275 organisations, with average annual grant payments of $3.7 million.

D BACKGROUND

15. The Fund was created in 2011 on the instructions of James Dondero. Mr Dondero is the President of NexPoint Advisors, L.P. (***NexPoint***), an alternative investment firm registered with the U.S. Securities and Exchange Commission (***SEC***), and the former President of Highland Capital Management, L.P. (***Highland***), also an SEC registered investment advisor which he founded in 1993. Mr Dondero is a regular donor to philanthropic and charitable causes. The Fund is one of the vehicles he utilises to donate such funds to charitable organisations. Mr Dondero holds no ownership or control stake in the Fund or any related entities, although he sits on the boards of the Supporting Organisations.

16. From the Fund's formation until March 2021, the Control Position was held by Grant Scott. On 25 March 2021, Mr Scott: (i) resigned as director of the Fund and the LP, (ii) appointed Mark Patrick as director of the Fund and the LP, and (iii) transferred to Mr Patrick the Management Shares in the LP and Management Interest in the GP. Mr Patrick therefore assumed the Control Position from that date.

17. From 2008 to 2021, Mr Patrick was employed as tax counsel by Highland Capital Management, LP (***Highland***), an investment advisor founded by Mr Dondero. From March 2021 to October 2024, Mr Patrick was employed as tax counsel by Skyview Group (***Skyview***). In both positions, Mr Patrick acted as an advisor to Mr Dondero and entities owned or affiliated to him.

18. On 22 April 2021, Paul Murphy, a Cayman Islands resident, was appointed as director of the LP.

19. On 16 October 2019, Highland filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the Northern District of Texas (the ***Highland Bankruptcy***). The Highland Bankruptcy plan was confirmed in February 2021, and the estate remains open as it makes distributions to creditors.

E EVENTS FOLLOWING MR PATRICK'S ASSUMPTION OF THE CONTROL POSITION

20. Since assuming the Control Position, Mr Patrick has used that position to advance his own interests to the detriment of the LP, the Fund, the Supporting Organisations and the Charities.

Non-disclosure of personal interest in grant

21. In June 2023, Mr Patrick made a request that the Highland Dallas Foundation (i.e. the Supporting

Organization that supports the Dallas Foundation) "*direct $10,000*" to Creative HEARTS TX, a non-profit entity formed on 13 June 2023. Following due diligence, it was discovered that the directors of the entity were Mr Patrick, Darees Patrick and Alyse Patrick (his daughter and wife). Mr Patrick had made the grant request without disclosing his and/or his family's involvement.

22. The grant payment was authorised on 5 September 2023, but Mr Patrick was informed that further payments were unlikely.

Attempt to obtain secret profit

23. In September 2023, Mr Dondero was contacted by Kevin Cronin of Fortaris Capital Advisors (***Fortaris***), a firm providing litigation support and investigative services which, at the time, was engaged by the Fund on an unrelated matter.

24. Mr Cronin disclosed to Mr Dondero that Mr Patrick had approached him with a proposition whereby Mr Patrick (on behalf of the Fund) would engage an entity controlled by Mr Cronin (other than Fortaris) at a monthly fee of between US$25,000 and US$50,000, and that this fee would be split between Fortaris and Mr Patrick as a supplement to Mr Patrick's compensation.

25. Mr Cronin refused Mr Patrick's proposal.

26. Mr Patrick's attempt to obtain a secret, undisclosed personal profit from the Fund would, if successful, have constituted U.S. federal wire fraud, and/or violations of the Texas Penal Code's prohibitions on bribery and misapplication of fiduciary property. It was otherwise a breach of Mr Patrick's duties to the LP and, through the LP, to the Fund.

Unauthorised use of MNPI / Insider Trading

27. NexPoint and its affiliates, through their investment activities, regularly obtain material non-public information (***MNPI***) related to those investments. As a service provider to NexPoint and its affiliates, Skyview employees also obtain the same MNPI. Trading on the basis of MNPI amounts to 'insider trading' which is prohibited under U.S. securities and other laws. As a result, NexPoint and its affiliates, and Skyview, all have the same robust regulatory compliance program to prevent, among other things, insider trading (the ***Compliance Policy***). NexPoint and its affiliates, and Skyview, require their employees to abide by the Compliance Policy at all times and employees are required to confirm in writing each quarter that they will not use MNPI while trading. Mr Patrick completed an annual 2023, Q4 2023, Q1 2024 and Q2 2024 certifications, among others.

28. In late August 2024, Mr Patrick contacted the attorneys to the Dallas Foundation to provide information about an asset held by the Dallas Foundation, which was held directly and separately from the Fund. This information was obtained by Mr Patrick through his employment at Skyview and constituted MNPI. On the basis of this MNPI, Mr Patrick advised the Dallas Foundation to

exercise a put option it held in a NexPoint affiliated asset. The Dallas Foundation did not act on the information or recommendation provided by Mr Patrick, but in the event it had exercised the put option, both the Dallas Foundation and Mr Patrick would have committed violations of the U.S. securities laws that prohibit insider trading.

29. Upon receipt of the allegations against Mr Patrick, Skyview's compliance department commenced an internal investigation which, due to the serious nature of the allegations, was conducted without Mr Patrick's knowledge, so as to avoid potentially tipping off Mr Patrick. The investigation concluded that Mr Patrick's actions constituted a serious breach of his compliance and employee obligations and that Mr Patrick had attempted a serious breach of U.S. securities laws.

30. Mr Patrick resigned from Skyview immediately before the internal investigation was finalised. At the same time, he terminated the Fund's services agreement with Skyview. That termination was not in the interests of the Fund, was for Mr Patrick's own self-protection and was otherwise a breach of Mr Patrick's duties to the LP and, through the LP, to the Fund.

Financial Irregularities in the Fund / Unexplained Expenditure

31. A review of the Fund's financial records conducted by Skyview covering the calendar years ending 2018 to 2023 and the first half of 2024 showed significant increases in expenditures, notably:

(a) **Directors' fees**, which increased from US$40,000 in 2022 to almost US$600,000 in 2023, and in the first half of 2024 alone, increased further to around US$2.25 million; and

(b) **Expenses overall**, which for the first half of 2024 were around US$18.3 million, with a further US$18.6 million being spent in the calendar year 2023.

32. In October 2024, the Charities requested that Mr Patrick provide financial information about the Fund entities to seek to understand these increases in expenditures. This information was not provided.

33. In November 2024, Holland and Knight (***H&K***), the Charities' US attorneys, delivered a letter to Mr Murphy from the Charities advising that the Charities no longer had confidence in the governance of the Fund and considered that a reorganisation was required (the ***No Confidence Letter***). No response to the No Confidence Letter was received.

34. In January 2025, further correspondence was sent to Mr Patrick and Mr Murphy advising that a better understanding of the Fund's asset position was needed and expressing serious concern that the Charities' requests for information continued to be disregarded, reflecting an ongoing lack of transparency on the part of Mr Patrick and Mr Murphy. Mr Murphy responded via email to this request noting that he and Mr Patrick would "*present directly to the foundations/supporting organisations*" to address some of the concerns in the No Confidence Letter.

35. H&K responded to Mr Murphy's email noting, *inter alia*, that the Supporting Organisations had legitimate concerns and highlighted that "*the last information they received from in July of 2024, before Mr Patrick shut down [communication] showed that legal expenses had increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022*" (a 300% increase, if annualized) and "*director fees skyrocketed from $40 thousand in 2022 to $2.25 million in the first six months of 2024*" (a 12,400% increase, if annualized).

36. In February 2025, further correspondence was sent between H&K and Douglas Mancino (***Mr Mancino***) of Seyfarth Shaw LLP (***Seyfarth***), US counsel purporting to act for the Fund, whereby Seyfarth rejected the reported increases in legal and directors' fees and provided a valuation of the Fund from 2020 to support the suggestion that similar information was provided to the Charities when Mr Scott was in the Control Position. It is clear that Mr Patrick and/or Mr Murphy has instructed Seyfarth, purportedly on behalf of the Fund, to take a hostile, indignant and non-neutral stance when faced with reasonable requests on behalf of the Charities, as ultimate beneficiaries of the assets of the Fund. Such conduct is a breach of their duties to the LP and, through the LP, to the Fund.

37. H&K responded to Seyfarth that the Charities were becoming frustrated by the ongoing lack of transparency and refusal to respond to simple inquiries about the financial position and governance of the Fund. Seyfarth sent an email to H&K requesting available dates for Mr Murphy to make the promised presentation to the Charities. The next day, H&K suggested three potential dates/times for such a call between 26 March and 3 April 2025, but did not receive any response. On 3 April 2025, Seyfarth sent an email to H&K stating that they had just learned that a call was scheduled for the following day and seeking to reschedule. H&K responded that no such call had been arranged and queried the source of confusion. Seyfarth has made no further efforts to schedule the meeting, nor has it otherwise provided any of the requested financial information.

Replacement of GP without notification

38. In February 2025, H&K discovered that Mr Patrick had redomiciled and replaced the general partner of the Fund, without notice to the Charities, almost one year prior.

39. On 27 February 2024, CDH GP, Ltd (the ***New GP***) was incorporated in the Cayman Islands (registration number 407515) with its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

40. Mr Patrick is the sole director of the New GP.

Sale of assets

41. Following Mr Patrick's resignation from Skyview and his termination of Skyview's services agreement with the Fund, the Petitioners have become aware that assets of the Fund have been

sold without explanation, at values which appear to be below-market.

Hunter Mountain

42. In February 2025, an individual associated with Mr Patrick, Shawn Raver, asked for the in-bound wire instructions for one of Mr Dondero's affiliates that owned a position in a trust called Hunter Mountain. Hunter Mountain is an indirect majority owned subsidiary of the Fund and owns the majority of the distribution rights of the equity position in the Highland Bankruptcy. The residual value of the Highland estate should be distributed to Hunter Mountain at the close of the Highland Bankruptcy.

43. According to Hunter Mountain's own filings, this value has been calculated in excess of $100 million gross, with approximately $17 million net value. After additional inquiries from accounting staff, Mr Raver disclosed that the entire Hunter Mountain position had been sold, at potentially a substantial undervalue, to an unidentified party for $1 million. The Fund has not disclosed the identity of the purchaser. In the absence of a further or better explanation, there is the inference of self-dealing, fair dealing, no profit or conflict rules

Atlas IDF, L.P.

44. Atlas IDF, L.P. is a fund controlled by its general partner Atlas IDF GP, LLC, a wholly owned subsidiary of the Fund. The economic beneficiaries of Atlas IDF are the holders of annuity policies issued by Crown Global Insurance Company. The majority annuity policyholder is Empower Dallas Foundation (***EDF***), a charitable foundation for which Mr Dondero serves as President whose purpose is to benefit the Dallas Foundation.

45. On 20 February 2025, Mr Patrick in his capacity as the general partner of Atlas IDF GP, LLC, sent a letter to Crown Global Insurance advising of the intention to dissolve Atlas in accordance with the partnership agreement dated 30 November 2015 on the basis of:

(a) concerns about the long-term availability and viability of back-office support;

(b) unsuccessful efforts to sell the defaulted Notes issued by HCRE Partners (one of Mr Donero's affiliates) dated 7 May 2014 in the amount of $2.3M and 27 May 2014 in the amount of $5M, held by the Partnership; and

(c) the decision by an affiliate of the GP to purchase the Notes at a price above their appraised value of zero dollars to facilitate an orderly wind-up.

46. At the time, the amounts outstanding on the two Notes, including accumulated interest, were in excess of $13M. The intention was to sell the Notes collectively for $500,000. Mr Patrick launched litigation related to these Notes prior to the 20 February 2025 and attempted sale of the Notes to

an affiliate.

47. On 27 February 2025, H&K as counsel for EDF (the policyholder), sent an email to Crown Global advising that the foundation was gathering information and requested that Crown Global therefore withdraw its consent to the proposed sale of the Notes.

48. On 28 February 2025, Mr Patrick sent a further letter to Crown Global noting the revocation of consent to sell the Notes, and further noting that: "*in addition to the purchase of the "Notes" for $500,000, we also intend to include a provision in the purchase and sale documents that, if the Notes are repaid in full within 12 months, all amounts received (minus fees and expenses of collection and purchase price) will be remitted to you as the sole limited partner of Atlas IDF, LP*." The initial zero valuation and proposed $500,000 sale price is commercially unjustifiable.

Attorney General Investigation

49. The Petitioners have been informed that on 14 March 2025, the Texas Attorney General (***Texas AG***) commenced an investigation into Charitable DAF GP, LLC (the Fund's former general partner) in relation to the organisation, conduct and management of Charitable DAF GP, LLC, and its related entities.

50. It is understood that the Texas AG has the power to investigate a charity, should it deem necessary, to determine whether a charity is complying with Texas law.

51. The Charities have requested information about the investigation from the Texas AG, but do not have knowledge of any further details.

F GROUNDS FOR WINDING UP

52. The Supporting Organizations bring this Petition based on the multiple concerns identified above about the governance of the LP and the Fund, including potential mismanagement of assets and/or use of assets for purposes other than to benefit and support the Charities, as the ultimate beneficial owners of the Fund's interest, in carrying out their charitable purposes, in accordance with the terms of the ARLPA, on the basis of a complete breakdown in confidence in the person in the Control Position.

53. Accordingly, the Petitioners seek a winding up of the LP on a just and equitable basis and in particular, without limitation, on the following grounds (each discussed in detail below):

(a) governance issues and mismanagement; and

(b) the need for an investigation into the recent activities and expenditure of the Fund; and

(c) justifiable loss of faith and confidence in the management of the Fund.

F APPLICATION

54. Given the above, the Petitioners seek an order that the LP be wound up pursuant to section 92(e) of the Act.

55. The Petitioners also seek an order appointing Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands, as the joint official liquidators (***JOLs***) of the LP.

56. Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd:

(a) are "qualified insolvency practitioners" as defined in section 89 of the Act and as prescribed by Regulation 4 of the Insolvency Practitioners' Regulations (2023 Consolidation) (***IPR***);

(b) meet the residency requirements contained in Regulation 5 of the IPR;

(c) meet the independence requirements prescribed by Regulation 6 of the IPR;

(d) meet the insurance requirements prescribed by Regulation 7 of the IPR and A&M holds a trade licence which authorises its staff to carry on business as professional insolvency practitioners; and

(e) consent to their appointment as official liquidators of the LP, if so appointed by the Court.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT –

1. The LP be wound up by the Court in accordance with section 92(e) of the Act.

2. Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands be appointed as the joint official liquidators (the ***JOLs***) of the LP.

3. The JOLs be authorized to act jointly and severally in their capacity as liquidators of the LP.

4. The JOLs shall not be required to give security for their appointment.

5. In addition to their powers prescribed in Part II of the Third Schedule to the Act, which are exercisable without sanction of this Honourable Court, the JOLs may also without further sanction or intervention from this Honourable Court exercise the following powers set out in Part I of the Third Schedule to the Act:

(a) The power to engage staff, agents and/or consultants (whether or not as employees of the LP) in the Cayman Islands and elsewhere to assist the JOLs in the performance of their

functions; and

(b) The power to engage attorneys and other professionally qualified persons in the Cayman Islands and elsewhere to assist the JOLs in the performance of their functions.

6. The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the LP.

7. The JOLs' remuneration and expenses be paid out of the assets of the LP in accordance with section 109 of the Act, Part III of the Regulations, and CWR Order 20.

8. The costs of this Petition shall be paid out of the assets of the LP as an expense in the liquidation, such costs to be taxed if not agreed with the JOLs.

9. The JOLs shall be at liberty to apply to further directions concerning their functions and the exercise or the proposed exercise of their powers.

10. Such further or other orders and directions be made as the Court shall deem fit.

AND your Petitioners will ever pray etc.

Dated 10 April 2025

Johnstone Law

Johnstone Law Ltd.

NOTE: This Petition is intended to be served on:

CHARITABLE DAF HOLDCO, LTD at its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands

THIS PETITION was presented by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/00016**)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on at am.

Any correspondence or communication with the Court related to the hearing of this Petition should be addresses to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.

EXHIBIT 48

Digitally signed by Advance Performance Exponents Inc.
Date: 2025.04.16 20:39:55 -05:00
Reason: Apex Certified
Location: Apex



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. OF 2025 ( )

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO LTD AND THE CHARITABLE DAF FUND LP

AFFIDAVIT OF JAMES DAVID DONDERO

I, **JAMES DAVID DONDERO**, of 300 Crescent Court, Suite 700, Dallas, Texas, United States, 75201, **MAKE OATH AND SAY** as follows:

1. I am the President of NexPoint Advisors, L.P. (***NexPoint***), an investment advisor registered with the U.S. Securities and Exchange Commission (***SEC***). I am a Certified Public Accountant and Chartered Financial Analyst with over forty years of investment advisory experience managing billions of dollars of investments across various assets classes.

2. I make this affidavit in support of the petition (the ***Petition***) filed by the Supporting Organizations (as defined below) seeking the winding up on the just and equitable basis of Charitable DAF HoldCo, Ltd (the ***LP***) and the Charitable DAF Fund, LP (the ***Fund***) pursuant to section 92(e) of the Companies Act (2025 Revision) (the ***Act***) and Order 3, rule 3 of the Companies Winding Up Rules (2025 Consolidation) (the ***CWR***).

3. I make this affidavit from matters within my own personal knowledge and believe the information contained herein to be true and accurate in all respects.

4. Now produced and shown to me and marked "**JDD-1**" is a bundle of true copy documents to which I refer in this affidavit. References to page numbers in this affidavit are references to that exhibit unless otherwise specified.

BACKGROUND

5. I founded NexPoint in 2012. NexPoint is an alternative investment firm, with a particular focus on investment in the real estate sector. NexPoint has assets under management exceeding US$16 billion in value.

6. I was formerly the President of Highland Capital Management, L.P. (***Highland***), also an SEC registered investment advisor which I founded in 1993. From that time until 2015, Highland was majority owned by me and/or my affiliates. In December 2015, I divested my majority stake of Highland (***2015 Transaction***). On 16 October 2019, Highland filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code (***Highland Bankruptcy***) in the Northern District of Texas. The Highland Bankruptcy plan was confirmed in February 2021, and the estate remains open as it makes distributions to creditors.

7. In February 2021, as part of the Highland Bankruptcy, the employment contracts of the majority of Highland's employees were terminated. Many of the former back-office employees of Highland thereafter became employees of a newly formed company called Skyview Group (***Skyview***) that provides middle and back-office services to various clients, including companies in which I hold an interest such as NexPoint.

THE FUND

8. In addition to my business interests, I am a regular donor to philanthropic and charitable causes. The Fund is one of the vehicles I utilize to donate such funds to charitable organizations.

9. In 2010, the finance, accounting, and tax staff of Highland identified certain assets to be donated to a charitable foundation. In 2011, I requested the Donor Advised Fund (or DAF) to be formed and structured in a way that allowed these donations to be receipted and distributed to certain charitable foundations, as the ultimate beneficial owners of the Fund's economic interest. The structure proposed by the tax and legal advisors to effect this was for the Fund to have one limited partner (i.e. the LP) which would issue 'participation shares' to be held by certain charitable supporting organizations (together, the ***Supporting Organizations***) and in turn each of those entities would provide funding directly to certain charitable foundations in the U.S. (together, the ***Charities***).

10. The Amended and Restated Limited Partnership Agreement of the Fund dated 7 November 2011 (***ARLPA***), and the Amended and Restated Memorandum and Articles of Association of the LP dated 19 January 2015 (***Articles***), govern the Fund and its partners.

11. The LP holds 99% ninety-nine percent (99%) of the economic interest in the Fund. The remaining one percent (1%) is (or at least was as at the time of the Fund's formation) held by its general partner, Charitable DAF GP, LLC (the ***GP***), a Delaware company incorporated on 25 October 2011.

12. In addition to the Participation Shares, the LP issued 100 management shares (the ***Management Shares***) with the only voting rights for any and all shareholders in the LP. In essence, the Articles and ARLPA therefore grant complete control of the Fund structure to the holder of the Management Shares in the LP and the entirety of the issued share capital of the GP. Those shares have at all material times been held by a single individual, who as a result has substantial control over the entire Fund structure (the ***Control Position***).

13. The ARLPA provides that the Fund was formed to make investments, directly or indirectly, on behalf of certain entities "*for the economic benefit of the Limited Partner and its Indirect Charitable Owners*" and contemplates the engagement of investment (and other service) advisors to effect this. In this context, the Control Position is responsible for the governance and management functions of the Fund as required in order for the Fund to carry out its sole purpose of benefiting the Supporting Organizations and the Charities they support.

GRANT SCOTT

14. I initially selected Grant Scott for the Control Position, a person I have known for years who also has great integrity.

15. From 2010 until the 2015 Transaction, the Fund operated as a non-discretionary advised account of Highland, meaning Highland provided back-and-middle-office staff to the Fund and also provided recommendations regarding potential investments to Mr Scott as the Control Person. However, Mr Scott had complete discretion in adopting or rejecting the investment recommendations provided to the Fund by Highland. He also had final discretion over payments made by the Fund to third parties. In his position as the Control Person, Mr Scott was paid $60,000 USD per annum.

16. After the 2015 Transaction, my affiliates and I no longer owned a majority stake in Highland. Subsequently, I was advised that, as a result of the change of ownership, the Fund was permitted to enter into a paying Investment Advisory Agreement with Highland. This form of investment advisory agreement was in place from January 2017 until it was terminated effective March 2021.

MARK PATRICK

17. Mark Patrick was hired as Tax Counsel at Highland in 2008. His job duties included maximizing tax saving to Highland's limited partners, including me and my affiliates. In that role, Mr. Patrick directly represented me as my personal tax counsel. He represented me in tax efficiency planning and tax-deductible charitable giving, among other things. He provided the same services for various trusts and companies affiliated with me. Mr Patrick served that role at Highland from 2008 until his departure in February 2021.

18. In March 2021, Mr Patrick was hired by Skyview as Tax Counsel and continued to perform

substantially similar tax counsel duties for me. At Mr Patrick's request, his job title was changed to "Managing Director, Tax" in September 2021, although his role with respect to me and my affiliates remained substantially the same.

19. The legal structure of the Fund (including as regards its partners and ultimate beneficiaries as discussed above) was created in 2011 on the advice of Mr Patrick working with outside counsel. Mr Patrick advised me that, to avoid potential negative findings by the U.S. Internal Revenue Service, as the donor/grantor of assets to the Fund, I could not have any control over the Fund or its entities. I followed his advice as my tax counsel.

20. In March 2021, Mr Scott informed me that he wanted to resign from the Control Position. The Fund had become engaged in certain disputes arising from the Highland Bankruptcy, and he did not believe he was equipped to handle those disputes. Mr Patrick suggested to Mr Scott and me that he was prepared to take on the Control Position and, in that role, to handle the litigation related to the Highland Bankruptcy as it affected the Fund. At the time, Mr Patrick was my attorney and Mr Scott was my trusted friend, and I was happy for Mr Scott to pass the Control Position to Mr Patrick.

21. On 25 March 2021, Mr Scott: (i) resigned as director of the LP, (ii) appointed Mr Patrick as director of the LP, and (iii) transferred to Mr Patrick the Management Shares for nominal consideration. Mr Patrick therefore assumed the Control Position from that date.

22. At some point, I understand that a person named Paul Murphy based in the Cayman Islands also was appointed as director to the LP and a portion of the Fund's subsidiaries, giving those entities two directors. However, I understand that in the event of a dissenting vote by Mr Murphy, Mr Patrick's vote counts as the tiebreaker for corporate voting.

MR PATRICK'S CONTROL OF THE FUND

23. In the initial period following Mr Patrick's assumption of the Control Position, there was no noticeable change in the management of the Fund. NexPoint provided, without charge, investment ideas to the Fund, as Highland previously had done, and Mr Patrick was free (as Mr Scott had been) to decide whether or not the Fund wished to follow NexPoint's recommendations. This approach was similar to the non-discretionary advised account status of the Fund prior to 2017.

24. Subsequently, however, communications between Mr Patrick and Skyview and me began to become less frequent, and over time I came to suspect that Mr Patrick was utilizing the Control Position not for the benefit of the Supporting Organizations, the Charities or the Fund, but rather for his own personal enrichment.

25. On 28 June 2023, Mr Patrick sent an email to Lauren Short, an employee of NexPoint, requesting that the Highland Dallas Foundation (i.e. the Supporting Organization that supports the Dallas

Foundation) "*direct $10,000*" to Creative HEARTS TX, a non-profit entity formed on 13 June 2023. Following due diligence, Ms Short learned that the directors of the entity were Mr Patrick, Darees Patrick and Alyse Patrick (his daughter and wife). Mr Patrick had made the grant request without disclosing his and/or his family's involvement.

26. Ms Short discussed the matter with Mr Patrick, who did not provide many details, but said the non-profit was formed to facilitate paying for trainers or speakers on self-defense training for teenage girls. Ms Short understood that Patrick's expectation was that this would be an annual donation to a "club" at his daughter's school. While Ms Short inquired, there was no detail forthcoming as to whether or not Creative Hearts would be a pass-through donating the monies to other charities or would directly do any work with the trainers or speakers itself. There also was not clarity if Creative Hearts' members intended to take a salary from the grant. The grant payment was authorized on 5 September 2023, but Mr Patrick was informed that further payments were unlikely. I was informed of this process by Ms Short and her supervisor. Contemporaneously with the grant approval, my team also informed the Dallas Foundation of the situation.

27. As another example, in or around September 2023, I was contacted by Kevin Cronin of Fortaris Capital Advisors (***Fortaris***). Fortaris provides litigation support services including due diligence, internal investigations, fraud detection, asset verification and in-depth background checks. Mr Cronin is a former police sergeant and Special Agent with the Department of Homeland Security.

28. Fortaris was at the time engaged by the Fund in respect of an unrelated matter and Mr Cronin was known to me personally. In September 2023, Mr Cronin and I met, and he informed me that he had been approached by Mr Patrick with a proposition whereby Mr Patrick (on behalf of the Fund) would engage an entity controlled by Mr Cronin (other than Fortaris) at a monthly fee of between $25,000 and $50,000, and that this fee would be split between Fortaris and Mr Patrick as a supplement to Mr Patrick's compensation. Mr Cronin informed me that he had asked Mr Patrick if this arrangement would amount to fraud, and that Mr Patrick's response had been: "*you can't steal from yourself.*"

29. Mr Cronin informed me that he understood from this statement that Mr Patrick believed he owned the Fund and could use the funds controlled by it however he pleased. Mr Cronin further informed me that he was uncomfortable about Mr Patrick's proposal and that he subsequently communicated this to Mr Patrick, Mr Patrick cut off all further communications between them.

30. Mr Cronin's allegations that Mr Patrick was seeking to make a secret, undisclosed personal profit from the Fund were extremely concerning. I have subsequently been informed by my U.S. attorneys that, had Mr Cronin agreed with this proposal, it would have likely constituted U.S. federal wire fraud, and/or violations of the Texas Penal Code's prohibitions on bribery and misapplication of fiduciary property. Shortly after Mr Cronin contacted me, I met with Mr Patrick and confronted him about the allegations, which he admitted to me were true. I informed the Supporting Organizations

about the matter and Mr Patrick's admission. However, at the time, both the Supporting Organizations and I were concerned that under the Articles, the Supporting Organizations did not have the power (in their capacity as Participating Shareholders) to limit Mr Patrick's powers or remove him from his position.

31. Given the situations described above, and the lack of communication about the Fund, I became increasingly concerned about Mr Patrick's management of the Fund, including the potential misuse and/or misappropriation of its assets. In June 2024 therefore I requested that my team at NexPoint analyze the financial information of the Fund that I had in my possession, covering the calendar years ending 2018 to 2023 and the first half of 2024. My team produced an annual expense summary of that information (the ***Expense Summary***) which indicated substantial increases in expenditures during Mr Patrick's tenure, particularly during early 2023 and mid-2024, as follows:

    (a) Directors' fees increased from around US$40,000 in 2022 to almost US$600,000 in 2023 – and increased even further to around US$2.25 million in the first half of 2024 alone.

    (b) Expenses overall for the first half of 2024 were around US$18.3 million – roughly the same amount spent over the entire course of 2023 (i.e. US$18.6 million).

32. The Expense Summary reinforced my concern that Mr Patrick is using the Control Position for his own enrichment rather than to benefit the Supporting Organizations and the causes they support. I therefore directed my employees at NexPoint to provide the Expense Summary to the Supporting Organizations, and which they promptly did.

33. In August 2024, I became aware of yet another issue concerning Mr Patrick. NexPoint and its affiliates, through their investment activities, regularly obtain material non-public information (***MNPI***) related to those investments. As a service provider to NexPoint and its affiliates, Skyview employees also obtain the same MNPI. Trading on the basis of MNPI amounts to 'insider trading' which is prohibited under U.S. securities laws. As a result, NexPoint and its affiliates, and Skyview, all have the same robust regulatory compliance program to prevent, among other things, insider trading (***Compliance Policy***). NexPoint and its affiliates, and Skyview, require their employees to abide by the Compliance Policy at all times and employees are required to confirm in writing on a quarterly basis that they will not use MNPI while trading. Mr Patrick completed the annual 2023, Q4 2023, Q1 2024, and Q2 2024 certifications, among others.

34. I was informed that my director of charitable giving had been contacted by Ms Diaz, the CEO of the Highland Dallas Foundation, Inc. (***Dallas Foundation***), one of the Charities. Ms Diaz stated that on 28 August 2024, Mr Patrick contacted the Dallas Foundation's attorney to provide information about an asset held by the Dallas Foundation, which was held directly and separately from the Fund. This information was obtained by Mr Patrick through his employment at Skyview and constituted MNPI,

which is prohibited by U.S. securities laws from being disclosed and/or acted upon. On the basis of this MNPI, Mr Patrick advised the Dallas Foundation to exercise a put option it held in a NexPoint affiliated asset. The Dallas Foundation did not act on the information or recommendation provided by Mr Patrick, but in the event it had exercised the put option, both the Dallas Foundation and Mr Patrick would have committed violations of the U.S. securities laws that prohibit insider trading.

35. Upon receipt of the allegations against Mr Patrick, Skyview's compliance department commenced an internal investigation which, due to the serious nature of the allegations, was conducted without Mr Patrick's knowledge, so as to avoid potentially tipping off Mr Patrick about the investigation. By the end of September 2024, the investigation was substantially complete, and the conclusion had been reached that Mr Patrick's actions constituted a serious breach of his compliance and employee obligations. On 1 October 2024, as part of the finalisation of the investigation report, Skyview's chief compliance officer interviewed Ms Diaz about the allegations against Mr Patrick, which I understand confirmed Skyview's conclusions. The final investigation report was issued on 11 October 2024 and concluded that Mr Patrick had attempted a serious breach of U.S. securities laws. A copy of the report and its attachments is at **page 1**.

36. On 2 October 2024, Mr Patrick abruptly resigned his position from Skyview and thereafter became openly hostile towards the Charities, my affiliated companies, and me. Although neither I nor anyone at Skyview has direct evidence of Mr Patrick having been tipped off about the investigation, the timing of his resignation causes me to conclude that Mr Patrick became aware of the investigation into his behaviour and resigned before the report was published.

37. On the same day that Mr Patrick resigned his position at Skyview, he also terminated Skyview's service agreement with the Fund, and as a result all legal, compliance, back office and other services provided to the Fund. Mr. Patrick and Mr. Murphy have stated that that they intend to take on the role of investment advisors for the Fund. I am not aware of Mr. Murphy's qualifications for this role, nor am I aware of any third-party investment advisor that has been retained by the Fund to fill this role. Based on my knowledge and expertise in investment management, and my sixteen years working with Mr Patrick as my counsel, I believe that Mr Patrick is a well-qualified tax counsel, but does not have the experience, training, or expertise to be an investment professional.

38. After his resignation from Skyview and the termination of Skyview's services agreement with the Fund, I have received repeated reports and evidence of Mr Patrick causing certain DAF entities to liquidate their assets, some at below-market value. For example, on 20 February 2025, Mr Patrick's subordinate Shawn Raver asked for the in-bound wire instructions for one of my affiliates that owned a position in a trust called Hunter Mountain. Hunter Mountain owns most of the distribution rights of the equity position in the Highland Bankruptcy, meaning most of the residual value of the estate should be distributed to Hunter Mountain at the close of the Highland Bankruptcy. According to

Hunter Mountain's own filings, this value has been calculated in excess of $100 million gross, with approximately $17 million net value.

39. After additional inquiries from accounting staff, Mr Raver disclosed that the entire Hunter Mountain position had been sold to an unidentified party for $1 million. The Fund has not disclosed the identity of the purchaser. I am familiar with the Highland Bankruptcy estate and there is no valuation, net, gross, or otherwise, that I can imagine that would support a $1 million sales price. Additionally, given my founding and my affiliates' ownership of Highland, Mr Patrick would know that I was one of a few natural buyers of the Hunter Mountain position. While Mr Patrick of course would not be obliged to sell Hunter Mountain to me, the fact that Mr Patrick authorized the sale of Hunter Mountain at a below-market value without even approaching a natural buyer indicates a non-market, non-fiduciary reason for the sale.

40. Atlas IDF, L.P. is a fund controlled by its general partner Atlas IDF GP, LLC, a wholly owned subsidiary of the DAF. The economic beneficiaries of Atlas IDF are the holders of annuity policies issued by Crown Global Insurance Company. The majority annuity policy holder is Empower Dallas Foundation, a charitable foundation for which I serve as President whose purpose is to benefit the Dallas Foundation.

41. On 20 February 2025, Mr Patrick in his capacity as the general partner of Atlas IDF GP, LLC, sent a letter to Crown Global Insurance advising of the intention to dissolve Atlas in accordance with the partnership agreement dated 30 November 2015 on the basis of (i) concerns about the long-term availability and viability of back-office support; (ii) unsuccessful efforts to sell the defaulted Notes issued by HCRE Partners (one of my affiliates) dated 7 May 2014 in the amount of $2,3M and 27 May 2014 in the amount of $5M, held by the Partnership; and (iii) the decision by an affiliate of the GP to purchase the Notes at a price above their appraised value of zero dollars to facilitate an orderly wind-up. At the time, the amounts outstanding on the two Notes, including accumulated interest, was in excess of $13M. The intention was to sell the Notes collectively for $500,000. Mr Patrick launched litigation related to these Notes prior to the 20 February 2025 attempted sale of the Notes to an affiliate.

42. On 27 February 2025, H&K as counsel for the Empower Dallas Foundation (the policyholder), sent an email to Crown Global advising that the foundation was gathering information and requested that Crown Global therefore withdraw its consent to the proposed sale of the Notes to CLO Holdco. On 28 February 2025, Mr Patrick sent a further letter to Crown Global noting the revocation of consent to sell the Notes, and noting that: "*in addition to the purchase of the "Notes" for $500,000, we also intend to include a provision in the purchase and sale documents that, if the Notes are repaid in full within 12 months, all amounts received (minus fees and expenses of collection and purchase price) will be remitted to you as the sole limited partner of Atlas IDF, LP.*" The initial zero valuation and

proposed $500,000 sale price was confusing given that HCRE Partners had offered to pay the full amounts due in an amortizing schedule. After the withholding of consent, the revised offer of 28 February 2025 still is confusing given that the amortization schedule is longer than 12 months.

ATTORNEY GENERAL INVESTIGATION

43. I have become aware that, on 14 March 2025, the Texas Attorney General (***Texas AG***) commenced an investigation into Charitable DAF GP, LLC (the Fund's former general partner) in relation to the organization, conduct and management of Charitable DAF GP, LLC, and its related entities.

44. I understand that the Texas AG has the power to investigate a charity, should it deem necessary, to determine whether a charity is complying with Texas law.

45. I understand that the Charities have requested information about the investigation from the Texas AG, but do not have knowledge of any further details.

DONATIONS TO THE CHARITIES

46. Until Mr Patrick's departure in October 2024, I regularly donated to through the Charities to the Fund as part of my charitable giving program. My affiliates and I, which donated through the Charities to the DAF entities in 2023 and in various years prior, and are the primary funding source for the Fund. As allowed pursuant to US law, I direct the Charities to utilize the Fund's assets to sponsor charitable causes I particularly value, including underprivileged youth education, cancer research, heart health, veterans' services, and local institutions such as zoos and museums. Though I wish to continue to support these charitable causes, I will not give any future donations through the Charities to the Fund while it is under Mr Patrick's management and/or control.

FUNDING OF PROCEEDINGS

47. As stated above, I do not hold a controlling interest in any of the Charities or the Supporting Organizations. However, I sit on the boards of the Supporting Organizations simply for the purpose of overseeing how the Charities are deploying the Fund's assets for charitable purposes, and the impact of those donations in the community. In this context, I became aware that the Supporting Organizations were meeting to vote on the decision to take legal action to take steps to preserve the assets of the Charities they exist to support. Given my connection with the Fund and personal relationship with Mr Patrick, I recused myself from that meeting and was not otherwise involved in the decision taken by the Supporting Organizations to commence these proceedings.

48. The Supporting Organizations approached me about the costs associated with legal action and their reticence to use funds that should and otherwise would be used for charitable purposes, and asked whether I would be prepared to fund the action personally. I agreed to do so. I have not and will not

at any time receive a benefit, nor do I have control of the proceedings, because of this funding arrangement. The Supporting Organizations have decision making authority in relation to these proceedings. My concern is solely to ensure that the Fund, and the funds that I have donated over time that are held in the Fund, are used only to benefit the Charities and the causes they support.

SWORN by the above named)
JAMES DAVID DONDERO)
This 9th day of April 2025)
at 4:46 pm)

JAMES DAVID DONDERO

BEFORE ME:

NOTARY PUBLIC

KRYSTAL HUGHES
Notary ID #129488160
My Commission Expires
July 12, 2025

THIS AFFIDAVIT was presented by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/0016**)

EXHIBIT 49

Digitally signed by Advance Performance Exponents
Date: 2025.05.02 13:16:34 -05:00
Reason: Apex Certified
Location: Apex

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. OF 2025 (JAJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD

PETITION FOR COURT SUPERVISION
OF A VOLUNTARY LIQUIDATION

TO: THE GRAND COURT OF THE CAYMAN ISLANDS

THE **HUMBLE PETITION** of (1) The Highland Dallas Foundation, Inc, (2) The Highland Kansas City Foundation, Inc, (3) The Highland Santa Barbara Foundation, Inc, (4) The HCMLP Charitable Fund (the ***Supporting Organisations*** or ***Petitioners***), in their capacity as members of Charitable DAF Holdco, Ltd (the ***Company*** or ***HoldCo***):

1. The purpose of this petition (the ***Supervision Application***) is to seek an order that the voluntary liquidation of the Company continue under the supervision of this Honourable Court pursuant to section 131 of the Companies Act (2025 Revision) (the ***Act***) and Order 15, Rule 3 of the Companies Winding Up Rules (2023 Consolidation) (the ***CWR***). The Company was placed into voluntary liquidation, and Mitchell Mansfield and William Clarke (together, the ***JVLs***) of Kroll (Cayman) Ltd, pursuant to written resolutions of the directors of the Company dated 2 April 2025.

2. The petitioning Supporting Organisations are non-profit charitable entities exempt from taxation under s.501(c)(3) of the US Internal Revenue Code who collectively hold (or in light of recent developments allegedly held) 100% of the Participating Shares in the Company. Holders of Participating Shares are entitled under the Company's Amended and Restated Memorandum and Articles of Association dated 20 February 2025 (the ***Articles***) to participate in the profits or assets of the Company but are not entitled to attend, to speak at, or to vote at general meetings. By contrast, holders of Management Shares are entitled to attend, to speak at and to vote at any general meeting, but have no right to participate in the profits or assets of the Company.

3. HoldCo is a Cayman Islands exempt company formed on 27 October 2011 (registration no. 263805) whose registered office is Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands. HoldCo is purportedly governed by the Articles.

4. HoldCo is (or at least was) the limited partner of Charitable DAF Fund, LP (the ***Fund***), a Cayman Islands limited partnership formed on 28 October 2011 (registration no. 53083) whose registered office is Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands. The Fund is, to the best of the Petitioners' knowledge, governed by the Amended and Restated Limited Partnership Agreement dated 7 November 2011 (the ***ARLPA***).

5. This Petition refers to the Supporting Organisations' petition seeking the winding up of the Company on just and equitable grounds dated 10 April 2025 (the ***J&E Petition***), and the summons for the appointment of provisional liquidators dated 10 April 2025 (the ***PL Summons***), in Proceedings FSD. No. 99 of 2025, the latter of which is listed for hearing before this Honourable Court on 29 April 2025 (the ***Hearing***) – copies of which are at **Schedules A** and **B**, respectively.

VOLUNTARY LIQUIDATION OF THE COMPANY

6. On 23 April 2025 at 1:42pm, Johnstone Law (the Petitioners' attorneys) sent an email to Walkers (Cayman) LLP advising that they acted for the Supporting Organisations and seeking confirmation as to whether Walkers acted for and were instructed to accept service on the Company's behalf.

7. On 24 April 2025 at 11:35am, Walkers responded to Johnstone Law requesting confirmation of the nature of the proceeding to be served – but not addressing whether they acted for or had instructions to accept service on the Company's behalf. Johnstone Law replied that given their failure to respond the day prior, the papers would be served on HoldCo's registered office. That same day, copies of the Petition, the PL Summons and supporting materials were served on the Company's registered office.

8. On 25 April 2025, the Petitioners were preparing for the Hearing of the J&E Petition / PL Summons and in the course of finalising the hearing materials for delivery to the Court. At 3.32pm that day however Johnstone Law received a letter from Walkers (the ***Walkers Letter***) that stated *inter alia*:

   (a) On 2 April 2025, nearly four weeks ago: (i) HoldCo was placed into voluntary liquidation, and the JVLs appointed, by way of written resolutions of the directors, and (ii) the directors had executed a declaration of solvency with respect to the Company.

(b) On 14 April 2025, Gazette Issue No. 8/2025 (the ***Gazette***) was published, which included notice that the Company was placed into voluntary liquidation.

(c) Nothing in the Articles entitled the Petitioners to receive notice from the Company of its entry into Voluntary Liquidation, and "*[t]he fact should have been evident from a search of the Gazette prior to service, as per the enclosed notice*".

(d) As the Company was already in voluntary liquidation, the Petition and Summons were "*plainly redundant*" and should be withdrawn. If they were not withdrawn, this letter must be brought to the Court's attention at the Hearing, at which Walkers will appear for the Company and seek costs if appropriate.

9. Enclosed to the Walkers Letter were copies of the following:

(a) director resolutions dated 2 April 2025 (the ***Director Resolutions***);

(b) management shareholder resolution dated 2 April 2025;

(c) the JVLs' consents to act;

(d) declaration of solvency;

(e) the Gazette;

(f) the Articles;

(g) the Company's register of members as at 25 April 2025.

10. Although not stated anywhere in the Walkers Letter, the enclosures revealed the following matters, which were previously unknown to the Petitioners:

(a) On 7 February 2025, HoldCo allotted 318 participating shares to an entity named 'DFW Charitable Foundation' (***DFW***) – the effect being the substantial dilution of the Supporting Organisations' interest in the Company, from a cumulative holding of **100%** of the Participation Shares to **48.9%**. The Petitioners have since discovered that DFW is a Delaware company incorporated on 9 December 2024, registered to Mark Patrick's home address and Mark Patrick being the sole member. Mark Patrick is a director of and holds the Management Shares in HoldCo. DFW was purportedly granted charitable status by the State of Delaware on 7 February 2025, the same day it was allotted 318 participating shares in the Company.

(b) On 20 February 2025, HoldCo amended its Articles by way of special resolution, such special resolution passed solely by Mark Patrick.

(c) The Company's sole investment, being an interest in an entity by the name of CDMCFAD LLC was redeemed on 27 March 2025 and, on 2 April 2025, the proceeds available for distribution from this redemption were distributed in the amount of US$1,612,192 purportedly to HoldCo's participating shareholders;

(d) As at 2 April 2025, the Company has no assets.

11. On 27 April 2025, Johnstone Law responded to the Walkers Letter setting out the Petitioners' serious concerns arising from the matters disclosed therein, and stating *inter alia*:

(a) There can be no honest, reasonable or lawful justification or basis for the Company taking the steps it has, or for doing so without notifying and consulting the Petitioners in advance, and the subsequent failure to provide notice of such actions makes clear the information was deliberately withheld (supported further by the matters being disclosed only 1 clear working day before the Hearing).

(b) The steps were taken while the Supporting Organisations and HoldCo were engaged in correspondence about financial irregularities and lacking transparency on the part of the Company and its underlying interests. The failure of HoldCo (through its current directors or its US attorneys) to disclose this information in the course of that correspondence is proof of the utmost bad faith and deception on the part of HoldCo and its directors.

(c) The fact that the JVLs appointed by the Company have themselves taken no steps to inform the Supporting Organisations of such matters since their appointment causes them to conclude the JVLs lack sufficient independence required to protect the interests of the Supporting Organisations and the Company as a whole.

(d) The Walkers Letter makes it more, not less, essential that independent officer holders operating under the Court's supervision are appointed over the Company without delay. The Supporting Organisations will not withdraw the Petition or the PL Summons, but plan to issue or at least finalise additional proceedings on 28 April 2025, and to invite the Court to appoint Margot MacInnis and Sandipan Bhowmik as official liquidators of the Company at the Hearing – and seeking the Company's agreement by 12pm on 28 April 2025.

(e) The Supporting Organisations were, until 7 February 2025, and in law remain, owners of 99% of the economic interest in HoldCo. They do not approve of the purported share dilution nor the appointment of JVLs and their rights are fully reserved, and in the circumstances, it is inappropriate for assets of the Company, or any related entities, to be used for the purpose of payment of legal fees.

(f) A request for details of DFW, including when it was formed and received charitable status, the identity of its owners/controllers, its registered address and centre of operations.

(g) A request for confirmation by 8pm on 27 April 2025: (i) what has become of the Company's interest in the Fund, and (ii) to whom and in what amounts were the distributions referred to in the Director Resolutions transferred.

12. No response was received from Walkers by 8pm on 27 April 2025. At 9:16pm, Johnstone Law sent an email to Walkers noting the failure to provide the information and requesting that, in the circumstances and, if within their knowledge, the JVLs provide such information.

NOTICE OF SUPERVISION APPLICATION

13. In the circumstances, in particular that the Supporting Organisations (and purportedly DFW, although the Petitioners do not accept the validity of the share allotment to DFW) are the Company's only contributories – and given the clear evidence that the Supporting Organisations' interests in the Company have been diluted and the assets of the Company dissipated without notice or justification – the Petitioners respectfully request the Court exercise its discretion to dispense, as it is entitled to do, with the notice requirements in O.15 of the CWR.

APPLICATION FOR SUPERVISION ORDER

14. The Petitioners respectfully seek an Order from this Honourable Court that the voluntary liquidation of the Company continue under the supervision of the Court pursuant to section 131 of the Act, and that Margot MacInnis and Sandipan Bhowmik of Grant Thornton be appointed as joint official liquidators (together, the ***JOLs***) of the Company, for the following reasons:

(a) The making of a supervision order will allow the JOLs to conduct a proper investigation of the affairs of the Company and conduct an orderly winding up under the supervision of this Honourable Court for the benefit of all stakeholders.

(b) There is to say the least a large cloud hanging over Mr Patrick and Mr Murphy, as directors of HoldCo, who should not be allowed or entitled, irrespective of the professionalism of the JVLs, to retain the role and functions that directors normally retain attendant upon voluntary liquidations.

(c) The Supporting Organisations, as the owners of 100% of the economic interest in the Company (at least prior to the purported allotment of shares to DFW on 7 February 2025) should be entitled to choose the liquidator, or at least a liquidator not appointed by the directors, the conduct of whom has raised serious concerns even prior to the events disclosed in the Walkers Letter.

(d) Court supervision will result in an indisputably more effective, economic, and expeditious liquidation of the Company in the interests of the Supporting Organisations as contributories. Save in respect of any claim the Supporting Organisations save, there

does not appear to be any creditors.

(e) An investigation into the allegations of misconduct on the part of the management of the Company will be substantially expedited and more effective if conducted by official liquidators, who are not the same persons as the JVLs.

(f) Should an investigation identify transactions that should be set aside, or claims that should be advanced, whether against the directors of the Company or third parties, such actions are most appropriately and effectively undertaken by official liquidators, who are not the same persons as the JVLs.

(g) As the holder of the Management Shares in the Company (Mr Patrick) is resident in the US and as are many of the entities related to and with whom the Fund transacts, it is highly likely, if not certain, that the liquidators will need to instruct attorneys in the US, obtain recognition under chapter 15 of the US Bankruptcy Code, and commence proceedings in the US to recover any assets wrongfully dissipated. Such steps necessitate the liquidation being conducted under the supervision of the Court.

15. Ms MacInnis and Mr Bhowmik of Grant Thornton:

(a) are "qualified insolvency practitioners" as defined in s.89 of the Act and as prescribed by Regulation 4 of the Insolvency Practitioners' Regulations (2023 Consolidation) (***IPR***);

(b) meet the residency requirements contained in Regulation 5, IPR;

(c) meet the independence requirements prescribed by Regulation 6, IPR;

(d) meet the insurance requirements prescribed by Regulation 7, IPR, and Grant Thornton holds a trade licence which authorises its staff to carry on business as professional insolvency practitioners; and

(e) consent to their appointment as official liquidators of the Company, if so appointed.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

1. The voluntary liquidation of the Company be continued under the supervision of the Court pursuant to s.131 of the Act and O.15, r.8 of the CWR.

2. Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands, be appointed as joint official liquidators (***JOLs***) of the Company pursuant to s.132 of the Act.

3. The JOLs have the power to act jointly and severally.

4. The JOLs shall not be required to give security for their appointment.

5. The JOLs be authorised pursuant to s.110(2)(a) of the Act, to jointly and severally exercise all of the powers specified in Part II of the Third Schedule to the Act..

6. The JOLs be authorised pursuant to s.110(2)(a) of the Act to exercise the following powers in Part I of the Third Schedule to the Act, without the further sanction or intervention of the Court:

   a. The power to bring or defend any action or other legal proceeding in the name and on behalf of the company;

   b. The power to carry on the business of the company so far as may be necessary for its beneficial winding up;

   c. The power to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company.

   d. The power to deal with all questions in any way relating to or affecting the assets or the winding up of the company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.

   e. The power to engage staff, agents and/or consultants in the Cayman Islands and elsewhere to assist the JOLs in the performance of their functions; and

   f. The power to engage attorneys and other professionally qualified persons in the Cayman Islands and elsewhere to assist the JOLs in the performance of their functions.

7. The JOLs be specifically authorised and entitled without the further sanction of the Court to undertake the following:

   a. Presenting a petition for the winding up of the exempted limited partnership, Charitable DAF Fund, LP (the Fund).

   b. Taking control of the Company's subsidiaries, joint ventures, investments, associated companies, businesses, or other entities (collectively referred to as the "Associated Companies") in which the Company holds an interest (or such shares of such Subsidiaries and/or Associated Companies as are owned directly or indirectly by the Company), in each case, wherever located, as the JOLs see fit. Additionally, to call or cause to be called meetings of such Subsidiaries and/or Associated Companies, and to sign resolutions (in accordance with the provisions of any relevant constitutional or related documentation of

such companies) and take such other steps, including applications to and communications with appropriate courts and/or regulators, as the JOLs consider necessary to appoint or remove directors, legal representatives, officers, and/or managers to or from such Subsidiaries and/or Associated Companies. In each case, take the necessary steps to ensure that the registered agents (or other equivalent corporate administrators) of such Subsidiaries or Associated Companies implement the changes to the boards of directors, legal representatives, officers, and/or managers of such companies or entities. This includes (without limitation) effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the JOLs. Furthermore, to take such other actions in relation to all such Subsidiaries or Associated Companies as the JOLs see fit for the purpose of protecting the assets of the Company and managing its affairs (which, to avoid any doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies).

c. Issuing and pursuing an application by summons for an order appointing themselves or other fit and proper persons as joint provisional liquidators of the Fund.

d. Locating and taking possession of and preserving all the Company's books, records and other papers (whether hard copy, digital or otherwise).

e. Identifying the nature and location of all property and assets which appear to belong to the Company.

f. Getting in or otherwise securing and protecting all such property and assets.

g. Investigating the costs and expenses incurred by the Company.

h. Identifying any creditors of the Company.

i. Investigating the promotion, business, dealings, and affairs of the Company.

j. Investigating whether the Company or the JOLs may have any claims (either in this jurisdiction or elsewhere) against any officer or employee or former officer or employee of the Company, or against any other person or persons.

k. Commencing and pursuing any such or other claims, if the JOLs are of the view that that is necessary or desirable in order to protect the ability of the Company or any liquidator of the Company to pursue any such claims or otherwise to preserve the value of any such claims.

l. Seeking registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the liquidation.

m. Carrying on the business of the Company so far that may be beneficial for the Company, its

creditors.

n. Being at liberty to complete or terminate any contracts or transactions entered into by the Company.

o. Retaining and operating the existing bank or other accounts of the Company and where necessary opening new accounts.

p. Taking control of or redirecting any email or other digital communication method used for the purposes of the Company's business or affairs.

q. Applying to the Court for directions, including on short notice, including for Orders to vary these powers and functions.

8. The Court dispenses with the requirement for this Supervision Application and the hearing of this Supervision Application to be advertised pursuant to O.15 of the CWR.

9. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with s.109 of the Act, Part III of the Regulations, and O.20 of the CWR.

10. The costs of this Supervision Application shall be paid out of the assets of the Company as an expense in the liquidation, such costs to be taxed if not agreed with the JOLs.

11. The JVLs shall prepare a final report and accounts for the period from the commencement of the voluntary liquidation until the date of the supervision order, and deliver such report to the JOLs within 28 days of this Order.

12. Such further or other orders be made as the Court shall deem fit.

AND your Petitioner will ever pray etc.

Dated 28th April 2025

Johnstone Law

Johnstone Law Ltd.
Attorneys for the Petitioners

THIS PETITION was presented by Johnstone Law Ltd., attorneys for the Plaintiffs, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/00016**)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on at am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands; Tel: +1(345)949-4296.

EXHIBIT 50

FSD NO. 116 OF 2025 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD

BEFORE THE HONOURABLE JUSTICE JALIL ASIF KC
IN CHAMBERS

6 MAY 2025

SUPERVISION ORDER

UPON the petition filed on 2 May 2025 by (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund for an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd continue under the supervision of the Court pursuant to s.131 Companies Act (2025 Revision)

AND UPON hearing counsel for the Petitioners and counsel for DFW Charitable Foundation

AND UPON reading the petition herein, the affidavit of Julie Diaz and exhibit JD-2 sworn on 29 April 2025 and the affirmation of Rhiannon Zanetic and exhibit RMZ-1 signed (but not affirmed) on 29 April 2025

AND UPON reading the following documents filed in Cause FSD 2025-0099 (JAJ): the winding up petition filed on 10 April 2025, the first affidavit of Julie Diaz and exhibit JD-1 sworn on 10 April 2025, the affidavit of James Dondero and exhibit JDD-1 sworn on 9 April 2025 and the affidavit of Geoffrey Sykes and exhibit GS-1 sworn on 27 April 2025

AND UPON reading the affidavit of Margot Macinnis and exhibit MM-1 sworn on 28 April 2025 and the affidavit of Sandipan Bhowmik and exhibit SB-1 sworn on 28 April 2025 providing their consents to act as official liquidators of Charitable DAF HoldCo, Ltd

IT IS HEREBY ORDERED that:

1. The voluntary liquidation of Charitable DAF HoldCo, Ltd ("the Company") be continued under the supervision of the Court pursuant to s.131 of the Act and O.15, r.8 of the Companies Winding Up Rules (2023 Consolidation).

THIS ORDER was filed by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/0016**)

Filed: 09-May-2025 15:00 EST
Auth Code: C02067594574
www.verify.gov.ky File#: 263805

2. The following persons are appointed as joint official liquidators of the Company:

Name	Address	Contact Details
Margot MacInnis	Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, Century Yard, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands	+1 345 949 8588 margot.macinnis@uk.gt.com
Sandipan Bhowmik		+1 345 949 8588 sandipan.bhowmik@uk.gt.com

3. The joint official liquidators may act jointly and severally.

4. The joint official liquidators are not required to give security for their appointment.

5. The joint official liquidators are authorised to exercise the following powers in Part I of Third Schedule 3 to the Companies Act, without requiring further sanction by the Court:

   a) the power to commence legal proceedings in the name and on behalf of the Company to obtain the provision of information and/or documents and/or the examination of individuals in the Cayman Islands or the United States; and

   b) the power to apply in the Cayman Islands or the United States for the preservation, freezing or attachment of assets to which the Company is or may arguably be entitled.

6. The joint official liquidators are in addition authorised to exercise the following powers and to take the following steps without further sanction by the Court:

   a) the power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;

   b) the power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised; and

   c) the power to seek registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the exercise of the powers specified in paragraphs 5(a) or 5(b) of this Order.

7. The Court dispenses with the requirement for the summons herein and the hearing of the summons to be advertised pursuant to CWR O.15.

8. The joint official liquidators' reasonable remuneration and expenses be paid out of the assets of the Company in accordance with s.109 of the Act, Part III of the Insolvency Practitioners Regulations and CWR O.20.

9. The joint voluntary liquidators shall prepare a final report and accounts for the period from the commencement of the voluntary liquidation until the date of this Order and shall deliver such report to the joint official liquidators within 28 days of this Order.

THIS ORDER was filed by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/0016**)

Filed: 09-May-2025 15:00 EST
Auth Code: C02067594574
www.verify.gov.ky File#: 263805

10. The costs of this summons shall be paid out of the assets of the Company as an expense in the liquidation, such costs to be taxed on the indemnity basis if not agreed with the joint official liquidators.

Dated 6 May 2025
Filed 6 May 2025

THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

THIS ORDER was filed by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/0016**)

Filed: 09-May-2025 15:00 EST
Auth Code: C02067594574
www.verify.gov.ky File#: 263805

EXHIBIT 51

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO.: FSD 116 of 2025 (JAJ)

IN THE MATTER OF SECTION 110(3) OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

FIRST AFFIDAVIT OF MARK ERIC PATRICK

I, **MARK ERIC PATRICK**, of 6716 Glenhurst Drive, Dallas, Texas, United Sates of America, 75254, do say as follows:

1. I am a registered director, president and sole member of DFW Charitable Foundation, a Delaware 501(c)(3) nonprofit corporation (**DFW**). DFW is the majority Participating Shareholder of Charitable DAF Holdco, Ltd. (**Holdco** or **Company**) of which I am both a director and the sole Management Shareholder. The remaining Participating Shareholders of Holdco are Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., Highland Kansas City Foundation, Inc., and HCMLP Charitable Fund (collectively, **Highland Foundations** and also referred to as the **Supporting Organisations**).

2. In addition, I am the sole director of CDH GP Ltd. (**GP**), a Cayman Islands limited company incorporated in or around 7 February 2024 which is the general partner of Charitable DAF Fund LP (**DAF**).

3. This affidavit is provided pursuant to the Orders of Justice Asif KC handed down at the directions hearing on 23 May 2025 (**Directions Order**) made with respect to an

application of the joint official liquidators (**JOLs**) of Holdco issued by Summons dated 22 May 2025 (**JOLs Summons**), and amended as of 30 May 2025 seeking sanction from the Court for the engagement of Cayman attorneys, Cayman conflict counsel and US legal counsel (**Application**).

4. I am duly authorized to provide this affidavit for and on behalf of DFW to:

   (a) Oppose the engagement of Johnstone Law as Cayman Islands attorneys to the JOLs on the basis that Johnstone Law is subject to a conflict of interest;

   (b) Address the proposed appointment of Maples (**Maples**) as Cayman Islands conflict counsel to the JOLs; and

   (c) Oppose the engagement of US legal counsel pending determination of the Holdco estate, as addressed in section 60 herein.

5. In this affidavit I refer to the supervision hearing on 6 May 2025 (**Supervision Hearing**) at which this Honourable Court brought the voluntary liquidation of Holdco under its supervision on uncontested basis and refer to the order appointing the JOLs on 6 May 2025 as the **Appointment Order**.

6. The contents of this affidavit are, save where stated otherwise, within my own knowledge and are true. Where the contents of this statement are not within my own knowledge, they are true to the best of my knowledge and belief and I have indicated the source of my information. In making this affidavit I do not waive legal professional privilege in respect of any documents, information or advice referred to herein and no such waiver shall be implied.

7. There is now produced and shown to me a paginated bundle of documents marked "**MP1**". References in this affidavit are to pages in MP1 are in the form [**MP1/page number**]. The majority of the documents comprised in MP1 are materials that I and Mr Paul Murphy requested that our US attorneys compiled and made available in a data room to the JOLs following their appointment. As such, much of the material referred to in this affidavit is already and has been available since around

9 May 2025 to the JOLs. To illustrate this fact, I exhibit an index to the documents in the data room that was made available to the JOLs (**MP1/ page 1 - 3**).

8. I respond in this affidavit to the Second and Third Affidavits of Ms MacInnes dated 13 and 26 May 2025 respectively (**MacInnes 2** and **MacInnes 3** respectively), that were filed by the JOLs in support of the Application which I have reviewed. I have also reviewed the unsworn, undated and unsealed affidavit of Mr Andrew Johnstone of Johnstone Law (**Johnstone 1**) which was served on Baker and Partners (Cayman) Limited (**Baker & Partners**) as legal counsel to DFW on 26 May 2025. To the extent that any assertion made in Johnstone 1, MacInnes 2 or 3 go unanswered in this my first affidavit in these proceedings, that should not be taken as my agreement, acceptance or acquiescence of the position asserted by Ms MacInnes or Mr Johnstone.

9. There will be matters in this affidavit which relate to certain decisions and actions Mr Murphy and I have taken as directors of Holdco. I have noted that certain critical remarks have been made by Johnstone Law about the fact that I have a played a central role in controlling and managing several entities within the charitable structure of which the Company previously formed part. These remarks are unfounded in circumstances where the DAF Structure and the entities within it have always operated through a single human agent. This was by design so that Mr Dondero was able to draw on the economies of having a single point of contact across the entire structure. My role was exactly the same as that occupied by my predecessor, Mr Grant Scott, however my approach was and remains to ensure that each entity's role in the DAF Structure was professionally managed.

10. In light of the foregoing insofar as this affidavit deals with matters relating to my role in managing Holdco with Mr Murphy as well as other entities within the structure that is because of the architecture of the structure itself.

11. In light of the wider context in which the position of DFW should be considered, I have reviewed the evidence prepared by Johnstone Law in connection with the winding up of Holdco and filed on behalf of the Highland Foundations namely the

First Affidavit of Mr James Dondero filed on 16 April 2025 (**Dondero 1**), the First Affidavit of Ms Julie Diaz (**Ms Diaz**) filed on 16 April 2025 (**Diaz 1**) and the Second Affidavit of Ms Diaz filed on 29 April 2025 (**Diaz 2**), which was relied on by the Highland Foundations for the purposes of the Supervision Hearing. On my review I note there are a number of mischaracterisations and inaccuracies in the evidence relied on by the Highland Foundations.

12. These create an inaccurate picture of DAF, the DAF Structure (as defined below) and Mr Dondero's dealings with the same. To ensure the facts are accurately before the Court on these matters, and where not otherwise addressed in the content of my affidavit, I include in Sections E and F below specific responses to the inaccuracies set out in Dondero 1 and Diaz 1. I realise that the purpose of the Application is not to resolve complex issues of law or fact. However, I believe it is critical for this Honourable Court to have an understanding of the relevant contextual issues, even if disputed, in order to determine both the question of whether the proposed engagement of Johnstone Law will at the very least undermine the appearance of neutrality in dealing with these issues.

13. Equally, the objection of DFW to the engagement by the JOLs of US legal counsel at this juncture requires the Court to appreciate the facts and circumstances which required Mr Murphy and I to implement the DAF Restructuring (defined at paragraph 18 below).

14. This affidavit proceeds as follows:

    (a) Objections to the JOLs' Summons

    (b) Professional background and dealings with Holdco / DAF

    (c) Function of Holdco and DAF Structure

    (d) DAF as alter ego of Mr Dondero

    (e) Responses to First Affidavit of Ms Diaz

    (f) Responses to First Affidavit of Mr Dondero

A. OBJECTION TO JOLS' SUMMONS

15. In summary, DFW:

    (a) Opposes the engagement of Johnstone Law as Cayman Islands attorneys to the JOLs on the basis that Johnstone Law is subject to a conflict of interest.

    (b) Does not object to the proposed appointment of Maples (**Maples**) as Cayman Islands conflict counsel to the JOLs, subject to the conflict committee of Maples confirming that on considering the ability of Maples to act for the JOLs they gave specific consideration to the prospect that Maples would need to review and opine on the issuance

    (c) Opposes the engagement of US legal counsel pending determination of the Holdco estate, as addressed in section 60 below.

16. DFW objects to the appointment of Johnstone Law as Cayman Islands legal counsel to the JOLs. This opposition is based on Johnstone Law's immediately prior engagement by the Highland Foundations in seeking the just and equitable winding up of Holdco and the appointment of provisional liquidators, on the erroneous basis that the DAF Restructuring was a fraudulent scheme which resulted in assets in excess of US$250 million in value being misappropriated from the Company, to the detriment of the Highland Foundations. For the avoidance of doubt and as explained in Section C of my confirmatory affidavit, the Highland Foundations never had a traditional ownership economic interest in the DAF and its assets; they only had a right to discretionary dividends if and when paid.

17. The Highland Foundations are companies that are owned and controlled by Mr Dondero who is the President, Individual Member and Director of each of the Highland Foundations. The complaints and allegations made by the Highland

Foundations and the arguments advanced on their behalf by Johnstone Law ignore the real prospect that it is Holdco which may have causes of action against the Highland Foundations and/or Mr Dondero, for the reasons articulated below (see also Section D).

18. At the Supervision Hearing the Highland Foundations, through Johnstone Law characterised the following steps as a fraudulent scheme:

    (a) The allotment of 318 Participating Shares in Holdco to DFW on 7 February 2025 which constituted DFW the single majority Participating Shareholder of Holdco.

    (b) On 27 March 2025, redeeming Holdco's interest in CDMCFAD LLC.

    (c) On 2 April 2025, distributing the proceeds of the aforementioned redemption to the Highland Foundations in their capacity as Participating Shareholders.

19. I refer to these steps collectively as the **DAF Restructuring**.

20. I reject any suggestion that the DAF Restructuring was improper, inappropriate or fraudulent. As I explain in further detail below, the DAF Restructuring was necessary to protect the DAF and its charitable intent from the retaliatory actions that can be traced back to Mr Murphy's and my refusal to accept Mr Dondero's demands to use the DAF's assets to invest in several opportunities that were inappropriate, arguably unlawful and to his personal benefit. I also discuss Mr Dondero's attempts to influence me to transfer approximately US $1.5 million to an offshore firm owned by Mr Dondero to settle outstanding legal fees which were not related to the DAF at paragraph 116(a) below.

21. For the avoidance of doubt and without waiving legal privilege, the DAF Restructuring and each of the steps forming that transaction, was / were undertaken with the benefit of thorough and extensive legal, tax and financial advice from third-party professionals and for the principal purposes of: (i) ensuring the DAF structure continues to fulfill its charitable purpose of supporting

community-focused, non-profit foundations; and (ii) protecting DAF and the DAF Structure from being used by Mr Dondero or attacked by his creditors as his *alter ego*.

22. As a result of Mr Dondero's conduct, the Highland Foundations may not retain their non-profit status under the laws of the US. According to tax advice I sought for and on behalf of Holdco, the Highland Foundations were susceptible to being found as the *alter ego* of Mr Dondero or facilitating other claims against entities within the DAF Structure based on *alter ego* theories which are set out further at Section D, paragraph 78 onwards and paragraphs 145 onwards of this affidavit. Significantly, the Highland Foundations may also have liability as co-conspirators if Mr Dondero is found to have used them in a way which contravenes the US Internal Revenue Code (**IRC**). It was in recognition of this risk that Participating Shares were issued to DFW. As stated in the resolutions authorizing the issuance and allotment to DFW, this was necessary to ensure that DAF could continue to further its charitable mission where, upon advice, it seemed the Highland Foundations could not. I refer to the first affidavit of My Murphy and to Section V(ii) which addresses the DWF share issuance.

(i) *Objections to Johnstone Law on the basis of a conflict of interest*

23. The question of Johnstone Law's ability to advise the JOLs independently and impartially was a matter I instructed counsel for DFW to raise at the Supervision Hearing. While I had not opposed the making of a supervision order, nor found at that stage there was a need to object to the appointment of Ms MacInnes or Mr Bhowmik as JOLs, it was my firm belief that due to Mr Johnstone's prior engagement for the Highland Foundations he and his firm would not be sufficiently independent to act as legal counsel to the JOLs. My reasonable belief was founded on both my prior experience of how Mr Dondero conducts his arrangements and litigates aggressively (I refer the Court to the examples of such behaviour in Section D *DAF As Alter Ego of Dondero* (below) and to Section IV of Mr Murphy's affidavit); and on the allegations of fraud and misconduct which have been central to the

applications persuade by the Dondero controlled and managed Highland Foundations.

24. At the Supervision Hearing, and as is set out in the letter from Baker & Partners to the JOLs dated 14 May 2025 and exhibited at **MP1/ pages 4 – 7** (**14 May Letter**), the pleadings before the Court charcterised the DAF Restructuring as a *"fraudulent Scheme"* and that the former directors (myself and Mr Murphy) appeared to be *"implementing a calculated and ultimately fraudulent scheme to dissipate the Company's assets to prevent thorough independent investigation"*.

25. The pleadings prepared by Johnstone Law characterise the Highland Foundations as *"victims of the apparent fraud"* and, with specific regard to the skeleton argument that Johnstone Law filed in support of the *ex parte* application for the appointment of provisional liquidators, Johnstone Law addressed the proposition that *"There is no hard evidence of fraud or defalcation"* by clearly refuting that suggestion as *"not true"* and that *"it will not take the Court long to see that Mr Patrick and Mr Murphy's blocking tactics hide more nefarious conduct"* (see 14 May Letter at **MP1/ pages 4 - 7**).

26. Johnstone Law also prepared and filed Diaz 2 which was given in support of the Highland Foundations application for the voluntary liquidation of the Company to be brought under the supervision of the Grand Court. In this respect, the terms of relief and basis for the need for supervision was allegedly due to a *"cloud hanging over Mr Patrick and Mr Murphy, as directors of Holdco"* (**Diaz 2, para 15(b)**). Ms Diaz goes on to incorrectly described the Highland Foundations / Supporting Organisations as *"the owners of 100% of the economic interest in the Company"* and that the need for supervision of the Grand Court is primarily for a *"(a) proper investigation" "...(e) into the allegations of misconduct on the part of the management of the company"* (**Diaz 2, para 15.(a), (e)**). Ultimately and as I consider to be indicated by the terms of the **Diaz 2 (paragraph (f)**, the case advanced by Johnstone Law for the Highland Foundations envisaged and anticipated that transactions undertaken by Holdco would likely need to be set aside.

27. While I was not present at the Supervision Hearing I am informed by and understand that in accordance with my instructions, counsel for DFW foreshadowed the potential conflict of interest at the Supervision Hearing. After the DAF Restructuring, and subject any claims accruing to the Company, Holdco has no or de minimis assets. The central issue in the liquidation of Holdco is whether the DAF Restructuring was lawfully carried out by myself and Mr Murphy acting in the best interests of Holdco and exercising our powers as directors for a proper purpose. It simply cannot be the case that Mr Johnstone can review the DAF Restructuring impartially and with a fair-mind having already formed the view that that transaction amounted to a calculated and fraudulent scheme.

28. From my consideration of **Johnstone 1 (paragraphs 14,15 and 17)** I understand that:

(a) Mr Johnstone appeared as legal counsel to the Highland Foundations at the Supervision Hearing,

(b) After Justice Asif KC made the Supervision Order the engagement of Johnstone Law was terminated and at the same time the Highland Foundations consented to the engagement of Johnstone Law by the JOLs.

(c) I understand that the engagement with the JOLs is dated 7 May 2025. Having read MacInnes 2 I understand that the letter of engagement was executed by the JOLs on 13 May 2025 (see **MM2/ page 4**).

(d) Mr Johnstone asserts that he "*no longer [has] obligations to the SOs (save for my ongoing duties of confidentiality), and as former client, rather than current clients"* (**Johnstone 1, paragraph 39**) and that there is no *"suggestion that in my capacity as attorney to the SOs, I obtained confidential information that would make it unfair for me to know represent the JOLs"* (**Johnstone 1, paragraph 40**).

29. As is discussed in detail in Section IV of Mr Murphy's affidavit and Section D below, it was necessary for Mr Murphy and I to implement the DAF Restructuring so as to preserve the DAF assets and charitable standing of the DAF Structure. Given the potential civil and criminal consequences which may befall Holdco, DAF and its assets there is a real possibility that on investigation into the restructuring claims of Holdco are identified against the Highland Foundations and / or Mr Dondero.

30. I believe it is highly likely that Mr Johnstone holds confidential information relating to the operations of the Highland Foundations (being owned and controlled entities of Mr Dondero) that are highly relevant to the central issue in the liquidation, as presented by the Highland Foundations themselves.

31. It appears that the very real potential for Mr Johnstone and his firm's duty of confidentiality to the Highland Foundations as former clients, to conflict with the obligations to their current clients the JOLs has not been addressed in the discussions between Johnstone Law and the Highland Foundations; nor between Johnstone Law and the JOLs.

32. Significantly Mr Johnstone is *"happy to confirm I have never been instructed by James Dondero and/or JP Seville"*. This statement itself may refer to the specific terms of any engagement letters entered into by Mr Johnstone and/or his law firm, however, Johnstone Law has recently been engaged by the Highland Foundations who are under the ownership and control of Mr Dondero in his capacities as the individual member, president, and director of each, not to mention the influence he may wield by promising additional donations. Furthermore, Mr Dondero has put in evidence for and on behalf of the Highland Foundations in support of the petition to wind up Holdco and it was in that engagement and in part on the evidence of Mr Dondero that Mr Johnstone formed the view that *"it appeared on the evidence available that a fraud had been perpetrated"* (**Johnstone 1, paragraph 35**). Furthermore, as I refer to in paragraph 187 below, there is reason to be concerned that Johnstone Law has been engaged by entities likely to be controlled, owned or associated with Mr Dondero.

33. Insofar as the question of Johnstone Law / Mr Johnstone's independence is addressed in MacInnes 2, Ms MacInnes does not confirm that the JOLs have made independent enquiry or sought the views of legal counsel on the issue of conflict, save for relying on the view of Mr Johnstone.

34. **Johnstone 1, paragraph 41** notes that Mr Johnstone is *"surprised"* that the engagement of his law firm has elicited such opposition from DFW because it is usual for attorneys who have previously acted for the petitioners to take on the role of advising the liquidators. Mr Johnstone explains *"This has the advantage that the attorneys already have considerable understanding of the case, and so do not approach the task from a 'standing start', which saves time and costs"*. This point is also supported at **paragraph 11(a) of MacInnes 2** where Ms MacInnes states it to be her professional experience that liquidators frequently engage the firm of attorneys who acted for the petitioner upon their appointment, and the mere fact that a firm has previously acted for a petitioner does not of itself provide a basis for asserting that a firm lacks independence.

35. I do not accept this is correct in the context of liquidations arising from the breakdown of a shareholder relationship as is the case with Holdco. This evidence disregards the complex issues which arise in the context of this matter. I am informed by Cayman counsel and understand this issue will be addressed in submissions that while that general position as stated in Johnstone 1 and MacInnes 2 may be true where the winding up petition is premised on an undisputed debt, the position here is markedly different. There is a clear and contentious dispute brought by the Highland Foundations in the terms of the just and equitable petition that was filed against Holdco.

36. Insofar as MacInnes 2 asserts that the JOLs have concluded that Johnstone Law is independent and that the position of DFW in objecting to their appointment is without substance I note that:

    (a) It is Mr Johnstone himself who has informed the JOLs that his prior engagement by the Highland Foundations and that his own law firm had

no conflict in acting. The JOLs do not appear to have made independent enquiry into the potential conflict nor taken independent advice on the point (**Paragraphs 11(b)-(d) of MacInnes 2**).

(b) Johnstone Law has also confirmed that they *"have no preconceptions before accepting an engagement by the JOLS, and are not subject to any external pressure or influence"* (**paragraph 11(c) MacInnes 2**). However, it remains the case as per Mr Johnstone's own evidence that he is of the view that a fraud has been perpetrated and *that "that does appear to be an obvious explanation for what has occurred, and because those were my instructions"* (**Johnstone 1, paragraph 35**). I do not accept that fraud was the *"obvious explanation"* let alone a reasonable one had Mr Johnstone considered whether any underlying factual basis was reasonably credible. He does not appear to have considered the extraordinary legacy of the very person behind the Highland Foundations or the person funding his engagement, here Mr Dondero.

37. In the circumstances I fail to see how it could be considered reasonable or fair-minded (as **Johnstone 1 s**uggests at **paragraph 42**) for Johnstone Law's engagement to be sanctioned.

38. I am further informed by the Cayman attorneys to DFW that during the Supervision Hearing, Mr Johnstone submitted to the Court that the submissions of Baker & Partners with regard to the terms of Order ought not to be given weight because DFW is controlled by a person subject to investigation – that person being myself - and suggested I would seek to limit the powers of the liquidators. I refute the negative assertions that have been cast on my character advanced by Johnstone Law in written argument, and further at the Supervision Hearing. Additionally, recognizing that there is an investigation which needs to be conducted into the DAF Restructuring and its propriety, the conclusory view of Mr Johnstone that DFW's views should not be given weight because of that investigation itself indicates a

position of partiality which DFW believes requires that the JOLs have the benefit of independent, unconnected legal counsel.

39. The engagement of Johnstone Law specifically was not a matter that was before the Court at the Supervision Hearing. I understand from legal counsel to DFW that it was submitted at the Supervision Hearing that the identity of Cayman Islands attorneys for the JOLs was not then known, and that Reed Smith were identified during the Supervision Hearing as US legal counsel.

40. However, the terms of the Draft Supervision Order provided to the Court on 6 May 2025 did seek sanction for the JOLs to engage attorneys. I exhibit at **MP1/ page 9 - 11** a copy of the original draft order that was circulated on 6 May. It was this general sanction to engage attorneys that was denied and for which this Honourable Court directed the JOLs to make a sanction application for the specific firms to be engaged and the terms on which that engagement would proceed. Neither Johnstone 1 nor MacInnes 2 or 3 address the non-disclosure of Johnstone Law as proposed Cayman counsel to the JOLs. However, in the absence of independent legal counsel being identified I understand that (i) Johnstone Law's engagement with the Highland Foundations terminated after Supervision Hearing and (ii) Johnstone Law had issued a letter of engagement dated 7 May 2025 to Grant Thornton. There is a necessary inference that at the time of the Supervision Hearing Johnstone Law had been selected to act as Cayman legal counsel to the JOLs.

41. The concerns of DFW have been further compounded by steps immediately taken by the JOLs following their appointment.

42. Firstly, the clear overreach of their powers under the Appointment Order, insofar as the JOLs have sought to exercise authority and jurisdiction over entities which are neither Holdco, nor entities that are owned or controlled by Holdco. In this regard I refer to correspondence issued by the JOLs to Skyview Group (**Skyview,** legally incorporated as Highgate Consulting Group, Inc. and doing business as Skyview Group) dated 9 May 2025, in which the JOLs purported to have authority to request books and records from Skyview not only of Holdco but also to its current and

former subsidiaries (**Skyview Notice**). In doing so the JOLs also sought to exercise their powers in the jurisdiction of the United States where, I am informed by legal counsel, the JOLs have no legal standing or authority. A copy of the notice and correspondence issued to Skyview is exhibited at **MP1/ page 12 - 18**.

43. These steps are value destructive to DAF and its direct and indirect subsidiaries (**DAF Structure**) insofar as the JOLs have caused banks and other service providers to the DAF and related entities to freeze the operative accounts of the DAF. As an example, email correspondence from Hancock Whitney is exhibited at **MP1/ page 19 - 26**. In turn, this prevents DAF from operating its business (i) making (and receiving payments on) investments and (ii) carrying out its charitable purpose and fulfilling obligations which DAF has assumed to support selected charities.

44. Second, on 12 May 2025 Baker & Partners issued a letter to the JOLs identifying the impropriety and overreach of the requests set out in the Skyview Notice. No response to that correspondence has been received. I exhibit at **MP1/ page 27 – 29** a copy of the correspondence issued to the JOLs in response to the Skyview Notice.

45. Following the Supervision Hearing Mr Doug Mancino, a leading US tax attorney whose CV is exhibited at **MP1/ page 30 - 41**, informed me that he had agreed to a meeting with the JOLs. That meeting took place virtually on 12 May 2025 (**12 May Meeting**). I understand from Mr Mancino that Mr Johnstone of Johnstone Law was present at the virtual meeting. Mr Mancino also informed me that he was not informed during the call who Mr Johnstone was or in what capacity he was attending, that Mr Johnstone had represented (or was representing) the Highland Foundations, or that the JOLs had purported to engage Mr Johnstone as their counsel pursuant to a letter of engagement dated 7 May 2025 (despite the court requiring the JOLs to seek court approval for the appointment of legal counsel). I understand there to be a factual dispute relating to the 12 May Meeting and that Mr Mancino will directly address the assertion made in **MacInnes 3 (paragraph 12)** that at that meeting Mr Macino was informed that Mr Johnstone attended in his capacity as the JOLs' attorney.

46. On 14 May 2025, Baker & Partners wrote to ask who Mr Johnstone acted for while attending the 12 May Meeting. That same letter outlined to the JOLs the concern of DFW which arose from the representations made during the course of these proceedings by Mr Johnstone (see **MP1/ page 4 - 7**). As the letter of 12 May 2025 to the JOLs makes clear, DFW has serious and justifiable concerns that where conduct which Mr Johnstone has described as a fraudulent scheme are the very actions that will inevitably be investigated and considered by the JOLs, there is not only the appearance of a conflict but a serious question over the ability of Johnstone Law to impartially advise the JOLs on matters concerning the legality and propriety of the DAF Restructuring.

47. This extends to the very real possibility that on an independent and thorough investigation into the DAF Restructuring, causes of action may have accrued to HoldCo against the Highland Foundations and potentially Mr Dondero. DFW's position will be deeply prejudiced if the JOLs are unable or unwilling to act or even unable or unwilling to consider acting against the Highland Foundations and Mr Dondero. The timing of Johnstone Law's termination as counsel for the Highland Foundations as of 6 May, and appointment by the JOLs pursuant to a letter of engagement dated 7 May, in circumstances where Johnstone Law had already made accusations of fraud makes it difficult, if not impossible, to believe that Johnstone Law can advise the JOLs with a view to ensuring they investigate the affairs of Holdco fairly and independently.

48. Following the 12 May Meeting and the correspondence that was issued by Baker & Partners for DFW and on behalf of the Management Shareholder and directors by Kobre & Kim issued on 14 May 2025 (see **MP1/ page 42 - 44**) Johnstone Law made the Letter Application seeking the sanction of their appointment as legal counsel to the JOLs, without first seeking the formal views of DFW. I do not know if the Highland Foundations who are also participating shareholders of Holdco were notified.

49. I am informed by my legal counsel, without waiving privilege, that the usual course in making a sanction application is for the stakeholders of the liquidation to be

consulted with, and for a hearing to be set down for that application to be heard, including the views of stakeholders. While I also understand that there may be circumstances in which it may be appropriate to seek to have a sanction application determined on the papers, the views of the stakeholders interested in the application should provide their consent to proceeding with an application without sanction. The fact that the Court properly directed that DFW and all relevant stakeholders be given notice of the application and a hearing set down only indicates that this sanction application was not one suitable to be determined on the papers.

50. I note at **paragraph 20 of Johnstone 1** that the application for sanction of Johnstone Law was initially *"made by letter to the Court dated 14 May 2025 (**Letter Application**)"*. At the time of swearing this affidavit I understand that a copy of the Letter Application has been requested from Johnstone Law but not yet provided to DFW. I refer the Court to **MP1/ page 49 - 47** being a letter from Baker & Partners dated 20 May 2025 (**20 May Letter**) relating to the sanction application made by the JOLs and making specific requests for *"copies of all correspondence between Johnstone Law and the Grand Court regarding the proposed sanction application"*.

51. I note that **Johnstone 1 (at paragraph 55)** outlines requests for documents and information that were made by Baker & Partners in the 20 May Letter but lists only 3 or the 4 categories that were requested. Johnstone 1 makes no reference to the request that was made by Cayman counsel for DFW for a copy of Johnstone Law's correspondence with the Court, which would necessarily include the Letter Application.

52. Significantly, if the concerns of myself and Mr Murphy regarding Mr Dondero's dealings with DAF are found on an independent investigation to have been well founded, there is a real prospect that Holdco would have actions against the Petitioners in respect of distributions that were made which did not actually comply with the charitable purpose for which the assets of DAF ought to have been deployed. Even in the absence of such causes of action, if my concerns about Mr Dondero, the Highland Foundations are vindicated through an independent

investigation, the JOLs will be required to reach adverse conclusions about Johnstone Law's former clients. Given Johnstone Law at the very least holds confidential information about those parties, it is reasonable to infer that Johnstone Law will be strongly predisposed (or have the appearance of being strongly predisposed) towards their former clients. Indeed, Johnstone Law has already characterised his former clients as the *"victims of fraud."* (**Supplementary Skeleton Argument, 28 April 2025, para, 17**).

53. Once again, this raises a justifiable concern that Johnstone Law is not in a position to act independently in advising the JOLs to commence proceedings against the former clients of Johnstone Law or take adverse positions against them. Given the pervasive nature of the required investigation into the history of the DAF Structure, its connection with Mr Dondero and indeed DAF Restructuring, I do not see how the issue can be cured by the appointment of Maples as *ad hoc* conflict lawyers.

54. As I explain in further detail below a serious underlying concern of DFW as well as a concern Mr Murphy and I have held as directors appointed by the Management Shareholder to exercise its entitlements and functions, is that Mr Dondero historically misused DAF, the DAF Structure, and its assets for his own personal U.S. tax advantages and gain and intends to leverage the liquidation of Holdco to ultimately wrongfully require the DAF Structure and its assets.

55. Furthermore, I understand from the evidence filed by the Highland Foundations that Mr Dondero is funding the JOLs' fees and is privately financing these proceedings including meeting the fees of the Highland Foundations. In circumstances where Johnstone Law has been remunerated by Mr Dondero and indeed where they appear to have acted with certain entities associated with him, this inevitably gives rise to the real prospect that without instructing independent counsel, Johnstone Law and by extension the JOLs may not be in a position to reach fair and impartial findings against Mr Dondero or indeed the Highland Foundations with respect to any investigations of misuse or attempted misuse of the DAF Structure. Such findings would almost certainly be contrary to the position adopted by Johnstone Law on behalf of the Highland Foundations (and ultimately Mr Dondero).

56. Mr Dondero is a serial litigant. Since 2007 he has been locked in substantial litigation with UBS and since 2019 has been pervasively involved in the now infamous "Highland Bankruptcy" Chapter 11 proceeding in Texas. Mr Dondero is currently exposed to a summary judgment determination from the Southern District of New York which may imminently result in an award against him in the amount of US$1.2 billion (as more fully discussed below in paragraph 153). I believe the prospect of such a significant adverse judgment against Mr Dondero provides ample reason for him to seek to have the DAF Restructuring unwound and seek to control – directly or indirectly – that process. In simple terms Mr Dondero may need access to significant liquidity in the short term.

(ii) Engagement of Maples

57. I note from the Amended Summons provided by Johnstone Law on 26 May that the JOLs now seek sanction for the appointment of Maples as conflict legal counsel to the JOLs. As noted in **MacInnes 3 (paragraph 19-24)**, Maples were previously retained by the Company to provide advice in connection with the power and ability of the directors of Holdco to issue and allot shares in Holdco to DFW.

58. Given the centrality of the DAF Restructuring and the DFW share issuance to the liquidation of Holdco, I was concerned that Maples would be in a position of conflict to the extent that Maples were instructed by the JOLs to assess or impunge the validity and propriety of the issuance of shares from Holdco to DFW. However, I also understand from both the terms of MacInnes 3 that Maples have cleared conflicts and do not regard the previous, advice provided to the Company as presenting a conflict of interest.

59. In the circumstances, I on behalf of DFW would not object to the engagement of Maples by the JOLs providing confirmation could be provided that the conflict committee had, on considering the engagement for the JOLs, specifically addressed the ability of Maples to advise on the validity and propriety of the share issuance to DFW by Holdco.

(iii) No requirement for US Counsel at this stage

60. DFW objects to the application for sanction by the JOLs to engage US counsel at this juncture. As is accepted by the JOLs, Holdco presently holds no assets in Cayman or anywhere else.

61. The issues that are raised by the Highland Foundations and which have been assumed by the JOLs, concern the validity and potential ability to unwind the DAF Restructuring.

62. In due course DFW intends to seek a declaration as to the validity of the DAF Restructuring from this Honorable Court and to make that application within the liquidation. Until such time as a determination has been made that would result in assets being conveyed to the Holdco estate, DFW objects to the sanction and engagement of US counsel for the reason that it is neither proportionate nor necessary.

B. PROFESSIONAL BACKGROUND AND DEALINGS WITH HOLDCO /DAF

63. I am a US tax attorney and have practiced as US tax counsel from 1998 until 2008. I hold a bachelors degree from the University of Miami Herbert Business School (BBA, Finance, Cum Laude); an LLM in Taxation from the New York University School of Law and am a Juris Doctor from the Boston University (Cum Laude).

64. For a significant part of my career through until October 2024 I have been employed by companies connected with or controlled by Mr Dondero. From January 2008 to February 2021 I was employed as Tax Counsel by Highland Capital Management, L.P. (**Highland**). During my employment with Highland, I provided tax consulting advice to Highland and engaged outside tax lawyers to provide legal advice to Highland relating to the management of its tax liabilities and the ability to make use of tax efficient structures.

65. Contrary to the assertion made by Mr Dondero (**Dondero 1, paragraph 17**) I have not and did not represent Mr Dondero as his personal tax counsel while employed at Highland or at any time thereafter. During this time, I held a license to practice

law but my role within Highland was as a tax professional and not as an attorney and I was assigned to the tax department, not the legal department. To the extent that Mr Dondero required tax or trust advice in respect of his assets, external tax counsel were hired to fulfil that role. It is well understood in the U.S. that attorneys who are employed by a company represent the company and not its officers or directors.

66. Highland was an entity formerly owned and controlled by Mr Dondero, which was later placed into Chapter 11 Bankruptcy in the United States (**Highland Bankruptcy**). It is my understanding that the bankruptcy of Highland in 2019 was precipitated by Highland incurring significant exposure in what has been characterised as vexatious and oppressive litigation which Mr Dondero was instrumental in prosecuting. In particular in 2019 it was expected that a judgment would be made against Highland in favour of certain of its investors in the amount of US$189.3m. Highland was not in a position to satisfy this judgment and Mr Dondero placed the Company into Chapter 11. Following the collapse of Highland, Mr Dondero set up a new investment manager under the name NexPoint. Skyview was formed to provide back-office services to NexPoint and its managed funds.

67. I was employed by Skyview from March 2021 to October 2024.

68. I note that Mr Dondero refers to many of the former back-office employees of Highland becoming employees of the newly formed Skyview (**Dondero 1, paragraph 7**), Mr Dondero does not accurately describe the business of Skyview. From my time employed by Skyview I understand that almost all the clients of Skyview are entities owned and controlled by Mr Dondero.

69. Further, the Chief Executive Officer and owner of Skyview is Mr Scott Ellington, a longtime business associate of Mr Dondero and former General Counsel of Highland. During my employment at Skyview it was well understood by those working there including myself, that Mr Dondero had actual control of Skyview. By way of example, the compensation determination for all of Mr Dondero's companies' employees is carried out in January-to February. During this time the

Head of Human Resources and a member of the Executive Board of Skyview would attend Mr Dondero's office at the Crescent where he would set the pay of every Skyview employee.

70. I provided tax advice to Skyview. In September 2021 my title was formally changed from "Tax Counsel" to "Managing Director, Tax". I requested this title change to make it objectively clear that I was not providing any legal services for Skyview, Mr Dondero, nor any of Mr Dondero's companies, which met no resistance from Skyview.

71. Contrary to the assertions made in **Diaz 1, para 25(b)**) and **Dondero 1, para 18**, at no point during my tenure at Skyview was I retained by Mr Dondero to advise in respect of his personal tax liability. As with my employment at Highland, external legal counsel was engaged to advise Mr Dondero in respect of his personal tax affairs and trusts. I submitted my resignation to Skyview by letter dated 2 October 2024, a copy of which I exhibit at **MP1/ page 48**. The significance of my resignation which I explain in further detail below has a direct correlation to the rapid deterioration of the ensuing interactions with the Highland Foundations.

72. During the course of my employment with Highland I, along with outside advisor Mr Douglas Mancino (**Mr Mancino**), was instrumental in the establishment of Holdco, DAF and the DAF Structure. Mr Mancino and I exchanged a series of letters exhibited at **MP1/ pages 49 – 52, 53 – 55, 56 – 58 and 59 - 61** commissioned a memorandum exhibited at **MP1/ page 62 - 66** and had in-depth discussions regarding the most advantageous structures, compliance implications, and outreach to potential recipients of the Participating Shares. This runs contrary to **paragraph 9 of Dondero 1**, where Mr Dondero over-states his involvement in establishing the DAF.

73. Contrary to the assertions made at **paragraphs 8 and 9 of Dondero 1**, Mr Dondero does not have the ability to use or influence the DAF to donate to charitable organizations. Furthermore, DAF entities are all for-profit entities and to the best of my knowledge and belief, Mr Dondero has never donated to.

74. At best, Mr Dondero is an indirect donor to DAF. Specifically, Mr Dondero donated assets to Highland Capital Management Partners Charitable Trust #2 ("**Trust #2**"), which was a charitable remainder trust and was required by law to donate all its assets to a charity by a certain date. My understanding is that a few years later, Trust #2 placed all its assets to an entity it owned called CLO HoldCo, Ltd. Trust #2 then contributed CLO HoldCo, Ltd. to Charitable DAF HoldCo, Ltd. in exchange for 300 participating shares in Charitable DAF HoldCo, Ltd. Trust #2 in turn gifted these 300 participating shares to the Highland Foundations. Mr Dondero's "donation" was in fact to Trust #2[1]. I am also aware that Mr Dondero or his trusts have made other donations to Highland Dallas Foundation from my work at Highland and Skyview.

C. FUNCTION OF HOLDCO AND DAF STRUCTURE

75. The DAF Structure was established in late October 2011 to provide a permanent capital offshore structure that would manage assets on a long-term basis, during which it would make discretionary distributions to the benefit of various charitable entities and their charitable endeavors. The structure was established for the purpose of reorganizing investment assets from Trust#2 and distributing such assets to non-profits when the trust expired per its term, and reducing the burden to pay US federal tax. It was never an investment fund.

76. In my experience these structures serve to mitigate the tax exposure of assets under management, while also permitting any donors of assets to have non-binding input on the investment of such donations and charitable contributions to charitable entities. It is important to stress that these arrangements, to avoid material tax liability and violations of criminal tax laws, must be conducted at arm's length and with strict adherence to the principle that the donor must totally relinquish dominion and control over the contributed assets.

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[1] In 2011, Mr Dondero also owned and controlled Charitable DAF GP, LLC, a Delaware limited liability company, which was the General Partner of Charitable DAF Fund, LP and effectively had control over the DAF Structure (other than Charitable DAF HoldCo, Ltd.). Mr Dondero could not maintain control of the General Partner because, in order for his charitable deduction that he obtained when he donated assets to Trust #2 to remain legally valid, he had to cede dominion and control of the transferred assets.

77. From my background as a tax professional advisor I am aware of the importance of avoiding inferences of "dominion and control". These derive from the fact that under U.S. tax law, when someone donates to charity, they must forfeit "dominion and control" of the donated assets, meaning the donor must completely and irrevocably transfer ownership and control of the property to the charity. To qualify for a charitable deduction, the donor cannot reclaim the property or dictate how it is used, directly or indirectly (such as with the DAF Structure). This includes relinquishing any power to change the use or disposition of the donated assets.

78. Furthermore, for the donation to be tax-deductible, the donor must (i) intend to permanently give up control of the property, (ii) transfer legal title and control of the property, (iii) deliver the property, and (iv) ensure the charity accepts the donation. I exhibit at **MP1/ page 16 - 83** a memorandum of advice prepared by Corrington for Holdco addressing the issue of dominon and control of assets provided to charity (**Carrington Memo**).

79. The charitable distributions to DAF were to be made through the Highland Foundations as the Supporting Organisations of the DAF Structure. I know from my involvement in establishing the DAF Structure that Mr Dondero is the President, Director, and Individual Member of each Supporting Organisation and wields further influence as a purported donor to the Highland Foundations. If, for example, the IRS were to make a finding that Mr Dondero never intended to part with dominion and control over the "gifts" he made to DAF, then they would likely disallow the income and gift tax deductions that he has benefited from and impose civil penalties, as outline in the Carrington Memo (ref to page in exhibit).

80. The charitable distributions made would be from the DAF through Supporting Organisations exempt from federal taxation under Section 501(c)(3) of the US IRC providing the DAF structure was administered and managed independently of any donor (including Mr Dondero's in his capacity as an indirect donor through the charitable remainder trust). At the time Mr Dondero and I discussed the establishment of the DAF Structure, I informed Mr Dondero that the structure required the complete divestiture of assets and that the terms of the DAF and its

related entities could not provide Mr Dondero with any dominion or control over the structure or the distributions made by DAF.

81. For example, when I articulated to Mr Dondero that the investment income reported to each of the foundations which held the DAF was US $22,875,944 to Highland Dallas Foundation, Inc.; US $22,961,382 to Highland Santa Barbara Foundation, Inc.; and US $22,883,319 to Highland Kansas City Foundation, Inc., Mr Dondero's response was "*They don't think of that money as their own do they???*". In fact, the Highland Foundations as Participating Shareholders were only entitled to cash distributions, if and when made. Following my review of this correspondence I was concerned that Mr Dondero had evaluated the prospects of DAF to advance financing to his current and future projects in a way which may be contrary to Mr Dondero relinquishing dominion and control in respect of the DAF Structure. A copy of this email exchange is exhibited at **MP1/ page 84 - 85**.

82. In fact, the Carrington Memo at **MP1/ page 76** advised that there was a "*significantly heightened risk that the IRS could severely penalize and/or revoke the tax-exempt status of one of more*" of the Supporting Organisations which could in turn imperil the status and assets of the DAF, for the reasons which I explain below.

83. My concerns which arose at a later date (again, the justifications for which are articulated more fully below) were that should Mr Dondero attempt, through his control of the Highland Foundations, to exert dominion and control over the cash and property that he previously (indirectly) donated to DAF (and for which I understand he claimed personal charitable deductions for U.S. tax purposes) and the IRS were to make that determination, then the IRS would likely disallow the income and gift tax deductions that Mr Dondero took, and impose civil penalties, such as, a penalty on underpayments under Code Section 6662 and potentially the civil fraud penalty authorized by Code Section 6663, as referred to in the Carrington Memo (insert page ref from exhibit).

84. In addition and as mentioned above, I understand that significant penalties can be imposed on self-dealings between a private foundation (such as each of the

Highland Foundations) and a "disqualified person". The term disqualified person" includes an officer, director, or trustee of a foundation. Given Mr Dondero's involvement with the Highland Foundations, and further to the evidence which I give below, by late 2024 I harbored concerns that the IRS may consider Mr Dondero to be a "disqualified person" with respect to each and every Highland Foundation, which could expose each of those entities to revocation by the IRS of its tax-exempt status and possible criminal prosecution.

85. To the extent that the DAF's assets could have been used in such a way, my further concern was that creditors of Mr Dondero could view the DAF as Mr Dondero's financial alter ego under U.S. law. In tun that could expose DAF and its assets to creditor claims unrelated to the DAF Structure. Such claims could risk depleting the pool of assets held by DAF, which would result in depriving current and future charities from the benefit of those assets. I note that significant amounts of DAF's liquid assets are held in the U.S. and whilst I understand (without waiving privilege) that concepts of alter ego are different under Cayman Islands law, that would not prevent attachment of DAF's assets held in the U.S.

86. Quite simply, the assertions made on behalf of the Highland Foundations by the evidence of Ms Diaz show a fundamental misunderstanding of the corporate structure and charitable purpose of DAF. Primarily, the Highland Foundations assume that DAF was a "consolidated entity" when in fact the fundamental scheme of the corporate group intentionally, and necessarily, delineated between control of and economic interest in the DAF Structure.

87. In this regard, Holdco was incorporated and registered as a Cayman Islands exempted limited company on 27 October 2011 with registration number 263805 (see **MP1/ page 86**). Since its incorporation and until the DAF Restructuring in March 2025 (discussed below) Holdco was the Limited Partner of DAF through which it indirectly owned the entities in the DAF Structure. However, Holdco did not hold voting, control, or management rights in respect of DAF. Its sole purpose was to act as a conduit through which discretionary, charitable donations would pass.

88. DAF, an exempted Cayman Islands limited partnership was controlled and operated by its former general partner, Charitable DAF GP, LLC (**Original GP**) between October 2011 through to the Restructuring. From February 2024 DAF has been operated by the GP. The Original GP was arranged in Delaware and also registered in the Cayman Islands under Part IX of the Companies Act (as revised). The control of the Original GP and the Replacement GP are also explained below.

89. The characterization by the Highland Foundations through the evidence of Ms Diaz of DAF as a 'Fund' (**Diaz 1, paragraph 12**) is therefore misleading and liable to create confusion. DAF is not an investment fund but is a charitable vehicle and properly understood, DAF:

(a) Did not solicit capital from investors;

(b) Had / has no subscription agreements through which interests are taken up. Notably, the Highland Foundations did not "subscribe" to DAF in the way, I am informed by counsel (without waiving privilege), commonly used by investment funds in the Cayman Islands, but were granted Participating Shares in Holdco by way of a gift at the inception of the DAF Structure.

(c) Holdco as Limited Partner had restrictive rights in its participation and management of DAF, including restricted rights to information.

(d) Had no entitlement to make capital calls against the Supporting Organisations or indeed against Holdco;

(e) Does not have a registered investment advisor;

(f) There are no investment hurdles or reporting requirements;

(g) There are no marketing brochures, private placement memorandums or other materials relating to solicitation for investments;

(h) The economic substance filing lists business of Holdco; and

(i) There is no wind down date or term within which shareholders are entitled as of right to distributions.

90. Accordingly, to describe DAF as a fund, as the JOLs, Mr Johnstone, Mr Dondero and MS Diaz assert, is incorrect. Holdco was a passive holder and would receive cash distributions from time to time but purposefully did not enjoy any governance or fixed economic rights over the entities comprising the DAF Structure.

91. The constitutional documents of Holdco and DAF maintained the necessary distinction between the economic interest in the DAF Structure and control over the same. In the evidence of Ms Diaz the Highland Foundations incorrectly rely on the Amended and Restated Memorandum and Articles of Association of Holdco dated 19 January 2015 (**2015 Articles**) (**Diaz 1, paragraph 15**). The Articles have been amended and restated twice since the 2015 Articles both as of 24 January 2024 and again since 20 February 2025 (**2025 Articles**). It is the 2025 Articles which regulate the affairs of Holdco and are exhibited at **MP1/ page 87 - 123**.

92. Notwithstanding that the Holdco constitution has been amended, the provisions relating to the rights and interest of the shareholders of Holdco have not been modified. Holdco has issued both Participating Shares and Management Shares. The interests and rights conferred by these shares maintain a distinction between control of Holdco and an economic interest in Holdco.

93. Management Shares are *"voting, non-participating share in the capital of"* Holdco *"that shall be non-redeemable at the option of the holder but redeemable by"* Holdco. As stipulated in Art. 11 of the 2025 Articles, the Management Shares *"shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of"* Holdco. Notably, Management Shares *"confer no other right to participate in the profits or assets of"* Holdco.

94. In contrast Participating Shares, being those held by the Highland Foundations, are *"a non-voting, participating non-redeemable share in the capital of"* Holdco. Specifically, Participating Shares confer the right upon the Participating Shareholders to participate in the profits or assets of Holdco in accordance with

the terms of the 2025 Articles (**Art. 12, 2025 Articles**), which is subject to the sole discretion of the Directors of Holdco.

95. The distinction between Management and Participating Shareholder rights is evident throughout the 2025 Articles:

(a) it is for the Directors of Holdco to exercise their sole discretion to consider if a dividend ought to be paid to the Participating Shareholders, or whether the available funds ought to be set aside as a reserve. The Participating Shareholders have no ability to vote on whether a distribution would be made from Holdco (**Arts 102, 105, 2025 Articles**).

(b) Participating Shares do not confer the right to remove or appoint directors to Holdco. The right to appoint Directors to Holdco is reserved for the Management Shareholder and Directors, whereas the ability to remove Directors of Holdco is limited solely to the Management Shareholder (**Arts 64, 65, 69, 2025 Articles**).

(c) The Directors of Holdco have discretion to issue further shares in Holdco, and by the 2025 Articles the dilution of the Participating Shares *"shall not be deemed to be materially adversely varied or abrogated by [the]...issue of further Participating Shares"* (**Arts 7, 14, 2025 Articles**).

(d) Participating Shares do not confer a general right to inspect any account or book or document of Holdco, except in very limited circumstances being if such a right is granted by law or the Directors of Holdco otherwise authorize such inspection (**Art 111, 2025 Articles**).

96. At the time the DAF Structure was being established the limited nature of the Participating Shareholders' rights caused some charities who may have benefitted from the structure to reject the proposed gift of Participating Shares. I travelled and met with various charities, including the Greater Houston Community Foundation and Communities Foundation of Texas. These charities carried out extensive due diligence on the Participating Shares and ultimately rejected the gift. These

charities determined that the shares did not confer sufficient economic rights to qualify as a gift because they provided only discretionary dividends, carried no liquidation rights, and were susceptible to being diluted at any point.

97. In contrast, the Dallas Foundation, the Great Kansas City Community Foundation and the Santa Barbara Foundation also undertook extensive due diligence and, through the Highland Foundations, accepted the Participating Shares by way of a gift in full knowledge of the very limited rights conferred by these shares. Having regard to **paragraph 20(b) of Diaz 1**, it appears that the Highland Foundations are seeking to assert some form of fixed or proprietary economic interests in DAF which they knew were at best (i) discretionary; (ii) subject to dilution; and (iii) not controlling rights. The assertion of the Highland Foundations in these respects are refuted. The Highland Foundations were cognizant of these limitations when they accepted the gift of Participating Shares. For example, I recall meeting with Mary Jalonick (now-retired former president of The Dallas Foundation, which is supported by the Highland Dallas Foundation, Inc.), who understood the limitations. The current effort by the Supporting Organisations therefore subverts the intention, understanding and terms of the agreement of the parties at the time the Particiapating Shares were gifted by the Company.

98. The Highland Foundations, Ms Diaz and Mr Dondero were and/or should each have been well aware of the ability of Holdco to issue new Participating Shares. In July 2015, I understand that Mr Dondero had encouraged Grant Scott to cause Holdco to issue 5 Participating Shares to Community Foundation of North Texas (now known as North Texas Community Foundation) in exchange for US$.05. A copy of the correspondence admitting North Texas Community Foundation as a Participating Shareholder is attached at **MP1/ page 120 - 128**. I am aware that Mr Dondero was frustrated with (what he considered to be) the "woke", liberal, California-based Santa Barbara Foundation and their priorities, so Mr Dondero and Lane Britian requested that I find a replacement charity. At the time, I spoke with the El Paso Foundation and the Miami Foundation, who both rejected the gift of Participating Shares. North Texas Community Foundation was willing to accept a modest number of shares (5) to be held in a donor-advised fund account.

99. I explained to Mr Dondero in November 2014 that the Highland Foundations did not think of DAF's assets as their own and understood they were only entitled to discretionary cash distributions, if and when made. A copy of the email correspondence is exhibited at **MP1/ page 84 - 85**.

100. The operations of DAF are regulated by the Second Amended and Restated Exempted Limited Partnership Agreement of DAF, dated 11 March 2024 (**Amended LPA**). Again, the Highland Foundations rely on an outdated version of the governance document for the DAF. A copy of the Amended LPA is exhibited at **MP1/ page 129 - 146**.

D. DAF AS ALTER EGO OF JAMES DONDERO

101. From October 2011 until March 2021, Mr Scott was Managing Member and Sole Member of the Original GP and was the holder of the Management Shares issued in Holdco. As such Mr Scott was the control person over DAF and the related structure (**Control Person**). The function of the Control Person was and is to ensure DAF made independent investment decisions for the ultimate benefit of charitable beneficiaries and the charities they support. From my professional experience and expertise I understood that if the Control Person fails to act independently, the charitable and tax-exempt status of the supporting organisations would be compromised. The mere illusion of lack of independence could also expose DAF and its assets to adverse tax treatment and penalties from the Internal Revenue Service as well as creditors and other adverse parties if independence were not maintained.

102. Prior to 2021 Mr Scott and Mr Dondero were longstanding friends and acquaintances. I am aware from my associations with both Mr Scott and Mr Dondero that they were college roommates and that Mr Scott acted as Best Man at Mr Dondero's wedding with Rebecca (Becky) Dondero in 2005, which ended in divorce and extensive public litigation all the way to the Supreme Court of Texas. Mr Scott and Mr Dondero continued to be friends following the divorce litigation.

103. In or around March 2021 I approached Mr Scott to assume the role as Control Person of the DAF. This required me to take on the directorship of the Original GP and be registered as holder of the Management Shares issued by Holdco. I assumed the role of Control Person as of 24 March 2021. Therefore, the concept of their being a sole human agent in control of the DAF is one that has represented the status quo since its inception in 2011. The aspersions and innuendos cast by Johnstone Law on behalf of the Highland Foundations and more recently the JOLs are therefore inappropriate and are also consistent with their prevailing inaccurate view that DAF should be regarded as a "consolidated entity."

104. At this time I understood from my conversations with Mr Scott that he and Mr Dondero had suffered a falling out because Mr Scott refused to take a step at the request of Mr Dondero which would have caused him to breach his fiduciary duties to DAF.

105. It is my understanding and belief that Mr Scott's refusal to act at the direction of Mr Dondero angered him and that, as a result of Mr Scott's opposition to Mr Dondero's instructions, Mr Dondero wanted Mr Scott to resign. I exhibit an email from Mr Scott to John Kane on 30 January 2021 at **MP1/ page 147** which, contrary to the assertion made by Mr Dondero at **paragraph 20** of **Dondero 1** that Mr Scott informed him that he wished to resign in March 2021, Mr Dondero and Mr Scott reached a mutual agreement on a call on 30 January 2021 that Mr Scott would resign as a result of being at a "*cross-roads*" with Mr Dondero. In fact, Mr Dondero had stated to Mr Scott that "*The releases and non objection to the plan was all Seery cared about … accusations of non independence was tweaking and always alleged against all trustees, very hard to prove … not a real threat but Seery got a lot for it, look what you signed*". Mr Scott is not prepared to provide me with a copy of the unredacted email due to privilege but has intimated that he would be prepared to give evidence in these proceedings. My understanding is that Mr Dondero did not have the power to remove Mr Scott from his position, but he nonetheless encouraged Mr Scott to resign because he was displeased that Mr Scott had done something to benefit Seery as outlined above (the Highland Capital Management, L.P. chief restructuring officer after Mr Dondero was ousted from Highland Capital Management).

106. The appointment and subsequent resignation of Mr Scott as described by Mr Dondero in **paragraphs 14 and 20-21** of **Dondero 1** is misleading. Contrary to the impression conveyed at **paragraph 14, Dondero 1** while Mr Dondero may have known and regarded Mr Scott for many years as a person of *"great integrity"* Mr Dondero did not select and nor could he select the Control Person of the DAF. To have such a level of decision-making in respect of the DAF Structure would have compromised the charitable standing and purpose of the structure from the outset.

107. At **paragraphs 20-21** of **Dondero 1**, Mr Dondero deposes that Mr Scott volunteered his resignation due to the fact that he was ill-equipped to handle various disputes which had arisen in connection with the Highland Bankruptcy proceedings on foot in the United States. Mr Dondero further and wrongly deposes to the effect that he was consulted on the transfer of Control Person from Mr Scott to myself, and that he was *"happy for Mr Scott to pass the Control Position"* to me.

108. For the avoidance of doubt, Mr Dondero was not consulted regarding my assumption as Control Person. This was a matter communicated by email between Mr Scott and myself. Mr Dondero learnt that I had been appointed as the Control Person on or after the relevant corporate transfers as of 25 March 2021. Once again, the impression wrongly conveyed by Mr Dondero is that the DAF and DAF Structure are subject to or under his control.

109. Mr Dondero's account of how I came to act as the Control Person in these proceedings directly contradicts testimony he gave under oath on June 1, 2021. In that testimony Mr Dondero testified to the fact that I had replaced Mr Scott a month after it happened and Mr Dondero did not know beforehand (see extracts from Mr Dondero's deposition dated 1 June 2021 at **MP1/ page 148 - 158**). Mr Dondero was clear that he learned of my appointment after the fact and that I was the one who told him. As set out in the transcript exhibited at **MP1/ page 149 - 150** Mr Dondero says, "*And unbeknownst to me, [Mark and Grant] agreed, and [Grant] sent over the appropriate documentation...and Grant signed it, and Mark Patrick became the trustee."* Mr Dondero goes on to say that, prior to learning about me taking over for

Grant Scott, Dondero had no knowledge discussions were underway pursuant to which that would occur.

110. After assuming the role of Control Person I quickly formed the belief that Mr Scott had created potential liabilities for DAF and the DAF Structure as a result of failing to manage DAF and its assets independently of Mr Dondero, particularly where I suspected that Mr Scott had simply been authorizing investments proposed by Mr Dondero without due consideration for their appropriateness or any financial due diligence.

111. As set out in my evidence below, I have good reason to consider these investments may in fact have been for Mr Dondero's personal benefit and/or to further Mr Dondero's commercial interests, which were not aligned with the best interests of DAF, or the charitable purposes it was intended to serve. In effect, during Mr Scott's tenure as Control Person both the Highland Foundations and DAF were in effect under the common control of Mr Dondero which enabled Mr Dondero to utilize DAF and its assets as a private line of credit. As examples, (i) NexBank Capital Inc. (**NexBank**), which is a privately held bank where Mr Dondero has a significant ownership interest, sold land to DAF for tax benefits to NexBank, emails of which are exhibited at **MP1/ PAGE 159 - 162** and (ii) Highland (then under the control of Mr Dondero) sold or caused to be sold so many assets to DAF that DAF had no money to fund other proposed Highland investments, emails of which are exhibited at **MP1/ page 163 - 168**.

112. I knew that should this be the case, this would have profound legal, compliance, and tax consequences for DAF and DAF's assets. I also became aware that Mr Scott's compensation for DAF was determined by Mr Dondero without consulting any compensation study or expert advice, a copy of which communication is exhibited at **MP1/ page 169 - 170**.

113. My concerns that Mr Scott may have come under pressure to authorize transactions which may not have been in the best interest of the DAF (but rather Mr Dondero) were duly reinforced when I was unduly pressured by Mr Dondero. In mid-

2024, Mr Dondero (via his employees at NexPoint) proposed various investment opportunities that involved using DAF's assets, which would have been to the benefit of Mr Dondero and/or his affiliates but which in my opinion were not suitable investment opportunities for DAF. These unsuitable investment opportunities included rescue financing for a NexPoint fund in connection with an SASB refinancing and a NexPoint-led Delaware Statutory Trust investment regarding storage facilities. In response to DAF turning down these investment opportunities, Mr Dondero (through his assistant) demanded in August 2024 that I meet him three times per week to discuss DAF management and investments. In accordance with my fiduciary duties to DAF, I refused these demands but strongly suspected Mr Dondero sought to exert control over DAF, contrary to its tax compliance requirements and charitable purpose.

114. My review of the investments and dispositions from DAF revealed that Mr Scott had historically approved every related party transaction between DAF and entities owned or controlled by Mr Dondero. If I were to characterise the history of the way in which Mr Dondero treated DAF and the DAF Structure from 2011 until my appointment in March 2021, Mr Dondero used DAF through influencing Mr Scott's position as Control Person to (i) generate income for Mr Dondero's commercial gain; (ii) provide liquidity to Mr Dondero and his affiliate entities to advance his commercial interests and/or to reduce the tax exposure of Mr Dondero affiliated entities; and (iii) take high risk positions for below market returns in order to generate significant profit for his affiliate entities whilst retaining the upside for Mr Dondero's affiliate entities and continuing to enjoy significant personal tax benefits.

115. With respect to point (i) above:

(a) I understand that Highland had previously charged investment manager fees to DAF. From my review of the investment management arrangement it does not appear that Mr Scott took any step during tenure as DAF's Control Person to independently review or assess the fees that were being charged to DAF.

(b) As mentioned above, NexPoint is an alternative investment firm founded by Mr Dondero in 2012 and in which Mr Dondero admits he holds an interest (**Dondero 1, paragraph 7**). I also recall in the first month of my tenure as DAF's Control Person, that Mr DC Sauter (general counsel of NexPoint) and Mr Isaac Leventon demanded DAF pay NexPoint a 2% base fee and 20% upside for managing DAF investments. I rejected this demand whilst fully appreciating that paying management fees would be a way for Mr Dondero to circumvent the "dominion and control" issues which would otherwise arise from a tax perspective. I was clear that my role as the DAF's Control Person was not to rubber-stamp Mr Dondero's proposals but rather to advocate for the DAF and its charitable purposes.

(c) When Mr Dondero or his entities needed capital and wanted to offload an illiquid or undesirable investment at a premium rate, such assets have been sold or donated to the DAF. By way of an example, the DAF currently has exposure of US $85 million to a syndicated debt facility where the borrower's sole investment is two wavelength spectrum licenses issued by the Federal Communications Commission. Such licenses are illiquid and speculative. In this case, I believe Mr Dondero (through both Highland and NexPoint entities) and his affiliates realised they were overleveraged in that investment and required DAF to buy it at par. I do not believe that DAF would be able to sell it at par because a maturity date extension signed in January 2025 required the borrower to pay steep fees and provide an increased interest rate, which are characteristic of troubled debt holdings.

116. With respect to point (ii) above:

(a) I recall that in November 2023, Mr Dondero attempted to exert influence over me as the Control Person, by asking me to transfer (on behalf of DAF) approximately US$1.5 million to offshore entities owned by Mr Dondero which I believed would be provided to Sentinel Reinsurance,

Ltd., a Cayman Islands limited company, (Sentinel) (or another entity above it in the Sentinel Structure) which I believe was then majority owned by Mr Dondero. I understand that the transfer was to settle the payment of outstanding legal fees which were wholly unrelated to DAF and its charitable purposes. The effect of this request would have meant that funds would be diverted from DAF and its charitable beneficiaries to further Mr Dondero's unrelated commercial interests. On the basis of advice received from Parsons McEntire McCleary PLLC and without waiving privilege, I determined the proposed transfer would be "impermissible and illegal" (as stated in the Carrington Memo at pages **MP1/ page 68**). It is important to note that at this time there were a number of outstanding lawsuits being conducted in the US in which the DAF Structure was being characterized as the alter ego of Mr Dondero. In accordance with my fiduciary obligations to DAF and in light of the real risk posed to the integrity of the DAF Structure by Mr Dondero's attempts to exert control, I refused to effect the transfer as directed.

(b) Similarly in the fiscal year 2024, I noted that Mr Dondero was experiencing liquidity issues and did not want Skyview Group to pay my bonus compensation. As such, Mr Dondero directed human resources at Skyview to email Shawn Raver (at the time, an independent consultant who helped me with DAF matters) and instruct him to have the DAF advance 90% of my bonus with Skyview paying the remaining 10%. Under this arrangement, such payments were likely characterized as director fees and is yet another example of how DAF was used by Mr Dondero to resolve third party liquidity issues.

(c) I understand that NexPoint (and other Dondero entities) had at various intervals sold to DAF its undesirable land situated in flood plains land and directed that investment funds related to Mr Dondero would sell other under or non-performing assets to the DAF to generate liquidity for Mr Dondero's entities. Again, the viability of these transactions does not appear to have been independently evaluated by Mr Scott in his

capacity as the Control Person. As a general matter, DAF's balance sheet was full of former NexPoint and other Mr Dondero-affiliated investments.

117. I also understand that Mr Dondero directed Mr Scott to send US $1 million of DAF funds to the Tall Pine Group, in order to pay Mr Dondero's affiliates (such as Mr Ellington and Isaac Leventon) their bonuses at a time when paying those bonuses was blocked by the US Courts in the Highland Bankruptcy (see an invoice issued by Tall Pine Group LLC issued on 3 April 2020 at **MP1/ page 171**). Mr Scott caused DAF to make the US $1 million payment, which was flagged in the Highland bankruptcy proceedings as part of a larger US $17 million fraudulent transfer (see **MP1/ page 172 - 305**). With respect to point (iii) above, examples of the value destructive dealings and transactions that were imposed on DAF are set out in a report prepared by ValueScope dated 20 November 2024 (**ValueScope Report**). The ValueScope Report is exhibited at **MP1/ page 307 - 315**.

118. In summary, I observed that NexPoint would devise a scheme whereby it needed capital to consummate an initial investment and would engage DAF to provide bridge financing in exchange for a fixed rate of return with no upside beyond the fixed rate of return or repayment timeline. Under this arrangement, NexPoint would retain the upside (typically the common equity interests) and DAF would receive a preferred equity that would be extinguished upon repayment with a fixed interest rate. From industry experience, I do not believe that other lenders would agree to transactions on these terms, which is why I believe NexPoint would attempt to solicit funding from DAF. In effect, the DAF provided access to millions of dollars of its own assets to support NexPoint's (and by extension Mr Dondero's) commercial ventures.

119. The ValueScope Report also provides an overview of transactions and events (in terms similar to those described above) concerning DAF, which includes reference to the:

(a) The Campus at Legacy (TCAL) transaction - This was characterised in the ValueScope Report as "NexPoint's request to DAF shifted US $45 million of downside risk to DAF, while NexPoint retained full upside. Development of TCAL would accrue significant benefits to NexPoint and Dondero by enhancing their adjacent Texas Research Quarter...project" (**TRQ**) (**MP1/ page 308**). By way of background:

(a) In September 2024, NexPoint requested that DAF acquire the TCAL property, which was advertised primarily as a land investment comprising approximately 80 acres, and featuring two office buildings generating approximately US $800,000 in annual net operating income at 59.4% occupancy.

(b) NexPoint had TCAL under contract for US $45 million and it was anticipated that the acquisition would close in November 2024. After closing, I understand (see **MP1/ page 308**) that NexPoint intended to control the TCAL property and gradually wind down the tenant leases, with a view to demolishing the site to construct new life science manufacturing facilities.

(c) TCAL would also be integrated into TRQ, a planned 135-acre life sciences innovation district centered around the former Electronic Data Systems campus in Plano, Texas, United States, which borders the TCAL property.

(d) I understand that NexPoint and its related entities owned substantial debt and equity interests in the TRQ properties.

(e) Due to insufficient cash flows generated from the office buildings on the TCAL property, DAF requested a two-year ground lease with NexPoint as the master tenant as part of the property acquisition. Additionally, DAF required that NexPoint be contractually obligated to purchase TCAL from DAF at the end of the ground lease and requested a security interest.

(f) However, NexPoint declined, which would have left DAF with full downside exposure and limited upside potential.

(b) **Preferred Dividend Financing**

(a) In August 2024, NexPoint approached DAF to provide NexPoint Storage Partners (**NSP**), which was managed by NexPoint Advisors, with US $11 million in unsecured financing. DAF was told that the funds were required as a bridge loan for the sale and refinancing of NSP properties. However, DAF learned after conducting some due diligence that the real use was to make a US $6.4 million payment on an upcoming preferred equity dividend payment NSP owed to an investor, Extra Space Storage. DAF ultimately turned down the deal, but this is another example of how Mr Dondero tried to use DAF as a personal banking facility to support his commercial ventures whilst I was the Control Person.

(b) I also understand from the ValueScope Report that there was a failure to reduce risk in the deal by providing collateral, reducing outstanding NexPoint DST exposure, or by providing any put options.

(c) The deal structure and the purpose for the funds also changed several times during the 2-week negotiation period.

(c) Small Bay II DST bridge loan – with respect to DST investments, the ValueScope Report states that: *"all three DST Investment made under prior leadership failed to be repaid from DST equity raise proceeds after full syndication, as opposed to full repayment on all new DST bridge loans that have been syndicated since Mark Patrick become the control person"* (see **MP1/ page 311**). By way of background and in relation to the Small Bay II DST bridge loan:

(a) In or around June 2024, Mr Dondero caused NexPoint to demand that DAF roll over its equity from a prior transaction while, simultaneously, Mr Dondero's trust, The Dugaboy Investment Trust (**Dugaboy**), (of which

Mr Dondero's family are the income beneficiaries and his sister, Nancy Dondero, is the trustee) which held a subordinate class of equity in the prior transaction, was paid at closing in full. In other words, Dugaboy received a payment in full despite being at a lower position in the payment waterfall, and DAF rolled over its investment. The return to Dugaboy was listed at US $13,650,280 and DAF rolled over two classes of equity totaling $6,404,958.

(b) As seen from the ValueScope Report, across the various investments DAF has made in NexPoint entities or NexPoint-related deals, DAF has also faced challenges in obtaining various repayments from NexPoint.

(c) These DST investments followed a similar pattern: DAF provided a DST bridge loan to ensure that the Delaware Statutory Trusts were adequately capitalised from inception, and DAF was to be repaid through the sale of trust equity interests to DST investors.

(d) However, NexPoint would regularly fall behind on these repayments to DAF by several months at a time (which were funds raised from investors). As a result, I negotiated a clause in the Small Bay II DST bridging loan agreement, which required NexPoint to pay DAF the funds that were raised within 5 business days (see an LLC Agreement of NREA SB II Holdings LLC dated 13 June 2024, exhibited at **MP1/ page 316 – 350, and page 319** which provides for the five business day window). Ultimately, Mr Dondero was upset over my handling of the transaction and exercising independence to act for the DAF, as DAF obtained multiple benefits and protections by fighting NexPoint on Small Bay II, as outlined in the ValueScope Report.

(e) At the date of the ValueScope Report, NexPoint had not made any repayments and had retained at least US $8.26 million in funds with respect to Small Bay II and US $0.7 million in funds with respect to Polo Glen DST (described below) that it was contractually obligated to pay to

DAF. In a settlement related to the Highland bankruptcy, I negotiated with Mr Dondero to cause Mr Dondero to release the US $8.26 million (as detailed further in HCLOM Claim Narrative at **MP1/ page 351 – 354)**.

(d) Polo Glen DST

(a) DAF made another bridge loan (which I refer to as the Polo Glen DST bridge loan) in December 2019 part of which, has remained unpaid for approximately five years.

(b) As far as I am aware, there remains about US $0.7 million which NexPoint has refused to repay to DAF, despite having collected enough in asset management and various other fees to honour the repayment.

(c) As further stated in the ValueScope Report, I also negotiated a put option to NexPoint and related parties in June 2024 as an option to reclaim the outstanding balance, which NexPoint failed to honour when it was exercised.

120. In this respect, and contrary to the perception which Mr Dondero seeks to convey in **Dondero 1**, Mr Dondero frequently sought to utilize DAF as a means of generating liquidity for his other commercial ventures which placed DAF and the DAF Structure at risk of being characterized as the alter ego of Mr Dondero. Not only does Mr Dondero seem to be ignorant of the risks he was creating for DAF and the untenable position he was creating for anyone occupying the Control Position, but to compound his flawed thinking, once I pushed back (with the approval of Mr Muphy as independent/oversight director) on his demands, he has proceeded to retaliate by actively taking adversarial position against me and Mr Murphy through the Highland Foundations. The JOLs do not seem to be remotely attuned to what is happening and have unconditionally adopted a position that can easily be traced back to Mr Dondero through the Highland Foundations for whom Johnstone Law has acted. DAF is further at risk of being found to be the alter ego of Mr Dondero's *alter ego* given how it has been utilised in legal proceedings arising from Mr Dondero's actions. As observed in the ValueScope Report: *"All DAF litigation arises*

from Dondero. Dondero adversaries have sued DAF, claiming that DAF is an alter ego of Dondero and his various entities. Certain causes place all of DAF's assets at risk to Dondero creditors and aggrieved parties. DAF must vigorously defend itself and its assets, which can be costly and time-consuming". The extensive suits in which the DAF has been caught up are divided between those that are cases brought or initiated by adversaries of Dondero and those that were actions at the recommendation of Dondero (see **MP1/ page 313**).

121. DAF's participation in numerous litigious proceedings will also inevitably result in the depletion of DAF's assets, which is to the detriment of the charitable purposes that DAF is meant to support. Mr Dondero has also been described as a "vexatious litigant" due to numerous and frivolous lawsuits brought by him either directly or indirectly, as discussed further in Mr Murphy's First Affidavit filed which is also being filed in opposition to this sanction application.

122. For the Court's benefit, a summary of these proceedings are as follows:

Turnover Proceedings - New York County Supreme Court (Index No 650744/23)

123. This claim was brought by UBS Securities LLC and UBS AG London Branch (collectively, **UBS**) to collect on a $1.1 billion judgment UBS had obtained against various Dondero entities. The UBS claim against DAF related to assets acquired by CLO Holdco in December 2010. Mr Dondero is a defendant in these proceedings.

124. Only DAF was dismissed as a defendant in these proceedings by the New York Supreme Court for lack of personal jurisdiction over CLO Holdco. The lawsuit proceeds against the other defendants. Whilst that outcome was positive for DAF, as I have alluded to above insofar as DAF's assets are within the U.S. I understand that if DAF is found to be the alter ego of Mr Dondero, those assets may be at risk of attachment by UBS (see further below).

125. With respect to **paragraph 54** of **Diaz 1**, Ms Diaz omits the fact that Mr Dondero, together with various entities he owns, are being sued by UBS in this action for US $1.1 billion for, among other things, a Cayman Islands Monetary Authority-

regulated company issuing a fraudulent after-the-event insurance policy in order to move assets from an advised fund of Mr Dondero to his company, Sentinel. Mr Dondero's motion to dismiss and motion for discovery in that action were both recently denied, and proceedings have been fast tracked for summary judgment[2].

126. As such, Mr Dondero will soon face the prospect of having to find and possibly liquidate the necessary assets in order to satisfy a potential billion dollar judgment. This is an important fact to omit, especially where DAF has a significant value of assets under management, which Mr Dondero has repeatedly exploited or tried to exploit in the past, to DAF's actual or potential commercial detriment.

127. Should a judgment be made against Mr Dondero, there is a risk that DAF's assets could be paid for distribution to creditors and/or UBS, if (a) Mr Dondero assumes control of the DAF; or (b) should creditors successfully argue that the DAF is in fact Mr Dondero's financial alter ego. It is for these additional reasons that establishing independence between DAF and Mr Dondero was critically important to obtain.

Turnover Proceedings - Bankruptcy Court, Northern District of Texas (Index No 20-03060)

128. These proceedings were brought by Acis Capital Management (**Acis**) and Josh Terry (**Mr Terry**) as part of Acis Bankruptcy (**Acis Bankruptcy**).

129. An action against Mr Scott was also brought in the Acis Bankruptcy, and Mr Scott was indemnified by DAF as former Control Person.

Declaratory Judgment - District Court, Southern District of New York (Index No 5. 21-11059)

130. This action was brought by Mr Terry, a former business partner of Mr Dondero, alleging that DAF and CLO Holdco did not have standing to bring claims related to

[2] Please note that summary judgment in these proceedings could result in three different outcomes: (1) the Turnover Petition is granted and the property is delivered up to UBS; (2) the Turnover Petition is declined; or (3) the Court finds that there are facts at issue which would result in discovery being ordered and a hearing is listed.

Acis's management of assets held by Highland CLO Funding, Ltd. (of which CLO Holdco held a 49.015% interest).

131. Acis and Mr Terry sought this relief on the basis that, prior to my accession as DAF's Control Person, DAF had fallen into a pattern of commencing multiple lawsuits and then dismissing them before discovery commenced.

132. Notably, I understand that attempts to settle this litigation were hindered by Mr Dondero and / or NexPoint's involvement each of which was against any settlement because I believe they wanted the litigation against Mr Terry to continue.

Derivative Action - Royal Court of Guernsey (Civil Number 2479)

133. These proceedings were brought on behalf of a Guernsey domiciled entity called HCLOF seeking the distribution of cash being withheld from HCLOF by Acis , Mr Terry and U.S. Bank**, National Association.**

Bankruptcy Litigation - Bankruptcy Court, Northern District of Texas (21-03073)

134. The purpose of these proceedings was to seek an Order to reverse the cancellation of DAF's ownership interest in Highland Crusader Fund II, Ltd.

Bankruptcy Litigation - Bankruptcy Court, Northern District of Texas (21-03076)

135. In these proceedings, DAF was sued by the Litigation Trustee of the Chapter 11 Proceedings of Highland (**Highland Bankruptcy**) in connection with certain contributions received by DAF in 2016.

Bankruptcy Litigation - Bankruptcy Court, Northern District of Texas (19-34054)

136. These proceedings concerned general matters related to the Highland Bankruptcy, including recovery of redemptions payable that were withheld by Highland.

General Litigation - District Court, Northern District of Texas (24-00498)

137. This action (styled Highland Employee Retention Assets LLC v. James Dondero et. al.) was brought by Patrick Daugherty (former partner of Highland), who sued

Hunter Mountain Investment Trust, an entity managed by Rand Advisors, LLC, which is a DAF subsidiary, related to actions undertaken by Mr. Dondero.

The Business Court of Texas First Division (25-BC01B-0004)

138. Separately, Atlas IDF, LP, a Delaware limited partnership and, a DAF controlled entity, is suing an entity affiliated with Mr Dondero (NexPoint Real Estate Partners, LLC) and Dugaboy to collect on US $13 million in demand notes, which were guaranteed by Dugaboy (the validity of these guarantees is now being contested in litigation). I understand that through Deborah Dietsch-Perez (Mr Dondero's counsel), Mr Dondero has attempted to delay the hearing in that matter on the basis that he anticipates gaining control of DAF as a result of these Cayman liquidation proceedings (which would enable him to control Atlas in those proceedings). DAF performed a valuation study and discovered that the notes have a heavy discount due to concerns with collectability. In other words, the valuation experts were concerned that Mr Dondero would not pay his debts. Upon demand (with ten days' grace provided), they were not paid; given they are demand notes, that was a default.

139. Mr Dondero has since tried to acquire Atlas's demand notes for US $600,000 (see **MP1/ page 355 to 356**).

140. Atlas will continue to litigate against Mr Dondero for the collection of the demand notes in full.

United States District Court for the Northern District of Texas, Dallas Division (3:25-cv-477)

141. I am also aware of another example whereby Mr Dondero is utilising these Cayman liquidation proceedings in an attempt to delay collection efforts by DAF. In this case DAF is suing another entity affiliated with Mr Dondero to collect on a $1 million debt obligation. Mr Dondero controls an entity, Highland Capital Management Services, Inc., that defaulted on an approximately $1 million promissory note because Mr Dondero directed payment to a personal friend of his, Patrick McCabe (**Mr**

McCabe), who Mr Dondero may have believed that DAF owed money to, although I am not aware of any DAF obligation to or demand for payment from McCabe.

142. Broadly speaking, if Mr Dondero is successful at controlling the proceedings brought by DAF, I harbour concerns that he will direct the Highland Foundations to cease litigation and enter into settlements on terms that favour him. As a result, the Highland Foundations would provide Mr Dondero with an improper "private benefit" to the detriment of DAF.

143. Otherwise, I believe DAF has actively settled the other cases it had involvement with in 2025, and that its litigation expenses only relate to those cases mentioned above.

144. Shortly after my appointment as Control Person, Mr Dondero encouraged me to cause DAF to enter into litigation relating to Dondero's former company (Highland - in bankruptcy), which led to me being found liable for sanctions for breaching a gatekeeper order for filing a lawsuit recommended by Mr Dondero. This was later overturned by the U.S. 5th Circuit Court of Appeals. DAF and I were frequently referred to as:

    (a) as an alter ego of Dondero,

    (b) part of Dondero's web of entities, and

    (c) under the direct control and influence of Dondero.

145. I also exhibit a letter from Seyfarth Shaw LLP to the IRS dated 20 March 2025 at **MP1/ page 357 - 374** (**Seyfarth Letter**), which notifies the IRS that Mr Dondero has an inappropriate donor relationship with representatives of the Highland Dallas Foundation (**HDF**), which is the Supporting Organization of the Dallas Foundation (which is a tax-exempt community foundation under US law, and whose president is Julie Diaz), which potentially jeopardizes the tax exempt status of HDF. Specifically, the Seyfarth Letter drew the IRS' attention to the fact that Mr Dondero

exerts direct control over HDF as a director, substantial contributor and president, and indirectly through his and his associates' influence over Highland Dallas' supported organization representatives on the HDF Board of Directors and the Dallas Foundation itself.

146. The Seyfarth Letter also provided the IRS with background on Holdco as HDF is a Participating Shareholder of Holdco, and ergo, Mr Dondero's attempts to control Holdco could have impacted HDF financially.

147. Having appreciated the precarious situation DAF and the DAF Structure had been placed in as a result of the conduct of Mr Dondero both generally and in exercising control over the structure, I immediately took the following actions to protect and mitigate against what I would characterise as "Dondero-recommended transactions":

(a) I hired independent law firms (law firms that had not been previously engaged by Mr Dondero) to negotiate with Mr Dondero's investment professionals and counterparty lawyers on every transaction. This is something which, to the best of my knowledge and belief, Mr Scott never did during the decade he acted as the Control Person.

(b) In order to verify any potential investment was properly underwritten, I hired and consulted with investment analysts such as ValueScope to make independent judgments before agreeing to a transaction. I believe that Mr Scott did not take steps to independently verify the potential investment opportunities presented to DAF by Mr Dondero. The ValueScope Report demonstrates the increased value and performance of DAF after I assumed the role of Control Person and retained investment analysts such as ValueScope to negotiate the financial terms for proposed transactions (see *Historical Performance*, ValueScope Report, **MP1/ page 310**). In particular the ValueScope Report notes that *"Under Mark Patrick's leadership, the DAF has delivered higher returns on bridge lending deals to NexPoint DSTs, all*

while managing risks more effectively than in transactions executed before Mark took over".

(c) DAF retained Paul Murphy as an independent director of Holdco and other DAF entities.

(d) We adopted institutional grade investment committee guidelines.

(e) We formed an investment committee to advise on investments with best-in-class managers, including the former Head of Harvard's fixed income portfolio.

(f) By terminating Skyview Group's servicing contract, the DAF saved US $1 million annually in service fees.

148. I took these steps knowing that the IRS would look favourably on any and all attempts made by the DAF to maintain its independence from Mr Dondero under the circumstances.

149. However, I realized that, despite the protocols I had established early in 2021, as the variety of litigation against the DAF was filed (including also DAF's litigation against a Guernsey entity, HCLOF referred to above at [x]), that a common theme and refrain was clear: the DAF was regarded as Mr Dondero's alter ego regardless of my legitimate actions to establish systems and protocols to attenuate that conclusion.

150. Additionally, I followed the various legal actions by UBS against Dondero relating to the Sentinel Fraud (as defined below), and I realized by early 2023 that both the Kirschner complaint against the DAF and potentially a future and significant claim to be brought by UBS (which eventually materialized) could jeopardize the DAF's assets and expose them to Mr Dondero's creditors and adversaries.

151. It is important to ensure the Court is appraised on the prior business dealings of Mr Dondero insofar as they demonstrate that in conducting his business affairs, Mr Dondero has previously placed himself in positions of influence and control for the

purposes of personal gain through unlawful transaction. This is demonstrated by the adverse rulings that were made against Mr Dondero (amongst others) during the course of the bankruptcy of Sentinel (a Cayman Islands based reinsurance company which is ultimately owned by Mr Dondero and Mr Ellington).

152. In summary, UBS Securities LLC and UBS AG London Branch (**UBS Entities**) alleged that the specific transfers of assets to Sentinel during 2017 (set out and defined below as the **2017 Transfers**) were executed after the UBS Entities obtained an order for summary judgment against Highland and other entities owned or otherwise affiliated with Mr Dondero. I refer to case *UBS Secs. LLC v Highland Cap. Mgmt. , L.P. ,* (index No. 650097/2009) (Supreme Court of the State of New York, New York County) (the **Underlying Action**).

153. In the Turnover Petition (as defined below) the New York court accepted that the 2017 Transfers took place at a time when the named respondents in the Underlying Action anticipated a US $1.2 billion judgment against them. The judgment was awarded in UBS' favour in the Underlying Action, but since the entry of the judgment, UBS has only been able to collect a fraction of the interest (and none of the principal) on that judgment. The assets compromising the 2017 Transfers were transferred pursuant to an attendant Asset Purchase Agreement, as payment of the premium for an after-the-event insurance policy (the **ATE Policy**) to insure Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company and Highland CDO Holding Company against liability in the Underlying Action. It was also claimed that the ATE Policy was outside the usual course of business for Sentinel, as Sentinel had never previously issued this type of policy or one as large as the ATE Policy and would not have had the means to pay on the ATE Policy without the assets received following 2017 Transfers (the **Sentinel Fraud**).

154. In connection with the Sentinel Fraud, Stephanie Vitiello (author of the Vitiello memo) and other affiliates of Mr Dondero received an indemnity for their role in the Sentinel Fraud, a copy of which indemnity is attached at **MP1/ page 375 - 384**. It is my understanding that UBS's counsel also used this indemnity as evidence of

Stephanie Vitiello and other affiliates of Mr Dondero participating in the Sentinel Fraud.

155. In *UBS Securities LLC, UBS AG London Branch v. James Dondero, Scott Ellington, Highland COO Holding Company, Highland COO Opportunity Masters Fund, L.P., Highland Financial Partners, L.P., Highland Special Opportunities Holdings Company, CLO HoldCo, Ltd., Mainspring, Ltd., Motage Holdings, Ltd* (Index No. 6507 44/2023), the Supreme Court of the State of New York, New York County made a decision and order on 26 March 2025 (the **Turnover Petition**), finding that the Turnover Petition sufficiently alleged that:

(a) Mr Dondero and Mr Ellington undertook fraudulent conveyances under DCL 276, when they devised and implemented a scheme to move all the remaining assets of, but not limited to, Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company and Highland Financial Partners, L.P. that could be subject to an impending judgment to Sentinel (the **2017 Transfers**). To the extent that Mr Dondero and Mr Ellington sought to dismiss these claims, their motions were denied.

(b) Mr Dondero was the alter ego of another corporate vehicle called Mainspring, Ltd and that it was sufficiently alleged that Mr Dondero "*used Mainspring to enter into fake service agreements in order to pay HCM [Highland Capital Management, L.P.] insiders bonuses that they were otherwise ineligible to receive in HCM's bankruptcy*" and "*used Mainspring to reward HCM employees who were loyal to him*".

(c) Mr Dondero "*used his dominance over Mainspring "to commit a fraud or wrong against the plaintiff, resulting in the plaintiff's injury*"", with respect to allegations that Mr Dondero used his position as the ultimate beneficial owner of Mainspring, "*to compel Sentinel to issue dividends, thereby draining assets that would have otherwise been available for collection by UBS*". To the extent that Mr Dondero pursued a motion to dismiss claims which sought to hold him liable as the alter ego of Mainspring, that motion was dismissed by the Court.

156. In 2022, at a hearing in the Bankruptcy Court for the Northern District of Texas, where the Sentinel fraud was discussed, Judge Stacey Jernigan (**Judge Jernigan**) noted that she may make a referral to the U.S. attorney given the criminal conduct by Mr Dondero, Mr Ellington, and others to fraudulently hide assets from UBS and lie about it. I exhibit at **MP1/ page 385 – 517,** HCMLP Motion to Withdraw, Case No. 19-34054-sgj-11, Adversary Proceeding 21-3020-sgj.

157. I am also aware that Mr Dondero has a hatred of Judge Jernigan, who has consistently ruled against Mr Dondero. I understand it has been reported that a SEC whistleblower complaint was made against Judge Jernigan and I believe Mr Dondero subsequently directed an employee of one of his entities, Lucy Bannon (who is also an officer of the Highland Dallas Foundation) to leak the SEC whistleblower complaint to the press so they would cover it (see **MP1/ page 670 – 677**).

158. The actions by UBS (which I anticipated) underscore the need for clear independence between Dondero, his entities and affiliates on the one hand, and the DAF, including Holdco on the other.

159. In the middle of 2023, DAF's exposure to Dondero owned and controlled investments exceeded US $100 million. I successfully worked to reduce this exposure throughout 2024. At the end of 2024, exposure was about US $8 million. It was my belief that this exposure posed a material risk to the DAF because it could be used as alter ego evidence. This risk is also reflected in the ValueScope Report.

160. My actions to reduce the DAF's exposure to Dondero owned and controlled investments from US $100 million to US $8 million in the span of 18 months required DAF to turn down multiple deal proposals from Mr Dondero and his entities. In turn this led to increasing frustration from Mr Dondero at the beginning and throughout this period.

161. I managed the DAF while balancing (i) the legal and compliance need to reduce exposure (based on advice of Mr Alex McGeoch and Mr Mancino) to Mr Dondero owned and controlled investments and (ii) avoiding upsetting Mr Dondero and his

affiliates as I was acutely aware of Mr Dondero's litigious nature and believed that Mr Dondero would stop paying amounts due on DAF investments if a clean break between Mr Dondero and DAF was implemented.

162. These concerns were clearly well founded. Immediately following my resignation from Skyview (which was made on advice (privilege in which is not waived) and in order to assert more independence from Mr Dondero to better protect the best interests of the DAF) Mr Dondero directed the entities he controlled to cease all payments to DAF, including US $8 million Mr Dondero owed on a deal called Small Bay II (referred above). In the following months, DAF sent letters attempting collection on three other investments. Mr Dondero has not met any of his obligations under them, requiring DAF to commence three lawsuits against Mr Dondero's entities for payment, each of which are ongoing.

163. Mr Dondero has, several times, commenced extensive, harassive litigation and/or engaged in other misconduct against his former employees and business partners. At **MP1/ page 553**, in the "Plaintiff Highland Employee Retention Assets LLC First Amended Complaint" records that Mr Dondero engaged in similar behavior against Joshua Terry, examples of Dondero and his affiliates' behavior is shown, which includes lying, fraud, and other types of misconduct and/or vexatious litigation against his former business partners Joshua Terry and Patrick Daugherty.

164. For the reasons set out herein, the background leading to the DAF restructuring is both factually and legally complex, as I understand counsel for DWF advanced at the Supervision Hearing.

E. RESPONSES TO FIRST AFFIDAVITS OF MS DIAZ

165. Save where already covered above, I address inaccuracies in Diaz 1 below. Paragraph references in this section are to paragraphs in Diaz 1.

166. With respect to Ms Diaz's evidence, she is wrong to describe and refer to DAF as a Fund for the reasons set our section x to above.

167. With respect to **paragraph 27 of Diaz 1**, this statement is inaccurate and misleading. I had informed several people affiliated with Highland Dallas Foundation, including Lucy Bannon and Lauren Short (NexPoint employees involved in personal relationships and charitable giving) that my daughter had formed this charity and I had asked whether they could donate US $5,000. Furthermore, no director or officer of Creative HEARTS TX has received or will receive any compensation, as these roles are strictly voluntary.

168. I understand that Ms Bannon and Ms Short approached Mr Dondero and obtained his approval. Creative HEARTS TX was then added to the approved list of charities of the Highland Dallas Foundation, which I had not requested. However, these facts may not have been known to Ms Diaz at the time she swore Diaz 1 and I have done nothing ethically and legally wrong and/or inappropriate as Ms Diaz suggests.

169. With respect to paragraph 28, Fortaris is owned by Kevin Cronin, a private investigator used by Mr Dondero and a trusted advisor of Mr Dondero. As I explain further in this affidavit, Mr Dondero determined my compensation whilst I worked at Skyview. After I assumed the role of Control Person of DAF I performed my functions as an employee of Skyview and as Control Person simultaneously. Accordingly, I was concerned that Mr Dondero would attempt to exert influence over my actions at DAF by controlling my compensation received from Skyview.

170. My concerns were well founded in this regard. As mentioned above, the Court found that it was sufficiently alleged in the Turnover Petition that Mr Dondero had rewarded those who were loyal to him, which was suggestive that Mr Dondero had controlled remuneration as a means of leverage. I also exhibit at **,MP1/ page 708** a confidential update with respect to Mr Dondero's negotiations with the Santa Barbara Foundation (**SB Foundation**) which illustrates how Mr Dondero threatened to withdraw US $1 million of funding to the SB Foundation because it elected to reject channeling funds to causes identified by Mr Dondero in favour of community causes. In response to the threat of having funding withdrawn, SB Foundation

agreed that a full slate of grants would be presented that were desirable to Mr Dondero, and would be allocated to the US $1 million funding.

171. This emerging pattern of coercing others through financial control compounds my concerns that Mr Dondero may leverage the private funding which he is providing to run this liquidation, as a means of influencing the direction of the liquidation itself. He could do so by threatening to withhold funding (which the JOLs and their counsel depend on to cover their costs and expenses) from the JOLs and/or their counsel, thereby placing undue pressure on the JOLs and/or their counsel, which may affect the JOLs and/or their counsel's ability to conduct themselves impartially in this liquidation.

172. As previously mentioned, I had identified that it was imperative that DAF was and was seen to be operated independently from Mr Dondero. Given my employment at Skyview it was my view that I should be paid from DAF in respect of services I provided to DAF and its related entities as the Control Person. Not only would the compensation need to be provided independently of Skyview but the level of compensation would need to be based on an objective third party compensation valuation. An independent compensation review was provided for the role as Control Person. This was then independently verified by Mr Murphy.

173. Given my concerns that the influence and control that was being asserted by Mr Dondero over DAF may have given was giving rise to allegations of DAF being an alter ego of Mr Dondero, I sought to consider ways in which my remuneration in respect of DAF could properly be paid without being subject to Mr Dondero's oversight, precisely because of the alter ego risk. I recall having two brief telephone conversations with Mr Cronin, as I explored whether my compensation (which would be paid by DAF) could be routed through Fortaris. I believed that, given historical payments by Mr Dondero's entities to Mr Cronin and Fortaris, payments by DAF to Fortaris would not raise suspicion with the Skyview employees monitoring DAF's finances. I shared with Mr Cronin an organisational chart and legal advice from Alex McGeoch, a tax expert at Hunton Andrews Kurth LLP, asserting that DAF can independently compensate me.

174. My intention in raising this suggested compensation structure with Mr Cronin was to insulate DAF from potentially significant tax liabilities if the charitable structure of DAF was not operated separately from Mr Dondero. In any event, this arrangement did not come to fruition because Mr Cronin told Mr Dondero about my proposal. However, any actions I took in relation to Mr Cronin were taken in good faith.

175. I may have flippantly said something similar to Dondero 1 where Mr Cronin said "*you can't steal from yourself*". The context was that I was speaking to Mr Cronin and attempting to describe that, in my capacity as DAF's control person, I would be authorizing paying myself and that I was not "stealing" funds from anywhere. The basis for that statement was the written legal advice from Alex McGeoch (long-time DAF counsel) that I provided to Mr Cronin and attached at **MP1/ page 645**.

176. With respect to **paragraphs 29 to 30 of Diaz 1**, I believe that Mr Mancino did not mention material non-public information in his conversation with Mr Rosenberg and only mentioned the share price of NHT, which was public information of a public company. This did not constitute a MNPI and I note that Ms Diaz only says that it "could have" been. Counsel at Eversheds Sutherland, a respected firm with securities law expertise, concluded that the material shared was not MNPI and did not constitute a breach of Skyview's policies and procedures, a copy of which is attached at **MP1/ page 647 - 650**.

177. With respect to paragraphs 31 to 35, Mr Mancino sent Holland & Knight a letter on February 14, 2025 informing them the numbers, specifically that "millions in director fees", were incorrect. He also said that the legal fees (the vast majority were DAF expenses) did not exceed US $10 million in 2024 and that they would continue to fall in 2025 and 2026.

178. My compensation was based on my role as CEO, CIO, and GC of DAF, and not my sole role as a director. As such these fees have been misclassified as "Director fees". It was also calculated based on a third-party independent report which took into account compensation packages for similar roles and responsibilities. The

final decision to approve my compensation was reviewed by Mr Murphy, in his capacity as an independent director, following his consultation with the third party expert. My compensation was only made after Mr Murphy executed written resolutions taking into account all of the relevant matters.

179. Both Mr Dondero and Ms Diaz make much of my "irresponsible management" of DAF by spending too much on expenses. However, US $6 million of the alleged US $18.3 million in expenses are not in fact expenses. Rather, Mr Dondero purposefully omitted that there was also US $6.1 million in income from a NexPoint-led transaction that more than offset the US $6 million in expenses, so Mr Dondero falsely inflated the expense number by omitting the offsetting income and the net gain to DAF from the transaction and those expenses. These are lease payments a DAF subsidiary receives in connection with an investment led by Mr Dondero called Skorpios (also known as NexPoint Life Science III). DAF is both lessee and lessor and generates around US $6.1 million per year from the arrangement. As such, DAF nets a profit each year (US $127,937 in 2024 and US $131,775 is anticipated in 2025, increasing substantially each year and maxing out at $364,815 in year 14), which is reflected in the spreadsheet attached at **MP1/ page 651 - 669** and provided by NexPoint.

180. I also met with Ms Diaz and Torrey Littleton on October 10, 2024 and Ms Diaz did not raise any concerns with respect to those now raised in Diaz 1. At that meeting, I also suggested that I would like audited financials of DAF (which had never been provided before) within the next two years and I had hired a third party accounting service provider for that purpose. On the same day, I also had a phone call with Debbie Wilkerson, the CEO of the Highland Kansas City Foundation, Inc. who similarly did not raise any concerns with me. Furthermore, on November 20, 2024, ValueScope and Mr Mancino spent several hours presenting to Holland & Knight (counsel to the Highland Foundations) on the finances of DAF, its investments, and its outlook which I understand from discussing with ValueScope and Mr Mancino afterward was received very positively by Holland & Knight.

181. The next communication from the Highland Foundations that I received was the No Confidence Letter (as defined in Diaz 1) which was not actually received until December 2024 and left me in disbelief given that no questions or concerns had been raised with me previously. I was left confused why they had not voiced any concerns with me directly despite repeated affirmative outreach. Regardless, following the No Confidence Letter, on December 11, 2024, Mr Murphy presented to Holland & Knight regarding the DAF's corporate governance and investments, and which I understand was so well received, that Mr Murphy was invited by Michael Stockham, a partner at Holland & Knight, to provide the same presentation directly to the Highland foundation CEOs. The ValueScope Report also shows that the DAF had outperformed the S&P 500 during my tenure at DAF, and the Highland Foundations had been receiving quarterly financial updates from ValueScope for years.

182. With respect to paragraph 38, Ms Diaz had received an asset list via the ValueScope DAF quarterly financial update on January 7, 2025 and I found her request for the same information again on 23 January 2025 to feel quite orchestrated. Historically, these reports were the only information the Highland Foundations received and, in any event, exceeds what they are entitled to under the organizational documents given their status as passive discretionary holders.

183. With respect to paragraphs 46 to 49, the Highland Foundations were not entitled to notice but this change was done to use a Cayman (instead of Delaware) General Partner and to create more independence from Mr Dondero, for all the reasons above. I understand that under Cayman Islands law, a general partner of an exempted limited partnership must be a Cayman-registered entity whether as an exempted company or a company registered under Part IX of the Companies Act.

184. With respect to **paragraphs 50 to 52 of Diaz 1**, Ms Diaz omits to explain Highland Foundations' role in opening the Texas AG (as defined in Diaz 1) investigation but in any event, the Texas AG has taken no action outside of sending an initial letter to request that certain DAF entities preserve documents. I believe the Highland Foundations and Mr Dondero reached out to the Texas AG to open an investigation

and use that as a data point in this matter. Mr Dondero's propensity to abuse a "complaint" filing is well known. As an example, refer to the SEC whistleblower complaint against Judge Jernigan described at **MP1/ page 670 - 677**. DAF is actively attempting to cooperate with Texas AG, but the Texas AG has been non-responsive to repeated requests to meet with me and my advisors.

185. As such, there is no dispute between myself and Mr Dondero, but simply a dispute between Mr Dondero and the assets under DAF's management which he seeks to control. To illustrate that point, in November 2024, I was offered through Mr Dondero's attorneys at the Ashcroft Law Firm (and its partner Johnny Sutton), a Caribbean Island and large sums of money if I agreed to step down from the DAF during a call on 22 November 2024. It was also intimated to me by Ashcroft that this offer was also made on behalf of the Highland Foundations. I believe Mr Dondero's intention in causing his attorneys to propose this was to remove me and insert someone who would not second guess his investment recommendations and would permit Mr Dondero to again use DAF (as was the case under Mr Scott's tenure as Control Person) for Mr Dondero's personal benefit. Needless to say, I turned down Mr Dondero's offer.

186. For these reasons, it is vitally important that the JOLs obtain independent counsel to ensure they are properly and impartially advised. The central issues in this liquidation concern the actions I took, with Mr Muphy's oversight, to attenuate direct and indirect influences from Mr Dondero, including through his control of the Highland Foundations whom Johnstone Law previously represented.

187. Furthermore, I understand that Mr Andrew Johnstone of Johnstone Law contacted My Murphy on February 12, 2025, purporting to represent *"Charitable DAF Fund 2 LP (**DAF 2**)."* . I understand that Mr Murphy referred this enquiry to Walkers, who were legal counsel to Holdco and DAF at the relevant time.

188. The purpose of this unsolicited outreach was unclear but it is evident that Johnstone Law as DAF 2 lawyers wanted to discuss DAF's assets. Why they wanted to do so and to what end has never been revealed. Critically, even assuming DAF 2

was a legitimate entity (presumably another exempted limited partnership), there is nothing in Johnstone Law's email to indicate (a) who the general partner of DAF 2 was (b) who the limited partners of DAF 2 were and (c) what possible interest any of them would have in confidential information concerning the assets of DAF. As if these concerns were not concerning enough, it subsequently transpired that DAF 2 does not even exist.

189. Following an entity search, Walkers determined that DAF 2 did not exist. I understand that Walkers followed up with Johnstone Law to clarify which entity they represented and where it was domiciled. Johnstone failed to respond to repeated follow ups and failed to provide context. It is my belief that through Johnstone Law, as was the case with Ashcroft, Mr Dondero was seeking to access Mr Murphy as a director of Holdco with a view to exercising control over DAF and its assets.

F. RESPONSES TO FIRST AFFIDAVIT OF MR DONERO

190. With each section that to the extent I do not specifically respond to the assertions made in Dondero 1 above, I wish to address the inaccuracies of that evidence below. Paragraph references in this section are to references in Dondero 1.

191. With respect to **paragraph 13 of Dondero 1**, there are no restrictions in the organizational documents of DAF that prevent the admission of additional charitable beneficiaries. Furthermore, DAF exists to benefit charities, not only the Highland Foundations.

192. With respect to **paragraphs 29 to 30 of Dondero 1**, I own shares in Holdco in my personal capacity, and any reference to me owning the DAF would be a reference to my ownership of the GP and the HoldCo Management Shares. However, it is completely inaccurate to say that I could pay myself however I pleased; that represents a fundamental misunderstanding of exempted limited partnerships generally but also misunderstands the nature of the DAF structure. I expressed to Mr Dondero that DAF needs to independently determine the value of my services without Mr Dondero's input, or input from an entity controlled by Mr Dondero. My

reasons for this were to reduce any susceptibility to coercion from Mr Dondero (both directly and indirectly), which could have been exercised by interfering with my compensation, and create independence for DAF.

193. In relation to **paragraph 31 of Dondero 1**, it is highly unlikely that the expense summary could have been produced in June 2024 because, due to a lag in reporting times, June numbers would not have been available until later in the year. I received June 2024 numbers in October 2024.

194. With respect to **paragraph 35 of Donder 1**, the Vitiello memo **referred to in Dondero 1** correctly concludes that I did not engage in insider trading under U.S. securities laws. This is in relation to a put option that was not exercised under a contract. Failure to exercise the put option jeopardizes Highland Dallas Foundation's tax-exempt status and, according to the Seyfarth Letter at **MP1/ page 361**, may have been an attempt to protect Mr Dondero from having to address the precipitous fall in fair market value shortly after the gift was made, as there would have been a requirement to file Form 8282 "*Donee Information return*" that would have revealed this information.

195. By way of background with respect to the Put Option, and as explained in the Seyfarth Letter at **MP1/ page 360**:

> *Mr. Dondero's family trust, The Dugaboy Investment Trust ("Dugaboy"), a grantor trust, allegedly owns 99.9% of NexPoint Advisors. Mr. Dondero is the income beneficiary of Dugaboy and his sister, Nancy Dondero, is the family trustee of Dugaboy.*
>
> *One of the entities affiliated with and advised by NexPoint Advisors is NexPoint Hospitality Trust, an open-ended real estate investment trust (the "REIT") based in Ontario, Canada. The REIT was formed in 2018 for the purpose of acquiring and operating income-producing hotel properties in the United States. The REIT's investment interests (called "Units") were listed for public trading on the TSX Venture Exchange of the Toronto Stock Exchange ("TSXV").*

Dugaboy contributed 1,500,000 Class B non-voting Units of the REIT to Highland Dallas on , December 24, 2019 and also granted Highland Dallas an "embedded" put option to sell them back to Dugaboy for $6.19 per share (the "Put Option"). The net asset value of the REIT as of December 24, 2019 was $6.19 per share. The Put Option is exercisable at any time prior to December 24, 2026...

196. The Seyfarth Letter concluded that based on public filings with the U.S. Securities and Exchange Commission, REIT had approximately 29,353,66- Units, of which 82.52% were owned by entities affiliated or controlled by Mr Dondero. Furthermore, I understand that the REIT is to be dissolved which means that if the Put Option is not exercised before that point, then, according to the Seyfarth Letter, this will result in a US $9 million "*inappropriate windfall to both Dugaboy and Mr Dondero*".

197. As explained in the Seyfarth Letter at **MP1/ page 360**:

"*The significance of the Put Option at that time is that the Class B non-voting Units could be treated for valuation purposes as equivalent to the Class A voting Units, which were owned or controlled by Mr. Dondero. Therefore, for purposes of determining their fair market value on the date of the charitable contribution, the valuation firm could value them as if they were voting Units unreduced by a 2.9% discount for lack of control. That allowed Dugaboy to claim a charitable deduction in 2019 of $11,505,000, which we assume passed through to Mr. Dondero as the income beneficiary of Dugaboy.*"

198. It was public information that NHT had declined from a price per unit of $7.67 in December 2019 (when the donation occurred) to $0.20 in August 2024, representing a 99.7% decline. In fact, whilst the figures quoted in the Seyfarth Letter vary slightly, it was calculated that as of 22 November 2024, 1,500,000 Units were only worth $22,500, which is less than 1% of the Put Option value of US $9,285,000. Additionally, NHT disclosed on August 2, 2024 (26 days before I spoke with the Dallas Foundation) in a document titled "Management's Discussion and Analysis

of Financial Condition and Results of Operations that there was "a potential risk about [its] ability to continue as a going concern and, therefore, realize its assets and discharge its liabilities in the normal course of business." A copy of the NHT disclosure is attached at **MP1/ page 678 - 707**. Therefore, the information I disclosed was not "material" or "non-public" and would not have resulted in a violation of U.S. securities laws even if traded upon by Highland Dallas Foundation. This is also confirmed by the Eversheds Memo exhibited at **MP1/ page 647 - 650**.

199. Furthermore, and with reference to the Seyfarth Letter, it is important to not lose sight of the fact that the Put Option was in effect an interest free loan of US$9,285,000 for Mr Dondero and Dugaboy while the Put Option remains outstanding and unexercised.

200. For the purpose of responding to the JOLs' sanctions applications, I do not expand here on the factual inconsistencies which I have identified between the Vitiello memo and Dondero 1 and Diaz 1, but reserve all my rights to do so during the course of these liquidation proceedings.

201. With respect to **paragraph 36 of Dondero 1**, my resignation was not abrupt. It was the culmination of actions I had been working toward to create independence between the DAF and Mr Dondero for almost two years. I was not aware of any investigation or any accusation of wrongdoing on my part. The Vitiello memo was finalized after my resignation, not before.

202. With respect to **paragraph 37 of Dondero 1**, the Skyview services agreement required 180 days' notice to terminate, and was not terminated effective until March 31, 2025. Whilst I have 4 years of investment management experience, DAF also has a wealth of other investment advisors, including:

(a) Investment committee

(b) Investment advisors

(c) Investment houses and banks with investment functions

(d) Real estate advisors

(e) Security and portfolio monitoring

203. With respect to **paragraphs 38 to 39 of Dondero 1**, Hunter Mountain's interest was sold to a DAF subsidiary based on an independent third-party valuation report and because it was sold to a DAF subsidiary, there was no dissipation of assets.

204. Furthermore, Mr Dondero's proposal that he is a potential buyer of Hunter Mountain is misleading. Mr Dondero's attorneys (Ms Dietsch-Perez at Stinson) have argued that Hunter Mountain owes Dugaboy and other trusts US $65 million in debt obligations. These debt obligations were released by the plain language of a settlement agreement entered into in 2022, although I understand that Mr Dondero disputes this. Given this dispute, it is doubtful whether Mr Dondero would have paid any meaningful amount for Hunter Mountain, outside of credit bidding the debt he believes he is owed.

205. As mentioned above, a valuation study was performed on the Hunter Mountain interests, and the purchase price is in accordance with this valuation study. The seller made an attempt to find other buyers by contacting distressed asset buyers, but there was little interest given that there was a contingent claim in the Highland Bankruptcy that would not be paid out until litigation ceased.

206. For the purpose of responding to the JOLs' sanctions applications, I do not expand further on the issue here but I again reserve all my rights to do so during the course of these liquidation proceedings.

CONCLUSION

207. For the reasons stated above, I respectfully request that the JOLs' sanction application is denied.

SWORN to at Wise Texas)
on this 4th day of June 2025)
) **MARK ERIC PATRICK**

BEFORE ME: 132662714
08/27/2028

NOTARY PUBLIC

NOTARY PUBLIC STATE OF TEXAS
Shannara Franzel
ID NUMBER
132662714
COMMISSION EXPIRES
August 27, 2028

Electronically signed and notarized online using the Proof platform.

EXHIBIT 52

Matthew S. Okin
Texas Bar No. 00784695
David L. Curry, Jr.
Texas Bar No. 24065107
Okin Adams Bartlett Curry LLP
1113 Vine Street, Suite 240
Houston, Texas 77002
Tel: (713) 228-4100
Fax: (346) 247-7158
mokin@okinadams.com
dcurry@okinadams.com

ATTORNEYS FOR THE DALLAS FOUNDATION AND
CROWN GLOBAL LIFE INSURANCE, LTD.

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

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

OBJECTION OF THE DALLAS FOUNDATION AND CROWN GLOBAL LIFE INSURANCE, LTD TO MOTION FOR ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY RULE 9019 AND 11 U.S.C. § 363 APPROVING SETTLEMENT WITH THE HMIT ENTITIES AND AUTHORIZING ACTIONS CONSISTENT THEREWITH
[Related Docket No. 4216]

The Dallas Foundation (the "Foundation"), on behalf of Empower Dallas Foundation ("EDF") and The Okada Family Foundation (the "Okada Foundation"), and Crown Global Life Insurance, Ltd. ("Crown,"), not individually, but solely in respect of Segregated Accounts 30218 & 30219 (the "Segregated Accounts") hereby file this objection (the "Objection") to the Motion (the "9019 Motion") for entry of an order pursuant to sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") filed on behalf of Highland Capital Management, L.P., the

reorganized debtor (the "Debtor" or "Highland," as applicable) in the above-captioned chapter 11 case (the "Bankruptcy Case"), the Highland Claimant Trust (the "Claimant Trust"), and the Highland Litigation Sub-Trust (the "Litigation Sub-Trust" and together with Highland and the Claimant Trust, the "Movants"), and respectfully states as follows:

I.
PRELIMINARY STATEMENT

1. Through the Motion, the Movants seek approval of a settlement agreement (the "Settlement") purportedly entered into by Movants with Hunter Mountain Investment Trust ("HMIT"), Beacon Mountain LLC ("Beacon Mountain"), Rand Advisors, LLC ("Rand Advisors"), Rand PE Fund I, LP ("Rand PE Fund"), Rand PE Fund Management, LLC ("Rand GP"), Atlas IDF, LP ("Atlas IDF"), and Atlas IDF GP, LLC ("Atlas GP" and together with HMIT, Beacon Mountain, Rand Advisors, Rand PE Fund, Rand GP, and Atlas IDF, the "HMIT Entities"), which Movants describe as "one of the most significant developments in the long-running Highland Bankruptcy Case." *Motion*, p. 3. As described by Movants, the significance of the settlement rests in the belief that it will bring to an end "protracted and value-destructive litigation that has impeded the Highland Entities' ability to distribute their assets to their constituents and fully implement the Plan." *Id.*

2. Unfortunately, unbeknownst to the Movants, the Settlement is potentially tainted by the actions of Mark Patrick, the apparent sole manager and director of the HMIT Entities. Specifically, upon information and belief, Mr. Patrick illicitly restructured the ownership of the HMIT Entities in a manner that seems to facilitate the diversion of millions of dollars in assets from the charitable entities that are the beneficial owners of the HMIT Entities. As set forth herein, given the actions of Mr. Patrick and the pending proceedings related thereto, rather than

provide the peace sought by Movants, approval of and consummation of the Settlement will most likely result in further litigation both before this Court and in jurisdictions outside of the United States.

3. Further, as set forth in more detail herein, the alleged actions of Mr. Patrick, taken in his capacity as the sole manager or officer of various entities within the charitable organization structure supported by the HMIT Entities and their assets, along with the timing of the Settlement, all establish a cloud of suspicion over the HMIT Entities' entry into the Settlement. Upon information and belief, under the structure illicitly put in place by Mr. Patrick, more than half of the proceeds of the Settlement will flow to an entity formed very recently by Mr. Patrick and based out his personal home, rather than to the Charitable Entities (defined below) who should be receiving such proceeds. Approval of the Settlement would, therefore, also be inequitable at this time.

4. For these reasons, as more fully set forth herein, the 9019 Motion should be denied.

II.
FACTUAL BACKGROUND

5. The lengthy procedural history of this Bankruptcy Case has been well documented in numerous prior pleadings and orders from this Court and is, therefore, not repeated herein. Moreover, the Beneficial Owners do not at this time have sufficient information to either admit or deny the procedural or background allegations set forth in the Motion but admit that those certain publicly available pleadings and orders referenced were filed or entered, as the case may be, on the dates and in the proceedings set forth in the Motion.

A. The Foundation is a Beneficial Owner of the HMIT Entities

6. The HMIT Entities, and their assets, are held and managed for distribution to certain charitable organizations through a Donor Advised Fund (a "DAF") established at the direction of James Dondero in 2011.[1] The DAF was structured as a limited partnership and registered under the name The Charitable DAF Fund, L.P. (the "Fund"). The formation documents for the Fund make clear its charitable purposes and further establish that, while certain non-voting limited partnership interests were nominally held by the Supporting Organizations (defined below), the Charitable Entities (defined below) that they supported were the actual indirect, beneficial owners of the Fund.

7. Specifically, the recitals set forth in its partnership agreement provide that:

> the [Fund] was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "Code") and the parties hereto desire for the [Fund] to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein.

Amended and Restated Exempted Limited Partnership Agreement of The Charitable DAF Fund, LP, p. 1. Further, the "Purpose and Powers" of the Fund include investment: "in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners." *Id.*, at p. 2, Art. 1.3.

8. Lastly, the partnership agreement specifically provides that the Charitable Entities are: "the indirect equity owners of the Limited Partners, which shall at all times be entities or Organisations exempt from taxation under Section 501(c)(3) of the Code or entities or

[1] As originally structured, the HMIT Entities were wholly owned by their sole member, Charitable DAF Holdings Corp., which is, in turn, indirectly owned by the Fund.

Organisations whose sole beneficiaries are entities or Organisations exempt from taxation under Section 501(c)(3) of the Code." *Id.* at p. 4, Art. 1.12(b).

9. As a beneficial owner of the HMIT Entities, approval of the Settlement will have a direct, pecuniary impact upon the Charitable Entities, including the Foundation. This is because, as a result of actions believed to have illicitly taken by Mr. Patrick, a significant portion of the economic interests derived by the HMIT Entities from the Settlement will flow to Mr. Patrick rather than the Charitable Entities for whose benefit the Fund was established.

B. The Original Structure and Management of the Fund

10. To achieve certain desired tax treatments, the Fund, a Cayman Islands exempted limited partnership, was structured with a single limited partner, Charitable DAF Holdco, Ltd ("Holdco"), holding 99% of the economic interests in the Fund. Holdco, in turn, was owned through the issuance of participation shares (the "Participation Shares") to: (i) Highland Dallas Foundation, Inc. ("HDFI") (32.787%) for the benefit of the Foundation; (ii) Highland Kansas City Foundation, Inc. ("HKCF") (32.787%) for the benefit of Greater Kansas City Community Foundation ("GKCC Foundation"); (iii) Highland Santa Barbara Foundation, Inc. ("HSBFI") (32.787%) for the benefit of Santa Barbara Foundation ("SB Foundation"); and (iv) HCMLP Charitable Fund ("HCMLP," and, with HDFI, HKCF, and HSBFI, the "Supporting Organizations") (1.639%) for the benefit of The Community Foundation of North Texas ("CFNT," and, with the Foundation, the GKCC Foundation, and the SB Foundation, the "Charitable Entities").

11. The general partner of the Fund, as originally established, Charitable DAF GP, LLC (the "Original GP"), a Delaware limited liability company, held the remaining de minimis economic interest in the Fund. Additionally, to achieve the desired tax treatment as referenced

above, the Fund issued to the Orignial GP 100 management shares (the "Management Shares") representing the only voting rights for any and all shareholders. In essence, this structure granted complete control of the Fund to the holder of the Management Shares, which shares have at all material times been held by a single individual as the manager of the Original GP. As a result, the manager of the general partner has substantial control over the entire Fund structure (the "Control Position"). From the inception of the Fund until March 25, 2021, the Control Position was held by Grant Scott.

C. Change of Control in 2021 and Resulting Concerns Regarding Mr. Patrick

12. In March 2021, Mr. Scott indicated his desire to retire from the Control Position. Mr. Patrick offered himself as a replacement to both Mr. Dondero and Mr. Scott. Mr. Patrick had been employed by the Debtor as tax counsel since 2008.[2] He had also provided personal tax advice to Mr. Dondero. Significantly, Mr. Patrick was intimately involved in the creation of the Fund in 2011, including providing advice as to the Fund's structure and in drafting the Fund's governing documents. He was at the time clearly an individual trusted by both Mr. Dondero and Mr. Scott to oversee the DAF and its charitable purposes. Thus, on March 25, 2021, Mr. Scott transferred the Management Shares, and the shares held in Holdco, to Mr. Patrick.

13. There was, initially, no noticeable change in the Fund's management following the transfer to Mr. Patrick. Over time, however, communications from Mr. Patrick and the Fund became less frequent and less substantive when provided. Further, through the Supporting Organizations, the Foundation and Crown became aware that Mr. Patrick had taken or had attempted to take various actions that appeared to be in conflict with the duties owed to the

[2] In February 2021, as part of this Bankruptcy Case, the employment contracts of many of Highland's employees, including Mr. Patrick, were terminated. Mr. Patrick, along with many other of the former back-office employees of the Debtor thereafter became employees of a newly formed company, Skyview Group ("Skyview"), that provides middle and back-office services to various clients.

Charitable Entities as beneficial owners of the Fund. Finally, an initial investigation into these alleged improper actions highlighted a substantial and sudden increase in the costs and expenses borne by the Fund.

i. *Mr. Patrick attempts to direct charitable funds to benefit his own family.*

14. An early example of these concerns occurred in June 2023. On June 28, 2023, Mr. Patrick attempted to have HDFI "*direct $10,000*" to Creative HEARTS TX ("CHTX"), a non-profit entity formed just two weeks earlier. Following due diligence, it was discovered that the directors of the CHTX were Mr. Patrick, Darees Patrick and Alyse Patrick (his daughter and wife). Mr. Patrick did not initially disclose either his or his family's involvement with CHTX.

15. When questioned regarding the nature of CHTX and his family's involvement Mr. Patrick represented that the nonprofit was formed to facilitate paying for trainers or speakers on self-defense training for teenage girls. Upon information and belief, Mr. Patrick's expectation was that this would be an annual donation to a "club" at his daughter's school. The grant payment to CHTX was authorized on September 5, 2023, but Mr. Patrick was informed that further payments were unlikely.

ii. *Mr. Patrick resigns amidst insider trading concerns.*

16. In August 2024, additional concerns arose regarding Mr. Patrick when he attempted to provide advice to the Foundation regarding an asset held directly by the Foundation (the asset in question was held separately from the Fund). Upon information and belief, the information provided was obtained by Mr. Patrick through his employment at Skyview and constituted material non-public information ("MNPI"). On the basis of this MNPI, Mr. Patrick advised the Foundation to exercise a put option it held in the subject asset. Uncomfortable with

the nature of the information provided and the "tip" from Mr. Patrick, the Foundation notified Skyview of Mr. Patrick's actions and declined to act upon Mr. Patrick's advice.

17. On October 2, 2024, while his actions were being reviewed by Skyview's internal compliance department, Mr. Patrick abruptly resigned from his position at Skyview. On the same day, Mr. Patrick also terminated Skyview's service agreement with the Fund.

iii. *Diversion of assets through the creation of new entities.*

18. Through the Control Position, Mr. Patrick also manages the HMIT Entities, including Atlas IDF and its general partner, Atlas GP, which itself is a wholly owned subsidiary of the Fund. The economic beneficiaries of Atlas IDF are EDF and the Okada Foundation as the holders of annuity policies issued by Crown.

19. On February 20, 2025, Mr. Patrick in his capacity as the general partner of Atlas GP, sent a letter to Crown advising of the intention to dissolve Atlas IDF in accordance with the partnership agreement dated November 30, 2015, on the basis of (i) concerns about the long-term availability and viability of back-office support; (ii) unsuccessful efforts to sell certain defaulted Notes (the "HCRE Notes") issued by HCRE Partners (a Dondero affiliate) dated May 7, 2014, in the amount of $2,300,000.00, and May 27, 2014, in the amount of $5,000,000, which notes were held by Atlas IDF; and (iii) the decision by an affiliate of Atlas GP to purchase the HCRE Notes at a price above their appraised value of zero dollars to facilitate an orderly wind-up. At the time, the amounts outstanding on the HCRE Notes, including accumulated interest, was in excess of $13,000,000. The stated intention was to sell the HCRE Notes collectively for $500,000.

20. Crown initially provided consent to the sale and liquidation, but withdrew said consent on February 28, 2025, after being advised of the potential misconduct by Mr. Patrick. That same day, Mr. Patrick sent a further letter to Crown Global responding to the revocation of

consent, and noting that: "*in addition to the purchase of the 'Notes' for $500,000, we also intend to include a provision in the purchase and sale documents that, if the Notes are repaid in full within 12 months, all amounts received (minus fees and expenses of collection and purchase price) will be remitted to you as the sole limited partner of Atlas IDF, LP.*"

21. At the time that Mr. Patrick attempted to sell the HCRE Notes, upon information and belief, HCRE had proposed to cure its default and repay the HCRE Notes in full pursuant to a revised amortization schedule. As such, the initial zero valuation and proposed $500,000 sale price disclosed to Crown is troubling. More troubling, however, is the fact that the proposed amortization schedule extends beyond 12 months. In other words, Mr. Patrick's proposed "fix" – i.e. sharing upside in the event the HCRE Notes were repaid within one year – was carefully tailored to give the appearance of addressing Crown's concerns even though Mr. Patrick already knew that the repayment would not occur within the 12 month period.

D. <u>The Cayman Insolvency Proceedings</u>

22. In or around October 2024, the Charitable Entities, acting through counsel and the Supporting Organizations, requested that Mr. Patrick provide financial information explaining certain significant increases in the costs charged to the Fund.[3] In November 2024, having not received any of the requested financial information, the Charitable Entities delivered a letter of no confidence to Mr. Patrick requesting a formal reorganization of the Fund. No response to the no confidence letter was received.

[3] For example, directors' fees increased from $40,000 in 2022 to almost $600,000 in 2023 –and increased even further to around $2.25 million in the first half of 2024 alone. Expenses overall for the first half of 2024 were around $18.3 million – roughly the same amount spent over the entire course of 2023 (i.e. $18.6 million).

23. In January 2025, the Charitable Entities again reached out to Mr. Patrick and invited him to provide a presentation directly to the Charitable Entities and/or the Supporting Organizations to address the concerns raised in the no confidence letter.

24. In February 2025, the Supporting Organizations and the Charitable Entities learned that, almost a year earlier, Mr. Patrick had secretly redomiciled and replaced the Original GP. Specifically, on February 27, 2024, Mr. Patrick caused the formation of CDH GP, Ltd (the "New GP"), which was incorporated in the Caymen Islands (registration number 407515) with its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands. Mark Patrick is the sole director of the New GP.

25. In light of the mounting concerns regarding Mr. Patrick's actions, the Supporting Organizations, as holders of the Participation Shares, filed a petition (the "Cayman Petition") in the Cayman Islands requesting that the Fund be liquidated under the supervision of the Cayman Islands court and the appointment of joint official liquidators.

26. The Cayman Petition was served on the Fund on April 24, 2025. The next day, April 25, 2025, counsel purporting to act on behalf of the Fund responded by correspondence to counsel for the petitioning Supporting Organizations. Through this correspondence, the Supporting Organizations and the Charitable Entities that they serve learned for the first time that Mr. Patrick had engaged Kroll Cayman Ltd ("Kroll") to commence a liquidation of the Fund.

27. The Supporting Organizations and Charitable Entities further learned that Mr. Patrick had caused the issuance of new Participation Interests, representing 51.04% of the resulting total of issued Participation Interests, to an entity named DFW Charitable Foundation (the "MP Charity"). The issuance of these new Participation Interests resulted in substantial

dilution of the interests beneficially held by the Charitable Entities such that, following the new issuance: (i) HDFI's interest was diluted from 32.787% to 16.05%; (ii) HKCF's interest was diluted from 32.787% to 16.05%; (iii) HSBFI's interest was diluted from 32.787% to 16.05%; and (iv) HCMLP's interest was diluted from 1.639% to 0.80%.

28. Publicly available records indicate that the MP Charity was formed in December 2024 and is based out of Mr. Patrick's home.

29. Additionally, the Supporting Organizations and the Charitable Entities learned that Mr. Patrick had caused the formation of another new entity, CDMCFAD, LLC ("CDMCFAD"), which was secretly inserted into the charitable organization structure. CDMCFAD is nominally a new wholly-owned subsidiary of the Fund, though, like the MP Charity, it is based out of Mr. Patrick's home. Upon information and belief, Mr. Patrick then caused the Fund to transfer its 100% interests in Charitable DAF Fund, LP to CDMCFAD. On March 27, 2025, the Fund's interest in CDMCFAD was purportedly redeemed for proceeds totaling $1,612,192.00 to be distributed to the Fund's participating interest holders.

30. In light of the existing liquidation and with these newly discovered facts, the Supporting Organizations amended their Cayman Petition to request that liquidation of the Fund continue under the supervision of the Cayman courts and that new independent, joint official liquidators be appointed to replace Kroll.

31. Following a hearing to consider the amended Cayman petition, the Cayman court entered its Supervision Order on May 6, 2025, and appointed Margo MacInnis and Sandipan Bhowmik as Joint Official Liquidators.[4]

[4] Mr. Patrick's chosen liquidators, Kroll, withdrew their consent to nomination prior to a May 5, 2025, hearing to consider the amended petition.

III.
OBJECTION

32. Against this backdrop, the proposed Settlement is problematic for a number of reasons. First, the Settlement purports to have been entered into on May 19, 2025, less than two weeks after entry of the Supervision Order by the Cayman court. Unfortunately, it does not appear, however, that Joint Official Liquidators are parties to or have authorized the Settlement. As a result, it is unclear whether Mr. Patrick had the requisite corporate authority to cause the HMIT Entities to enter into the Settlement. Indeed, many of Mr. Patrick's actions, including the insertion of newly created entities into the Fund's structure for the apparent purpose of diverting charitable assets will now be subject to the scrutiny of an independent, court appointed fiduciary and may be subject to claw back or other avoidance actions in the Cayman liquidation or such other tribunal as has jurisdiction.

33. In the event that it is ultimately determined that Mr. Patrick has acted against the fiduciary duties owed to the Fund, the Supporting Organizations, and the Charitable Entities, and the transfers of interests to Mr. Patrick's newly created companies are avoided, the validity of the Settlement will be in question. Thus, even if approved by this Court, consummation of the Settlement is not likely to buy the peace the Debtor now seeks.

34. Additionally, while Mr. Patrick may nominally be the sole manager of each of the HMIT Entities at this time, there is ample evidence that Mr. Patrick has acted and is acting well outside the scope of his authority and fiduciary obligations. Indeed, in light of the above, there is reason to suspect that the HMIT Entities' entry into the Settlement will further a scheme to wrongfully divert charitable funds from their intended beneficiaries. Under such circumstances, approval of the Settlement would be wholly inequitable.

35. For these reasons, the 9019 Motion should be denied.

IV.
ALTERNATIVE RELIEF

36. Alternatively, the Foundation and Crown respectfully request a continuance of the hearing to consider the 9019 Motion, which is currently scheduled for June 25, 2025. As noted above, upon becoming aware of the allegations discussed herein, the Supporting Organizations and Charitable Entities acted diligently to bring their concerns before a court of competent jurisdiction in the Cayman Islands. The Cayman court has granted relief in the form of the Supervision Order and the appointment of the JOLs. The JOLs, however, have held their positions for just over one month. Given the significance of the proposed Settlement to this bankruptcy estate, a short continuance to ensure that the Settlement is not being entered into improperly, without authority, and will not result in further, likely avoidable litigation, would benefit all parties in interest.

V.
CONCLUSION

37. In sum, the Foundation and Crown have received credible evidence that substantial charitable assets have been and are still being diverted from their benefit. The facts and circumstances set forth herein show that, at a minimum, there is good cause to suspect that entry into the Settlement by the HMIT Entities is but another attempt or the conclusion of an existing attempt to divert said charitable assets from their rightful recipients. Further, under these facts and circumstances, there is good cause to suspect that Mr. Patrick lacked the requisite corporate authority to enter into the Settlement or that any apparent authority he holds results from improper actions subject to avoidance and clawback. Under such circumstances, approval and consummation of the Settlement will not result in a cessation of litigation but will instead

result in more litigation across multiple forums. For these reasons, the Foundation and Crown, each a beneficial owner of the HMIT Entities, respectfully request that the 9019 Motion be denied.

VI.
PRAYER

WHEREFORE, for the reasons stated above, The Dallas Foundation and Crown Global Insurance, Ltd., request that this Court enter an order (i) denying the 9019 Motion; or, in the alternative, continuing the hearing set for June 25, 2025; and (ii) granting such other and further relief as the Court may deem just and proper.

Respectfully submitted on this 9th day of June 2025.

OKIN ADAMS BARTLETT CURRY LLP

By: /s/ *David L. Curry, Jr.*

Matthew S. Okin
Texas Bar No. 00784695
David L. Curry, Jr.
Texas Bar No. 24065107
1113 Vine Street, Suite 240
Houston, Texas 77002
Tel: (713) 228-4100
Fax: (346) 247-7158
Email: mokin@okinadams.com
Email: dcurry@okinadams.com

ATTORNEYS FOR THE DALLAS FOUNDATION AND CROWN GLOBAL LIFE INSURANCE, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2025, a true and correct copy of this document, with all exhibits, was served via the Court's CM/ECF system to all parties consenting to service through the same.

By: */s/ David L. Curry, Jr.*
David L. Curry, Jr.

EXHIBIT 53

Gregory G. Hesse, Esq.
State Bar No. 09549419
HUNTON ANDREWS KURTH, LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202-2799
Telephone: (214) 979-3000
Telecopy: (214) 880-0011

ATTORNEYS FOR DUGABOY INVESTMENT TRUST

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

In re	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.[1]	§	

DUGABOY INVESTMENT TRUST'S DISCOVERY RELATED TO RULE 9019 MOTION

Dugaboy Investment Trust ("Dugaboy"), by and through undersigned counsel, hereby serves the following First Set of Discovery upon Movants Highland Capital Management, L.P. ("HCMLP" or "Debtor"), Highland Claimant Trust ("Claimant Trust") and the Highland Litigation Sub-Trust ("Litigation Trust," and together with the Claimant Trust, the "Trusts," together with HCMLP, the "Movants"), with respect to the Movants' *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Dkt. 4216] ("Motion") and requests that the Movants respond to such discovery requests within the time required by the applicable Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure, and that the Movants produce for inspection and copying the documents described below at the offices of counsel identified below.

[1] The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. 1808] ("*Plan*"), filed by Highland Capital Management, L.P. ("*HCMLP*") became effective on August 11, 2021 (the "*Effective Date*").

REQUESTS FOR PRODUCTION INSTRUCTIONS

1. Dugaboy seeks production of the documents set forth in the numbered requests below that are in the Movants' possession, custody, or control.

2. All electronically stored information shall be produced in a format mutually agreed upon by the parties or ordered by the Court.

3. Each document must be produced in its entirety (including all attachments) and without deletion or excisions, regardless of whether You consider the entire document or only parts thereof to be relevant or responsive to these requests. If you contend that any document or thing cannot be produced in full, produce it to the extent possible, indicating which document or portion of that document is being withheld and the reason it is being withheld. For any document withheld or redacted, in whole or in part, based on a clam of privilege or work product protection, You shall comply with Fed. R. Civ. P. 26(b)(5)(A). Any privilege log shall be produced in a format and according to a schedule mutually agreed upon the parties or ordered by the Court. Any purportedly privileged document containing non-privileged material must be produced, redacting only the portion purportedly privileged. If you file a timely objection to any portion of a request, definition, or instruction, documents responsive to the remaining portion are to be produced.

4. Documents not otherwise responsive to a discovery request shall be produced if such documents relate to the documents which are called for by this discovery request, or if such documents are attached to documents called for by a discovery request and constitute routine transmittal memoranda, letters, comments, evaluations, or similar materials.

5. Any alteration of a responsive document, including any marginal notes, handwritten notes, underlining, date stamps, received stamps, endorsed or filed stamps, drafts, revisions, modifications, and other versions of a final document is a separate and distinct document and it must be produced.

6. All documents shall be produced in a file folder, envelope, or other container in which the documents are kept or maintained by the Movants. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks. Documents shall be produced in such fashion as to identify the department, branch, or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each document's custodian(s).

7. If any responsive document is believed to have existed but no longer exists or is otherwise unavailable, describe the document, the reason for its loss, destruction, or unavailability, and provide the name of each person believed by the Movants to have present possession, custody, or control of the original and any copy thereof (if applicable). If no document responsive to a request exists, please so state in the Movants' response.

8. These document requests are continuing and therefore require the Movants (or any person acting on the Movants' behalf) to furnish supplemental responses whenever the Movants (or any person acting on the Movants' behalf) obtains additional information called for by the request. Each supplemental response shall be served on Dugaboy no later than thirty (30) days after the discovery the additional information.

9. Capitalized terms not otherwise defined herein shall have their meanings as set forth in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (the "Plan"), and the associated Plan Documents giving meaning and effect to the Plan.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All communications between any of the Movants and the HMIT Entities (as defined in the Motion) related to the proposed Settlement Agreement (as referenced in the Motion).

REQUEST FOR PRODUCTION NO. 2:

All communications between any of the Movants and any third-party related to the proposed Settlement Agreement.

REQUEST FOR PRODUCTION NO. 3:

All drafts of the proposed Settlement Agreement.

REQUEST FOR PRODUCTION NO. 4:

All documents supporting the allegation in Paragraph 21 of the Motion that "[i]f the Settlement Agreement is approved, the only unresolved Claims or Equity Interests will be the Daugherty Claim and the Class 11 Equity Interests asserted by two Dondero controlled entities—Dugaboy and Strand—that have no value but, if they did, their aggregate maximum value, if allowed, would not exceed approximately $1.7 million."

REQUEST FOR PRODUCTION NO. 5:

All documents supporting the allegation in Paragraph 9 of the Motion that "[a]s of the Petition Date, HMIT's capital account balance on account of its Class B/C Interests was $394,630,871.53 (the "HMIT Capital Account Balance"), and the capital account for all Class A Interests in aggregate was $1,983,069.70.

REQUEST FOR PRODUCTION NO. 6:

All documents evidencing the "extensive arm's-length, good faith negotiations over the last several months [related to the proposed Settlement Agreement]" as referenced in Paragraph 20 of the Motion.

REQUEST FOR PRODUCTION NO. 7:

All documents evidencing any efforts that the Movants examined the effect of the potential Settlement Agreement on any of the remaining creditors of the estate.

REQUEST FOR PRODUCTION NO. 8:

All documents evidencing how HMIT's Capital Account Balance, as referenced in Paragraph 21 of the Motion, was calculated.

REQUEST FOR PRODUCTION NO. 9:

All documents related to the Dugaboy Note, as referenced in paragraph 21 of the Motion, including any documents evidencing payments or amounts owed related to the Dugaboy Note.

REQUEST FOR PRODUCTION NO. 10:

Any documents used to answer the Interrogatories in these discovery requests.

REQUEST FOR PRODUCTION NO. 11:

Documents sufficient to show the remaining unpaid amounts of allowed claims in Classes 8 and 9, as that term is defined in the Plan.

REQUEST FOR PRODUCTION NO. 12:

Documents demonstrating any efforts by the Movants to sell or transfer the claims and causes of action that were asserted by the Litigation Trustee in the Amended Kirschner Complaint to any parties.

REQUEST FOR PRODUCTION NO. 13:

Documents demonstrating any efforts by the Movants to sell or transfer the Dugaboy Note to any parties.

REQUEST FOR PRODUCTION NO. 14:

Documents related to or identifying the value of any consideration received or exchanged as part of the proposed Settlement Agreement, including any communications related to the value of any such consideration.

INTERROGATORY INSTRUCTIONS

1. Each Interrogatory shall be answered fully and separately. Interrogatories shall not be combined for the purpose of supplying a common answer thereto, but answers may be supplied by reference to the answer to another interrogatory.

2. Where an Interrogatory cannot be answered in full, state why, and furnish all available information.

3. Whenever the name or identity of a person is requested, state the full name and the home and business address of such person.

4. When knowledge or information in the possession of a party is requested, such request includes knowledge of the party's agents, representatives and, unless privileged, attorneys.

5. Whenever a document is cited in support of a response, identify the specific language in such document which the Movants contend provides support for the Movants' response.

6. These Interrogatories shall be deemed to be continuing, so as to require supplemental answers should the party on whom these Interrogatories are propounded obtain information responsive to these Interrogatories which has not previously been supplied. Such supplemental answers shall be served before trial and within a reasonable time after the information is obtained. The date such additional information was obtained shall be disclosed, and the identity of the source of the additional information shall be specified.

7. If the Movants claim a privilege as to any requested information, specify the privilege claimed, the Communication (as defined below) or other matter as to which such claim is made, the subject of the Communication or other matter and the basis which Defendants assert the claim of privilege.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify who negotiated the proposed Settlement Agreement on behalf of the Movants and the HMIT Entities and identify the dates of such negotiations.

ANSWER:

INTERROGATORY NO. 2:

Identify any efforts to analyze the "complexity, duration, and costs of [the Pending HMIT Litigation]," as stated in Paragraph 29 of the Motion.

ANSWER:

INTERROGATORY NO. 3:

Identify any efforts to sell or transfer the claims and causes of action that were asserted by the Litigation Trustee in the Amended Kirschner Complaint.

ANSWER:

INTERROGATORY NO. 4:

Identify any efforts to sell or transfer the claims and causes of action that were asserted by the Litigation Trustee in the Amended Kirschner Complaint.

ANSWER:

INTERROGATORY NO. 5:

Identify any efforts to sell or transfer the Dugaboy Note to any parties other than the HMIT Entities.

ANSWER:

INTERROGATORY NO. 6:

Explain the basis for the Movants' contention in Paragraph 21 of the Motion that "the Daugherty Claim and the Class 11 Equity Interests asserted by two Dondero controlled entities—Dugaboy and Strand—[] have no value but, if they did, their aggregate maximum value, if allowed, would not exceed approximately $1.7 million."

ANSWER:

INTERROGATORY NO. 7:

Identify all consideration received by any parties as part of the proposed Settlement Agreement and identify the monetary value of all non-monetary consideration received as part of the proposed Settlement Agreement.

ANSWER:

HUNTON ANDREWS KURTH LLP

By: /s/ *Gregory G. Hesse*

Gregory G. Hesse (Texas Bar No.09549419)
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202-2799
Telephone: (214) 979-3000
Telecopy: (214) 880-0011
GHesse@hunton.com

ATTORNEYS FOR DUGABOY INVESTMENT TRUST

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 10, 2025, a true and correct copy of this document was served via email to the following parties.

Counsel for Highland Capital Management, LP and the Highland Claimant Trust:

Jeffrey N. Pomerantz – jpomerantz@pszjlaw.com
John A. Morris – jmorris@pszjlaw.com
Gregory V. Demo – gdemo@pszjlaw.com
Hayley R. Winograd – hwinograd@pszjlaw.com
Melissa S. Hayward – mhayward@haywardfirm.com
Zachery Z. Annable – zannable@Haywardfirm.com

Counsel for Marc S. Kirschner as Litigation Trustee of the Highland Litigation Sub-Trust:

Deborah J. Newman - deborahnewman@quinnemanuel.com
Robert S. Loigman - robertloigman@quinnemanuel.com

/s/ *Gregory G. Hesse*
Gregory G. Hesse

EXHIBIT 54

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910

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

Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

QUINN EMANUEL URQUHART & SULLIVAN LLP
Deborah J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000

SIDLEY AUSTIN LLP
Paige Holden Montgomery
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300

Co-Counsel for Marc S. Kirschner, as Litigation Trustee of The Highland Litigation Sub-Trust

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

HIGHLAND CAPITAL MANAGEMENT, L.P., THE HIGHLAND CLAIMANT TRUST AND HIGHLAND LITIGATION SUB-TRUST'S

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

RESPONSES AND OBJECTIONS TO DUGABOY INVESTMENT TRUST'S DISCOVERY RELATED TO RULE 9019 MOTION

Highland Capital Management, L.P. ("HCMLP"), the Highland Claimant Trust (the "Claimant Trust") and the Highland Litigation Sub-Trust (the "Litigation Trust," and together with HCMLP and the Claimant Trust, the "Movants") hereby respond and object to *Dugaboy Investment Trust's Discovery Related to Rule 9019 Motion* (each, a "Request," and collectively, the "Requests"), served by the Dugaboy Investment Trust ("Dugaboy"). The Movants' responses and objections to the Requests (each, a "Response," and collectively, the "Responses") are made pursuant to Federal Rules of Civil Procedure ("FRCP") 26, 33, and 34, as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

GENERAL OBJECTIONS

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. The Movants object to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity. The Movants' agreement to produce documents shall be construed to mean non-privileged documents.

2. The Movants object to the Requests to the extent they request information that is not reasonably or readily available to it, in their possession, custody or control, or is more readily available to Dugaboy from another source or for which the burden of obtaining such information is not substantially greater for Dugaboy than it is for the Movants.

3. The Movants object to the Requests to the extent they call for legal

conclusions and/or legal analyses.

4. The Movants object to the Requests to the extent they seek information that is not relevant to the parties' claims or defenses or disproportionate to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1).

5. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

6. The Movants object to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

7. The Movants object to the Requests to the extent they seek information to which Dugaboy is not entitled under the terms of the Plan or the Claimant Trust Agreement.

8. The Movants' agreement to produce documents with respect to a specific Request shall not be construed as a representation that such documents actually exist or are within the Movants' possession, custody or control.

9. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

SPECIFIC RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

All communications between any of the Movants and the HMIT Entities (as defined in the Motion) related to the proposed Settlement Agreement (as referenced in the Motion).

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 2:

All communications between any of the Movants and any third-party related to the proposed Settlement Agreement.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 3:

All drafts of the proposed Settlement Agreement.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 4:

All documents supporting the allegation in Paragraph 21 of the Motion that "[i]f the Settlement Agreement is approved, the only unresolved Claims or Equity Interests will be the Daugherty Claim and the Class 11 Equity Interests asserted by two Dondero controlled entities—Dugaboy and Strand—that have no value but, if they did, their aggregate maximum value, if allowed, would not exceed approximately $1.7 million."

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 5:

All documents supporting the allegation in Paragraph 9 of the Motion that "[a]s of the Petition Date, HMIT's capital account balance on account of its Class B/C Interests was $394,630,871.53 (the "HMIT Capital Account Balance"), and the capital account for all Class A Interests in aggregate was $1,983,069.70.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request and refer to the information provided in Response to Request for Production No. 4.

REQUEST FOR PRODUCTION NO. 6:

All documents evidencing the "extensive arm's-length, good faith negotiations over the last several months [related to the proposed Settlement Agreement]" as referenced in Paragraph 20 of the Motion.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request and refer to the information provided in Responses to Request for Production Nos. 1 and 3.

REQUEST FOR PRODUCTION NO. 7:

All documents evidencing any efforts that the Movants examined the effect of the potential Settlement Agreement on any of the remaining creditors of the estate.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 8:

All documents evidencing how HMIT's Capital Account Balance, as referenced in Paragraph 21 of the Motion, was calculated.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request and refer to the information provided in Response to Requests for Production Nos. 4 and 5.

REQUEST FOR PRODUCTION NO. 9:

All documents related to the Dugaboy Note, as referenced in paragraph 21 of the Motion, including any documents evidencing payments or amounts owed related to the Dugaboy Note.

RESPONSE:

The Movants object to Request No. 9 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 10:

Any documents used to answer the Interrogatories in these discovery requests.

RESPONSE:

The Movants object to Request No. 10 on the grounds that it is overly broad and unduly burdensome. Subject to the General Objections and these Specific Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 11:

Documents sufficient to show the remaining unpaid amounts of allowed claims in Classes 8 and 9, as that term is defined in the Plan.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 12:

Documents demonstrating any efforts by the Movants to sell or transfer the claims and causes of action that were asserted by the Litigation Trustee in the Amended Kirschner Complaint to any parties.

RESPONSE:

Subject to the General Objections, there are no documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 13:

Documents demonstrating any efforts by the Movants to sell or transfer the Dugaboy Note to any parties.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request and refer to the information provided in Response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 14:

Documents related to or identifying the value of any consideration received or exchanged as part of the proposed Settlement Agreement, including any communications related to the value of any such consideration.

RESPONSE:

Subject to the General Objections, the Movants will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify who negotiated the proposed Settlement Agreement on behalf of the Movants and the HMIT Entities and identify the dates of such negotiations.

RESPONSE:

The Settlement Agreement was negotiated by James P. Seery, Jr. on behalf of the Movants and Mark Patrick on behalf of the HMIT Entities over the course of multiple in-person, telephonic and video conference meetings, and exchanges of draft Settlement Agreements, commencing on or around April 3, 2025, the specific dates of which are reflected in the Movants' document production.

INTERROGATORY NO. 2:

Identify any efforts to analyze the "complexity, duration, and costs of [the Pending HMIT Litigation]," as stated in Paragraph 29 of the Motion.

RESPONSE:

Subject to the General Objections, the Movants refer to all court filings in connection with the Pending HMIT Litigation, including, but not limited to, the witness and exhibit lists in connection with the First Motion for Leave, the order denying the First Motion for Leave, the briefs filed in connection with the appeal, and the legal invoices of Movants' counsel in connection with such matters, all of which Movants will produce in response to the Requests for Production.

INTERROGATORY NO. 3:

Identify any efforts to sell or transfer the claims and causes of action that were asserted by the Litigation Trustee in the Amended Kirschner Complaint.

RESPONSE:

Except as contemplated by Settlement Agreement, the Movants have not attempted to sell or transfer the claims and causes of action that were asserted by the Litigation Trustee in the Amended Kirschner Complaint.

INTERROGATORY NO. 4:

Identify any efforts to sell or transfer the claims and causes of action that were asserted by the Litigation Trustee in the Amended Kirschner Complaint.

RESPONSE:

The Movants object to Interrogatory No. 4 on the grounds that it is identical to and duplicative of Interrogatory No. 3.

INTERROGATORY NO. 5:

Identify any efforts to sell or transfer the Dugaboy Note to any parties other than the HMIT Entities.

RESPONSE:

Subject to the General Objections, the Movants refer to the information provided in Response to Request for Production Nos. 9 and 13.

INTERROGATORY NO. 6:

Explain the basis for the Movants' contention in Paragraph 21 of the Motion that "the Daugherty Claim and the Class 11 Equity Interests asserted by two Dondero controlled entities—Dugaboy and Strand—[] have no value but, if they did, their aggregate maximum value, if allowed, would not exceed approximately $1.7 million."

RESPONSE:

Subject to the General Objections, the Movants refer to the information provided in Response to Request for Production Nos. 4 and 5.

INTERROGATORY NO. 7:

Identify all consideration received by any parties as part of the proposed Settlement Agreement and identify the monetary value of all non-monetary consideration received as part of the proposed Settlement Agreement.

RESPONSE:

Subject to the General Objections, in response to Interrogatory No. 7, the Movants refer to the Settlement Agreement, which sets forth all consideration received by any parties as part of the Settlement Agreement.

Dated: June 13, 2025

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jkroop@pszjlaw.com
hwinograd@pszjlaw.com

- and -

HAYWARD PLLC

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

Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

QUINN EMANUEL URQUHART & SULLIVAN LLP

/s/ Robert S. Loigman
Deborah J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000

-and-

SIDLEY AUSTIN LLP

/s/ Paige Holden Montgomery
Paige Holden Montgomery
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300

Co-Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910

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

Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

QUINN EMANUEL URQUHART & SULLIVAN LLP
Deborah J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000

SIDLEY AUSTIN LLP
Paige Holden Montgomery
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300

Co-Counsel for Marc S. Kirschner, as Litigation Trustee of The Highland Litigation Sub-Trust

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

THE HIGHLAND CLAIMANT TRUST AND HIGHLAND LITIGATION SUB-TRUST'S RESPONSES AND OBJECTIONS TO DUGABOY INVESTMENT TRUST'S FIRST SET OF DISCOVERY

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

The Highland Claimant Trust (the "Claimant Trust") and the Highland Litigation Sub-Trust (the "Litigation Trust," and together with the Claimant Trust, the "Trusts") hereby respond and object to *Dugaboy Investment Trust's First Set of Discovery* (each, a "Request," and collectively, the "Requests"),[2] served by the Dugaboy Investment Trust ("Dugaboy"). The Trusts' responses and objections to the Requests (each, a "Response," and collectively, the "Responses") are made pursuant to Federal Rules of Civil Procedure ("FRCP") 26, 33, and 34, as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

GENERAL OBJECTIONS

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. These Responses are based upon information presently known and ascertained by the Trusts.

2. The Trusts object to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity. The Trusts' agreement to produce documents shall be construed to mean non-privileged documents.

3. The Trusts object to the Requests to the extent they request information that is not reasonably or readily available to them, in their possession, custody or control, or is more readily available to Dugaboy from another source or for which the burden of obtaining such information is not substantially greater for Dugaboy than it is for the Trusts.

[2] Capitalized terms not otherwise defined shall take on the meaning ascribed thereto in the Requests.

4. The Trusts object to the Requests to the extent they call for legal conclusions and/or legal analyses.

5. The Trusts object to the Requests to the extent they seek information that is not relevant to the parties' claims or defenses or not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1).

6. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses or information disclosed in connection therewith, and the subject matter thereof, as evidence for any purpose in any further proceedings in this matter or other matters or discovery proceedings; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object on any ground at any time to a demand or request for further responses or information relating thereto to these or any other discovery requests in any other matters or discovery proceedings; and (d) the right to assert any defense to any claim arising under or relating to a request for the disclosure of information produced in response to, or relating to, the Requests in any other matters.

7. The Trusts object to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

8. The Trusts' agreement to produce documents with respect to a specific Request shall not be construed as a representation that such documents actually exist or are within the Trusts' possession, custody or control.

9. The Trusts generally rely on the Plan, the Claimant Trust Agreement, and the Litigation Sub-Trust Agreement.

10. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

SPECIFIC RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Documents sufficient to show all money or payments made or transferred into or out of Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, or the Highland Indemnity Trust.

RESPONSE:

The Trusts object to Request No. 1 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 2:

Any documents used to answer the Interrogatories in Dugaboy's First Set of Discovery.

RESPONSE:

The Trusts object to Request No. 2 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 3:

All correspondence related to any money or payments made or transferred into or out of Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, or the Highland Indemnity Trust.

RESPONSE:

The Trusts object to Request No. 3 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 4:

Documents sufficient to identify any assets currently held by Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, or the Highland Indemnity Trust.

RESPONSE:

The Trusts object to Request No. 4 on the grounds that it is not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts refer to, and incorporate by reference, their Response to Interrogatory No. 3, which includes a list of the assets of Highland Capital Management, L.P., the Highland Litigation Sub-Trust, the Highland Indemnity Trust, and the Highland Claimant Trust as of the most recent month end. *See* **Exhibit A**, attached hereto and included in the Trusts' production.

REQUEST FOR PRODUCTION NO. 5:

Documents sufficient to identify any expenses or liabilities (fixed or contingent) of Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, or the Highland Indemnity Trust.

RESPONSE:

The Trusts object to Request No. 5 on the grounds that it is vague and ambiguous, not relevant to the parties' claims or defenses, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 6:

All documents supporting the allegations made in the motion of the Highland Claimant Trust and the Highland Litigation Sub-Trust for entry of an order further extending the duration of the Trusts through and including August 11, 2026 [Bankr. Dkt. 4213] ("Motion").

RESPONSE:

The Trusts object to Request No. 6 on the grounds that it is vague and ambiguous, not relevant to the parties' claims or defenses, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request. In addition to these documents, the Trusts refer Dugaboy to the docket in the Bankruptcy Case, along with other publicly available documents from related adversary, civil, and appellate proceedings.

REQUEST FOR PRODUCTION NO. 7:

All documents supporting the allegation in paragraph 1 of the Motion, stating that "Since the Effective Date, the Trusts have successfully monetized most of the Claimant Trust's assets, made substantial distributions to beneficiaries with vested interests in the Claimant Trust, managed substantial litigation, funded the Indemnity Trust, and reduced staff and expenses commensurate with reduced operations."

RESPONSE:

The Trusts object to Request No. 7 on the grounds that it is vague and ambiguous, not relevant to the parties' claims or defenses, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 8:

All documents supporting the allegation in paragraph 2 of the Motion, stating that "Among other things, the Trusts must still monetize a limited number of assets, resolve one disputed claim, and settle or otherwise dispose of certain Estate Claims."

RESPONSE:

The Trusts object to Request No. 8 on the grounds that it is vague and ambiguous, not relevant to the parties' claims or defenses, and not proportional to the needs of the case. *See* Fed.

R. Civ. P. 26(b)(1). The Trusts further object to this Request to the extent that it is redundant to other Requests, including Request Nos. 4, 6, 7, 10, and 11. Subject to the General Objections and these Specific Objections, the Trusts refer to, and incorporate by reference, their Responses to Request No. 4 and Interrogatory Nos. 3 and 4, and will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 9:

All documents supporting the allegation in paragraph 11 of the Motion, stating that "Among many other things, the Claimant Trust has successfully monetized most of its assets, managed substantial litigation, and made distributions to the Claimant Trust Beneficiaries substantially exceeding expectations."

RESPONSE:

The Trusts object to Request No. 9 on the ground that it is not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and this Specific Objection, the Trusts will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 10:

All documents supporting the allegation in paragraph 12 of the Motion, stating that "For example, a limited number of assets remain to be monetized."

RESPONSE:

The Trusts object to Request No. 10 on the grounds that it is redundant to other Requests, including Request Nos. 4, 6, 7, and 8. Subject to the General Objections and these Specific Objections, the Trusts refer to, and incorporate by reference, their Response to Request No. 4 and Interrogatory No. 3, and will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 11:

All documents supporting the allegation in paragraph 14 of the Motion, stating that "Ultimately, the Trusts cannot complete the forgoing tasks by August 11, 2025; an extension of the Trusts is therefore required."

RESPONSE:

The Trusts object to Request No. 11 on the ground that it is not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and this Specific Objection, the Trusts refer to, and incorporate by reference, their Response to Request No. 4 and Interrogatory No. 3, and will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 12:

All documents used to create the Post-Confirmation Reports for the Highland Claimant Trust or Highland Capital Management, L.P. filed with the United States Bankruptcy Court.

RESPONSE:

The Trusts object to Request No. 12 on the grounds that it is overly broad and unduly burdensome, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). The Trusts further object to this Request on the ground that it seeks information that is protected from discovery by the attorney-client privilege and the attorney work product doctrine.

REQUEST FOR PRODUCTION NO. 13:

Documents sufficient to show the remaining unpaid amounts of allowed claims in Class 9, as that term is defined in the Plan.

RESPONSE:

Subject to the General Objections, the Trusts will conduct a reasonable search for, and produce, non-privileged documents responsive to this Request.

RESPONSES AND OBJECTIONS INTERROGATORIES

INTERROGATORY NO. 1:

Identify any payments or distributions made by Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, or the Highland Indemnity Trust,

including the date of the payments or distributions, who the payments or distributions were made to, and any documents evidencing the payments or distributions.

RESPONSE:

The Trusts object to Interrogatory No. 1 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts refer Dugaboy to the post-confirmation reports produced in response to the Requests for Production.

INTERROGATORY NO. 2:

Identify any payments or deposits of money made into the Highland Litigation Sub-Trust or the Highland Indemnity Trust, including the date of the payments or deposits, who made the payments or deposits, the reason the payments or deposits were made, and any documents evidencing the payments or deposits.

RESPONSE:

The Trusts object to Interrogatory No. 2 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts refer Dugaboy to their Response to Interrogatory No. 3, which contains a list of the assets currently held by the Highland Litigation Sub-Trust.

INTERROGATORY NO. 3:

Identify any assets currently held by the Highland Litigation Sub-Trust or the Highland Indemnity Trust and identify the value of those assets.

RESPONSE:

The Trusts object to Interrogatory No. 3 on the grounds that it is not proportional to the needs of the case and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts refer Dugaboy to **Exhibit A** attached hereto and contained in the Trusts' production, which lists the assets of the

Highland Litigation Sub-Trust, Highland Capital Management, L.P., the Highland Claimant Trust, and the Highland Indemnity Trust.

INTERROGATORY NO. 4:

Identify any liabilities currently held by the Highland Litigation Sub-Trust or the Highland Indemnity Trust and identify the value of those assets.

RESPONSE:

The Trusts object to Interrogatory No. 4 on the grounds that it is vague and ambiguous, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts refer Dugaboy to the *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4216], pursuant to which Highland seeks to enter into a settlement with Hunter Mountain Investment Trust (the "HMIT Settlement").

INTERROGATORY NO. 5:

Identify any efforts that have been undertaken to monetize all remaining of the assets of the Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, or the Highland Indemnity Trust, including, but not limited to, identifying the actions taken, the date of such actions, and the current status of the monetization efforts.

RESPONSE:

The Trusts object to Interrogatory No. 5 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts refer Dugaboy to, and incorporate by reference, the information provided in **Exhibit A**, attached hereto and contained in the Trusts' production in response to the Requests for Production. The Trusts further refer Dugaboy to the Caris Life Sciences, Inc. Form S-1 and Amendment No. 1 to Form S1, the Confidentiality and Nondisclosure Agreement related to the

"Korea" entity, the HCM Korea Overview presentations and "HC PEF Opportunity" slide deck, the Indicative Sales Agreement related to the SK Telecom CS T1 Co., Ltd. entity, and several documents related to the "Dugaboy Note", all of which are included in the Trusts' production.

INTERROGATORY NO. 6:

Identify any efforts that have been taken to monetize any remaining Class 8 or Class 9 claims or causes of action held by Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, or the Highland Indemnity Trust, including, but not limited to, identifying the actions taken, the date of such actions, and the current status of the monetization efforts.

RESPONSE:

The Trusts object to Interrogatory No. 6 on the grounds that it is nonsensical as drafted, overly broad, unduly burdensome, not proportional to the needs of the case, vague and ambiguous, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these Specific Objections, the Trusts refer Dugaboy to their Response to Request for Production No. 9, the information provided in **Exhibit A**, and the HMIT Settlement.

INTERROGATORY NO. 7:

Identify the amounts of all reserves currently held in the Disputed Claims Reserve (as defined in the Claimant Trust Agreement).

RESPONSE:

Subject to the General Objection, in response to Interrogatory No. 7, the Trusts identify the following amounts as of May 31, 2025, which are materially unchanged since such date:

- Bank cash of $2,786.65

- Treasury bills maturing July 31, 2025 with a market value of $2,663,386.92

The Trusts further refer to the May 2025 brokerage statement produced in response to the Requests for Production.

Dated: June 13, 2025

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jkroop@pszjlaw.com
hwinograd@pszjlaw.com

- and -

HAYWARD PLLC

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

Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

QUINN EMANUEL URQUHART & SULLIVAN LLP

/s/ Robert S. Loigman
Deborah J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000

-and-

SIDLEY AUSTIN LLP

/s/ Paige H. Montgomery
Paige Holden Montgomery
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300

Co-Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

EXHIBIT A

Listing of remaining unliquidated/non-cash or treasury assets by entity [1]

as of May 31, 2025

Entity/description	Primary remaining barriers to disposal
Highland Claimant Trust	
LLC units of HCMLP Investments LLC (single member LLC and holder of shares of Highland CLO Funding, Ltd.)	Resolution of appeal in 2nd Circuit Dkt 25-643 (NexPoint/Acis) [2]
Highland Litigation Sub-Trust	Order approving settlement with Hunter Mountain Investment Trust
Highland Capital Management, LP	
Shares of Highland Capital Management Korea Limited ("HCMK") [3]	IPO and eventual sale of Caris Life Sciences, Inc.
Note due from HCMK	IPO and eventual sale of Caris Life Sciences, Inc.
Note due from Hunter Mountain Investment Trust	Order approving settlement with Hunter Mountain Investment Trust
Contractual right to receive percentage of Acis CLO 2015-6, Ltd. subordinated note payments made to Highland CLO Funding, Ltd.	Resolution of appeal in 2nd Circuit Dkt 25-643 (NexPoint/Acis) [2]
Shares of Highland CLO Funding, Ltd.	Resolution of appeal in 2nd Circuit Dkt 25-643 (NexPoint/Acis) [2]
Court award for sanctions for bad faith against NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)	Resolution of appeal in N.D. Tex. Case No. 3:24-cv-01479-S
Highland Indemnity Trust	
Note due from The Dugaboy Investment Trust on participation from Highland Capital Management, LP	Order approving settlement with Hunter Mountain Investment Trust
Contingent right to receive funds resulting from settlement with Mark Okada	Order approving settlement with Hunter Mountain Investment Trust
Limited partnership interests of Highland Capital Management, LP	Liquidation and winding-up of Highland Capital Management, LP
LLC units of HCMLP GP LLC	Liquidation and winding-up of Highland Capital Management, LP
Highland Litigation Sub-Trust	
Estate Claims	Order approving settlement with Hunter Mountain Investment Trust

[1] Does not include cash, restricted cash, or treasury holdings, nor does it include assets that are either diminimus in value or non-economic. The "Notes" described below accrue interest at various rates. Accrued, but unpaid interest with respect to these notes is also an asset for the entities.

[2] Appellants are NexPoint Diversified Real Estate Trust and NHF TRS, LLC. Appellees are Joshua N. Terry, Acis Capital Management, LP, and Brigade Capital Management, LP. Each of the Appellants had previously filed counterclaims against the Appellees in the Southern Disctrict of New York, alleging among other things, breach of fiduciary duty and mismanagement of the Acis CLOs. These claims were dismissed with the Court finding that the counterclaims were meritless and failed to state viable causes of action. The order dismissing the counterclaims is the subject of the on-going appeal, for which the opening brief of Appellants was filed June 6, 2025. Funds are currently reserved at Acis CLO 2015-6, Ltd., pending the resolution of the appeal. Highland CLO Funding, Ltd. as the approximately 87% holder of subordinated notes of Acis CLO 2015-6, Ltd., is the largest economic stakeholder in Acis CLO 2015-6, Ltd. Highland CLO Funding, Ltd. is also obligated to remit to Highland Capital Management, LP a percentage of any receipts received on account of the Acis CLO 2015-6, Ltd. subordinated notes.

[3] Highland Capital Management, LP owns 100% of the shares outstanding of HCMK. HCMK is a South Korea-domiciled entity that is the co-general partner and a limited partner of a private equity-style fund and related special purpose entities. Such entities hold minority interests in Caris Life Sciences, Inc., a US-based company that filed a registration statement on Form S-1 with the SEC on May 23, 2025, signifying its intention to go public with an initial public offering. The company has applied to list its shares on the Nasdaq Global Select Market under the ticker symbol "CAI".

EXHIBIT 55

In the Matter Of:

HIGHLAND CAPITAL MANAGEMENT, LP

19-34054-SGJ11

SHAWN RAVER

June 20, 2025

ESQUIRE
DEPOSITION SOLUTIONS

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EsquireSolutions.com

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

IN RE	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-34054-SGJ11
	)	
REORGANIZED DEBTOR.	)	

****

ORAL DEPOSITION OF

SHAWN RAVER

JUNE 20, 2025

(Reported Remotely)

****

ORAL DEPOSITION of SHAWN RAVER, produced at the instance of the Defendant Dugaboy Investment Trust, and duly sworn, was taken in the above-styled and numbered cause on the 20th day of June, 2025, from 11:35 a.m. to 12:19 p.m., Central Time, via Zoom videoconference before Angelica G. Robles, CSR, in and for the State of Texas, reported by oral stenography remotely pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S:

FOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND HIGHLAND CLAIM AND TRUST:

JOHN A. MORRIS
PACHULSKI STANG ZIEHL & JONES, LLP
1700 Broadway, 36th Floor
New York, New York 10019
Phone: (210) 561-7700
Email: jmorris@pszjlaw.com

FOR HIGHLAND LITIGATION TRUSTEE:

ROBERT S. LOIGMAN
QUINN EMANUEL URQUHART & SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Phone: (212) 849-7000
Email: robertloigman@quinnemanuel.com

FOR DUGABOY INVESTMENT TRUST:

MICHAEL J. LANG
CRAWFORD, WISHNEW & LANG PLLC
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Phone: (214) 817-4500
Email: mlang@cwl.law

FOR HUNTER MOUNTAIN INVESTMENT TRUST:

LOUIS M. PHILLIPS
KELLY HART PITRE
400 Poydras Street, Suite 1812
New Orleans, Louisiana 70130
Phone: (504) 522-1812
Email: louis.phillips@kellyhart.com

FOR DALLAS FOUNDATION AND CROWN GLOBAL LIFE INSURANCE:

DAVID CURRY
OKIN ADAMS BARTLETT CURRY LLP
1113 Vine Street, Suite 240
Houston, Texas 77002
Phone: (713) 228-4100
Email: dcurry@okinadams.com

ALSO PRESENT:

Jeff Pomerantz

Drew York

Amelia Hurt

Dennis C. Sauter

I N D E X

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SHAWN RAVER
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E X H I B I T S

DUGABOY INVESTMENT TRUST:

No.	Description	Page
1	Charitable DAF/CLO HoldCo Structure Chart	11

P-R-O-C-E-E-D-I-N-G-S

THE REPORTER: We are now on the record. Today's date is June 20th, 2025, and the time is 11:35 a.m., Central Time. This is the oral, remote deposition of Shawn Raver who is located in Dallas, Texas.

These proceedings are held in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, case being In Re Highland Capital Management, LP, Case No. 19-34054-SGJ11.

My name is Angelica Robles, Texas CSR No. 11809, administering the oath and reporting the deposition remotely for Esquire Deposition Solutions. The witnesses been identified to me throughout attestation of Counsel.

Would all parties, starting with the Plaintiff's attorney, please state their appearances and locations for the record, and then I will swear in the witness.

MR. MORRIS: John Morris, Pachulski, Stang, Ziehl & Jones, for Highland Capital Management, LP and Highland Claim and Trust, and I'm located in New York.

MR. LANG: Michael Lang for Dugaboy Investment Trust, and I am in Dallas.

MR. PHILLIPS: Louis M. Phillips, Kelly Hart, representing -- sitting in, defending Mr. Raver,

representing Hunter Mountain Investment Trust, and I'm in New Mexico.

MR. LOIGMAN: This is Robert Loigman of Quinn, Emanuel representing the Highland Litigation Trustee. And I am in New York.

MR. CURRY: And this is David Curry from Okin, Adams, Bartlett & Curry, on behalf of the Dallas Foundation and Crown Global Insurance, LTD, and I am in Houston.

THE REPORTER: Mr. Raver, at this time please raise your right hand to be sworn in.

(The witness was sworn)

THE WITNESS: I do.

THE REPORTER: Thank you.

Please proceed, Counsel.

SHAWN RAVER,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. LANG:

Q. Please state your name for the record.

A. Shawn Raver.

Q. Mr. Raver, how are you employed?

A. I'm employed by CDM CFAD, LLC.

Q. Can you give me those letters again?

A. Yes. CDM CFAD, LLC.

Q. And what does that LLC do?

A. It is basically a charitable investment, you know, fund, for a lack of a better word. But, you know, charitable investment structure.

Q. And how is CDM CFAD, LLC related to Hunter Mountain?

MR. MORRIS: Objection to the form of the question.

A. So Hunter Mountain would be an affiliate several layers below, so indirect subsidiary.

Q. (By Mr. Lang) Were you involved in the negotiation of the proposed settlement agreement in the Highland bankruptcy between Highland Capital Management and Hunter Mountain?

A. Yes. In a supporting role.

Q. Okay. What did you do in a supporting role?

A. You know, just took part in, you know, some meetings, reviewed drafts of the settlement agreement, provided comments, if I had any. You know, that was about it.

Q. And are you aware of when the negotiations began?

A. I became involved early April, right at the beginning of April.

Q. When is the first time -- let me ask this: Who initiated the settlement discussions, if you know?

A. I don't know.

Q. Under the proposed settlement agreement, Hunter Mountain received a promissory note from Highland, the Dugaboy Note. Are you familiar with that?

A. I am.

Q. Okay. Has Hunter Mountain performed any valuation on the Dugaboy note?

A. We had engaged a valuation firm, and it is in process, but it's not finished as of today.

Q. Does Hunter Mountain have an estimated value of the Dugaboy note?

A. No.

Q. What about the Kirschner Claims? Does Hunter Mountain have an estimated value of the Kirschner Claims?

A. Not to my knowledge, no.

Q. Are you familiar with the structure of DAF, the DAF CLO HoldCo?

A. Generally, yes.

Q. Let me try and share my screen here. I hope you guys can see the flowchart. Do you see that?

A. I can.

Q. Is this an accurate depiction of the structure of the DAF, which is the Donor Advised Fund, as it exists today?

A. No.

MR. PHILLIPS: Hold on, Shawn. Objection, Mr. Lang, sort of like and even stronger than Mr. Morris's suggestion that we limit the scope of the deposition to your objection. The court has said that the objection is not -- your client is not able to supplement your objection. We're not going to allow it to be supplemented through evidence outside the scope of the objection. And, in fact, the objection doesn't relate to the Hunter Mountain side at all, that we can figure out. So let's not challenge the authority of Mr. Patrick to sign on behalf of Hunter Mountain. So while Mr. Morris was very lenient in allowing you additional -- in allowing you leeway, we're going to be less so because your objection doesn't address, as we read it, the entire Hunter Mountain side of the settlement.

MR. LANG: Okay. You know, my issue is somebody has raised this issue. And if you're trying to buy peace and to risk the whole thing being unwound because of some capacity issue, I was just trying to get an idea of what changed in this work chart.

MR. PHILLIPS: Well, you didn't raise that as a problem. And the party who raises the problem, we know does not have standing to raise anything in connection with this transaction.

MR. CURRY: Well, Louis, do we want to go

ahead and pause and get her on the phone, or do you want to just stop and redo this next week and waste everybody's time?

MR. PHILLIPS: No. I'm telling Mr. Lang that we're going to allow him some leeway but not much because his objection doesn't relate to any claim -- any suggestion or assertion about the Hunter Mountain side of the transaction.

MR. CURRY: Well, I don't want to do his job for him, but don't you think his client has an interest in not having to pay twice?

MR. PHILLIPS: I don't think -- well, his client -- whose client?

MR. CURRY: I said his. We're not being asked to anything. We're trying to make sure the money that's owed to us comes to us, but --

MR. PHILLIPS: I don't know who you are talking about having to pay twice.

MR. LANG: Let's sit through another deposition. That's all.

MR. PHILLIPS: I didn't hear that.

MR. CURRY: We'll just sit through another deposition. You're right.

MR. LANG: We'll sit through another deposition, that's all I was saying.

MR. PHILLIPS: I'm going to give you some leeway, but I'm just telling you, we're not going to allow for supplementation or amendment of the pleadings through evidence.

MR. LANG: Understood.

Q. (By Mr. Lang) So, Mr. Raver, can you tell me what has changed from the flowchart that you see in what I'm going to mark as Exhibit 1? Can you tell me what has changed between the organization chart as it exists here and how it looks today?

(Exhibit No. 1 marked)

A. The ownership of the Charitable DAF Fund, LP has changed.

Q. (By Mr. Lang) Okay. So on this flowchart, Charitable DAF HoldCo, Limited owned 100 percent of Charitable DAF Fund, LP, correct?

A. Yes.

Q. And Charitable DAF HoldCo, Limited no longer owns Charitable DAF Fund, LP?

A. Correct.

Q. Who owns Charitable DAF Fund, LP?

A. CDM CFAD, LLC.

Q. And does Charitable DAF HoldCo, Limited have any ownership interest, direct or indirect, you know, through whatever layers there are? Does it have any ownership

interest in Charitable DAF Fund, LP?

MR. PHILLIPS: Object to the form of the question.

A. No.

Q. (By Mr. Lang) Does Charitable DAF Fund, LP still own 100 percent of CLO HoldCo?

A. Yes.

Q. So, currently, just so I'm clear, the structure below -- does the structure below the Charitable DAF Fund, LP generally look the same?

A. Generally, yes, it looks the same.

Q. And then -- and then CDM CFAD, LLC now sits above Charitable DAF Fund, LP?

A. Yes.

Q. And who owns Hunter Mountain? Where do they fall?

A. They are below -- they are below CLO HoldCo, LTD. The direct owner of Hunter Mountain is Beacon Mountain, LLC.

Q. And who owns Beacon Mountain?

A. CLO HoldCo, LLC.

Q. There was a mention in Mr. Klos's deposition about a Liberty or Liberty HoldCo. Where do they fall?

A. It's another 100 percent subsidiary of CLO HoldCo, LTD.

Q. So they go across the line under CLO HoldCo?

MR. PHILLIPS: Object to the form of the

question.

A. Yeah, I think that's correct. Yeah.

Q. (By Mr. Lang) Which of -- which of the companies on the work chart on Exhibit 1 is in liquidation?

A. Charitable DAF HoldCo, LTD.

Q. And who currently owns, of the Hunter Mountain entities that are defined in the motion, Rand Advisors, LLC?

A. I'm sorry. Could you repeat that?

Q. There's a list of Hunter Mountain entities in the motion. They include Beacon Mountain, LLC, who we talked about, Rand Advisors, LLC, Rand PE Fund1, LLC, Rand PE Fund Management, Atlas IDF, LP, and Atlas IDF GP, LLC. Are you familiar with those entities?

MR. MORRIS: Object to the form of the question.

A. Yes.

Q. (By Mr. Lang) Okay. So who currently owns Rand Advisors, LLC?

A. Charitable DAF Holdings Corp.

Q. And who currently owns Rand PE Fund1, LP?

A. Atlas IDF, LP.

Q. And who currently owns Rand PE Fund Management, LLC?

A. Charitable DAF Holdings Corp.

Q. And Atlas IDF, LP, who owns that LP?

A. I think -- I always look at it as the sole limited partner as Crown Global, the insurance company on behalf of the two segregated annuity contracts.

Q. And then Atlas IDF GP, LLC is just a general partner of Atlas IDF?

A. Yes.

MR. LANG: I'll pass the witness to Mr. Curry.

MR. PHILLIPS: We have the same objection as Mr. Morris raised to Mr. Curry's participation. And in the spirit of cooperation, we will allow 15 minutes.

MR. CURRY: I'm going to take the time I need, Louis. If you instruct your witness to leave, we can either deal with it today, or we'll just re-notice him, so --

MR. PHILLIPS: That's fine. You can do whatever you do. I've told you what we're going to do, and then you can respond.

MR. CURRY: Are you saying you're going to leave in 15 minutes? Because I'll filibuster with you for 15 minutes and then completely have an obstruction issue.

MR. MORRIS: We're going to allow you to ask questions for 15 minutes and abide by the very agreement that your partner just did.

MR. CURRY: Well, that was on that deposition

back then, John. He didn't make that agreement as to this deposition, and we're not agreeing to the limitation. So objection noted. You guys do what you want to do.

EXAMINATION

BY MR. CURRY:

Q. Mr. Raver, my name is David Curry. I'm with the law firm of Okin, Adams. I represent the Dallas Foundation and Crown Global Life Insurance. Are you familiar with those two entities?

A. Generally, yes.

Q. As to Crown Global, I think we were just going through this chart in here. Are you aware of Crown Global's limited partnership interest in this structure?

A. No, not in the structure.

Q. No? How about in the Rand entity structures? So if you go down from Rand to Hunter Mountain.

MR. PHILLIPS: Object to the form of the question.

A. Yeah, can you be a little clearer? I don't know what you mean by Rand.

Q. (By Mr. Curry) Rand Advisors Fund.

A. So Rand Advisors is the investment manager for Atlas IDF, LP.

Q. Atlas IDF, LP, it's a limited partnership?

A. Yes.

Q. And who would be the limited partner?
A. Crown Global.
Q. Thank you. I want to back up just a little bit and just kind of get a little bit of background information, Mr. Raver. You say your current employer is CDM CFAD, LLC?
A. Yes.
Q. Is that correct?
A. Correct.
Q. When did you become employed there?
A. My employment below that -- or for that entity was in March of this year.
Q. March of '25?
A. Correct.
Q. Where were you employed before then?
A. The employment agreement was with Charitable DAF HoldCo, LTD, and it would cover all the DAF entities.
Q. So you were employed by Charitable DAF HoldCo, LTD?
A. Yes.
Q. The entity that's in liquidation in the Caymans?
A. Yes.
Q. Okay. What was your role there?
A. Chief Operating Officer and Associate General Counsel.
Q. Okay. So we talked earlier, and you said -- and

just looking here at Exhibit 1 that's up here, you said that this structure is no longer accurate. When did CDM CFAD acquire any interest in Charitable DAF Fund -- I mean, yeah, in the Charitable DAF Fund, LTD? I'm sorry. Alphabet soup. Sometimes it jumbles.

MR. MORRIS: Objection to the form of the question.

MR. PHILLIPS: Same objection.

MR. CURRY: Yeah. Let me rephrase it.

Q. (By Mr. Curry) I believe your testimony earlier was that Charitable DAF Fund, LP is owned by your employer, CDM CFAD, LLC. When did your employer acquire its interest in Charitable DAF Fund, LP?

A. I believe it was in March of 2025. I don't remember the exact date.

Q. Was it before or after you went to work for CDM CFAD?

A. I don't recall.

Q. You don't recall whether you were working for DAF HoldCo or CDM F -- we're just going to call it -- if we say CDM, can we all agree we know what we're talking about? It's a mouthful. Were you working at DAF HoldCo or at CDM when CDM acquired its interest in DAF Fund, LP?

A. I just don't remember the exact date. I don't know if it was concurrently or shortly thereafter that I

became --

Q. You were the CEO and General Counsel of DAF HoldCo, that was your testimony, correct?

MR. PHILLIPS: Objection; misstating prior testimony.

MR. CURRY: Then I'm giving him the opportunity to correct it.

MR. PHILLIPS: Objection to the form of the question.

Q. (By Mr. Curry) Up until March '25, your testimony earlier was that you were the CEO and General Counsel for DAF HoldCo, correct?

MR. PHILLIPS: Object to the form of the question.

Q. (By Mr. Curry) Correct? Mr. Raver, go ahead and answer out loud.

A. Correct.

Q. Thank you. Correct. And so you're telling me you don't know whether or not you went to work for the purchaser before or after the asset was sold?

A. I just don't remember the specific dates, and I don't know the --

(Speaking simultaneously)

Q. (By Mr. Curry) Did you represent DAF HoldCo as internal counsel? Did you participate in the negotiation of

the transaction transferring ownership of DAF Fund, LP from DAF HoldCo, LTD to CDM?

MR. MORRIS: Objection to the form of the question.

A. I was aware of it but I didn't -- I don't know if I -- I didn't participate, I guess, you know, in the restructuring.

Q. (By Mr. Curry) So as the CEO and General Counsel, your input was not sought into the structure of the transaction or the resulting structure? Is that your testimony, that you had no input?

MR. MORRIS: Objection to the form of the question.

A. I think you said CEO, which I wasn't.

Q. (By Mr. Curry) I'm sorry. COO.

A. Yeah, like I said, I was generally aware of it. I just don't recall, you know, how my input was requested. But, you know, I'm understandably aware of it.

Q. Did you -- as General Counsel, was it your responsibility to engage outside legal services?

MR. MORRIS: Objection to the form of the question.

MR. PHILLIPS: Objection to the form of the question.

Q. (By Mr. Curry) Let me -- all right -- Mr. Raver,

tell us your roles at DAF HoldCo. What were your titles?

MR. PHILLIPS: Objection to the form of the question.

A. Chief Operating Officer and Associate General Counsel.

Q. (By Mr. Curry) Okay. In your role as associate General Counsel at Charitable DAF HoldCo, LTD, were your responsibilities -- did they include engagement of outside counsel?

A. At times, yes.

Q. Yes? Were you asked to engage outside counsel in connection with the transaction between DAF HoldCo and CDM?

A. Not that I recall, no.

Q. Okay. Do you know if outside counsel was engaged?

A. I believe so, yes.

Q. Do you know who that was?

A. I don't recall. I'd have to -- yeah, I don't remember.

Q. Okay. Who was the General Counsel?

MR. MORRIS: Objection to the form of the question.

Q. (By Mr. Curry) Okay. So sitting here today, your testimony is that you did not participate in any of the negotiation or drafting of the documents underlying a transaction that occurred in or around March of '25 -- 2025

whereby Charitable DAF HoldCo, LTD -- well, I'm going to say it this way -- whereby CDM CFAD, LLC acquired the sole partnership or the sole ownership interest in Charitable DAF Fund? So that's the transaction. Mr. Raver, do you understand when I say transaction? Are we in agreement in what I'm talking about?

A. I believe so, yes.

Q. Okay. So your testimony today is that in your capacity as Chief Operating Officer or Associate General Counsel with Charitable DAF HoldCo, LTD, that you did not participate in the drafting or the negotiation of the transaction documents; is that correct?

A. I don't think I said I did not participate. Yeah, I don't know -- I was aware of the transaction. I was aware of the concerns and the reasoning for the transaction, and, you know, I was aware of the documents, but I didn't draft them. So I guess I participated. I just don't know how, you know, how much I participated. I was aware of the transaction and, you know, the reasoning for it.

Q. So you were aware of the transaction, aware of the reasoning for it -- and I'm not trying to misstate this; this is a question -- had some familiarity or engagement with the documents or -- because you said something about the documents. I didn't quite hear you. It was broken up. I'm trying to get that clarified.

A. Right. I was aware of the documentation and may have reviewed it. So I guess I participated to some level. I just -- you know, I didn't draft the documents. I didn't engage outside counsel for that transaction.

Q. At the time of that transaction, who owned CDM CFAD, LLC?

A. Tell me the transaction again. I mean, with the redemption or the change of ownership of Charitable DAF Fund?

Q. Yeah. The change in ownership.

A. At that point, CDM was owned 50 percent by Charitable DAF HoldCo, LTD and 50 percent by CDM -- or DFW Charitable Foundation. Sorry.

Q. Okay. And so it was a 50/50 ownership? How did Charitable DAF HoldCo, LTD inquire its interest in CDM CFAD?

MR. MORRIS: Objection to the form of the question.

A. My recollection is it contributed its interest in Charitable DAF Fund, LP.

Q. (By Mr. Curry) So before it contributed its 50 percent ownership interest to Charitable DAF HoldCo, LTD, was it 100 percent owned by DFW Charitable Foundation?

A. I don't recall.

Q. I'm sorry?

A. I don't recall.

Q. Okay. As we sit here today, who owns CDM CFAD?

A. DFW Charitable Foundation.

Q. Just to make sure -- there's a little bit of choppiness, Mr. Raver, when you first start talking. So I'm losing a lot of your -- the beginning of your answers. So if you can just try to be aware of that and speak a little bit more clearly. Was your answer there that currently, now, CDM CFAD is owned by DFW Charitable Foundation? Is that 100 percent?

A. Right. Yes. 100 percent.

Q. And I think you alluded to this earlier when you were asking me to clarify which transaction I was talking about, you mentioned the redemption. By that, did you mean the transaction in which the 50 percent ownership that Charitable DAF HoldCo had in CDM -- well, wait. Let me back up. When was the CDM CFAD transaction? When did that occur?

A. I believe it was the end of March of 2025.

Q. Okay. So let me back up because I want to make sure we're establishing a timeline correctly here.

So before -- before CDM CFAD contributed 50 percent interest into Charitable DAF HoldCo, right, we all agree that the structure for CLO HoldCo, LTD, would you agree, Mr. Raver, that the chart that's on the screen as Exhibit 1 was what was accurate --

MR. PHILLIPS: Object to the form of the question.

Q. (By Mr. Curry) -- before the CDM transaction?

A. Yes.

Q. Okay.

A. Well, let me correct. I think the GP was different. It was a different GP. It was not Charitable DAF GP, LLC at that time, so I need to correct that.

Q. Was it CDH GP, LTD?

A. Yes.

Q. And who formed that entity?

A. It would've been Cayman counsel. I don't know who specifically would have formed it.

Q. Okay. So noting that discrepancy -- there's another issue there -- so the GP's been replaced by a new entity, and -- but before Charitable DAF HoldCo acquires its 50 percent interest in CDM CFAD, it owned 100 percent Charitable DAF Fund, LP, correct?

A. Can you repeat that? I'm sorry.

Q. CDM CFAD, before it was inserted into the structure, so before it contributed its interest and before the March '25 transaction we were talking about before, Charitable DAF Fund, LP was owned 100 percent by Charitable DAF HoldCo, LTD, right, right here as it says on Exhibit 1?

A. Yes.

Q. That's correct as far as you know, right?
A. Yes.
Q. Do you have any reason to believe that it would have been incorrect at anytime before the transaction with CDM CFAD?
A. Not to my knowledge, no.
Q. No? Okay.
MR. PHILLIPS: David, we're three minutes over. I'm going to give you another two minutes. That will give you 20.
MR. CURRY: Thank you, Louis. I should be able to wrap it up. If you give me 25, we'll definitely be done without a fight.
Q. (By Mr. Curry) So, Mr. Raver, when CDM CFAD contributed its 50 percent interest into Charitable DAF, so at this point, Charitable DAF HoldCo would own CDM CFAD, 50 percent; it's jointly owned with DFW Charitable Foundation, correct?
A. Yes.
Q. And so when CDM CFAD contributed its 50 percent interest in itself, did it own any assets?
MR. PHILLIPS: Objection to the form of the question.
Q. (By Mr. Curry) Did CDM own any assets?
A. I'm not sure I understand the question.

Q. Do you know what assets are?
A. Yes.
Q. Do you know what ownership is?
A. Yes.
Q. Did CDM own any assets when it contributed its 50 percent interest into Charitable DAF HoldCo?
A. I don't know.
Q. Okay. CDM, at some point, acquired 100 percent ownership of Charitable DAF Fund, LP, correct?
A. Yes.
Q. Other than its ownership of Charitable DAF Fund, LP, does CDM own any assets, any other assets?
A. No.
Q. I'm sorry. I didn't hear you.
A. No.
Q. No? Okay. So initially -- and I want to make sure I have the steps correct. So initially, we have this chart up here, Exhibit 1. We have Charitable DAF HoldCo. It holds 100 percent Charitable DAF Fund. Charitable DAF HoldCo acquires a 50 percent interest in CDM CFAD and then transfers its interest of Charitable DAF Fund, LP to CDM. And at the end of that transaction, if we are looking back at Exhibit 1, and I want to make sure -- I think I understand this correctly, but I just want to make sure -- that Charitable DAF HoldCo, LTD, once -- so it now owns CDM

CFAD 50 percent, right, and no longer owns an interest in Charitable DAF Fund, LP; is that correct? That's the change that occurred? Before the redemption -- I understand there's another transaction. But before --

MR. PHILLIPS: Object to the form.

Q. (By Mr. Curry) -- the redemption, the structure would have been Charitable DAF HoldCo, LTD owning CDM CFAD, which then held the rights to Charitable DAF Fund, LP. Is that the resulting structure?

A. Yes.

Q. Yes? Okay. So the transaction through which Charitable DAF HoldCo, LTD transferred its interest, you said you were familiar with. What was the consideration that was received by DAF HoldCo for the transfer of the Charitable DAF Fund, LP interest?

A. It would've been the interest in CDM CFAD, LLC.

Q. Right. So they gave 50 percent of all their assets, what they didn't return?

MR. PHILLIPS: Object to the form of the question.

A. I'm not sure I follow. They contributed --

Q. Well, let me walk you through it. DAF owned -- DAF Fund HoldCo owned Fund, LP 100 percent. When CDM was inserted in between it, it owned 50 percent of CDM. The other 50 percent was owned by DFW. So now, because it only

owns 50 percent of the company that now owns all of the assets, it owns 50 percent of all the assets. Is that not correct?

MR. PHILLIPS: Object to the form of the question.

A. Yeah. I guess I just don't understand your question.

Q. (By Mr. Curry) What was the consideration given by CDM to DAF HoldCo in exchange for DAF HoldCo's 100 percent interest in DAF Fund, LP? What consideration was provided?

MR. PHILLIPS: Objection to the form of the question.

A. Again, my recollection, and I don't -- clearly don't recall all the steps of the restructuring, but they got an LLC interest for -- in consideration for its contribution.

Q. (By Mr. Curry) An LLC interest in -- sir, help me understand --

MR. PHILLIPS: 24-minute mark, David, so one more minute.

MR. CURRY: Well, sorry. We need some follow-up here.

MR. MORRIS: You're going to have one more minute. That's what we agreed to.

MR. PHILLIPS: Yeah. One more minute.

MR. CURRY: Well, we can press pause and call Judge Jernigan, or you guys can leave, and we'll note on the record that you're leaving over --

MR. MORRIS: You can do whatever you want. We gave you 15. Then we gave you 20. You said you only needed 25. We're done. One more minute. Go ahead.

MR. CURRY: Well, your witness is kind of giving me a little bit of issue here. And I notice that as we get to the questions that are important to what you guys are objecting on us, you're being the most obstructionist. So if you want to continue that, John, then I'm going to assume you're waving your argument to our standing.

(Speaking simultaneously)

MR. MORRIS: Don't be ridiculous, number one.

MR. CURRY: It's absurd as you're being, John.

MR. MORRIS: What I'm trying to do, David, is to abide by the very agreement that we just reached when you said 25 minutes would be enough. I'm just looking at the clock.

MR. CURRY: I just assumed that he would answer the questions. I didn't realize he would say he didn't know what assets were or what it meant to own something. We had to walk through a few more things.

MR. MORRIS: You've got 60 seconds. Go ahead.

MR. CURRY: Yeah.

Q. (By Mr. Curry) You -- Mr. Raver, you said that it was your understanding that what DAF HoldCo received in exchange for its 100 percent ownership of DAF Fund, LP, that the only thing it received was the LLC interest in CDM CFAD?

MR. PHILLIPS: Objection to form the question.

Q. (By Mr. Curry) That's it? That's the consideration? Because I'm trying to make sense of what you said.

A. I'm sorry. Can you repeat the question again? I'm not trying to delay. In all honesty --

Q. It's the same question that I've been asking that I'm trying to get answered.

A. In all honesty I didn't --

(Speaking simultaneously)

MR. PHILLIPS: All right. Let him finish. He's trying to answer.

MR. CURRY: Sorry. Sorry.

A. Yeah, in all honesty, I didn't review this restructuring, for purposes of your questioning because Crown Global has never had any ownership in this structure. So I guess I just wasn't expecting the questions.

Q. (By Mr. Curry) Well, my other client does. Let's back this up. So you worked at Charitable DAF HoldCo, LTD, right?

MR. MORRIS: Last question.

A. I did.

Q. (By Mr. Curry) It's a limited partnership, correct?

A. I think it's an exempted limited company.

Q. Limited company? Okay. Are you familiar with the limited company agreement?

MR. MORRIS: John --

Q. (By Mr. Curry) Are you familiar with the limited company agreement?

A. Generally, yes.

Q. Okay. Who -- the limited company economic interest, the participation interest, who --

MR. MORRIS: Louis, I really don't want to do this all day. It's your witness, but this is not --

MR. PHILLIPS: Yeah. I think we're done.

MR. CURRY: Hey, guys, you agreed to make him available for two hours, and it's only been an hour.

MR. PHILLIPS: Not to you.

MR. MORRIS: We didn't reach any agreement with you because you didn't have the courtesy of contacting us all --

MR. PHILLIPS: Right.

MR. CURRY: Yeah, John, because you've been assuming that we were affiliated with people that we're not. And you've been talking to them instead of getting back to us --

(Speaking simultaneously)

MR. MORRIS: They -- they --

MR. CURRY: -- you could have reached out to us.

MR. MORRIS: I sent you an e-mail earlier this week that you failed to respond to, true?

MR. CURRY: You're right. You asked me to file something and I haven't filed it. I'll get it filed.

(Speaking simultaneously)

MR. MORRIS: You don't know how -- you don't know how to serve a subpoena? Is this new to you? You don't know how to serve a subpoena?

(Speaking simultaneously)

MR. CURRY: I'll tell you what --

MR. MORRIS: You don't know how to reach out and say I'd like to take a deposition? You can say, I'd like to take a deposition. You can see --

(Speaking simultaneously)

MR. CURRY: You know what? That's fine, guys. I'll tell you what. Here's what we'll do --

(Speaking simultaneously)

MR. MORRIS: We're done.

MR. PHILLIPS: Yeah. Clearly -- clearly this a --

MR. CURRY: Fine. I didn't notice this deposition. I didn't participate in it. We'll see you guys Monday and Tuesday. We'll see you Monday and Tuesday.

And we're not doing it by Zoom, Louis. You are coming to Dallas.

MR. MORRIS: Right. Good luck.

MR. PHILLIPS: Good luck with that.

MR. CURRY: Hey, Louis, there's full knowledge of all this that's out there, right?

MR. MORRIS: Hey, let's not do this. I'm shutting this down.

MR. CURRY: I would assume -- hey, Louis. Louis, stop. This is a question for you.

(Speaking simultaneously)

MR. MORRIS: We're shutting this down. Madame Court Reporter, let's go off the record, please.

(Speaking simultaneously)

MR. PHILLIPS: Madame Court Reporter, let's go off the record, please.

MR. CURRY: Louis -- yeah, we can go off the record. Absolutely. Go off the record.

THE REPORTER: We are off the record at 12:19.

(Proceedings terminated at 12:19 p.m.)

CHANGES AND SIGNATURE

WITNESS NAME: SHAWN RAVER DATE: JUNE 20, 2025

PAGE	LINE	CHANGE	REASON

Signature: _____ Date: _____

I, SHAWN RAVER, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
SHAWN RAVER

THE STATE OF _____)
COUNTY OF _____)

Before me, _____ on this day personally appeared SHAWN RAVER, known to me (or proved to me under oath or through _____, (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2025.

_____
Notary Public in and for
The State of _____

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

IN RE	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-34054-SGJ11
	)	
REORGANIZED DEBTOR.	)	

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REPORTER'S CERTIFICATION
ORAL DEPOSITION OF SHAWN RAVER
JUNE 20, 2025

I, Angelica G. Robles, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, SHAWN RAVER, was duly sworn by the officer and the transcript of the oral deposition is a true record of the testimony given by the witness;

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

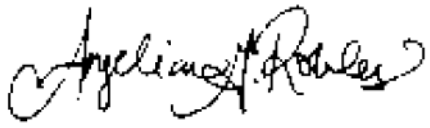
XXX was requested by the deponent or a party before the completion of the deposition and that the signature is to be before any notary public and returned within 30 days from the date of receipt of the transcript. If returned, the attached Changes and Signature Pages contains any changes and the reasons therefore;

___ was not requested by the deponent or a party before the completion of the deposition.

I further certify that I am neither counsel for,

related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 21st day of June, 2025.



ANGELICA G. ROBLES, TEXAS CSR 11809
Expiration Date: 02-28-2027
Esquire Deposition Solutions
1700 Pacific Avenue, Suite 1000
Dallas, Texas 75204
Firm Registration No. 286

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EXHIBIT 56

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

In Re: Case No. 19-34054-sgj11

HIGHLAND CAPITAL MANAGEMENT,

L.P.,

Debtor. Chapter 11

---X.

REMOTE VIDEO-RECORDED DEPOSITION of

JULIE DIAZ

Sunday, June 22, 2025

1:37 p.m. Central Time

Reported Stenographically by:

Gail L. Inghram,

BA, RDR, CRR, RSA, CA-CSR No. 8635

WHEREUPON, the remote video-recorded deposition of JULIE DIAZ was held via video-conferencing on Sunday, June 22, 2025, beginning at approximately 1:37 p.m. Central Time, the proceedings being recorded stenographically by Gail Inghram, Registered Diplomate Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, and transcribed under her direction, there being present:

A P P E A R A N C E S:

[All parties appeared via remote videoconferencing.]

On behalf of Highland Capital Management, and the Highland Claimant Trust:

JOHN MORRIS, ESQ.
jmorris@pszjlaw.com
GREGORY V. DEMO, ESQ.
gdemo@pszjlaw.com
JEFFREY POMERANTZ, ESQ.
jpomerantz@pszjlaw.com
HAYLEY WINOGRAD, ESQ.
hwinograd@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES
780 Third Avenue, 34th Floor
New York, New York 10017-2024
310.277.6910

On behalf of Highland Litigation Trustee:

ROBERT S. LOIGMAN, ESQ.
robertloigman@quinnemanuel.com
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue 22nd Floor
New York, New York 10010
212.849.7615

A P P E A R A N C E S (Cont'd):

On behalf of Defendant Dallas Foundation and Crown Global Life Insurance:

MATTTHEW OKIN, ESQ.
mokin@okinadams.com
DAVID CURRY, ESQ.
dcurry@okinadams.com
OKIN ADAMS BARTLETT CURRY LLP
1113 Vine Street, Suite 240
Houston, Texas 77002
713.228.4100

On behalf of Defendant Dugaboy Investment Trust:

MICHAEL LANG, ESQ.
mlang@cwl.law.com
CRAWFORD WISHNEW & LANG PLLC
1700 Pacific Avenue, Suite 2390
Dallas, Texas 75201
214.817.4500

A P P E A R A N C E S (Cont'd):

On Behalf of Hunter Mountain Investment Trust:

LOUIS M. PHILLIPS, ESQ.

lphillips@kellyhart.com

AMELIA L. HURT, ESQ.

ahurt@kellyhart.com

KELLY HART & HALLMAN LLP

301 Main Street, Suite 1600

Baton Rouge, Louisiana 70801

225.381.9643

VIDEOGRAPHER:

PAUL D'AMBRA

ALSO PRESENT:

NATHAN HALL, Pachulski Stang Ziehl & Jones

JAMES SEERY

TORREY LITTLETON

SHAWN RAVER

- - -

I N D E X

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EXAMINATION OF: PAGE

JULIE DIAZ

By Attorney Morris 8

E X H I B I T S

HIGHLAND: PAGE

Highland 1 Objection of the Dallas 63
Foundation and Crown Global to
Motion for Entry of An Order
Approving Settlement
(15 pages)

DEPOSITION SUPPORT INDEX

QUESTIONS INSTRUCTED NOT TO ANSWER:

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(None)

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(None)

STIPULATIONS

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(None)

QUESTIONS MARKED

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(None)

REPORTER'S NOTE:

QUOTATION MARKS ARE USED FOR CLARITY AND DO NOT NECESSARILY REFLECT A DIRECT QUOTE.

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PROCEEDINGS

- - -

WHEREUPON,

JULIE DIAZ,

being first duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY ATTORNEY MORRIS:

Q. Good afternoon, Ms. Diaz. Can you hear me okay?

A. I can.

Q. My name is John Morris. I'm an attorney for Highland Capital Management, and we're here to take your deposition today in connection with the Dallas Foundation's objection to a certain settlement.

Are you aware of that?

A. Yes, I am.

Q. Have you ever been deposed before?

A. Yes, I have.

Q. Okay. So just some quick ground rules so we're on the same page.

I'm going to ask a series of questions, and it's very important that you allow me to finish my question before you begin the answer.

Is that fair?

A. Yes.

Q. I will try to allow you to finish your answer before I begin a question; but if I fail to do so, will you let me know that?

A. Yes, I will.

Q. If I ask a question that you don't understand, will you let me know that?

A. I will.

Q. If you need a break at any time, I'm happy to accommodate you; but I just ask that you not seek a break while a question is pending unless you need to consult with your lawyer about privilege questions.

Is that fair?

A. Yes.

Q. Are you affiliated with the Dallas Foundation?

A. Yes. I am the president and CEO.

Q. When did you become the president and CEO of the Dallas Foundation?

A. Formally, April 1st, 2024. Prior to that, I was interim CEO; and have been with the foundation for six years.

Q. Are you familiar with the company called Highland Capital Management, LP?

A. Yes, I am.

Q. Are you aware that Highland Capital Management, LP, filed for bankruptcy back in 2019?

A. Yes, I am.

Q. Are you aware that the Dallas Foundation recently filed in the bankruptcy court an objection to a proposed settlement between certain Highland affiliates and certain affiliates of Hunter Mountain Investment Trust?

A. Yes, I am.

Q. Are you aware of the parties to the settlement agreement that the Dallas Foundation has objected to?

A. Can you clarify that question.

Q. Can you identify the parties on the Highland side that are -- that executed the settlement agreement that the Dallas Foundation objected to?

A. No.

Q. Can you identify the parties -- withdrawn.

Are you aware that there are parties -- are you aware that Hunter Mountain Investment Trust is a party to the settlement agreement?

A. Yes, I am.

Q. Are you aware that a gentleman named Mark Patrick signed the agreement on behalf of the Hunter Mountain Investment Trust?

A. I'm aware of his involvement.

Q. But you're not aware as you sit here right now that Mr. Patrick signed on behalf of Hunter Mountain Investment Trust?

A. No.

Q. Can I refer to Hunter Mountain Investment Trust as "HMIT" for purposes of the deposition?

A. Yes, you may.

Q. Are you aware that there are other entities that are affiliated with HMIT that are also party to the settlement agreement?

A. Yes, I am.

Q. Can we generally refer to all of the affiliates of HMIT and HMIT itself as "the HMIT

entities" for purposes of today's deposition?
A. Yes.
Q. Did you review the Dallas Foundation's objection before it was filed?
A. Yes, I did.
Q. Were you responsible for authorizing its filing?
A. Yes.
Q. Are you aware that the objection was filed on behalf of an entity called Empower Dallas Foundation?
A. Yes.
Q. Are you familiar with that entity?
A. Yes, I am.
Q. What is the Empower Dallas Foundation?
A. Empower Dallas Foundation is a supporting organization that is sponsored by the Dallas Foundation. It's a grant-making organization that's been in existence for at least 10 years.
Q. Do you know who formed Empower Dallas Foundation?
A. Yes. I'm aware that it came from Jim Dondero.
Q. What do you mean that it came from Jim

Dondero?
A. Well, that the donation was made from Mr. Dondero.
Q. Did Mr. Dondero make a donation to Empower Dallas Foundation?
A. Yes.
Q. And does Empower Dallas Foundation fund the Dallas Foundation?
A. Technically, it is a -- we are a -- it is a supporting organization of the Dallas Foundation, which is an IRS entity for which it makes grant recommendations that then flow to a donor-advised fund that then the Dallas Foundation effectuates, basically, the grant.
Q. Do you know if the Dallas -- did I step on your words?
A. No.
Q. Do you know if the Dallas -- withdrawn.
Do you know if Empower Dallas Foundation had any contractual obligation to make donations to the Dallas Foundation?
A. I believe that through its charitable status, it is required to make contributions on a regular basis. And we also have governance that

oversees activity within all of our charitable funds.
Q. Is there an agreement of any kind between the Dallas Foundation and Empower Dallas Foundation?
A. Yes. We have a fund agreement.
Q. And under that fund agreement, is the Dallas Foundation entitled to receive contributions from Empower Dallas?
A. Yes. I don't know the technical language offhand.
Q. Do you know if Mr. Dondero plays any role in the management of Empower Dallas Foundation?
A. What do you mean by "management"?
Q. Does he have any involvement in --
A. Yes. As any fundholder, he would have involvement in making recommendations for grants he would like to put into the community, as all of our fundholders do.
Q. Does he play any other role, to the best of your knowledge, with respect to the Empower Dallas Foundation?
A. No.
Q. Are you familiar with --

A. Oh, sorry. May I correct myself?
The Empower Dallas Foundation does have its own governance, of which he is president of the foundation. I'm the vice president. And we have a treasurer. As with all of our supporting orgs, the Dallas Foundation has majority oversight.
Q. The Dallas Foundation has majority oversight of Empower Dallas Foundation?
A. Yes.
Q. And how does it exercise that oversight?
A. In voting.
Q. And who gets to vote?
A. The officers: the president, the vice president, and the treasurer.
Q. Of which entity?
A. Of the supporting organization, the Empower Dallas Foundation.
Q. Can you identify who those people are.
A. Jim Dondero is the president; I'm the vice president; and our CFO, Torrey Littleton, is the treasurer.
Q. How about the Okada Family Foundation? Are you familiar with that?

A. Oh, excuse me -- sorry.
I'm -- I need to correct myself. That is for Empower Dallas, because we have two funds I'm confusing. Empower Dallas Foundation, I am the president; Torrey is the treasurer; and we have a secretary.
For consent agendas, Jim Dondero plays an individual member role.
Q. Ma'am, what are you reading right now?
A. I'm looking at the structure of our supporting organizations.
Q. Can you just hold that up for me so I can see what you're looking at.
A. It literally lists that for all of them.
Q. Do you have any other documents with you today?
A. Just my notes.
Q. Can I ask you to put those away for now.
A. Oh, sure.
Q. How about the Okada Family Foundation; is that another supporting organization?
A. Yes, it is.
Q. And do you know if Mr. Dondero has any

involvement with that entity?
A. It does not have any involvement with that entity.
Q. Okay. Do you know if Mr. Dondero played any role in the Dallas Foundation's decision to object to the proposed settlement between the Highland entities and the HMIT entities?
A. Did not have any role.
Q. Did you ever speak to him about the objection?
A. I have spoken to him in the last six months.
Q. Did you ever speak with him about the objection?
A. No.
Q. Did you speak with him about any of the facts that are set forth in the objection?
A. No.
Q. Was Mr. Dondero a source for some of the facts that are set forth in the Dallas Foundation's objection?
A. No.
Q. Did Mr. Dondero or anyone acting on his behalf provide any information to the Dallas

Foundation that the Dallas Foundation used in its objection?
A. Repeat the question.
Q. Did Mr. Dondero or anybody you believe was acting on his behalf provide any information that the Dallas Foundation used in its objection?
A. I'll abstain from answering that.
Q. Excuse me?
A. I'd rather not answer that question.
Q. I appreciate that, but you have to.
A. Well, there's a lot of context around the formation of where we are today. So I have been engaged with our counterpart over the last six years, so I have a lot of information from working through our grant-making and the management of the assets over the past six years.
So in that same vein, I've learned a lot from many interested parties.
Q. Okay. So I ask you to listen carefully to my question, because it's rather precise.
Do you know if Mr. Dondero or anybody you believed was acting on his behalf provided the Dallas Foundation with any information that is -- that was used to prepare the objection?

A. No.
Q. Are you familiar with the objection?
A. I am familiar. I authorized it and read it.
Q. And it's your testimony that Jim Dondero wasn't the source of any information that's in that objection. Is that fair?
A. That is fair.
Q. Do you know where the idea of filing the objection originated?
A. I don't.
Q. Do you know whose idea, who came up with the idea to object to this -- withdrawn.
Do you know whose idea it was to object to the Highland/HMIT settlement?
ATTORNEY OKIN: Okay. Actually, Ms. Diaz, before you answer, just want to caution you that as long as it's not conveying advice of counsel, you can answer the question.
A. You'll have to repeat that. I don't understand that.
BY ATTORNEY MORRIS:
Q. Do you know who came up with the idea of objecting to the proposed Highland/HMIT settlement?

A. I believe it came out of discussions in another settlement.
Q. What settlement are you referring to?
A. In the Cayman Islands.
Q. What settlement is that?
A. Well, it has to do with the three large supporting orgs and an entity called DAF Holdco.
Q. Which three large supporting orgs are you referring to?
A. Kansas City Foundation; Santa Barbara Foundation; Highland Dallas Foundation; and really in a small way, North Texas Community Foundation. All --
Q. And I apologize. What did you just refer to those entities as? Supporting organizations?
A. Yes.
Q. The Kansas -- and you called it the Kansas City --
A. Foundation.
Q. -- Foundation, the Santa Barbara Foundation and the Dallas Foundation? And those are three additional supporting organizations of the Dallas Foundation?

A. Sorry. We have three -- four community foundations; right? Dallas Foundation, Santa Barbara Foundation, Kansas City Foundation, and North Texas Community Foundations.
The three -- Kansas City, Dallas and Highland -- I'm sorry -- Dallas, Kansas City, and Santa Barbara all have supporting organizations that were the result of contributions from Highland Capital in 2011.
Q. Do you know if Mr. Dondero has any relationship to the Dallas, Kansas City, or Santa Barbara Foundations that you just identified?
A. My understanding is they have -- he has the same structure of supporting org with Kansas City, Santa Barbara, and Dallas.
Q. Is he the president of each, to the best of your knowledge?
A. Yes.
Q. And are those the entities that commenced the Cayman Islands proceedings, to the best of your understanding?
A. Yes.
Q. Is it your understanding that Mr. Dondero directed those entities to do so?

A. No.
Q. Who directed those entities to do so, to the best of your knowledge?
A. CEOs of the organizations.
Q. And who are they?
A. Debbie Wilkerson is the CEO of Kansas City. Jackie Carrera is the CEO of Santa Barbara. Rose Bradshaw is the CEO of North Texas Community Foundation, although she did not enter in, in the formal filing. They have a very de minimis role in the asset.
Q. Are you aware that Mr. Dondero filed a declaration or an affidavit in the Cayman Islands in support of the Community Foundation's litigation that they commenced?
A. I did see that.
Q. Did you read it?
A. Yeah.
Q. Did you see any familiarity between that declaration and the Dallas Foundation's objection?
A. I think there were some similarities because of the nature of the activities that have been happening.
Q. Did you learn, when you read

Mr. Dondero's declaration in the Cayman Islands, that he's actually funding that litigation on behalf of the supporting organizations?
A. No, that's not when I learned that.
Q. That's not when you learned it or -- withdrawn.
Are you aware that he's funding that litigation?
A. Yes.
Q. When did you learn that he was funding that litigation?
A. Before we got into litigation.
Q. Is he funding this litigation on behalf of the Dallas Foundation?
A. Yes, he is.
Q. And how much money did he provide for the funding of this litigation?
A. We have not agreed on an amount. As with any of our fundholders', legal expenses will get paid through by the fund. So that's a very common business practice. And it would go until the legal issues ceased.
Q. But he's made a commitment to fund -- to personally fund the expenses of the Dallas Foundation in connection with this litigation; is

that right?
A. Yes.
Q. Are you aware of any particular reason that that's not disclosed in the Dallas Foundation's objection?
A. I'm not aware.
Q. Why did the Dallas Foundation file the objection on behalf of Empower Dallas Foundation?
A. Well, we filed the objection on behalf of both Empower and Okada Family Foundation, in essence, because the person who has been overseeing the activity ceased to communicate with us as of last fall. And there were enough irregularities in our communication and accounting leading up to then some pretty dramatic changes in valuations that raised a red flag for us.
Q. Who is the person that you're referring to?
A. Mark Patrick.
Q. And did the Empower Dallas Foundation ask the Dallas Foundation to file this objection on its behalf?
A. As fiduciaries of all of our charitable assets, we oversee the activity; and

when there is any irregular activity, we investigate.
Q. I appreciate that. I'm just asking you if the Empower Dallas Foundation asked the Dallas Foundation to file the objection on its behalf.
A. Well, since I am representative of the Empower Dallas Foundation, I don't have to ask anybody except ourselves to do that.
Q. And did you confer with Mr. Dondero about that decision?
A. I think we informed him.
Q. Did he review a copy of the objection before it was filed?
A. Not to my knowledge, no.
Q. Are you aware that the Dallas Foundation also filed the objection on behalf of certain segregated accounts held at Crown Global Life Insurance Limited?
A. Yes.
Q. Can I refer to Crown Global Life Insurance Limited as just "Crown Global"?
A. Yes.
Q. And can I refer to the segregated accounts that are identified in the Dallas

Foundation's objection as "the segregated accounts"?
A. Yes.
Q. And are you familiar with those segregated accounts?
A. At a high level.
Q. What's your understanding at a high level of what those segregated accounts are?
A. That the Crown Global assets are really insurance annuities that pay out to the fund; and that's the source of income for charitable purposes.
Q. Where does the income from the annuity flow to?
A. Flows to the supporting organizations.
Q. And then the supporting organizations have the proceeds from the annuity available for the foundations; is that fair?
A. Yes.
Q. And do you know who took out these insurance policies or these annuities? Which of the -- withdrawn.
Can you identify the supporting organization that funded the purchase of the annuities?

A. Empower Dallas Foundation and Okada Family Foundation.
Q. And is the cash that is thrown off from the annuities -- withdrawn.
To the best of your understanding, is the cash that's thrown off from the annuities the sole source of income for Empower Dallas Foundation and the Okada Foundation?
A. That's my understanding.
Q. Is it your understanding that the Dallas Foundation has not received anything of value from Empower Dallas Foundation or the Okada Family Foundation other than proceeds from the annuities?
A. That's my understanding.
Q. Do you know why the Dallas Foundation filed the objection on behalf of the segregated accounts at Crown Global?
A. Yes.
Q. Why did the Dallas Foundation file its objection on behalf of the segregated accounts?
A. As I said earlier, because there had been activity and essentially a write-down of 40 percent of value, we were concerned that there were activities within Crown Global for the

organizations that support that that we did not have any, you know, access to, vision or communication around.

Q. Does the Dallas Foundation have any relationship with Crown Global?

A. Yes.

Q. As it pertains to -- what relationship does the Dallas Foundation have with Crown Global?

A. Well, I don't understand on a transactional, but we get quarterly reports from them. They obviously send the proceeds to us. I mean, they are a fiduciary to us in the same way we are to others.

Q. Crown Global is?

A. Yeah.

Q. With respect to the disbursement of proceeds from the annuity?

A. Yes.

Q. Okay. So the proceeds from the annuity don't go to Empower Dallas or the Okada Family Foundation; they get remitted directly to the Dallas Foundation.

Do I have that right?

A. No. They go -- they go to the

supporting organizations. But in our governance that -- I refer to both as -- it flows into our finance office, and then they get allocated to the foundations.

Q. You mentioned that there was a 40 percent write-down in value. Is that with respect to the annuities?

A. I don't know all of the transactions that led up to that. But what we understood, there were a few -- sorry.

There are a few requests for us to approve that we didn't understand and sent them to our counsel, and then got the first-quarter report for March 30th, and it was significantly lower and we didn't know why.

So in asking for that, we found out there was a decline.

Q. And is that -- is it your understanding that it's the decline in value -- withdrawn.

Is it your understanding that it's the unexplained decline in value that caused the Dallas Foundation to file the objection on behalf of the segregated accounts?

A. Yes.

Q. Did anybody ask the Dallas Foundation to file the objection on behalf of the segregated accounts?

A. No.

Q. Can you identify the owner of the segregated accounts on behalf of -- on whose behalf the Dallas Foundation filed the objection?

Withdrawn. Too many words.

Do you know who owns the segregated accounts?

A. No. I won't guess.

Q. Are you aware that the owner of the segregated accounts is Crown Global?

A. Oh, yes.

Q. And so is that your understanding, that Crown Global --

A. Yes.

Q. -- owns the segregated accounts?

A. Yes.

Q. Did anybody from the Dallas Foundation seek Crown Global's consent and approval before filing the objection on behalf of the segregated accounts?

A. Yes.

Q. Yes?

And who at Crown Global gave the authorization, if you know?

A. Mr. -- the CEO and their chief legal, Hernandez -- Paul --

ATTORNEY OKIN: Let me interrupt here too, John. You're acting as though the objection was filed solely by the Dallas Foundation. We represent two clients here. We represent the Dallas Foundation and Crown Global.

And you're putting Ms. Diaz in a position where I think she thinks she has to justify having -- Crown Global's actions when they -- we represent them as well.

ATTORNEY MORRIS: Well, as I read the pleading that you filed, it said the Dallas Foundation -- I won't --

ATTORNEY OKIN: I think that's a --

ATTORNEY MORRIS: I'll ask the questions, and we'll --

ATTORNEY OKIN: Take a look at our signature block. It says clearly that we're doing it on behalf of the Dallas Foundation and Crown Global.

BY ATTORNEY MORRIS:

Q. Ms. Diaz, do you know if the Dallas

Foundation ever appeared in the Highland bankruptcy case before it filed this objection?
A. I do not believe so.
Q. To the best of your knowledge, the Dallas Foundation never filed a claim against Highland in the Highland bankruptcy case; correct?
A. No.
Q. To the best of your knowledge -- withdrawn.
Have you ever heard of the Highland Claimant Trust?
A. No.
Q. So is it fair to say that you have no reason to believe that the Dallas Foundation has any interest in the Highland Claimant Trust?
A. No. That is not -- that's not fair to claim.
Q. So is it your testimony that you believe the Dallas Foundation has a direct or indirect interest in the Highland Claimant Trust?
A. What you asked me was had we ever participated and did we then have any result from it.
I don't know the answer to that

question.
Q. I apologize if my questioning wasn't clear to you. Let me try again.
To the best of your knowledge, the Dallas Foundation has never appeared in the Highland bankruptcy case until it filed the objection that we're talking about today; correct?
A. I don't know the answer to that.
Q. But to the -- you have no knowledge that they ever did; is that fair?
A. I have no knowledge.
Q. Okay. And you have no knowledge that the Dallas Foundation ever filed a claim against Highland in the Highland bankruptcy case; correct?
A. I have no knowledge of that.
Q. And you have no knowledge that the Dallas Foundation has any interest of any kind in the Highland Claimant Trust; correct?
A. I do not agree with that statement.
Q. What knowledge do you have that the Dallas Foundation has an interest in the Highland Claimant Trust?
A. Because of the relationship between

Hunter Mountain and how it feeds up to Crown Global and, therefore, the supporting organizations.
Q. It might be my fault that I'm not being clear, but I'm really just focused on Highland right now. Has nothing to do with Crown Global --
A. Okay.
Q. -- or Hunter Mountain; it's just Highland.
A. Okay.
Q. Are you aware that as a result of the bankruptcy, an entity Called the Highland Claimant Trust was formed?
A. I was not, no.
Q. Okay. So if you weren't aware that an entity called the Highland Claimant Trust was formed, is it also fair to say you have no knowledge that the Dallas Foundation has an interest in the Highland Claimant Trust?
A. Okay.
Q. Okay. And does the Dallas Foundation have any contractual relationship with Highland Capital Management, LP?
A. No.

Q. Has the Dallas Foundation ever had a contractual relationship with Highland Capital Management, LP, to the best of your knowledge?
A. No.
Q. Does the Dallas Foundation have any contractual relationship with an entity called the Highland Claimant Trust, to the best of your knowledge?
A. No.
Q. And to the best of your knowledge, has the Dallas Foundation ever had a contractual relationship with an entity called the Highland Claimant Trust?
A. No.
Q. Do you have any reason to believe, as you sit here today, that Highland Capital Management, LP, owes any duties or obligations to the Dallas Foundation?
ATTORNEY OKIN: Object to form.
BY ATTORNEY MORRIS:
Q. You can answer.
A. Can you ask the question again.
Q. Sure.
As you sit here today, do you have any reason to believe that Highland Capital

Management, LP, owes any duties or obligations to the Dallas Foundation?

ATTORNEY OKIN: Object to form.

A. No.

BY ATTORNEY MORRIS:

Q. As you sit here today, do you have any reason to believe that Highland Capital Management, LP, ever had any duties or obligations that it owed to the Dallas Foundation?

ATTORNEY OKIN: Object to form.

A. No.

BY ATTORNEY MORRIS:

Q. Are you aware that if the settlement agreement between the Highland entities and the HMIT entities is approved, the HMIT entities will receive cash and other assets pursuant to the terms of the settlement agreement?

A. I'm assuming that there is assets within the agreement.

Q. Have you reviewed the settlement agreement yourself, Ms. Diaz?

A. No.

Q. Are you generally familiar with the terms of the settlement agreement?

A. At a high level.

Q. What's your understanding at a high level?

A. That once the settlement is complete, that Hunter Mountain will receive assets of some size that will flow up to Crown Global.

Q. Do you know if the requirement that the assets flow up to Crown Global is part of the settlement agreement that's before the Court and that the Dallas Foundation is objecting to?

A. That was our understanding.

Q. From the agreement itself?

A. I have not seen the settlement agreement.

Q. So you authorized an objection to a settlement agreement that you haven't seen; is that fair?

A. That's fair.

Q. Do you have any reason to believe that the Dallas Foundation has a right to recover any of the assets you just described that HMIT will receive if the settlement is approved by the Court?

ATTORNEY OKIN: Object to form.

A. Can you repeat the question.

BY ATTORNEY MORRIS:

Q. Do you have any reason to believe that the Dallas Foundation has a right to recover any portion of the assets that HMIT will receive if the settlement agreement is approved by the bankruptcy court?

ATTORNEY OKIN: Object to form.

A. My job is to protect the charitable assets under our organization's fiduciary compliance role; and so if there is any opportunity for assets to either be diminished or not move forward, it's my job to ensure that I've done everything I can to recover them.

BY ATTORNEY MORRIS:

Q. But do you have an understanding as to whether or not -- withdrawn.

I think you just testified that it's your understanding at a high level that HMIT will receive certain assets if the settlement agreement is approved.

Do I have that right?

A. Yes.

Q. Do you have an understanding that the Dallas Foundation is entitled to receive all or any portion of the assets that HMIT would receive

under the settlement agreement?

ATTORNEY OKIN: Object to form.

A. I don't know that.

BY ATTORNEY MORRIS:

Q. You don't know that?

A. (Shakes head.)

Q. Have you asked anybody whether the Dallas Foundation has a right to recover any portion of the assets that HMIT will receive under the settlement agreement?

ATTORNEY OKIN: Before you answer that, Ms. Diaz, I'll just remind you: Other than disclosing any of your conversations with counsel for you or for the foundation.

BY ATTORNEY MORRIS:

Q. But you can answer the question.

A. You'll have to ask the question again.

Q. No problem. I appreciate that.

Did you ever ask anybody whether the Dallas Foundation had a right to receive any of the assets that HMIT will receive under the settlement agreement?

A. Like somebody-who in your question?

Q. Anybody. Did you ever ask the question of anybody? Let's just start with "yes"

or "no."
A. Yes.
Q. And who did you ask?
A. I'll strike that, because it would be -- I couldn't tell you definitively I did that.
Q. Did Mr. Dondero tell you that the Dallas Foundation had a right to the assets that HMIT was going to receive under the settlement agreement?
A. No.
Q. And you don't recall asking that question of anybody; is that fair?
A. The only person I talked to this -- about these assets to is Mark Patrick.
Q. And did Mr. Patrick tell you that the Dallas Foundation had a right to recover any of the proceeds under the HMIT/Highland settlement agreement?
A. I don't know.
Q. Have you ever received any documents that lead you to believe that the Dallas Foundation has an ownership interest in any of the assets that HMIT will receive under the settlement agreement?

ATTORNEY OKIN: Object to form.
A. My understanding is that through the Hunter Mountain settlement, that those assets flow into the Atlas fund that I know Mark Patrick was managing. So indirectly.
BY ATTORNEY MORRIS:
Q. Is there a document that you reviewed that leads you to believe that the assets HMIT receives will go to the Atlas fund?
A. No.
Q. Can you identify with any specificity which Atlas entity you have in mind that's expected to receive the proceeds from the HMIT/Highland settlement?
A. No.
Q. Do you know if the Atlas entity that you just identified, does that have any obligation to disburse any of the assets it may receive from HMIT?
A. I don't know.
Q. Okay. Let's -- do you have any reason to believe that the Dallas Foundation will be impacted in any way if the settlement between Highland and the HMIT entities is approved?
A. As I said, because the Crown Global is

to disburse money that it receives from Atlas, then there would be an impact. That's why we filed the objection.
Q. Is it fair to say that the Dallas Foundation's concern is what happens to the assets that HMIT receives after the settlement is approved and it's not with the agreement itself?
A. I can't answer that.
Q. If Mark Patrick hadn't done anything to change any of the structure that's described in the Dallas Foundation's objection such that the Dallas Foundation's expectations as set forth in its objection were met, would the Dallas Foundation have any reason to object to this settlement?
ATTORNEY OKIN: Objection; form.
A. I don't know.
BY ATTORNEY MORRIS:
Q. Isn't the problem here that you're concerned about what happens to the money after it's received by HMIT?
A. I'm concerned that the case that's pending in the Cayman Islands shows that $300 million of charitable assets have vanished and that the same type of behavior is happening

in Crown Global and impacts those funds to the tune of $25 million.
Q. But that has nothing to do with Highland.
Fair enough?
A. I don't know.
Q. Do you have any basis to say that Highland has any involvement in anything you just described?
A. Well, I'm not a lawyer and, technically, I don't know how to answer that. But Highland has been involved from day one.
Q. Involved in what?
A. The original contribution to set up the supporting orgs with those shares; like I said, I -- all the different legal entities -- GPs, LPs, et cetera -- I leave you all to track.
Q. If the Court approved the settlement and Mark Patrick decided to give all of the proceeds to the Dallas Foundation, would the Dallas Foundation have any reason to object to the settlement?
ATTORNEY OKIN: Object to form.
A. I think we'd want to know more.
///

BY ATTORNEY MORRIS:
Q. What would you want to know?
A. What are the assets that we would be receiving? What would the structure be?
Q. Well, the assets are set forth in the settlement agreement; right? So there's no mystery about the assets.
Fair enough?
A. I don't know that. I don't know -- are they -- is it cash? Is it securities? What are the nature of the -- I would want to know a lot more before accepting all things like that.
Q. Do you know if Crown Global ever appeared in the Highland bankruptcy?
A. I don't know.
Q. Do you know if the segregated accounts ever filed a notice of appearance in the Highland bankruptcy?
A. I don't know.
Q. Do you know if Crown Global ever filed a claim against Highland in the Highland bankruptcy?
A. I don't know.
Q. Do you know if the segregated accounts ever filed a claim against Highland in the

Highland bankruptcy?
A. I don't know.
Q. Do you know if Crown Global has an interest in the Highland Claimant Trust?
A. No. No, I don't know.
Q. Do you know if the segregated accounts have an interest in the Highland Claimant Trust?
A. I don't know.
Q. Do you know if Crown Global has any contractual relationship with Highland?
A. I don't know.
Q. Do you know if Crown Global has any contractual relationship with the Highland Claimant Trust?
A. No.
Q. I'm going to take Mr. -- I think it's Mr. Littleton's deposition next.
A. Yep.
Q. Do you know if he is affiliated with Crown Global in any way?
A. No. He's an employee of the Dallas Foundation.
Q. Thank you.
Do you know if Crown Global has any right to recover any of the assets that HMIT and

the HMIT entities may receive under the settlement agreement?
ATTORNEY OKIN: Object to form.
A. I don't know.
BY ATTORNEY MORRIS:
Q. Have you asked that question of anybody?
ATTORNEY OKIN: Other than your lawyers, you can answer that, Ms. Diaz.
ATTORNEY MORRIS: Please --
BY ATTORNEY MORRIS:
Q. Was the answer "no," Ms. Diaz?
A. Ask the question again, please.
Q. Have you ever asked anybody whether Crown Global had the right to receive any of the assets that Highland will convey to HMIT under the settlement agreement?
A. No.
Q. We're using the phrase "HMIT entities" to mean the entities on whose behalf Mark Patrick signed the settlement agreement; right? Are we on the same page?
A. That's what you're telling me.
Q. Okay. Are you familiar with any of those entities?

A. Tell me what they are.
Q. Are you familiar with any of the Rand entities?
A. I'm familiar with Rand.
Q. And what's your familiarity with Rand?
A. Certainly it was another vehicle that flowed through to Atlas. And when Mr. Patrick came to see me last October, told me that there might be some issues with Rand and that structure might be changing. That's vague.
Q. Let's stick with the Hunter Mountain Investment Trust.
Are you aware of any assets that the Hunter Mountain Investment Trust owns today?
A. No.
Q. Was it your understanding that Mr. Patrick controlled Rand?
A. Yes.
Q. And is it your understanding that he controls Rand today?
A. Yes.
Q. And going back to Hunter Mountain Investment Trust, you're not aware of any assets that that entity holds today; correct?
A. No.

Q. Were you --
A. I'm assuming Rand is one of the assets, I guess.
Q. Were you ever -- did you ever know -- were you ever aware of any asset that HMIT owned?
A. Well, Atlas.
Q. It's your understanding --
A. Yeah, I feel like I'm being quizzed on Hunter Mountain Trust.
ATTORNEY OKIN: Let me interrupt here. John, two things.
One, if you want to show her an org chart so she can actually see these entities in a way that actually would help her remember them. Nobody can possibly keep them in their mind cold.
And, second, Ms. Diaz is not going to be our witness on this Hunter Mountain structure and the Rand structure. You can keep asking her questions about it and testing her memory on it, but I don't think you're going to find that the answers are going to be any different.
Mr. Littleton will talk to these issues, yes. I can't promise you he'll be able to answer every one of your questions. But to the extent you want somebody with the Dallas

Foundation's knowledge of the workings of that structure, he's the one to ask about that.
ATTORNEY MORRIS: I'll continue to ask the questions, but I appreciate that.
BY ATTORNEY MORRIS:
Q. Do you know if the Dallas Foundation ever received anything of value from any of the HMIT entities?
A. Crown Global.
Q. Crown Global is not an HMIT entity. So I'm asking you to just focus on the entities that Mark Patrick controlled, the Rand entities, the Atlas entities and Hunter Mountain.
Did any of those entities ever give anything of value to the Dallas Foundation?
A. Not directly that I'm aware of, no.
Q. Did any of those entities ever have any business dealings with the Dallas Foundation?
A. Only in the relationship with Crown Global.
Q. Do you have any understanding as to whether any of the HMIT entities owes any duties or obligations to the Dallas Foundation today?
ATTORNEY OKIN: Objection to form.
A. I don't know.

BY ATTORNEY MORRIS:
Q. I understand there was some corporate reorganization earlier this year. I think that's described in the Dallas Foundation's objection.
Is that just generally fair?
A. As it relates to Mr. Patrick?
Q. Yes.
A. (Nods head.)
Q. Okay. Do you have any reason to believe that before Mr. Patrick effectuated those changes, that any of the HMIT entities owed any duty or obligation to the Dallas Foundation?
ATTORNEY OKIN: Objection to form.
A. I don't know.
BY ATTORNEY MORRIS:
Q. Are you aware that HMIT filed a couple of years ago a motion in the bankruptcy court for permission to bring certain claims against Highland Capital Management and a gentleman named James Seery?
A. No.
Q. Nobody ever told you that; is that fair?
A. Fair.
Q. Are you aware that Highland contends

that the settlement agreement that it has entered into with the HMIT entities is the product of good-faith, arm's-length negotiations?
A. Am I aware? No.
Q. Do you have any knowledge of the nature of any negotiations between the Highland entities and the HMIT entities?
A. I'm aware that it's been going on for four years.
Q. I'm just talking about the settlement agreement now.
A. Okay.
Q. Do you have any knowledge of any facts concerning the negotiation of that particular settlement agreement?
A. No.
Q. Do you have any knowledge of any facts that might suggest that the settlement agreement was not the product of good-faith, arm's-length negotiations?
A. No.
Q. Do you have any reason to believe that the proposed settlement is unfair to Highland Capital Management, LP?
ATTORNEY OKIN: Object to form.

BY ATTORNEY MORRIS:
Q. You can answer, ma'am.
A. I don't know.
Q. Do you know whether the proposed settlement is unfair to the Highland Claimant Trust?
A. I don't know.
ATTORNEY OKIN: Object to form.
BY ATTORNEY MORRIS:
Q. You don't have a view on that; is that fair?
A. Yes.
Q. And is it fair that in connection with the preparation and the filing of the objection -- withdrawn.
The Dallas Foundation, in its objection, does not contend that the settlement is unfair to Highland Capital Management; is that correct?
A. I don't know.
Q. You reviewed and authorized the filing of the objection; isn't that right, ma'am?
A. Right.
Q. And you're familiar with the document that you authorized to be filed; fair?

A. Yes.
Q. And based on your recollection, do you recall the Dallas Foundation making any assertion or claim that the settlement agreement was unfair to Highland Capital Management, LP, or any of its affiliates?
A. The claim was that it was unfair to the supporting organizations.
Q. And how is the settlement agreement unfair to the supporting organizations?
A. Because we would -- well, what we claimed is that because of our lack of transparency of the flow of those funds and the changes in the fund recently, that the supporting organizations were losing their assets and any potential future assets.
Q. Is there any other basis that you're aware of by which the Dallas Foundation contends that the settlement agreement is unfair to it?
A. No.
Q. Does the Dallas Foundation contend that the settlement agreement is unfair to Hunter Mountain Investment Trust?
A. I don't know.
Q. As the person who authorized the

filing of the objection on behalf of the Dallas Foundation, do you have any reason to believe that the terms of the settlement are unfair to the Hunter Mountain Investment Trust?
A. I do not.
Q. Are you aware that under the settlement agreement, the HMIT entities and the Highland entities are releasing each other from all liabilities except for the liabilities arising under the settlement agreement?
A. I'm assuming that's what the settlement is intended to do.
Q. And the Dallas Foundation doesn't have any concern about the scope of the mutual releases; is that fair?
ATTORNEY OKIN: Objection to form.
A. I don't know.
BY ATTORNEY MORRIS:
Q. As the person who authorized the filing of the objection on behalf of the Dallas Foundation, do you recall there being any statement in the objection where the Dallas Foundation expressed any concern at all about the scope of the mutual releases that are in the settlement agreement?

ATTORNEY OKIN: Object to form. The document speaks for itself. I mean, if you want to show it to her and ask her to find it, that's fine.
BY ATTORNEY MORRIS:
Q. You can answer, ma'am.
A. I don't --
Q. I'm sorry?
A. I don't recall that.
Q. Okay. Thank you.
Are you aware of any facts that could give rise to a claim by the Dallas Foundation against any Highland entity?
ATTORNEY OKIN: Object to form.
A. Repeat the question.
BY ATTORNEY MORRIS:
Q. Are you aware of any facts that would support a claim by the Dallas Foundation against Highland Capital Management, LP, or the Highland Claimant Trust?
ATTORNEY OKIN: Object to form.
A. No.
BY ATTORNEY MORRIS:
Q. Do you understand the basis for the Dallas Foundation's objection?

A. Yes.
Q. Can you articulate that for me. What's your understanding of the basis of the Dallas Foundation's objection?
ATTORNEY OKIN: Object to form.
A. Our objection --
BY ATTORNEY MORRIS:
Q. Pardon me? What's that, ma'am?
ATTORNEY OKIN: I said I object to the form of the question.
Go ahead. You can answer.
A. Our objection is based on -- and I've said this before -- the fact that there's been irregular significant erosion of the assets to date by the party who seems to control a lot of the liquidity flows and oversight of the assets.
And so with the backdrop of all of the work we're doing in the Cayman Islands to recover 300-plus million dollars, this seemed not insignificant to protect the $25 million for these two supporting organizations.
So as this happens on Wednesday, what we've learned is that every opportunity we can to slow down decisions that are made give us time to understand where -- what is happening with these

charitable assets and where they are.
BY ATTORNEY MORRIS:
Q. Do you have any reason to believe that Mark Patrick does not have the authority to enter into the settlement agreement on behalf of each of the HMIT entities?
ATTORNEY OKIN: Object to the form of the question.
A. I don't know what authority he has to enter into that.
BY ATTORNEY MORRIS:
Q. Do you have any facts that you can share with me that suggest that Mr. Patrick does not have the legal authority to enter into the settlement agreement on behalf of any of the HMIT entities?
ATTORNEY OKIN: Object to the form of the question.
A. I don't.
BY ATTORNEY MORRIS:
Q. Is it your understanding that Mr. Patrick was required to obtain the Dallas Foundation or Crown Global's consent before entering into this settlement agreement?
A. I think what we would have appreciated

and what had been our business as usual was information prior to and during anything that involved the assets under our aegis.
Q. Do you know if any of the HMIT entities had an obligation or duty to provide information to the Dallas Foundation or Crown Global before entering into the settlement agreement?
ATTORNEY OKIN: Object to the form of the question.
A. I don't --
BY ATTORNEY MORRIS:
Q. I'm sorry. Ms. Diaz, you don't know?
A. I don't contractually know that. But whether it's authority that he was given or assumed, he should have communicated with us.
Q. Should he have communicated with you before filing a lawsuit against the Highland -- withdrawn.
Do you believe that Mr. Patrick should have communicated with the Dallas Foundation before filing a lawsuit on behalf of Hunter Mountain Investment Trust against Highland, Mr. Seery, and others?
A. I don't know.

Q. You don't have a view on that; is that fair?
A. Fair.
Q. I apologize if I asked this, but do you have any reason to believe that Mr. Patrick was required to obtain either the Dallas Foundation's or Crown Global's consent before entering into the settlement on behalf of the HMIT entities?
ATTORNEY OKIN: Object to form of the question.
A. I don't know.
BY ATTORNEY MORRIS:
Q. Do you have any reason to believe that the Dallas Foundation or Crown Global has -- withdrawn.
Do you know if the Dallas Foundation has a direct ownership interest in any of the HMIT entities that are party to the settlement agreement?
A. I don't believe so.
Q. Do you know if Crown Global has a direct ownership interest in any of the HMIT entities that are party to the settlement agreement?

A. I don't know.
Q. Do you know if the Dallas Foundation has an indirect ownership interest in any of the HMIT entities that are party to the settlement agreement?
A. Indirect ownership?
ATTORNEY OKIN: Object to the form of the question.
A. I don't know.
BY ATTORNEY MORRIS:
Q. Did you ever ask anybody?
A. No.
Q. No?
A. No.
Q. Do you know if Crown Global has an indirect ownership interest in any of the HMIT entities that are party to the settlement agreement?
ATTORNEY OKIN: Object to the form of the question.
A. I don't know.
BY ATTORNEY MORRIS:
Q. Do you know if the Dallas Foundation has any right to control any of the HMIT entities?

A. No.
Q. No, you don't know; or, no, they don't have that right?
A. No, we don't have that right.
Q. Do you know if Crown Global has the right to control any of the HMIT entities?
A. I don't know.
Q. Do you know if the Dallas Foundation has the right to approve transactions that are entered into by any of the HMIT entities?
A. I don't know.
Q. Do you know if Crown Global has the right to approve any transaction that's entered into by any of the HMIT entities?
A. I don't know.
Q. Do you know if Crown Global or the segregated accounts has any right to control any of the HMIT entities?
A. I don't know.
Q. Do you know if Crown Global or the segregated accounts has any right to approve transactions that any of the HMIT entities might enter into?
A. I don't know.
Q. Do you know if any of the HMIT

entities were required to obtain the segregated accounts' consent before entering into the settlement agreement?
ATTORNEY OKIN: Object to the form of the question.
A. I don't know.
ATTORNEY MORRIS: Okay. We're going to put up on the screen -- Nathan, can you please put up on the screen the Dallas Foundation's objection.
BY ATTORNEY MORRIS:
Q. And while we wait, Ms. Diaz, I will tell you that, you know, the good news with COVID -- or at least one piece of the good news -- is that we learned to do these remote depositions so people don't have to travel and it's much less expensive for clients.
The bad news is that I'm not in the room with you and we have to put documents on the screen, and sometimes that can be a little bit cumbersome.
The Dallas Foundation's objection is fairly lengthy. This is not a test at all. I am going to point to certain parts of the objection. But if you believe that you need to see any other

portion of the document, will you let me know that so that I give you a chance to be fully informed?
A. Yes.
ATTORNEY MORRIS: Okay. I think it's towards the end, Nathan, paragraph 32.
This will be -- let's just call it Highland 1.
(Whereupon, Exhibit Highland 1 was marked for identification and is attached hereto.)
BY ATTORNEY MORRIS:
Q. So we've got up on the screen paragraph 32 of the objection. And the third sentence states, "Unfortunately, it does not appear, however, that joint official liquidators are parties to or have authorized the settlement."
Do you see that?
A. I see it.
Q. Okay. Are you aware that joint official liquidators were appointed by a Cayman court?
A. Yes.
Q. Do you know the entity over which the

joint official liquidators were appointed?
A. I've met with them.
Entity?
ATTORNEY OKIN: Ms. Diaz, maybe you need the question repeated. You seem to be confused by the wrong part of it.
THE WITNESS: Okay.
ATTORNEY MORRIS: Thank you, Matt. That's fine. That's fine. I'll ask the question again.
BY ATTORNEY MORRIS:
Q. Can you identify the entity that's the subject of the Cayman Islands liquidation proceeding?
A. Yes; the DAF Holdco.
Q. Are you aware that all of the HMIT entities are Delaware corporations? Withdrawn.
Are you aware that all of the HMIT entities were formed under the laws of the State of Delaware?
A. Sounds familiar.
Q. And have you ever communicated with the joint official liquidators?
A. Yes.
Q. When did you do that?

A. Two weeks ago.
Q. Did you make them aware of Highland's motion to have the settlement between the Highland entities and the HMIT entities approved?
A. I'd have to look at my calendar.
Q. Do you need your calendar to refresh your recollection as to whether or not you informed them of the Highland settlement motion?
A. I would want to make sure that the day I met with them is clear in my mind as to this versus when we've talked to them.
Q. Fair enough.
A. As you can imagine, there's been a lot of detail around all of these cases.
Q. Sure. And I don't mean to be disrespectful at all, ma'am. I apologize if you took it that way.
Do you recall ever making the joint official liquidators aware of the Dallas Foundation's objection to the settlement motion?
A. As I said, I don't know if we've made them aware of the objection, except as it relates to ancillary activity that we're concerned about regarding Mark Patrick.
So this was filed on June 9th, and I

would want to make sure that I spoke with them before or after that; and I don't have that.
Q. Do you know if anybody provided a copy of the Dallas Foundation's objection to the joint official liquidators?
A. I don't know that.
Q. Did you ever consider doing that?
A. I will after today.
Q. Do you know if anybody asked the joint official liquidators to make an appearance in this case?
A. I don't know that.
Q. Did you ever ask the joint official liquidators to appear in this case?
A. We've already precluded that we don't know whether I've actually talked to them about this case, so that's moot; right?
Q. Okay. Do you believe that Mr. Patrick was required to obtain the joint official liquidators' authorization before entering into the settlement agreement?
A. I don't know that.
ATTORNEY OKIN: Object to the form of the question.
///

BY ATTORNEY MORRIS:
Q. I'm sorry, ma'am. What did you say?
A. I don't know that.
Q. Did you have any reason to believe that Mr. Patrick was required to obtain the joint official liquidators' consent before entering into this settlement agreement?
A. I don't know.
Q. Do you have any reason to believe that the joint official liquidators have any authority to reject the proposed settlement?
ATTORNEY OKIN: Object to the form.
A. I don't know.
BY ATTORNEY MORRIS:
Q. A little bit further down, towards the bottom of this paragraph, there's a reference, it says that the Court-appointed fiduciary, quote, may -- withdrawn.
It says:
"Indeed, many of Mr. Patrick's actions, including the insertion of newly created entities into the fund's structure for the apparent purpose of diverting charitable assets, will now be subject to the scrutiny of an

independent, Court-appointed fiduciary and may be subject to clawback or other avoidance actions in the Cayman liquidation or such other tribunal as has jurisdiction."

Do you see that?

A. No. You need to scroll down on the --

Q. It's just at the end of paragraph 32 here. It's the last sentence of 32.

A. And so what's your question?

Q. I just want to make sure that you and I are on the same page, because I'm going to ask some questions about this sentence.

A. Yeah.

Q. You're not an expert in Cayman Islands law; fair?

A. Fair.

Q. You're not a lawyer, are you?

A. Nope.

Q. You're not an expert on clawback or other avoidance actions, as that phrase is used in the Dallas Foundation's objection in paragraph 32; fair?

A. Fair.

Q. Do you have any understanding as to

what facts must be established to succeed in a clawback or other avoidance action?

A. Repeat the question.

Q. Do you have any understanding as to what facts somebody needs to prove in order to succeed on a clawback or other avoidance action?

A. Not in a corporate setting.

Q. Is there any other type of setting that would pertain to the Dallas Foundation's claims against Mr. Patrick?

A. No.

Q. Okay. Do you have a view as to the likelihood that the Dallas Foundation might succeed in clawing back or asserting another avoidance action to set aside the settlement agreement if it's approved by the bankruptcy court?

ATTORNEY OKIN: Object to form.

A. I don't know.

BY ATTORNEY MORRIS:

Q. And you don't have a view; is that fair?

A. No, I just really don't know --

Q. If we could --

A. -- whether we will.

Q. Okay. You would have to speculate; is that fair?

A. Yes.

ATTORNEY MORRIS: Can we scroll down to paragraph 33, please.

ATTORNEY OKIN: John, how much longer do you anticipate going? We talked about these being an hour and a half.

ATTORNEY MORRIS: Correct. And we started at exactly 2:37 New York time. I expect to finish at 4:07 New York time.

ATTORNEY OKIN: Are we doing additional questions from anybody else?

ATTORNEY MORRIS: Mr. Phillips, do you have any questions?

You're on mute, sir.

We'll be done in the 90 minutes.

ATTORNEY PHILLIPS: Not at this time.

ATTORNEY MORRIS: Okay. Thank you.

BY ATTORNEY MORRIS:

Q. So in paragraph 33, it says at the end, quote: "Even if approved by this Court, consummation of the settlement is not likely to buy the peace the debtor now seeks."

Do you see that?

A. Yes.

Q. Are you aware of anything in the Dallas Foundation's objection that suggests the Highland parties have done anything wrong here?

A. Repeat that question.

Q. Is there anything in the Dallas Foundation objection that you read and authorized to be filed that suggests that any of the Highland parties have done anything wrong?

ATTORNEY PHILLIPS: I'm going to object to that question because you said that she read and authorized it to be filed.

ATTORNEY MORRIS: I apologize. I apologize. Thank you.

BY ATTORNEY MORRIS:

Q. Let me start again, Ms. Diaz.

Do you recall whether there's anything in the Dallas Foundation objection that asserts that any of the Highland parties have done anything wrong in connection with the entry into the settlement agreement?

A. I don't recall.

Q. Are you aware of any facts that cause you to believe that any of the Highland entities did anything wrong in negotiating and entering

into the settlement agreement?
A. I don't know.
Q. If you're not aware of any facts suggesting that Highland has engaged in wrongdoing, do you know why the Dallas Foundation has informed the Court that consummation of the settlement is not likely to buy the peace the debtor now seeks?
ATTORNEY OKIN: Object to form.
A. I'll abstain from answering that.
BY ATTORNEY MORRIS:
Q. That's not a thing, respectfully.
ATTORNEY MORRIS: If -- Matt, if you want to just help your witness out.
ATTORNEY OKIN: You want me to give her the answer?
BY ATTORNEY MORRIS:
Q. Well, there's no abstention, so you have to answer the question, ma'am.
ATTORNEY OKIN: As best you can answer it, Ms. Diaz, answer it. If you can't answer it, tell him you can't answer it.
A. And I'll just say, when you say "Highland," you want to be more specific?
///

BY ATTORNEY MORRIS:
Q. Sure. Highland Capital Management, LP, the Highland Claimant Trust or the Highland Litigation Subtrust.
A. And so repeat the question.
Q. Okay. If you don't have any facts suggesting that they've done anything wrong, why did the Dallas Foundation inform the Court, at the end of paragraph 33, that consummation of the settlement is not likely to buy the peace the debtor now seeks?
ATTORNEY OKIN: Object to form.
BY ATTORNEY MORRIS:
Q. You can answer.
ATTORNEY OKIN: If you can answer it.
A. Again, I'll just repeat that the peace that the debtor seeks will be tainted because of the harm that will come to the Dallas Foundation.
BY ATTORNEY MORRIS:
Q. Anything else?
A. No.
Q. Is the Dallas Foundation considering bringing any claims against Highland, the Highland Claimant Trust or any of its fiduciaries?

A. (No audible response.)
Q. I'm sorry, ma'am. Did you answer?
A. I did. I said, "No."
Q. Thank you.
In paragraph 34 --
ATTORNEY MORRIS: Yeah, right there. Thank you Nathan --
BY ATTORNEY MORRIS:
Q. -- it says, quote: "There is ample evidence that Mr. Patrick has acted and is acting well outside the scope of his authority and fiduciary obligations."
Have I read that correctly?
A. Yes.
Q. Focusing solely on the settlement agreement, do you have any reason to believe that Mr. Patrick is acting outside of the scope of his authority in entering into the settlement agreement on behalf of each of the HMIT entities?
ATTORNEY OKIN: Object to form.
A. And I don't know.
BY ATTORNEY MORRIS:
Q. Okay. Focusing solely on the settlement agreement, do you have any reason to believe that Mr. Patrick is breaching his

fiduciary obligations by entering into the settlement agreement on behalf of each of the HMIT entities?
A. I don't know.
ATTORNEY MORRIS: Can we scroll up to paragraph 16, please.
Do you see paragraph 16 concerns material nonpublic inside information?
A. Yes.
Q. And was Mr. Dondero the source of the information in this particular paragraph?
A. No.
Q. Who was?
A. My attorneys.
Q. That's how you learned about it; is that fair?
A. Yes.
Q. Do you see there's a reference to a put option in the last line of this paragraph?
A. Yes.
Q. Are you generally familiar with that put option?
A. Yes.
Q. And do you know who the counterparty is for that put option?

A. No, I don't.
Q. You don't know?
A. No.
Q. Did you ever ask?
A. I'm sure when we --
ATTORNEY OKIN: Louis, you're not on mute, by the way.
BY ATTORNEY MORRIS:
Q. Go ahead, Ms. Diaz. I'm sorry.
A. I'm sure when we received the contribution, we asked. And you can ask our CFO that question.
My understanding from the original call in Labor Day weekend to our attorney was that we should call the put. That was a 10-year, I believe, and this would have been at year 7; and we didn't understand why he would be calling to ask that. And ...
Q. Has the Dallas Foundation exercised the put as of today?
A. Absolutely not.
Q. Why not?
A. We stopped all activity because this, again, was the beginning of, why is somebody doing that, not giving us the information, not

talking to us directly; and that -- and at advice of counsel, we -- we have been very careful with any of our activities to date.
Q. And do you know what material nonpublic inside information Mr. Patrick supposedly misused?
A. I'll just tell you the quote he gave us, which was Jim Dondero's spiraling out of control and you need to do this because nothing appears to be what it is.
Q. He didn't tell you who -- withdrawn.
Is that your basis for alleging that he had material nonpublic inside information --
A. I'll -- well, I guess, I can't abstain. I don't know.
Q. Do you have any other --
A. If my --
Q. I'm sorry.
A. Well, if my attorney says, "Don't do that," we don't do it.
Q. I appreciate that. I don't quarrel with you. I'm just trying to learn facts here.
Can you identify any information that you believe Mr. Patrick had that constitutes material nonpublic inside information, as that

phrase is used in the Dallas Foundation's objections?
A. Right.
ATTORNEY OKIN: Hold on, John. I assume you're not -- I assume we're talking about information that's no longer nonpublic?
ATTORNEY MORRIS: If -- if you all want to mark this -- I don't know what it is, Matt, so I can't say. And it's not my information either. So I'm happy to mark it confidential if you really prefer.
ATTORNEY OKIN: I -- I don't even know if she knows the answer to the question.
A. I don't know the answer to that. But I will tell you that we quickly got a call from Skyview saying that Mark Patrick was no longer employed there and that that was confidential, yeah, insider information.
BY ATTORNEY MORRIS:
Q. Oh, so somebody at Skyview told you that; is that fair?
A. That's fair.
Q. And who was that at Skyview?
A. Well, it was an attorney for Skyview.
Q. Was it D.C. Sauder?

A. No. A woman.
Q. Okay. So a female attorney at Skyview told you that Mark Patrick had been terminated and that he had material nonpublic inside information.
Do I have that right?
A. That they were investigating him and understood that we had called the -- he had called -- told us to call the put option.
Q. Okay. But as you sit here today, you're not able to tell me what material nonpublic inside information Mr. Patrick supposedly had; fair?
A. Fair.
ATTORNEY MORRIS: Ma'am, thank you so much. I appreciate your time.
Matt, thank you for a professional deposition.
We'll see you all, I guess, in a little bit for the next deposition.
Thanks, folks.
THE COURT REPORTER: Do you want a copy of the transcript?
ATTORNEY OKIN: Yes, rushed, please. Whenever John gets it.

ATTORNEY PHILLIPS: Yes, expedited, like everybody else.

THE COURT REPORTER: Mr. Lang, do you want a copy of the transcript?

ATTORNEY LANG: Yes, please.

(Whereupon, at 3:08 p.m. Central Time, the proceedings concluded.)

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After reading this volume of your deposition, indicate any corrections or changes to your testimony and the reasons therefor on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself.

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I hereby certify that I have read the foregoing transcript of my deposition testimony, and that my answers to the questions propounded, with the attached corrections or changes, if any, are true and correct.

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Gail Inghram,
BA, RDR, CRR, RSA, CA-CSR No. 8635

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EXHIBIT 57

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

In Re: Case No. 19-34054-sgj11

HIGHLAND CAPITAL MANAGEMENT,

L.P.,

Debtor. Chapter 11

---X.

REMOTE VIDEO-RECORDED DEPOSITION of

TORREY LITTLETON

Sunday, June 22, 2025

3:30 p.m. Central time

Reported Stenographically by:

Gail L. Inghram,

BA, RDR, CRR, RSA, CA-CSR No. 8635

WHEREUPON, the remote video-recorded deposition of TORREY LITTLETON was held via video-conferencing on Sunday, June 22, 2025, beginning at approximately 3:30 p.m. Central Time, the proceedings being recorded stenographically by Gail Inghram, Registered Diplomate Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, and transcribed under her direction, there being present:

A P P E A R A N C E S:

[All parties appeared via remote videoconferencing.]

On behalf of Highland Capital Management, and the Highland Claimant Trust:

JOHN MORRIS, ESQ.
jmorris@pszjlaw.com
GREGORY V. DEMO, ESQ.
gdemo@pszjlaw.com
JEFFREY POMERANTZ, ESQ.
jpomerantz@pszjlaw.com
HAYLEY WINOGRAD, ESQ.
hwinograd@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES
780 Third Avenue, 34th Floor
New York, New York 10017-2024
310.277.6910

On behalf of Highland Litigation Trustee:

ROBERT S. LOIGMAN, ESQ.
robertloigman@quinnemanuel.com
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue 22nd Floor
New York, New York 10010
212.849.7615

A P P E A R A N C E S (Cont'd):

On behalf of Defendant Dallas Foundation and Crown Global Life Insurance:

MATTTHEW OKIN, ESQ.
mokin@okinadams.com
DAVID CURRY, ESQ.
dcurry@okinadams.com
OKIN ADAMS BARTLETT CURRY LLP
1113 Vine Street, Suite 240
Houston, Texas 77002
713.228.4100

On behalf of Defendant Dugaboy Investment Trust:

MICHAEL LANG, ESQ.
mlang@cwl.law.com
CRAWFORD WISHNEW & LANG PLLC
1700 Pacific Avenue, Suite 2390
Dallas, Texas 75201
214.817.4500

A P P E A R A N C E S (Cont'd):

On Behalf of Hunter Mountain Investment Trust:

LOUIS M. PHILLIPS, ESQ.

lphillips@kellyhart.com

AMELIA L. HURT, ESQ.

ahurt@kellyhart.com

KELLY HART & HALLMAN LLP

301 Main Street, Suite 1600

Baton Rouge, Louisiana 70801

225.381.9643

VIDEOGRAPHER:

PAUL D'AMBRA

ALSO PRESENT:

NATHAN HALL, Pachulski Stang Ziehl & Jones

JAMES SEERY

SHAWN RAVER

JULIE DIAZ

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EXAMINATION OF: PAGE

TORREY LITTLETON

Attorney Morris 8

PREVIOUSLY MARKED EXHIBITS REFERENCED:

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REQUEST FOR PRODUCTION OF DOCUMENTS

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QUESTIONS MARKED

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(None)

REPORTER'S NOTE:

QUOTATION MARKS ARE USED FOR CLARITY AND DO NOT NECESSARILY REFLECT A DIRECT QUOTE.

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PROCEEDINGS

- - -

WHEREUPON,

TORREY LITTLETON,

being first duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY ATTORNEY MORRIS:

Q. Actually, I just want to start by apologizing to the witness that I did not tell him that Sunday depositions were casual. Thanks for dressing up.

A. I appreciate it. No worries.

Q. And for some of us, Mr. Littleton, every day is Sunday unless we're going to court.

It's nice to meet you, sir.

A. Same here.

Q. Can you hear me okay, sir?

A. Yes, I can hear you.

Q. Okay. Good afternoon. My name is John Morris. I'm an attorney at a law firm who represents Highland Capital Management, LP, and

the Highland Claimant Trust. And we're here today for your deposition in connection with the Dallas Foundation's objection to a certain proposed settlement agreement between Highland and some affiliates and some entities that are controlled by Mark Patrick.

Do you understand that?

A. Yes.

Q. Have you ever been deposed before, sir?

A. No. This is my first time.

Q. Okay. It's not -- just relax. It's a -- it's a formal process, but it's not a complicated process. I'm going to ask you a series of questions, and it's very important that you let me finish my question before you begin your answer. Okay?

A. Yes, sir.

Q. It's important that I allow you to finish your answer before I begin my next question; and if I fail to do that, will you let me know?

A. Yes, sir, I will.

Q. Do you understand that your testimony today is being transcribed by Gail, the court

reporter?

A. Yes.

Q. So everything you and I say is going to be written down verbatim, or that's the goal anyway.

Do you understand that?

A. Yes, I do.

Q. Okay. If there's a question that I ask that you don't understand, will you let me know and I'll try to rephrase it?

A. Yes.

Q. From time to time your lawyer might object to some of my questions. It will give -- it's formal, legal stuff, lawyer stuff. It gives me a chance to think about whether there's a legal infirmity in my question, and it gives me an opportunity to rephrase it if I want.

But unless he directs you not to answer, I'm going to ask you to answer the question anyway. Okay?

A. Okay.

Q. Just so you're not surprised by the process.

If you need a break for any reason at any time, let me know, and I'll try to

accommodate you as long as a question is not pending. Okay?

A. Yes.

Q. Are you affiliated with the Dallas Foundation, sir?

A. Yes, I am.

Q. In what capacity?

A. I am the CFO here at the Dallas Foundation.

Q. How long have you been the CFO of the Dallas Foundation?

A. I've been the CFO here since January 1st of 2022, but I've been with the organization for 13 years.

Q. And what are your duties and responsibilities as the CFO?

A. As the CFO, my main duty is to ensure the proper oversight and fiduciary stewardship of our charitable assets. That means having fiduciary oversight of our investments, our financial reporting, any legal aspects that may impact the foundation in any capacity.

I also serve as a board director as relates to some of our supporting organizations, part of our conversation here today with Empower

Foundation and the Okada Family Foundation.
Q. Are you a lawyer?
A. No, sir.
Q. Are you familiar with a company called Highland Capital Management, LP?
A. Yes, sir.
Q. Are you aware that that entity filed for bankruptcy a number of years ago?
A. Yes, sir.
Q. Are you aware that that entity used to be controlled by a gentleman named Jim Dondero?
A. Yes, sir.
Q. Okay. Are you aware that the Dallas Foundation recently filed an objection in the bankruptcy court overseeing Highland's bankruptcy and the objection pertaining to a proposed settlement agreement between Highland and certain affiliates and certain entities that are controlled by Mr. Patrick?
A. Yes, sir.
Q. Did you review that objection before it was filed?
A. Yeah, I read through the objections. But for the most part, I rely on our legal team to give us a summary and kind of walk us through

some of the pertinent details.
Q. Are you familiar with the entities that Mr. Patrick signed that agreement on behalf of?
A. Yeah; I believe it's the Hunter Mountain Investment Trust.
Q. Right. And you're aware that in addition to the Hunter Mountain -- can we refer to Hunter Mountain Investment Trust as "HMIT" today?
A. Yes.
Q. And are you aware that certain affiliates of HMIT are also party to the settlement agreement that is the subject of this proceeding?
A. I am.
Q. And can we refer to HMIT and those affiliates that are party to the agreement as "the HMIT entities"?
A. Yes.
Q. Okay. It's going to make our day a little bit quicker and a little bit easier.
A. Sure.
Q. Do you know who approved the filing of the objection on behalf of the Dallas Foundation?

A. Yeah, so it was approved by President Julie Diaz.
Q. Anybody else?
A. Then our legal team helped us kind of put together the objection.
Q. Do you know, have you ever met Jim Dondero?
A. I have never met him personally, no.
Q. Have you ever spoken with him?
A. I think I was on one conference call with him one time that I can recall.
Q. Okay. Do you know if he had any role in the preparation of the Dallas Foundation's objection?
A. I didn't have any exposure with Mr. Dondero. So, no, I do not know.
Q. Do you know where the idea of filing the objection originated? Like, whose idea was it?
A. Yes -- yes.
Q. Whose idea was it to file the objection?
A. Well, it's a combination of the Empower and Okada Foundation boards. Just looking at some of the investment activity that

transpired through the first quarter, we had some concerns about the activity. And a portion of that activity was the sale of Hunter Mountain interests through the Rand PE Fund I that ultimately rolled up to the Atlas, LP Fund, which impacted the economic value of the portfolio that's held by Crown Global.
Q. That's why the -- let's unpack that a little bit. I asked where did the -- who came up with the idea of objecting? Let's take that first.
A. Sure, sure. Yeah, I think it was the board of the foundations, so primarily Julie Diaz and myself just kind of thinking through the activity that we became aware of.
Q. And Mr. Dondero is a member of the board; right?
A. That's correct.
Q. And it's just the three of you; correct?
A. That's correct.
ATTORNEY OKIN: Object to form.
BY ATTORNEY MORRIS:
Q. The Dallas Foundation's objection refers to certain litigation pending in the

Cayman Islands.
Are you aware of that?
A. Yes.
Q. Are you aware that Mr. Dondero is funding that litigation on behalf of the supporting organizations that commenced it?
A. Yes, sir.
Q. And you're aware that he's funding this litigation on behalf of the Dallas Foundation; correct?
A. That's correct.
Q. Do you know why Empower Dallas Foundation and the Okada Family Foundation didn't just file the objection in their own name rather than having the Dallas Foundation do it for them?
ATTORNEY OKIN: Object to form.
A. I think we looked it as the Dallas Foundation is the supporting organization of the two entities. And we felt that the Dallas Foundation and our president, Julie Diaz, we just decided to file it under the foundation based on a recommendation from our legal counsel.
BY ATTORNEY MORRIS:
Q. Are you aware that the objection is also filed on behalf of Crown Global Life

Insurance, Limited?
A. Yes, sir.
Q. Okay. And what is Crown Global Life Insurance, Limited?
A. The Crown Global Life Insurance, Limited, is an issuer of insurance annuities.
Q. What -- what role does it play with respect to the Dallas Foundation?
A. Yeah, so it plays a role more so with the Empower Dallas and Okada Family Foundation. They each hold policies with Crown Global through the insurance annuities. So the legal contract is between Empower Dallas and Okada Family Foundation with Crown Global.
Q. And -- and is the withdrawn.
Does the annuity pay dividends or make other distributions?
A. Yeah, it makes distributions to the fund as fixed payments through the contract, yes, sir.
Q. And do those fixed payments go directly from Crown Global to Empower Dallas and the Okada Family Foundation respectively?
A. That's correct.
Q. And do you know what the annuities are

invested in?
A. I don't know the actual underlying investments. I know the annuities have within them the Atlas IDF, LP Fund, and that they -- what ultimately rolls up is the Rand Fund I, the Beacon Mountain and the Hunter Mountain, HMIT, ultimately rolls up.
Q. And is -- are the annuities the sole source of Empower Dallas and the Okada Family Foundation's income, to the best of your knowledge?
A. That's correct, yes, sir.
Q. And does a portion of that income then flow up to the Dallas Foundation?
A. Well, the income doesn't flow to the Dallas Foundation. What does happen is, as Empower and the Okada Family Foundations make recommendations, those recommendations flow to the Dallas Foundation, to the corresponding donor-advised fund; and then ultimately those donor-advised funds make the grants out to the community.
We typically don't get any of the income through the Crown Global vehicle -- the Dallas Foundation doesn't get any income through

the Crown Global vehicle.
Q. Is there anybody in the room with you right now?
A. No, sir.
Q. Do you have any device on other than the computer that we're sharing right now?
A. No. I have a fan on. Is it causing feedback?
Q. No, but I have a fan on too. Maybe it's --
A. Okay. Sorry. Yeah. Sorry about that.
Q. Do you have any notes or anything that you're reading from or that you're looking at?
A. No, sir, no.
Q. Okay. So there are these annuities. How did those annuities get funded? Do you know?
A. Yes. So back in 2015, I believe, in November of 2015, we funded the annuities with about $29 million. So contributions from -- I think it was about $22 million from the -- Mr. Dondero, and then I believe another $7 million from Mr. Okada, which ultimately were sent over to Crown Global to invest in the annuities.

Q. And under the annuities, they pay fixed amounts to both supporting organizations?
A. Yes, sir, that's correct.
Q. And is there any market risk that the supporting organizations have, or is this a -- is it your understanding that it's a contractual obligation of Crown Global to pay that fixed amount for some duration?
A. Yeah, I believe Crown Global takes the risk. They have to pay a fixed amount through the obligation. I believe they take an M&E expense, which compensates for the risk.
Q. What's that last piece? I missed --
A. The M&E expenses, it's part of their -- we receive their statements quarterly. They have an administrative fee that they take, and then they have what they call an M&E expense, which it was explained a while back that's a percentage that they take to compensate for the risk associated with insurance annuities.
Q. And is the annuity tied to a -- is it a fixed period of time, or is it tied to a particular event?
A. That, I cannot answer.
Q. Okay. But is it fair to say that the

supporting organizations paid money to Crown Royal -- Crown Global -- it's getting late. Sorry.
ATTORNEY OKIN: Sounds good.
THE WITNESS: No. Sounds good, yeah.
BY ATTORNEY MORRIS:
Q. Let me restate the question.
Is it your understanding that the supporting organizations paid money to Crown Global; and in exchange, they got annuities which produced a fixed stream of income for a period of time in the future? Is that right?
A. That's correct.
Q. Okay. And that the assets -- the segregated accounts themselves are owned by Crown Global; correct?
A. I believe the Atlas IDF Fund, I believe Crown Global has partnership interests in that particular fund. I don't think they have any ownership of the other underlying segregated accounts. Not that I'm aware of.
Q. Do the segregated accounts hold anything other than the annuities? Withdrawn.
Do the segregated accounts hold the annuities?

A. The segregated accounts, not to my knowledge do they hold the annuities. What I believe hold the annuities is the Atlas IDF, LP Fund holds the annuities.
Q. But Crown Global is the one who takes the risk with respect to the investments in the annuities; correct?
A. That's correct.
Q. And do they take the risk as well with respect to the value of Atlas, for example?
A. Yes, they do take the risk with the value of Atlas.
Q. So whether Atlas is worth a dollar or a billion dollars, Crown Global has the same obligation to the supporting organizations to pay the fixed stream of income that it agreed to when it sold the annuity to them; correct?
A. That's my understanding.
Q. Okay. So that regardless of the value of the segregated accounts, the supporting organizations are guaranteed to receive the exact same amount of money over time as long as Crown Global complies with its obligations in the annuity contract; correct?
A. Yes, sir.

Q. Okay. Do you know if the Dallas Foundation ever appeared in the Highland bankruptcy before it filed this objection?
A. No, sir, I don't believe we did.
Q. And as the CFO, is it fair to say that you know that the Dallas Foundation never filed a claim in the Highland bankruptcy?
A. Yes, sir.
Q. And do you also know that the Dallas Foundation does not have an interest in the Highland Claimant Trust that was formed as part of the plan of reorganization?
ATTORNEY OKIN: Object to form.
BY ATTORNEY MORRIS:
Q. Withdrawn. Let me lay a little bit of foundation.
Are you familiar with an entity called the Highland Claimant Trust?
A. Yes.
Q. Okay. Does the Dallas Foundation have, directly or indirectly, any interest in the Highland Claimant Trust?
ATTORNEY OKIN: Object to form.
A. What I could say is that it depends on the settlement with relationship with Hunter

Mountain and indirectly with the roll-up that the beneficial interest to Empower and Okada Foundation and how that settlement impacts the economic interest there. I think that's where the Dallas Foundation could indirectly have some interest. While we're not the sole ownership of the Crown Global policy, we do have a relationship with Empower Dallas and the Okada supporting organizations.

BY ATTORNEY MORRIS:

Q. Well, you don't have an interest in what, did you say? The annuities?

A. We do have an interest in the annuity contracts.

Q. The Dallas Foundation didn't fund the annuity contracts; correct?

A. No, we did not fund them. But --

Q. And the Dallas Foundation doesn't own the annuity contracts; correct?

A. No, we don't own the annuity contracts. But what we do is we do have a fiduciary responsibility for any relationship that they financially to protect, preserve and to grow these charitable assets. And, ultimately, the supporting organizations, they roll up into

our financial statements.

Q. Is it your understanding that Crown Global has a duty to distribute -- withdrawn.

Is it your understanding that Crown Global has a duty to make distributions to the Dallas Foundation?

A. No, sir. They make distributions to Empower and Okada supporting organizations.

Q. Do you have any reason to believe that Crown Global owes any duty at all to the Dallas Foundation with respect to the annuities?

ATTORNEY OKIN: Object to form.

A. There's no direct responsibility from Crown Global to the Dallas Foundation. But because of our relationship with Okada and Empower, there is an indirect relationship there, that we have an interest.

BY ATTORNEY MORRIS:

Q. And let's go beyond the annuities.

Do you know whether Crown Global has any direct duty to the Dallas Foundation for any reason?

ATTORNEY OKIN: Object to form.

A. I'm going to say not directly.

BY ATTORNEY MORRIS:

Q. Okay. Thank you.

Does the Dallas Foundation carry on its balance sheet any interest in the Highland Claimant Trust?

A. No, sir.

Q. Do you know if the Dallas Foundation has any contractual relationship with Highland Capital Management or the Highland Claimant Trust?

A. No, sir, we don't.

Q. Do you have any reason to believe today that Highland Capital Management or the Highland Claimant Trust owes any duties or obligations to the Dallas Foundation?

ATTORNEY OKIN: Object to form.

A. I wouldn't say there was any duties or obligations to the Dallas Foundation. But I do think we have, again, some interest in the settlements and how the funds originally were supposed to flow up to Empower and Okada.

Empower and Okada, they roll up to the Dallas Foundation's financial statements. So I think there is some indirect interest in Highland Capital Claimant Trust and the decisions that are

being made as it relates to the settlement.

BY ATTORNEY MORRIS:

Q. I'm going to respectfully move to strike and ask you to listen carefully to my question --

A. Yes, sir.

Q. -- and this will go very smoothly.

Do you have any reason to believe that Highland Capital Management or the Highland Claimant Trust owes any duties or obligations to the Dallas Foundation?

ATTORNEY OKIN: Objection; form.

THE WITNESS: My apologies.

ATTORNEY OKIN: Go ahead.

A. No, sir.

BY ATTORNEY MORRIS:

Q. Are you aware that if the settlement between the Highland entities and the HMIT entities is approved, that the HMIT entities will receive cash and other assets as set forth in the agreement?

A. Yes.

Q. Do you have any reason to believe that the Dallas Foundation has a right to receive any of the cash or other assets that would be

delivered to HMIT if the settlement is approved?
ATTORNEY OKIN: Object to form.
A. Like I say based on the facts is that the interest in HMIT were sold for a million dollars. So I believe the current structure as of now, the two supporting organizations would not receive any settlements. They would not have any economic benefit of the settlement payout.
Based on the historical structure, yes, I would have said yes. We had interest in that settlement that would ultimately impact the fair market values for Empower and Okada.
BY ATTORNEY MORRIS:
Q. Are you familiar with the fair market value of Empower and Okada?
A. So the fair market value is through the insurance annuity. So based on the --
Q. I'm sorry. Through the insurance what?
A. It's the insurance through Crown Global, so they produce a fund statement on a quarterly basis. We use that to state the fair market value.
Q. And is the fair market value based on anything other than the projected future income

stream that you described earlier?
A. I believe there is impact related to some of the sub accounts. One thing we do know is in February of 2025, we saw the fair market value increased by 918,000 due to the sale of Rand's interest in Hunter Mountain. So we do believe there are other assets that impact the fair market value.
Q. But that's the fair market value of the annuities; is that right?
A. The sale of the Rand -- the interest in the Hunter Mountain, the Rand?
Q. Yeah, yeah. Is what you're describing the fair market value of the annuities that flows up to the supporting organizations?
A. I believe we have a couple of investments that are within the Crown Global structure. I think you have insurance annuities, and then you have other assets that are also within that structure through the Atlas platform. The way I understand it, the Atlas platform allows for other alternative investments to be wrapped within the insurance annuities.
Q. Did the supporting organizations have an ownership interest in Crown Global?

A. Yeah. They hold the policy, right? The supporting organizations hold the policy through Crown Global, so absolutely.
Q. And the policy that you're referring to are the annuity policies?
A. The annuity policies, that's correct.
Q. And, again, just for clarity, it does not matter to the supporting organization what the value of the assets that are held by Crown Global is; what matters is the agreed-upon future flow of distributions; fair?
A. That's fair, yes, sir. Yes.
Q. Are you familiar at all with the structure of the Highland Claimant Trust?
A. Not with the Highland Claimant Trust, no. I'm familiar with the structure of the -- the Rand structure here as relates to the Empower Dallas, and then I'm familiar with the DAF Holdco structure.
Q. Are you familiar with the HMIT structure?
A. I'm familiar -- I know how the structure flows up to the Atlas IDF Fund.
Q. Have you reviewed any of the governing documents for HMIT or any of the Rand funds or

any of the Atlas funds? Have you ever reviewed the governing documents?
A. At a high level, I took a glance at the governing documents to get an understanding of the flow. I've seen organizational flow charts to kind of give me an idea of who owns what and how does it roll up ultimately to Crown Global.
Q. Do you have any knowledge as to what, if any, role Crown Global played in the Highland bankruptcy?
A. No, sir.
Q. So we've talked about the Rand and the Atlas entities and Hunter Mountain, and we've referred to those that signed on to the agreement as "the HMIT entities"; right?
A. Yes.
Q. Do you know why each of the HMIT entities was created? Do you know what purpose they served?
A. You know, I know that they create some vehicles that allow some different types of investments. I would imagine -- I don't know why the structures were created the way they were. We don't have that kind of insight. That's just

an assumption.
Q. Can you identify any assets that HMIT owns today?
A. No, sir.
Q. Were you ever able to identify any assets that HMIT owned?
A. No.
Q. In your duties as the CFO for the Dallas Foundation, did you ever make an inquiry as to what assets HMIT owned?
A. We made an inquiry to the Atlas structure unsuccessfully over the years because they were able to get to the underlying assets to have a clear understanding of the holdings; so, no, I couldn't tell you that I was successful in understanding the underlying assets.
Q. So you've been the CFO for three years now --
A. Yes, sir.
Q. -- and a half?
But you were with the organization for about six; right?
A. For 13, 13 total.
Q. Thank you.
So you've been with the organization

long before Mark Patrick ever had any role with respect to the HMIT entities; right?
A. Yes, sir.
Q. Okay. At any time that you've been with the Dallas Foundation, were you ever informed as to the assets that were held by HMIT?
A. No, sir.
Q. No; right?
A. That's correct -- no.
Q. Do you know today what assets are held by any of the HMIT entities?
A. No, sir.
Q. At any time during your tenure at the Dallas Foundation, were you ever informed as to what the assets were that any of the HMIT entities owned?
A. No, sir.
Q. Okay. And did you ever think that, as part of your duties and responsibilities working for the Dallas Foundation, that you needed to know that information?
A. Absolutely. Yeah, we inquired on multiple occasions to get our auditors comfortable with the investment vehicle.
Q. And you were never able to get that

information, is that right?
A. That's right.
Q. And that was true for the entire time of your tenure at the Dallas Foundation?
A. Yes, sir.
Q. Okay. In the course of your duties, did you ever communicate with anybody who was acting on behalf of HMIT?
A. I had some communications with Mark Patrick, but I don't think he was over HMIT at the time. I don't know. So it's kind of hard to understand the transfer of a trustee or ownership or oversight those accounts had.
So at a high level, he was probably the person I tried to communicate with if we had any questions around the valuations.
Q. But it wasn't necessarily because he was wearing the HMIT hat; it was because he wore a lot of hats. Is that fair?
A. That's fair, yes.
Q. During the course of your tenure at the Dallas Foundation, did you ever once say to yourself, I need to speak to the guy who's the head of HMIT?
A. No, we've never said that.

Q. Okay. Did you ever say to yourself at any time during your tenure at the Dallas Foundation, I need to speak to the head of any of the HMIT entities?
A. No, sir.
Q. Do you know if the Dallas Foundation ever received anything of value from HMIT directly?
A. I can't say directly, no. I just assumed it had rolled up. It was -- we had some value through the structure, I would imagine.
Q. Do you know if the Dallas Foundation ever received anything of value directly from any of the HMIT entities?
A. No, sir.
Q. Do you know if any of the -- withdrawn.
Do you have any reason to believe that any of the HMIT entities owes a duty or obligation to the Dallas Foundation today?
ATTORNEY OKIN: Object to the form.
A. I believe that there's going to be impact to our economic interest in Crown Global. I do believe there's a fiduciary obligation to the Dallas Foundation to have communication if

there are investment decisions that are being made that's going to impact that economic interest, positive or negatively.
BY ATTORNEY MORRIS:
Q. Sorry. I may not have heard it clearly.
But do you believe that Highland Capital Management or the Highland Claimant Trust owes a fiduciary duty to the Dallas Foundation?
A. Sorry. No. No. No. I thought you said HMIT. Sorry.
Q. You know what? I probably did. Let's do that.
A. Yeah.
Q. Did you believe -- do you believe that any of the HMIT entities owes a fiduciary duty to the Dallas Foundation?
ATTORNEY OKIN: Object to form.
A. Again, I'll just restate what I said.
If it's starting to impact the economic interest for the value of the Crown Global policies, I do think there's a fiduciary obligation to have a conversation to inform of any investment decisions that are being made that could have significant impact to that

value.
BY ATTORNEY MORRIS:
Q. Okay. Are you aware that HMIT filed a motion in the bankruptcy court a couple of years ago seeking permission to file a lawsuit against Highland Capital Management and others?
A. Yes, sir, I am aware of that.
Q. You are.
Did HMIT seek the Dallas Foundation's approval before filing that motion?
A. No, sir, not that I'm aware of.
Q. Do you believe that HMIT was required to seek the Dallas Foundation's approval before filing that lawsuit?
A. Again, I think it -- I don't know if "seek approval" is the right language I would use. But I do think informing the Dallas Foundation, that this could impact the economic interests of Empower and Okada Foundation.
Q. And nobody ever told you that; is that right?
A. That's correct.
Q. How did you learn about the lawsuit that HMIT commenced against Highland and others a couple of years ago?

A. Well, as we kind of got -- one, it was kind of some news that was -- that came about through some other research. Currently, as of today, we have our legal team working, pulling together facts so they kind of reiterated some of the facts that could impact the overall case. So I will just lean on our legal team to kind of bring us up to speed on this fact-finding.
Q. Do you know who authorized the filing of that motion?
A. From HMIT?
ATTORNEY OKIN: Object to form. Which motion do you mean, John?
ATTORNEY MORRIS: The same one we're talking about, the motion for permission from the bankruptcy court to sue Highland and other parties.
ATTORNEY OKIN: The one he told you he didn't even know about what was filed.
ATTORNEY MORRIS: Hey, Matt, he did tell me. He actually did tell me --
ATTORNEY OKIN: He told you he heard about it after, but go ahead.
BY ATTORNEY MORRIS:
Q. So...

A. Yes, sir, I believe it was Mr. Mark Patrick that filed them.
Q. That authorized the filing of that lawsuit?
A. Yes, sir.
Q. Do you think he did anything wrong in doing that?
ATTORNEY OKIN: Object to form.
A. What I can say is that it has impact -- it can potentially have some impact on the -- it's convoluted. I can't say he did anything wrong with filing that motion. But if it's going to impact the Empower and Okada Foundation, which is why I'm here today, is to represent those supporting orgs, you know, I think we have interest in the decisions that he's making, right?
BY ATTORNEY MORRIS:
Q. Okay. But we can agree that he never sought nor obtained the Dallas Foundation's approval to file that motion; correct?
A. Yes, sir, we can agree.
Q. And can we also agree that you only heard about that lawsuit after it was commenced or after the motion was filed?

A. Yes, sir.
Q. Okay. Have you read the settlement agreement that is the subject of the Dallas Foundation's objection?
A. Yeah, I've got some high-level facts related to the settlement agreement. We had a legal team kind of -- again, we leaned on them to kind of pull out some of the important facts that could impact the Empower and Okada Foundation.
Q. Do you know generally what HMIT is proposing to give and receive under the settlement agreement?
A. Yes, sir, generally, I do know. I believe they're trying to release liability on some of the claims. I think that's part of the settlement agreement. I'm also aware that there are future payouts that will be made to Hunter Mountain.
Q. And are you aware of other assets that Hunter Mountain might receive if the settlement agreement is pursued?
A. Yes.
Q. And what other assets are you aware of?
A. I know there's a large sum of assets,

you know, in the -- 300 million, I think that's the amount of it that I don't recall. But I couldn't go verbatim.
Q. It's not your understanding that there's $300 million worth of anything that's related to that agreement --
A. Oh, yeah, yeah, yeah. But, yeah, it's not -- it's not there -- I was thinking about there was some data around -- I apologize if I'm getting my facts confused.
Q. That's okay.
A. Yeah, actually, there's a -- as it relates to the Empower and Okada, I believe there was an impact of roughly 23-plus million dollars, potentially.
Q. But that has nothing to do with Highland; correct?
A. That's correct.
Q. And it has nothing to do with this settlement agreement; correct?
ATTORNEY OKIN: Object to form.
A. Well, I think if it has impact, ultimately, again, to Empower and Okada, again, we sold our interest in Highland Capital Management -- or Hunter Mountain for a million

dollars. So based on what we know is if there is a payout of $23 million, Empower and Okada, we won't benefit from it.
BY ATTORNEY MORRIS:
Q. So is it fair to say that the Dallas Foundation's concern is not with the terms of the settlement agreement itself but with the disposition of the assets that Hunter Mountain will receive if the settlement agreement is approved?
ATTORNEY OKIN: Object to form.
A. Well, the only thing I would say about that is we have individuals making some questionable decisions and, you know, with charitable assets. I believe Highland Dallas has entered into a settlement agreement with this individual. I think that's -- that's what I could say is somewhat problematic.
BY ATTORNEY MORRIS:
Q. What's problematic?
A. Oh, we have an individual that's shifting around charitable assets out of the responsibility of Empower and Okada; right? And, you know, Highland Capital has entered into an agreement with this individual. I think we all

understand the facts that are at play.
Q. Do you have any reason to believe that the settlement agreement was not the product of an arm's-length, good-faith negotiation between adverse parties?
ATTORNEY OKIN: Object to form.
A. I can't say anything. Yeah, I wasn't a part of those conversations, so I can't opine.
BY ATTORNEY MORRIS:
Q. And you don't have any facts that would suggest that the settlement agreement is anything other than the product of good-faith, arm's-length negotiations; correct?
ATTORNEY OKIN: Object to the form.
A. I wasn't part of the conversation, so I can't opine. But what I can state is that I believe there's significant impact to the Okada and Empower Dallas Foundation.
BY ATTORNEY MORRIS:
Q. And that's as -- not as a result of the settlement agreement, but as a result of what the Dallas Foundation contends was the restructuring that Mr. Patrick engaged in earlier this year; fair?
ATTORNEY OKIN: Object to form.

A. For the most part, I'd say that's fair.
BY ATTORNEY MORRIS:
Q. Okay. Do you have any concerns that the settlement agreement is not the product of arm's-length, good-faith negotiations?
A. I'd have to restate that, again, we have an individual who's moving around charitable assets. And, again, I think we understand the facts of restructuring, and the agreement was made to settle with this individual. So from our standpoint, again, it impacts the two supporting organizations that we are here representing.
So I think there's two things at play. The negotiations that you had with this individual, I can't opine whether or not that it wasn't done in good faith; but the impact of that settlement agreement does impact Okada and Empower Dallas.
Q. And that's because as a result of Mr. Patrick's restructuring, the Dallas Foundation is concerned that it may not have -- it may not receive as much as it would have indirectly had the restructuring not taken place; fair?

A. That's fair.
ATTORNEY OKIN: Object to form.
BY ATTORNEY MORRIS:
Q. Okay. Do you have any reason to believe that the proposed settlement is unfair to Highland Capital Management, LP?
A. Yeah, I don't have any reason to opine, no.
Q. Okay. Do you have any reason to opine as to whether or not the proposed settlement agreement is unfair to the Highland Claimant Trust?
A. No, sir.
Q. Do you have any reason to opine that the proposed settlement agreement is unfair to the Highland Litigation Subtrust?
A. No, sir.
Q. Do you have any reason to opine that the settlement agreement is unfair to Hunter Mountain Investment Trust?
A. No, sir. We can make good-faith settlements, given that there are facts that certain organizations or entities could be impacted, given what we've already talked about, what Mark Patrick has done with the restructuring.

Q. So two things can be true, at the same time --
A. Two things can be true.
Q. Two things can be true at the same time; right, sir? The settlement agreement can be a fair and reasonable settlement that's the product of arm's-length and good-faith negotiations; while at the same time, the Dallas Foundation can still have concerns over the disposition of the assets that Hunter Mountain receives as a result of this restructuring; fair?
A. I think for the most part, that's fair. The only caveat I would add to that is if I'm negotiating with an individual that we know is causing harm to other organizations, I just say maybe we don't care about that. But from our standpoint, we do.
Q. Do you have any reason to believe that the proposed settlement is unfair to any of the HMIT entities?
A. No, sir.
Q. Are you aware that under the settlement agreement, the HMIT entities are releasing the Highland parties from any liability

other than that which arises out of the settlement agreement itself?
A. Yeah. I believe that was a part of the settlement. That's why we have the settlement. Yeah.
Q. Do you have any concern about the scope of the releases that the HMIT entities are providing?
ATTORNEY OKIN: Object to form.
BY ATTORNEY MORRIS:
Q. You can answer, sir.
A. No, sir; only as it impacts, how does it impact or potentially can impact lost income for Okada and Empower.
Q. Do you have any reason to believe that the granting of the releases in the proposed settlement agreement by the HMIT entities will have any impact at all on the supporting organizations?
ATTORNEY OKIN: Object to form.
A. Again, I think there's an economic interest in what does the settlement -- the loss of income streams to Empower and Okada, which we believe is true.
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BY ATTORNEY MORRIS:
Q. I'm just focused on the releases now.
A. Sure.
Q. Do you have any reason to believe that the releases that the HMIT parties are granting under the proposed settlement will have any economic impact on the supporting organizations?
ATTORNEY OKIN: Object to form.
A. No, sir.
BY ATTORNEY MORRIS:
Q. Okay. Are you aware of any facts that could give rise to a claim by the Dallas Foundation against Highland?
ATTORNEY OKIN: Object to form.
A. Can you elaborate on that a little bit for me.
BY ATTORNEY MORRIS:
Q. Sure.
So I'm just -- I'm wondering if you know of any facts that might give rise to a claim or a cause of action by the Dallas Foundation against Highland Capital Management.
ATTORNEY OKIN: Object to form.
A. Not directly, no, sir.
///

BY ATTORNEY MORRIS:
Q. Okay. Are you aware of any facts that might give rise to a claim or cause of action that the Dallas Foundation could assert against the Highland Claimant Trust?
ATTORNEY OKIN: Object to form.
A. No, sir, not directly, no.
BY ATTORNEY MORRIS:
Q. Do you understand the basis for the Dallas Foundation's objection to the proposed settlement?
A. Absolutely, yes, I do.
Q. Can you describe for me in your own words what your understanding is of the basis of the objection.
A. Yeah. We are aware that we sold Rand PE Fund, which rolls up to the Atlas IDF Fund, sold its interest in the Hunter Mountain for a million dollars; and we believe that we have significant future economic payments that would be paid out to Hunter Mountain that Empower and Okada would no longer benefit from.
Q. Is it fair to say that the Dallas Foundation is concerned, not with the terms of the settlement agreement itself, but with the

possibility that it may not get its fair share of the consideration that the HMIT entities are to receive under the settlement agreement?
ATTORNEY OKIN: Object to form.
A. Yeah, for the most part, that's the key -- that's our concern.
BY ATTORNEY MORRIS:
Q. Okay. Do you understand that Mark Patrick has entered into the settlement agreement with the Highland entities on behalf of each of the HMIT entities?
A. That's my understanding.
Q. Do you have any reason to believe that the governing documents for the HMIT entities did not authorize Mr. Patrick to enter into the settlement agreement on behalf of each of the HMIT entities?
ATTORNEY OKIN: Object to form.
A. You know, what I would say to that is, you know, regardless of the governing documents, I do believe there's a fiduciary obligation that Mr. Patrick had to the supporting organizations, to inform us of any significant investment decisions that could impact the economic interest in the Crown Global vehicle.

So I just believe that, you know, just like any trustee investment advisor/control person, those are just normal conversations that we expect to have; and we not did not have that in this situation.
BY ATTORNEY MORRIS:
Q. Okay. Anything else?
A. No, sir.
Q. Okay. You don't believe that Mr. Patrick was required to obtain the Dallas Foundation's consent before entering into the settlement agreement; fair?
A. That's fair.
Q. And you don't have any reason to believe that the Dallas Foundation has any right or ability to prevent Mr. Patrick from entering into the settlement agreement on behalf of the HMIT entities; fair?
ATTORNEY OKIN: Object to form.
A. You know, I think there's two things can be true again. I think there's documentation which I haven't seen, but, again, there's a fiduciary obligation to the interested parties, I believe, just as any relationship with an investment advisor or control person.

BY ATTORNEY MORRIS:
Q. And in your view, does the fiduciary duty that you believe Mr. Patrick had as the representative of the HMIT entities, does that extend anywhere beyond the duty to inform?
ATTORNEY OKIN: Object to form.
A. Well, I'm just trying to think about -- you know, we advised $650 million of assets under management. We have advisors all the time, before they make any decisions on the sale of investments, we're informed about it. They kind of let us know if it's going to have impact to our portfolios. And that's just an expectation that we have of any investment advisor or control person.
BY ATTORNEY MORRIS:
Q. I appreciate that you have that expectation. Do you have an expectation that the HMIT entities needed to obtain the Dallas Foundation's consent before entering into the settlement agreement?
A. I'm not a legal person. But I would imagine if you have the documentation legally, I don't know if you had to get our consent. It's more so just a fiduciary obligation.

Q. And, legally, do you have any reason to believe that the Dallas Foundation has a legal right over transactions that Mark Patrick, in his capacity as the representative of any of the HMIT entities, wanted to enter into?
ATTORNEY OKIN: Object to form.
A. As an interested party, I think we have an ability to have conversations to see if this decision was made that negatively impacted the supporting organizations. I think we do have a right there to really understand why this decision was made. Why are we selling the interest for a million dollars? Why now? Why is the timing that happened now? Because if nothing happened, what we know is we would have benefited from the settlement payouts.
BY ATTORNEY MORRIS:
Q. Does the Dallas Foundation have a direct ownership interest in any of the HMIT entities?
A. Not a direct ownership, no, sir.
Q. Does the Dallas Foundation have any indirect ownership interest in any of the HMIT entities?
ATTORNEY OKIN: Object to form.

A. Not directly. The Dallas Foundation does not.
BY ATTORNEY MORRIS:
Q. So no direct interest -- withdrawn.
No direct ownership interest and no indirect ownership interest; fair?
ATTORNEY OKIN: Object to form.
A. We do have an interest in -- because the assets roll up to our balance sheet overall, they would present an audited financial statement. So we do have to understand the fluctuations in market value to explain not just to our board but to our auditors what's happened. So we do have indirect interest.
BY ATTORNEY MORRIS:
Q. And none of the HMIT entities appear as an asset on the Dallas Foundation's balance sheet; correct?
A. Not directly. But if they roll up and they feed into the Atlas IDF Fund, right, and then the Atlas IDF Fund, which is a part of the Crown Global annuities, feeds into our balance sheet, there is an indirect interest in HMIT.
Fair to say?
Q. Does any Atlas entity appear on the

Dallas Foundation balance sheet?
A. Yeah, through the Crown Global annuity. So if you look at the Crown Global statement, it lists an Atlas LP as the investment vehicle.
Q. Do you know if the Dallas Foundation has any right to control any of the HMIT entities?
ATTORNEY OKIN: Object to form.
A. No, we can't directly control the HMIT entities.
BY ATTORNEY MORRIS:
Q. Do you know if the Dallas Foundation has any right to approve or disapprove of any potential transaction that an HMIT entity was contemplating entering into?
A. Yeah, so with the Atlas IDF Fund, what I can say is the Empower and Okada, they do have the opportunity to consent.
We had some notes that were -- there were some notes that Mark Patrick wanted to sell in February. We had to get the consent of Crown Global in order to sell these notes; and we had -- we opined with Crown Global to withdraw consent, right?

So he did reach out to Crown Global for consent in which the Empower and Okada had an opportunity to provide our recommendation.

Q. Let's focus on the settlement agreement.

Do you have any reason to believe that Mr. Patrick was required to obtain the consent of the Dallas Foundation before he signed it on behalf of the HMIT entities?

ATTORNEY OKIN: Object to form.

A. No.

BY ATTORNEY MORRIS:

Q. Do you have any reason to believe that Mr. Patrick was required to obtain the consent of the supporting organizations before entering into the settlement agreement on behalf of the HMIT entities?

ATTORNEY OKIN: Object to form.

A. No, sir.

BY ATTORNEY MORRIS:

Q. Do you have any reason to believe that Mr. Patrick was required to obtain the consent of Crown Global before entering into the proposed settlement agreement on behalf of each of the HMIT entities?

ATTORNEY OKIN: Object to form.

A. No, sir.

BY ATTORNEY MORRIS:

Q. Do you have any reason to believe that Crown Global has any right to control any of the HMIT entities?

ATTORNEY OKIN: Object to form.

A. Not that I'm aware of, no.

BY ATTORNEY MORRIS:

Q. Do you have any reason to believe that -- we're going to move on.

So we're going to put up on the screen the Dallas Foundation's objection.

A. Yes, sir.

Q. It will just take a moment for my colleague to do that.

While he's doing that, let me just tell you that this can be a little bit of a cumbersome process. I'm doing this by Zoom. If there's any aspect of the document that you recall that you think you need to review to refresh your recollection or to put it in context, will you just let me know that so that I give you a full and fair opportunity to answer the questions?

A. Yes, sir.

ATTORNEY MORRIS: Okay. Can we go to paragraph 32, please.

(Previously marked Highland Exhibit 1 introduced by counsel.)

BY ATTORNEY MORRIS:

Q. So I've put up on the screen, Mr. Littleton, the portion of the Dallas Foundation's objection that was filed in this case.

And you're familiar with that document; is that right?

A. Yeah. I couldn't repeat it back to you verbatim, but I understand some of the high-level facts in this objection.

Q. You give me comfort when you say that. You should not be able to repeat verbatim what this document is. So --

ATTORNEY OKIN: And, Mr. Littleton, although he didn't say it this time, he did say it in the prior one: If you need to see any more of this in order to be able to answer his questions, be sure to point that out.

THE WITNESS: Absolutely.

ATTORNEY MORRIS: I actually did say

that. That's okay.

ATTORNEY OKIN: Did you say that this time? I know you said it last time.

ATTORNEY MORRIS: Sorry, I must be putting you to sleep.

ATTORNEY OKIN: That's a possibility.

BY ATTORNEY MORRIS:

Q. Looking at the third line, I'm just going to read this quote: "Unfortunately, it does not appear, however, that joint official liquidators are parties to or have authorized the settlement."

Do you see that sentence?

A. Yes, sir.

Q. Do you know the entity over which the joint official liquidators were appointed?

A. Yes, sir. It's the DAF Foundation Holdco.

Q. And that's in the Cayman Islands; is that right?

A. Yes, sir; that's correct.

Q. Are you aware that all of the HMIT entities are Delaware organizations?

A. Yes, sir; that's correct.

Q. Have you ever communicated with the

joint official liquidators?
A. No, not officially. We do have a planned communication this week.
Q. Do you know if anybody acting on behalf of the Dallas Foundation has ever informed the joint official liquidators of Highland's motion to have the settlement agreement approved?
A. No, sir.
Q. Do you know if anybody acting on behalf of the Dallas Foundation has provided a copy of the objection that's on the screen to the joint official liquidators?
A. Not that I'm aware of, sir.
Q. Do you have any reason to believe, as you sit here today, that the joint official liquidators have any knowledge of the settlement agreement that is going to be before the Court on Wednesday?
ATTORNEY OKIN: Object to form.
A. I can't directly say.
BY ATTORNEY MORRIS:
Q. Okay. You haven't had any communications with anybody in the world at any time that led you to believe that the joint official liquidators were informed of the

proposed settlement agreement or the Dallas Foundation's objection; fair?
A. That's fair, sir.
Q. Okay. Do you have any reason to believe that Mr. Patrick was required to obtain the authorization of the joint official liquidators before entering into this settlement agreement on behalf of the HMIT entities?
ATTORNEY OKIN: Object to form.
A. No, sir, I can't. I can't speak to that.
BY ATTORNEY MORRIS:
Q. Can you speak to whether or not the joint official liquidators have any right to veto or prevent the HMIT entities from entering into the settlement agreement?
A. Again, I'm not a legal person, so I can't really opine on the official capacity of the joint liquidators and what they're capable of doing and not doing. So I'm going to have to say, no, I can't answer that question.
Q. Further down in the paragraph it states that:
"Indeed, many of Mr. Patrick's actions, including the insertion of

newly created entities into the fund's structure for the apparent purpose of diverting charitable assets will now be subject to the scrutiny of an independent, Court-appointed fiduciary and may be subject to clawback or other avoidance actions in the Cayman liquidation or such other tribunal as has jurisdiction."
Have I read that correctly, sir?
A. Yes, sir, you have.
Q. Okay. You're not an expert in Cayman Islands law; correct?
A. No, sir.
Q. I think you said earlier you're not a lawyer. Right?
A. That's correct.
Q. Do you have any understanding as to what facts must be established in order to succeed in a clawback or avoidance action?
A. It would just be assumption of mine that I would have, whether it's a breach of contract, discovery of various actions decision-making. But, no, I can't give you a legal opinion.

Q. Do you have any view at all as to likelihood that the supporting organizations or the Dallas Foundation might succeed in clawing back or succeeding in other avoidance actions to set aside the settlement agreement if it's approved by the Court?
ATTORNEY OKIN: Object to form.
And I'll also just remind you, Mr. Littleton, to the extent it's implicated, don't go into attorney-client privileged information that you may have received.
A. Yeah, I can't -- I can't answer your question, Mr. Morris, on that one.
BY ATTORNEY MORRIS:
Q. Is it fair to say you'd have to speculate as to whether or not -- let me just finish the question.
Is it fair to say that you would have to speculate as to whether or not the Dallas Foundation or anybody else might succeed in clawing back or avoiding the settlement agreement if it's approved by the Court?
ATTORNEY OKIN: Object to form.
A. It would be my opinion. It would be speculation of how I feel, given the facts that

I've seen and just some of the impact that we've seen on our supporting organizations; and I would just leave it there.

ATTORNEY MORRIS: Okay. If we could scroll up to paragraph 33, please.

BY ATTORNEY MORRIS:

Q. Okay. The last sentence of paragraph 33 says: "Thus, even if approved by this Court, consummation of the settlement is not likely to buy the peace the debtor now seeks."

Do you see that?

A. Yes, sir.

Q. Do you have any reason to believe that the Highland parties have done anything wrong in entering into this proposed settlement agreement?

ATTORNEY OKIN: Object to form.

A. You know, what I would say is we have an individual, in Mr. Patrick, that's moving around charitable assets; and we -- Highland Capital or the Highland entities have settled -- have made a settlement agreement with this individual, knowing some of the facts of how the charities are being negatively impacted. That's -- that would be my comment there.

///

BY ATTORNEY MORRIS:

Q. I'm not asking about the impact on the charitable foundations, and I'm not asking about Mr. Patrick. I'm just asking if you have any facts that lead you to believe that Highland has engaged in any wrongdoing with respect to negotiation and entry into the proposed settlement agreement.

ATTORNEY OKIN: Object to form. He answered your question.

BY ATTORNEY MORRIS:

Q. You can answer, sir.

A. No, sir. I'll just leave it as I stated. That was my answer.

Q. All right. So I didn't hear any facts, so you don't have any facts. Is that fair?

ATTORNEY OKIN: Object to form; argumentative. Come on, John.

ATTORNEY MORRIS: Matt, I'm being --

ATTORNEY OKIN: You asked him if they did anything wrong. He told you they did something wrong by --

(Indiscernible cross-talk.)

THE COURT REPORTER: I'm sorry. I

can't understand you both when you are talking at the same time.

BY ATTORNEY MORRIS:

Q. Mr. Littleton, are you aware of any facts that cause you to believe that the Highland parties have done anything wrong in entering into this agreement?

ATTORNEY OKIN: Object to form.

A. Again, I would just state that we have an individual who is moving around charitable assets, and I think we all are aware of the facts of what has taken place. Now, whether we want to consider that as anything wrong, in quotations, that's up for opinion.

In terms of "facts" facts, I can't -- no, I'm going to say, no, I don't have facts that I can with share you, Mr. Morris.

BY ATTORNEY MORRIS:

Q. And you don't even have any facts that suggest Highland had any role in moving the assets around that you just described; fair?

A. Yeah, I don't understand that Highland has moved around the assets. But I think when you're making a deal knowing that the individual that I'm settling with has done some things that

are questionable, you know, I think that discussion can be up for debate, whether -- you know, charities are being impacted; significant dollars are not going to be going out to the community; there's a lot of uncertainty with these assets.

And we all know the facts. The facts are clearly outlined.

Q. Do you know why the Dallas Foundation contends that: "Even if approved by the Court, consummation of the settlement is not likely to buy the peace that the debtor now seeks"?

What's the basis for that, if you have any understanding at all?

A. That one there, sir, I'm not going to be able to answer that one for you.

Q. Are you aware of any potential claims that the Dallas Foundation is considering bringing against Highland Capital Management or the Highland Claimant Trust?

ATTORNEY OKIN: I'm going to instruct him not to answer that. To the extent that he would be aware of those, that would be --

ATTORNEY MORRIS: Why don't we just do "yes" or "no," Matt. Okay?

ATTORNEY OKIN: No. I think -- I think whether or not there are any claims and whether we're considering any claims is attorney-client privilege. It's not a "yes" or "no" or detail; it's a not answer.

ATTORNEY MORRIS: I'll ask him on Wednesday.

ATTORNEY OKIN: Okay.

BY ATTORNEY MORRIS:

Q. Let's go to -- yeah, paragraph 34 says that "there is ample evidence that Mr. Patrick has acted and is acting well outside the scope of his authority and fiduciary obligations."

Do you see that?

A. Yes, sir, I do.

Q. Okay. I want to focus solely on the negotiation and execution of the settlement agreement.

Focusing --

A. Yes, sir.

Q. Focusing solely on the settlement agreement, do you believe that Mr. Patrick acted outside of the scope of his authority to negotiate and enter into the settlement agreement on behalf of each of the HMIT entities?

ATTORNEY OKIN: Object to form of the question.

A. Again, I think it's something that I've stated a few times now. Two things can be true. I think we've already agreed on that.

BY ATTORNEY MORRIS:

Q. Which two things can be true here?

A. The good-faith conversation with the settlement; but at the same time, it could have a consequential impact on the Okada and Empower Dallas supporting organizations.

Q. Okay. Do you believe -- do you have any reason to believe that Mr. Patrick acted outside of his fiduciary obligations with respect to his negotiation and execution of the settlement agreement on behalf of the HMIT entities?

ATTORNEY OKIN: Object to form. Are you asking him personally or the organization that filed this?

ATTORNEY MORRIS: It's not a 30(b)(6) witness. I know the difference.

ATTORNEY OKIN: Just so we're clear.

A. Yeah, I do think there was a fiduciary obligation to inform and have a conversation with

the interested parties.

BY ATTORNEY MORRIS:

Q. Okay. So, again, it's a duty to inform but nothing more; is that fair?

ATTORNEY OKIN: Object to form.

A. Yeah, yeah, again, I think it's, you know, something that we all expect to have, again, with our investment advisors, control persons, trustees.

BY ATTORNEY MORRIS:

Q. Okay. Can we go to paragraph 16, please.

Do you see paragraph 16 refers to material nonpublic information?

A. Yes, sir. I see it.

Q. Do you know what material nonpublic information is being referred to there?

A. No, sir.

Q. Did you ever ask anybody?

A. No. I didn't want to get involved in that conversation, no, sir. I did not ask anybody.

Q. Do you know where -- withdrawn.

Do you know the Dallas Foundation's source of information that enabled it to state,

upon information and belief, that the information provided was obtained by Mr. Patrick through his employment at Skyview and constituted MNPI?

ATTORNEY OKIN: Object to form.

A. No, sir, I was not -- no.

BY ATTORNEY MORRIS:

Q. You don't know where that information came from?

A. No, sir.

Q. The next sentence refers to a put option.

Do you see that?

A. Yes, sir.

Q. Did the foundation have a put option?

A. Yeah, the Highland Dallas Foundation had a put option agreement with the Dugaboy Investment Trust. I think we had 1.5 million shares of NexPoint Hospitality Trust. I think it was a contribution that was given in 2019 with the 7-year put option.

Q. And is that option now expired?

A. I believe it converted into a different investment vehicle now.

Q. So the Dallas Foundation never exercised that option; correct?

A. Correct.
Q. Why not?
A. We didn't have a -- we didn't feel we had any reason to exercise the put option.
Q. Did you ever do any analysis to try to determine what the economic impact would be on the Dallas Foundation if they actually exercised that put option?
A. We had some conversations with our internal investment advisor, and at the time his recommendation was not to make any changes or call the put option.
Q. Who was that advisor?
A. Madden & Associates at the time -- excuse me. Madden Asset Management.
Q. Do you have the shares to exercise the put today?
A. To be honest, Mr. Morris, there's a little bit of discovery we have to understand now that the shares have converted. I believe they converted to a different vehicle in April of this year.
Q. Are you aware that the Dallas Foundation lost $9 million by not exercising the put option before it converted?

ATTORNEY OKIN: Object to form.
A. I think we -- so we do have some information that we just need to understand thoroughly about what's happened now that the assets transferred into a different vehicle.
BY ATTORNEY MORRIS:
Q. Well, you're the CFO; right? And I think you said that your duty is to be responsible for the foundation's assets; right?
A. That's fair; yes, sir.
Q. Were you aware that the put was going to convert before it actually converted?
A. I was not aware of that. I was not informed of that.
Q. Were you ever told what the value would be to the Dallas Foundation if the Dallas Foundation exercised the put?
A. Yeah, I believe you're correct, it was in the ballpark range of $9 million.
Q. So is it fair to say that had the Dallas Foundation exercised the put, then it would have recovered $9 million?
A. Yeah, I think that's fair, yeah.
Q. What's the value of the shares that it received upon conversion? Do you know that?

A. No, I don't know that. We were just notified recently that the shares had converted.
Q. Is one of the reasons that you didn't exercise the put option is because Dugaboy, Mr. Dondero's family trust, was the counterparty?
ATTORNEY OKIN: Object to the form.
A. No, sir, that wouldn't be the reason.
BY ATTORNEY MORRIS:
Q. Do you think Mark Patrick breached his fiduciary duty by telling the Dallas Foundation that it should consider exercising a put that was worth $9 million?
ATTORNEY OKIN: Object to form.
A. You know, I think there was information that was not privy to individuals, so I don't know if we could rely on that information to make a decision.
BY ATTORNEY MORRIS:
Q. This was a put that was owned by the Dallas Foundation; do I have that right?
A. The Highland Dallas Foundation, supporting organization.
Q. And what's the relationship between the Dallas Foundation and the Highland Dallas Foundation?

A. Very similar to the relationship between Empower Dallas and Okada Dallas. The Highland Dallas Foundation is the supporting org that we have indirect oversight of.
Q. And if the Highland Dallas Foundation had exercised the put, would that have inured to the benefit of the Dallas Foundation?
ATTORNEY OKIN: Object to form.
A. It ultimately would have. What it would have benefited was the supporting organization to allow for more impactful grant-making. So you would have had $9 million of liquidity that could be pushed out into the community.
ATTORNEY MORRIS: Okay. How much time do I have left, Matt? I know you're watching.
ATTORNEY OKIN: I lost track, I was so enraptured by your questions.
18 minutes.
ATTORNEY MORRIS: You wouldn't be the first one.
Why don't we take a short break here. I've got 18 minutes left. If we could just take a five-minute break.
///

(Recess taken from 4:42 p.m. to 4:49 p.m.)

BY ATTORNEY MORRIS:

Q. Mr. Littleton, I think you answered this. If I did, I apologize.

Can you confirm for me that you've never communicated with the joint official liquidators?

A. Yes, sir. That is correct, other than emails to set up a conversation.

Q. Conversations that you did not participate in; is that right?

A. Yeah, just for -- yeah, just for some questions they wanted to ask of the Dallas Foundation's finance team.

Q. But did you participate -- so you spoke with the joint official liquidators' finance team?

A. No. They wanted to set up a call. That's the only time -- the only communication I've had.

Q. And you haven't had that call yet; is that right?

A. That's correct.

Q. And that call is going to be scheduled

for sometime in the future; fair?

A. Yes, sir.

ATTORNEY MORRIS: I have no further questions.

ATTORNEY PHILLIPS: No questions.

ATTORNEY OKIN: All right.

ATTORNEY MORRIS: Mr. Littleton, thank you very, very much for your time and patience.

Matt, thank you for arranging this on short notice.

Gail, do you need anything else from anybody?

THE COURT REPORTER: Okay. I have copies for Mr. Morris, Mr. Lang, Mr. Okin, and Mr. Phillips.

Anybody else?

ATTORNEY OKIN: Gail, we do want to read and sign both transcripts.

(Whereupon, at 4:50 p.m. Central Time the proceedings concluded.)

INSTRUCTIONS TO DEPONENT

After reading this volume of your deposition, indicate any corrections or changes to your testimony and the reasons therefor on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself.

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C E R T I F I C A T I O N

I hereby certify that I have read the foregoing transcript of my deposition testimony, and that my answers to the questions propounded, with the attached corrections or changes, if any, are true and correct.

TORREY LITTLETON

CERTIFICATE OF SHORTHAND REPORTER

I, Gail Inghram, Registered Diplomate Reporter, Certified Realtime Reporter, Realtime Systems Administrator, CA-Certified Shorthand Reporter No. 8635, and Notary Public, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

_____
Gail Inghram,
BA, RDR, CRR, RSA, CA-CSR No. 8635

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EXHIBIT 58

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

In re	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

ORAL DEPOSITION OF
MARK PATRICK
JUNE 23, 2025
(Reported remotely)

ORAL DEPOSITION OF MARK PATRICK, produced as a witness duly sworn by me at the instance of the Defendant, taken in the above-styled and numbered cause on the 23RD day of June, 2025, from 12:05 p.m. to 1:14 p.m., via Zoom videoconference before Ida Alcala, Certified Shorthand Reporter No. 12565, in and for the State of Texas, reported by oral stenographic means, pursuant to the Texas Rules of Civil Procedure, and the provisions stated on the record or attached hereto.

APPEARANCES

Mr. Sawnie A. Mcentire (Via Videoconference)
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Ave Ste 4400
Dallas, Texas 75201-7324
214-237-4300

Mr. Michael Lang (Videoconference)
CRAWFORD, WISHNEW & LANG PLLC
1700 Pacific Ave Ste 2390
Dallas, Texas 75201
214-817-4500

Mr. Louis M. Phillips (Via Videoconference)
KELLY HART ATTORNEYS AT LAW (LOUISIANA)
Baton Rouge Office
301 N. Main Street Ste. 1600
Baton Rouge, LA 70801
225-381-9643

Mr. John R. Morris (Via Videoconference)
ATTORNEY AT LAW
P.O. Box 470472
Fort Worth, Texas 76147-0472
817-262-7762

Ms. Deborah A. 'Deborah' Newman (Via Videoconference)
NEWMAN LAW FIRM
245 W. 18th Street
Houston, Texas 77008-4005
713-942-2501

Mr. Matthew Okin (Via Videoconference)
OKIN ADAMS LLP
1113 Vine St Ste 240
Houston, Texas 77002-1044
713-228-4100

(CONTINUED ON NEXT PAGE)

(CONTINUED)

Mr. Andrew Kohl 'Drew' York (Via Videoconference)
GRAY REED & MCGRAW
1601 Elm St. Ste 4600
Dallas, Texas 75201-7212
469-320-6114

Ms. Kathryn George (Via Videoconference)
LATHAM AND WATKINS LLP
Chicago Office
330 North Wabash Avenue Ste 2800
Chicago, IL 60611
312-876-7700

ALSO PRESENT:
Ms. Amelia Hurt (Videoconference)
Mr. Jeff Pomerantz (Videoconference)
Mr. Gregory Demo (Videoconference)

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INFORMATION REQUESTED TO BE FURNISHED
(None)

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COUNSEL FOR DUGABOY INVESTMENT TRUST

EXHIBITS	DESCRIPTION	PAGE IDENTIFIED
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2	Rand Structure Chart	8
3	Proposed settlement agreement	16

PROCEEDINGS

MARK PATRICK,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. LANG:

Q. Please state your name for the record.

A. Mark Patrick.

Q. And, Mr. Patrick, how are you currently employed?

A. I -- what do you mean by --

Q. Who's your -- who do you work for?

A. I work for DAF entities.

Q. And when you say the DAF entities, can you be more specific into which entities that are?

A. You know, there -- it's just a group of entities that hold investment assets for charitable purposes.

Q. Specifically, do you have the names of these entities?

A. Some -- some of them such as CLO HoldCO.

Q. Anybody else?

A. Liberty, I think. Charitable DAF HoldCo Inc, US entity, Charitable DAF Fund LP. I'm probably missing several others. It's a sophisticated structure, but that's generally the gist of when I refer to DAF entities.

Q. And what about Hunter Mountain? Are you employed by Hunter Mountain?

A. Well, no -- I know -- I appreciate that. I'm -- like, when I think of employment, I'm also the preferred manager for Wind Advisers, which is an investment adviser that advises investment funds -- and then -- so then I have roles and that's why when you ask about employment, you know, there's -- it's kind of a different question than roles.

Q. That's fair. Tell you what. Why don't I put up a work chart and we'll talk through it. Will that work?

A. Yeah, I'll take a look anything.

Q. Okay. Do you see this chart?

A. Yes, I do.

Q. Okay. So this is the charitable DAFs, you know, the whole structure comp chart. Do you see that at the top?

A. Yes.

Q. Okay. Is this how the DAF CLO HoldCo structure currently looks today?

A. No, it does not.

Q. Okay. What is different?

A. Well, there's a lot of differences. I'd have to kind of see the specific documentation to be exact.

Q. Well, can you generally describe the -- the changes that have been made to this flowchart?

MR. MCENTIRE: I'll object as to form and relevance.

A. Yeah. I mean, I -- I think I have already, you know, with respect to the listing of entities. You'd have to show me some documents with respect to these entities and I can, you know, walk you through it.

Q. Would charitable DAF GP LLC still the GP for charitable DAF CLO Co?

A. I don't -- I don't recall precisely and I, you know, I want -- I want to be -- when I give you an answer, a hundred percent accurate.

Q. Okay. Does charitable DAF Fund LP still own a hundred percent of CLO Hold Co?

A. Yes, that is my understanding.

Q. And this charitable DAF CLO CO limited still own a hundred percent of charitable DAF Fund LP?

MR. MCENTIRE: Objection, form.

A. No.

Q. (By Mr. Lang) Okay. Charitable DAF FUND LP, is that owned by CDM CFAD LLP?

MR. MCENTIRE: Objection, form.

A. That's my general -- that's my general understanding.

Q. (By Mr. Lang) Okay. And who owns CDM CFAD LLC?

A. Yeah, again, without corporate documents that you can present to me, I -- you know -- I -- I just don't want to be inaccurate.

Q. Does DFW Charities own CDM CFAD LLC?

MR. MCENTIRE: Objection, form. Relevant.

A. Yeah, again, you know, Mr. Lang, you know, there are several entities in this structure, and I -- I just don't want to go beyond what I have a hundred percent knowledge of.

Q. I'm sharing this charitable DAF CLO CO structure chart as Exhibit 1, to be fair. And this is a RAND structured chart, which I'm marking as Exhibit 2. Do you recognize this document?

MR. MCENTIRE: Mark, at this time he's only asking whether you recognize it.

A. Yeah, I haven't made it to the bottom, I apologize.

MR. MCENTIRE: Okay.

A. What is the question now?

Q. (By Mr. Lang) Well, do you recognize this organizational structure? Let me change the question.

A. Do I recognize this structure. Generally -- very generally.

Q. Okay. And starting at the top, charitable DAF Holdings Corp, do you see that box?

A. Yes, I do.

Q. Is that owned by CLO HOLD CO?

MR. MCENTIRE: Objection, form.

A. I don't know -- I don't know. I can't recall

precisely if there's other entities in -- in between that, you know, whether that links up to CLO Hold Co.

Q. (By Mr. Lang) Does CLO Hold Co indirectly own charitable -- charitable DAF holdings Corp.?

MR. MCENTIRE: Objection, form.

A. Yeah, again, I can't answer with accuracy here unless you showed me a corporate -- some actual corporate filings or something like that.

Q. (By Mr. Lang) Is this generally the structure for the RAND -- structure -- is it generally a structure it looks like today?

MR. MCENTIRE: Objection, form.

A. What part of the structure are you referring to, Mr. Lang?

Q. (By Mr. Lang) Well, the whole thing. Charitable DAF Holdings Corp?

A. No.

Q. Does it own Rand Advises LLC?

A. Yeah, can you restate that question, again?

Q. Does charitable DAF Holdings Corp, top box, the sole member of Rand Advisers LLC? The green box to the left.

A. Yes, that is -- that is my understanding.

Q. Okay. Does charitable DAF holdings Corp, the box at the top, is it still the sole member of Rand PD fund

management LLC?

A. I would -- I would believe so.

Q. Okay. And is RAND PE fund management LLP still the general partner for RAND PE Fund One LP? See it just below it?

A. Yes, I would believe so.

Q. And then charitable DAF Holdings Corp, the box at the top, is it still the sole member for Atlas IDF GP PLLC?

MR. MCENTIRE: Objection, form.

A. Yes, I would believe so.

Q. (By Mr. Lang) Okay. And is Atlas IDF GP LLC still the general corporate for Atlas IDF LP?

MR. MCENTIRE: Objection, form?

A. Yes, I would believe so.

Q. (By Mr. Lang) Okay. And is Atlas IDF LP still the 99 percent limited partner for RAND PE FUND I LP?

MR. MCENTIRE: Objection, form.

A. I'm trying to recall because I have RAND PE FUND in a wind down situation. So I -- I don't know if that is accurate or not offhand.

Q. (By Mr. Lang) And does RAND PE FUND ONE LP still the sole member of Beacon LLC?

MR. MCENTIRE: Objection, form.

A. No.

Q. (By Mr. Lang) Okay. Who -- who owns Beacon

Mountain LLC?

A. An entity called CLO HOLD CO LLC.

Q. And that's different than CLO HOLD CO limited?

A. Yes.

Q. Who owns CLO HOLD CO LLP?

A. I believe it's CLO HOLD CO limited, from my understanding.

Q. And the CLO HOLD CO LLC owned Hunter Mountain?

A. No.

Q. Who owns Hunter Mountain?

A. Beacon Mountain LLC. And I would clarify one thing. I -- it's beneficial -- it's a beneficial ownership. Hunter Mountain investment trust is a trust.

Q. Okay. I appreciate that.

A. Can you do -- if you don't mind, do a summary? I just want to make sure that we're sort of accurate here?

Q. Okay. From what I understand --

A. Yeah, from Beacon Mountain ownership. I just want to make sure you are understanding is --

Q. Beacon Mountain LLC is owned by CLO HOLD CO LLC?

A. Yes.

Q. Beacon Mountain LLC owns Hunter or -- Hunter Mountain Investment Trust is owned by Beacon Mountain LLP?

A. Yes.

MR. MCENTIRE: Objection.

A. (inaudible) beneficial.

MR. MCENTIRE: Yeah, I would object to mischaracterizing his testimony.

MR. LANG: Nobody's mischaracterizing.

Q. (By Mr. Lang) The beneficial owner of Hunter Mountain Investment Trust.

A. Yeah, this is all a current state.

Q. Current state.

And what is your role with Hunter Mountain Investment Trust?

A. My understanding is I'm the -- an administrator which is a -- the control person for that trust.

Q. Are you the control person for Beacon Mountain LLP?

A. Yes.

Q. Are you the control person for CLO HOLD CO LLC?

A. Yes.

Q. Are you the control person for RAND Advisers LLC?

A. Yes.

Q. Are you the control person for RAND PE FUND Management LLC?

A. Yes.

Q. Are you the control person for Atlas IDF GP LLC?

A. Yes.

Q. Are you the control person for the Charitable DAF Holdings Corp?

A. Yes.
Q. And you're the control person for Charitable DAF Fund LP?
I'll -- I'll go back here.
MR. MCENTIRE: Objection, form.
Q. (By Mr. Lang) Are you the control person for Charitable DAF Fund LP?
MR. MCENTIRE: Objection, form.
A. It's -- no, but you should ask me a follow-up question.
Q. What's your role at Charitable DAF Fund LP?
A. Yeah, I'm the control person for the general partner of that limited partnership.
Q. And who's the general partner of the limited partnership?
A. Yeah, and then this is where my memory is -- is -- I'd have to kind of revisit the actual organizational documents to give you a confident a hundred percent answer.
MR. MCENTIRE: Yeah, Mark, let's don't -- let's don't speculate unless he has a document, okay?
A. Yes.
Q. (By Mr. Lang) Are you the control person for CDMCFAD LLC?
MR. MCENTIRE: Can you repeat the question, I didn't hear it, Mr. Lang.

Q. (By Mr. Lang) Mr. Patrick, are you the control person for CDMCFAD LLC?
A. I believe I am.
Q. Does that stand for anything out of curiosity?
A. I don't remember.
Q. All right.
MR. PHILLIPS: Objection, formatting.
Q. (By Mr. Lang) Did you -- you negotiated the settlement agreement that is the subject of (inaudible) correct?
A. Correct.
Q. Did you initiate settlement discussion with about events?
A. What do you mean by initiate.
Q. Well, did you approach them about settlement or did they approach you?
A. I'm sorry, you were slightly muffled there.
Q. I said did they approach you about settling or did you approach them about a potential settlement?
MR. PHILLIPS: Objection to the form of the question?
A. I can't -- I can't recall offhand. Who approached who or -- yeah.
Q. Under the settlement agreement, Hunter Mountain is to receive among other things the Dugaboy note and the

Kirschner claims. Do you know what I'm referring to when I refer to the Dugaboy note and the Kirschner claims?
A. I -- I would appreciate it if you could pull up the -- the Dugaboy note document that you are referring to. There's an awful lot of Dugaboy notes out there, and -- and as a starter and I'd also appreciate if you could pull up for me the -- what you're referring to as the Kirschner Litigation complaint.
Q. I'm referring to what's in the settlement agreement. It refers to the Dugaboy note --
A. Well, then the document speaks for itself, sir. If you want to show me the document, I'll definitely testify to the accuracy of what I signed.
Q. I'm asking if you know what I'm referring to when I refer to the Dugaboy note and the Kirschner claims as re restricted at that point out from Patricia claims as referenced in the settlement agreement.
A. Yeah, and I'm asking you to show me the settlement agreement with the lines and then I -- and I'll verify that for you if you don't mind.
There's a lot of Dugaboy notes out there you have to appreciate that, Mr. Lang.
Q. Which one have you bargained to receive in the settlement agreement?
A. And -- and there's a lot of Kirschner litigation as

well.
Q. Well, the Kirschner litigation is that -- Styled Kirschner versus Dondero Adversary Proceeding 2103076.
Are you familiar with that one?
A. I'm not familiar with that caption. If you could just show me the document that you're -- the complaint that you're referring to, then I will say that is -- that is the litigation that -- that we negotiated for.
Q. Okay.
A. You can bring up the settlement agreement, I'll happily verify that whatever is referenced in there is what I negotiated for, but I'm not gonna broad brush generically say that I negotiated for some Dugaboy note without a little more precision, if you don't mind.
Q. Can you see my screen?
A. Here we go. Yes.
Q. Okay. When I refer to the Dugaboy note, that's the note that I'm referring to. Does that help you?
MR. MCENTIRE: Well, for the record, Mr. Lang, can we just identify that you have put up the actual settlement agreement, is that correct?
MR. LANG: Yes. Sorry. Exhibit 3 will be the settlement agreement. The proposed settlement agreement.
A. Yes, so you're having me refer to the Dugaboy note dated May 31st, 2017, with a face amount of roughly

24 million as the maker and with Highland Capital Management collectively as the payee. That's what -- that's what you're referring me to.

Q. That's what I'm referring you to.

A. And what is your question?

Q. I'm -- I was just asking if you understand what I'm referring to when I say the Dugaboy note?

A. Okay. I understand now what you're referring to.

Q. And then the Kirchner claims are -- means all claims and causes of action that were asserted or could've been asserted by litigation trustee or the litigation subtrust in the capital amended. Do you see that?

A. Yes, I do.

Q. Okay. Let's go up and see the amenities claims. The amended complaint means the Amended Complaint and objection to claims Docket number 158 in Kirschner versus Dondero adversary proceeding 21-03076, do you see that?

A. Yes, I do.

Q. Okay. So if I refer to the Kirchner claims, you know what I'm referring to now?

A. Yes, I do. Thank you.

Q. Okay. How does Hunter Mountain value the Kirchner claims?

MR. MORRIS: Objection to the form of the question.

A. Hunter Mountain is a non-living entity. It's a trust.

Q. (By Mr. Lang) Have you valued the Kirchner claims?

A. I have not had an appraised evaluation. I'm not qualified to appraise value.

Q. Do you have an estimated value of the Kirchner claims?

A. Estimate. Estimate. Who? Are you asking if I've estimated the value?

Q. Yes.

A. Of the Kirchner claim?

Q. Yes.

A. No.

Q. Have you done anything to determine the value of the Kirchner claims?

A. No.

Q. What does Hunter Mountain plan to do with the Kirchner claims after the settlement agreement if it's approved?

MR. MCENTIRE: Objection to the form of the question.

MR. PHILLIPS: Objection, form.

A. So you're asking me to speculate about my future actions --

Q. (By Mr. Lang) I'm not asking you --

A. -- with respect that claim?

Q. What does Hunter Mountain plan to do with the Kirschner claims if the settlement agreement is pursued or --

A. What do you mean by plan?

Q. What is it's intention to do with the Kirschner claims if the settlement agreement is approved?

MR. PHILLIPS: Objection, form.

A. And again, what do you mean by to do?

Q. (By Mr. Lang) What -- are you going to dismiss the claims?

A. I don't -- I won't be the owner of the claim so I couldn't dismiss it.

Q. Is Hunter Mountain going to dismiss the claim?

A. I wouldn't want to -- want to speculate.

Q. Do you have any plans whatsoever sitting here today on what you're going to do -- what Hunter Mountain is going to do with the Kirchner claim if the settlement agreement is approved?

MR. PHILLIPS: Objection, form.

MR. MCENTIRE: Joined objection.

A. And again, help me understand better what you mean by plan because, you know, I have a -- it's -- I have a lot of plans for the weekend, but whether I do it or not, you know, is fairly speculative. You just got to help me kind

of understand what you mean by that.

Q. (By Mr. Lang) I mean, what is your intent? What do you plan to do with the Kirchner claims if the settlement agreement is approved. Why is it such a hard question to answer? It seems very basic?

MR. PHILLIPS: Objection, form.

A. To be fair, Mr. Lang, if the agreement -- the settlement agreement is approved, then Hunter Mountain will have ownership over that claim, and -- one thing -- I guess one thing that is certain that I can tell you as far as a plan is to evaluate and decide what we are going to do.

Q. (By Mr. Lang) And that means pursuing the claims?

MR. MCENTIRE: Objection, form.

A. Wait. I'm sorry. Say that, again.

Q. (By Mr. Lang) I said, and does that include potentially pursuing the claims?

A. By whom?

Q. Hunter Mountain.

A. Oh, pursuing the claim. Well, yes, I would imagine it -- it involves a range of options.

Q. And what -- what is within that range of options that you can think of sitting here right now?

MR. PHILLIPS: Objection, form.

A. I don't know because I'll reach out to my legal advisors and they'll give me a range of options, but, you

know, I would say either move forward or not or whatnot, but I'll let the legal advisors tell me.

MR. MCENTIRE: Yeah, Mark, let me jump in here. You can try to answer the question if you can to the extent you're not relying upon legal advice, okay? And so feel free to do that. If you have to rely upon legal advice, then I instruct you not to answer.

A. At some point in the future, I'll rely upon legal advice to determine what my range of options are.

Q. Has Hunter Mountain performed any analysis of the Dugaboy note?

A. Has Hunter Mountain performed any analysis regarding the Dugaboy note?

Q. Like the valve of the Dugaboy note.

A. Oh, has Hunter Mountain itself determined the --

Q. Yes.

A. -- the -- the value of it. We'll, again, it's an entity and it doesn't, you know, think for itself so I would say, no.

Q. Has anybody with Hunter Mountain analyzed the value of the Dugaboy note?

A. Anybody with? Again, what you are -- I'm the administrator but -- are you talking about people with a role?

Q. Have you? Have you performed any analysis of the

value of the Dugaboy note?

A. No, again, because I'm not a qualified appraiser.

Q. Have you requested anyone to provide an analysis of the valve of the Dugaboy note?

A. Yes.

Q. Who have you requested the value of Dugaboy note?

A. A qualified appraisal company.

Q. Who is that qualified appraisal company?

A. It's a company called Weaver.

Q. Okay. Have they provided you with an opinion on the value of the Dugaboy note?

A. No.

Q. When do expect them -- let me ask this, have they told you when they may be able to provide the opinion of a value of the Dugaboy note?

MR. PHILLIPS: Objection to form?

A. I can't -- I can't recall offhand when they'll provide me an evaluation on that Dugaboy note?

Q. (By Mr. Lang) Okay.

MR. LANG: I'll pass the witness.

MR. MCENTIRE: I'm sorry, Mr. Lang, I couldn't hear you. I apologize.

MR. LANG: I said -- I said I'll pass the witness.

I think David or there are other attorneys

that have questions.

MR. MCENTIRE: Okay.

Is there anyone else who wants to ask Mr. Patrick any questions?

MR. PHILLIPS: Michael could you take down a document?

MR. LANG: Yup, sorry. Thank you.

MR. PHILLIPS: I read it seven times now.

MR. LANG: I got it. I forgot it was up.

MR. MCENTIRE: Anybody else have any questions for Mr. Patrick?

MR. YORK: Go ahead, Matthew.

MR. OKIN: Can everybody hear me okay?

MR. PHILLIPS: Yes.

MR. OKIN: I think, Louis, you and I have an agreement that we were going to postpone our asking questions til tomorrow, is that correct?

MR. PHILLIPS: Correct, at 2:00 o'clock, right? 2:00 o'clock, right?

MR. OKIN: 2:00 o'clock tomorrow. So we'll defer our questions. We are going to take Mr. Patrick's deposition when we recommence at 2:00 o'clock tomorrow.

MR. MCENTIRE: Okay. Anyone else have any questions of Mr. Patrick.

MR. YORK: So -- this is Drew York, I do.

Mr. Phillips, are you okay with me going forward now.

MR. PHILLIPS: I think we -- I forgot, I didn't get a chance to tell you, Mr. York, that I think Mr. Patrick --

Mr. Patrick you want to -- we don't want to wait til 2:00, so --

THE WITNESS: Yeah, let's just keep going.

MR. PHILLIPS: We can keep going. We can move straight on to you. I just didn't know if he wanted a five minute break.

MR. YORK: Let's take five minutes. Let's do that. Let's go off the record, take a five-minute break and come back, how's that?

MR. PHILLIPS: Okay.

(Recess at 12:33 p.m.)

(Resume at 12:41 p.m.)

MR. YORK: Let's go on the record.

EXAMINATION

BY MR. YORK:

Q. Mr. Patrick, good afternoon, my name is Drew York and I represent Patrick Daugherty in this matter. Are you familiar with Mr. Daugherty?

A. Yes.

Q. And how do you know Mr. Daugherty?

A. I knew him from Highland.
Q. Were you also employed at Highland at one point in time?
A. Yes.
Q. What position?
A. I was in the tax department.
Q. Okay. Did you have a title?
A. I was a tax professional.
Q. How long were you employed at Highland?
A. Oh, from 2008 to 2021.
Q. And were you always employed in the position as a taxpayer professional at Highland during that time?
A. Yes.
Q. You mentioned earlier in response to some questions from Mr. Lang that you're currently the administrator or control person for Hunter Mountain, is that correct?
A. Yes.
Q. Okay. When did you take on that role?
A. I believe in 2022.
Q. Did you have -- do you remember when in 2022?
A. I think the latter part of the summer.
Q. Did you have any role at Hunter Mountain trust prior to that time in 2022 when you became the administrator?
A. Can you ask that question one more time?

Q. Sure. Did you have any role at the Hunter Mountain trust prior to the time you became the administrator in 2022?
(Zoom call froze)
THE COURT REPORTER: Is everyone still there?
A. -- recall specifically, you know, so I, you know, I had no formal role.
Q. Okay. When you say you would speak to Mr. Hanus from time to time when he was the administrator, can you describe for me what it was that you would be conferring with him about?
A. Probably would have to be -- involved taxes.
Q. And why was he conferring with you on that based on your -- I assume role at Highland at the time, right?
MR. MCENTIRE: Objection, form.
Q. (By Mr. York) Actually, that's fair. I'll back up and let me ask this question. Did Mr. Hanus reach out to you in his role as the administrator for the Hunter Mountain trust while you were still in the tax department at Highland?
A. I can't recall specifically, but I'm confident that he and I spoke on occasion.
Q. And what do you recall the two of you speaking about?
A. It had to involve tax -- some sort of tax related

type questions.
Q. Did you have any other involvement with the Hunter Mountain Trust at all? Not even in a formal role, but any involvement with the Hunter Mountain Trust at all prior to your becoming the administrator in 2022?
A. No.
Q. Were you ever counsel for the Hunter Mountain Trust?
A. No.
Q. Were you ever counsel to the Hunter Mountain Trust in any fashion?
A. No.
Q. Did you ever conduct any tax analysis with regard to the Hunter Mountain Trust when you were at Highland?
A. I can't recall, specifically.
Q. Can you recall even if you did, when?
A. Well, it'd probably be around -- I mean, it would be when that trust was, you know, created and after it was created.
Q. When was the trust created?
A. I don't recall, specifically.
Q. Do you recall who came up with the idea to create the trust?
A. The idea to create the trust. You know what, I actually do.

Q. Who was that?
A. It was Thomas Surgeon. That's what I seem to recall. He -- he wanted that trust created.
Q. Why?
A. Well, I can't recall specifically, but he was in the compliance department at Highland.
Q. Earlier today Mr. Lang showed you those organizational structure charts that we looked at. I think Exhibit 1 which was the charitable DAF structure chart. And I -- as I understood from your testimony the chart that he put up is no longer accurate. Do you know why it's changed?
MR. PHILLIPS: Objection, form.
MR. MCENTIRE: Following the objection. He's already asked and answered this question too.
A. I'm trying to remember when that exhibit was put in to place, but -- any variably kind of complex sophisticated corporate structures, you know, they're generally -- just don't -- a lot of different reasons for -- for structures to kind of shift throughout the years.
Q. (By Mr. York) And you don't recall specifically when those changes were made to the structure?
A. Well, I think there's -- I guess I'm trying to expresses this -- it's rather fluid. A lot of these kind of structures, you know, just for an example, sometimes you make an investment of certain types and so then you want to

have a special purpose vehicle formed for that investment, and, you know, to hold it, and it can be for a variety of reasons and purposes and whatnot. So that's what I'm kind of saying that, that these structures are always sort of fluid when you have a variety of investment holdings as one reason, and as, you know, tax law changes can influence development of structures, legal -- corporate legal changes. That's why it's -- it's a very complex structure that has a lot of different things, and so you really have to see it and snapshot it in time, you know, but -- but it's always evolving in light of different considerations.

Q. Let's switch gears. Did you have any involvement in the creation and development of the charitable DAF?

MR. MCENTIRE: Objection, form.

MR. PHILLIPS: Objection, form.

A. If you don't mind, could you be a little more specific to what you're referring to charitable DAF?

Q. (By Mr. York) Sure.

Mr. Lang, can you put up the chart for me please, Exhibit 1.

MR. PHILLIPS: I'm having a hard time -- I know there's not a question pending, but what does this have to do with the Daugherty objection?

MR. MCENTIRE: I don't think it has anything to do with the objection.

So, Mr. Lang -- I mean, Mr. York, I don't know how we go here.

MR. PHILLIPS: We're not going to allow any kind of amendment to pleadings or by additional evidence and that sort of thing. I'm just having a hard time with this folderol about -- Daugherty has an objection, but this is not part of it.

MR. YORK: Take down the exhibit for now, I'll go a different route.

Mr. Patrick, have you read Mr. Daugherty objection to the proposed settlement between Highland and the HMIT entities?

A. Yes.

Q. Are you aware that Highland has separately filed an adversary proceeding against Mr. Daugherty?

A. I have an awareness, yes.

Q. Okay. Have you ever read the settlement agreement between Highland and Mr. Daugherty?

A. No.

Q. In the course of the negotiations of the proposed settlement between Highland and the HMIT entities, was there ever any discussions about Mr. Daugherty unresolved class a claim?

MR. PHILLIPS: Objection to form.

A. Yes.

Q. (By Mr. York) When did those take place?

A. I believe during the period of the -- the discussions around the settlement.

Q. Before or after the settlement agreement -- I'm sorry, strike that. Before or after the motion for entry for approval of settlement was filed with the Bankruptcy Court?

A. Oh, I can't recall with that sort of precision.

Q. Did it come up before the parties, that is Highland and HMIT entities reached an agreement in principle to the proposed settlement?

A. Yes, I --

Q. Who brought it up?

A. Not me, is what I can say because it's nothing that was really in my radar screen.

Q. Was it brought up by anybody else on the HMIT entities side?

MR. PHILLIPS: Objection, form.

MR. MCENTIRE: Let me jump in here. I would object to the extent that he's asking you to talk about discussions you've had with Mr. Lewis or other attorneys representing Hunter Mountain. If you can answer that without making reference to any such privileged discussions, you can do so. Otherwise, I will instruct you not to answer.

A. Yeah, no -- I mean, we had substantial all legal involvement and so I think a lot of those discussions -- I mean, it wasn't necessarily me, but is lawyers to lawyers.

Q. (By Mr. York) Did you ever have any communications yourself with anyone on the Highland side regarding Mr. Daugherty unresolved Class A claim in the bankruptcy?

A. I just remember generally speaking -- and it coming up in the settlement negotiations.

Q. I understand that. So is your answer then, no, you did not have any direct conversations with anyone from Highland regarding Mr. Daugherty Class A claim?

A. I wish I could be that precise. I just don't recall. Maybe.

Q. Well, if you did, who would those conversations have been with?

A. Yeah, I don't want to speculate.

MR. MORRIS: Objection form.

Q. (By Mr. York) Are you aware that Highland is engaged in a dispute with the IRS regarding its tax filings from 2008 to 2010?

A. Yes.

Q. Okay. And have you been aware of that since, you know, since the time that you became the administrator at Hunter Mountain Trust?

A. Yes.

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Q. And before that?
A. Yes.
Q. All right. What is your understanding of that dispute?
MR. PHILLIPS: Objection, form.
A. That there's a proposed adjustment with respect to the Highland tax return for 2007 and 2008.
Q. Have you had any discussions with anyone from Highland regarding that dispute?
A. When?
Q. At any point in time.
A. Oh, yeah, when I was employed by Highland, yes.
Q. Okay. What about since?
A. When I was employed by Skyview.
Q. When you were employed by Skyview?
A. Yeah.
Q. Okay. Who owns Skyview?
A. My understanding is a Scott Ellington.
Q. Okay. And who did you have those conversations with?
A. Oh, outside counsel.
Q. Other than counsel, have you had discussions with anyone else about the IRS audit dispute?
A. Oh, I'm sure I have.
Q. Do you recall who?

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A. Not really, specifically.
Q. Do you recall the last time you did?
A. No.
Q. Do you recall what was said?
A. No.
Q. Are you familiar with what's known an FPAA, F-P-A-A?
A. Yes, I am.
Q. What does that stand for?
A. Final partnership administrator adjustment.
Q. And is that a document or form, I guess, that is issued by the IRS with respect to an audit?
A. Yes, it is.
Q. All right. Do you know whether an FPAA has been issued with regard to Highlands tax filings for 2007-2008?
A. I may have known, but I may have forgotten. That's -- so I don't want to say, I don't know because I just can't -- I can't recall, but I may have known.
Q. I'm not sure -- so you just don't know as you sit here?
A. Well, I'm saying I guess I can't remember, but it's within a realm of possibility that I may have known at some point.
Q. Have you seen it?
A. It's been many years, and that's why my memory

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isn't precise enough to give you kind of an affirmative.
MR. MCENTIRE: Mark, don't speculate if you don't remember.
A. Yeah.
Q. (By Mr. York) Have you ever had any discussions with anyone concerning the FPAA if one has actually been issued for either Highland's 2007 at 2008 tax returns?
MR. PHILLIPS: Objection, form.
A. Can you state that again?
Q. (By Mr. York) Sure. Have you ever had any discussions with anyone to the best of your recollection about an FPAA if one has actually been issued concerning Highland's either 2007 or 2008 tax returns?
A. Yeah, I don't recall. If I have or have not, I just don't remember.
Q. You were asked earlier by Mr. Lang about who reached out first on the settlement discussions. Am I correct the settlement discussions between Highland and Hunter Mountain began sometime in, I think, March of this year? Is that right?
A. I -- I don't know with absolute precision, like, I was thinking April.
Q. Did you personally have any direct negotiations with anyone on the Highland side?
MR. MORRIS: Objection.

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A. Yes.
Q. (By Mr. York) Who was that?
A. Wait, so restate your question again.
Q. Yeah, my question was did you -- did you have any direct negotiations with anyone on Highland side relating to the proposed settlement?
A. Yes, I did.
Q. And my question then was, who --
MR. MCENTIRE: Objection.
A. The professionals at Highland.
Q. (By Mr. York) So you spoke just with the professionals at Highland? Nobody else?
A. No, I spoke to a lot of, you know, like, my team.
Q. Sure. I'm asking on the Highland side, who did you speak with?
A. Oh, the professionals there at Highland.
Q. Okay, which ones?
A. You know, Mr. Starey, and I guess when you say spoke with, I mean, do you, like, general discussions within a group typesetting. You know, Dave Clause and Tim Corinoir. Those are the names that come to mind.
Q. And you can't recall who initiated the settlement discussions -- the discussions about potentially settling the dispute between Highland and the Hunter Mountain entities, correct?

A. Yeah, I can't, specifically.
Q. You consider yourself to have had a close relationship with Jim Dondero in the past?
MR. MCENTIRE: Objection, form.
MR. PHILLIPS: Objection, form.
A. No.
MR. YORK: So you know that Highland at one point did characterize you as having a close relationship with Mr. Dondero over a more than decade period of time that you worked at Highland.
MR. PHILLIPS: Objection, form.
MR. MCENTIRE: Joined in the objection.
A. I didn't have that awareness.
Q. (By Mr. York) Do you still communicate with Mr. Dondero?
MR. PHILLIPS: Objection, form.
A. No.
Q. (By Mr. York) When was the last time you recall communicating with him?
MR. MCENTIRE: Objection, form.
A. I can't recall precisely.
Q. (By Mr. York) Was it some time within this calendar year?
MR. MCENTIRE: Same objection.
A. No.

Q. (By Mr. York) Last year?
A. Yes.
Q. Do you recall when last year?
A. No.
Q. Can you tell me -- was it, you know, spring, summer, fall 2024? Any idea?
MR. PHILLIPS: Objection, form.
A. Well, I'm pretty confident it was in the summer.
Q. Okay.
A. But it may have been later, but at least the summer.
Q. All right. What do you recall the two of you discussing in the last conversation?
MR. MCENTIRE: Objection, form.
MR. PHILLIPS: Objection, form.
MR. MCENTIRE: Can we have an agreement that one attorney objects, it's good for all?
MR. YORK: Sure.
MR. PHILLIPS: It's fine with me. I can't speak for Mr. Lang or Okin.
MR. LANG: That's fine.
A. I just don't specifically remember.
Q. (By Mr. York) Has Highland capital ever had an ownership interest in Hunter Mountain Trust?
A. Highland Capital Management having an ownership in

Hunter Mountain?
Q. Yeah.
A. To my understanding, no.
Q. Okay. Do you know how Hunter Mountain came to own Class B and Class C limited partnership interest in Highland Capital Management?
A. Yes.
Q. How?
A. Purchase and contribution.
Q. So are you saying that Hunter Mountain purchased Class B Limited partnership interest in Highland Capital?
MR. PHILLIPS: I'm going to object to form. And counsel, where are we headed here?
MR. YORK: Just trying to make sure we have a full understanding when we go into this hearing. Hunter Mountain interest is as set forth in the -- in the proposed settlement relating to the capital account balance, that's all.
A. What was the question?
Q. Yeah, so did -- I was trying to understand when you said purchase and contribution, what do you mean by that? What's -- what's that number?
A. Yeah, yeah, my understanding is that Hunter Mountain had purchased the -- some interest in Highland Capital Management LP. I don't recall precisely the class

and then it had also acquired interest in Highland Capital Management LP via a contribution contributing a note or an asset into it. Is what I -- is my general understanding.
Q. And is that note, that you're referring to, is that what Coakley has been called the Hunter Mountain Investment Trust note?
MR. PHILLIPS: Objection to form.
A. Yeah, I don't know what you're referring to. I'm just -- my general -- my general knowledge is that -- that there was a note contributed by Hunter Mountain into Highland in exchange for an interest.
Q. (By Mr. York) When did that occur to your knowledge?
MR. PHILLIPS: Objection, form.
A. I can't remember the years gone by.
Q. (By Mr. York) Was it while you were employed with Highland?
A. Yes.
Q. The last couple of questions here, I think, is Hunter Mountain paying the legal expenses for Mr. Phillips and his firm? Relating to the proposed settlement and, I guess, the defense of the proposed settlement at the upcoming hearing?
A. I believe so.
Q. Okay. Is there --

MR. PHILLIPS: I'll answer that, yes.
MR. YORK: Mr. Phillips, if you want to go under oath we can put you under oath as a witness too, but --
MR. PHILLIPS: Let me rephrase. I hope so.
A. Yeah.
Q. (By Mr. York) Is there anyone that's making any payment or contribution to Hunter Mountain in relation to those legal expenses? In other words, is any third party paid Hunter Mountain or reimbursed Hunter Mountain for any legal expenses associated with the proposed settlement?
A. No, but -- except for the current ownership, you know, is probably funding it that way. So CLO HoldCo LLC would be making a contribution into Hunter Mountain to pay legal bills.
Q. All right.
A. And probably -- I'm kinda jumping -- probably go to Beacon Mountain first and then it would go to Hunter Mountain like that.
Q. On up the chain, so to speak?
A. Yeah. Well, I don't know how -- on up the chain -- yeah, until there's cash which would be CLO HoldCo.
Q. Okay. Are there any indemnifications agreements that Hunter Mountain has entered into where it is being indemnified by any parties relating to -- relating to the

settlement at all?
MR. PHILLIPS: Objection, form.
A. Not to my -- not to my knowledge.
Q. Okay. All right.
MR. PHILLIPS: I would qualify that. If you're asking about the settlement agreement, could you put the settlement agreement up because there may be indemnification provisions in the settlement agreement. If you're asking for outside the settlement agreement, that's a different story.
MR. YORK: You took care of that for me Lewis.
A. Yeah, yeah, and no, I appreciate that clarification because I guess I should have asked you either or because I was getting confused thinking that maybe it also includes the settlement agreement. No, my answer is with respect to anything outside of a settlement agreement. There are no indignities to my general understanding.
Q. All right.
With that, I think, at this point, I'll pass the witness back to Mr. Lang, if he's got any further questions.
FURTHER EXAMINATION
BY MR. LANG:
Q. I have one question. You said that Rand PE Fund I, LP was in liquidation, do you recall that?

A. Yeah, yeah, well, I call it a windup.
Q. Windup, okay.
A. Yeah, yeah. It's a windup.
Q. And then I could be wrong, but I think I recall that Mr. Raver testified that Atlas IDF LP was in liquidation, does that sound right?
MR. MCENTIRE: Objection, form.
A. Yeah, windup.
Q. (By Mr. Lang) You said windup also?
A. Yeah, but, but loosely termed they're one and the same.
MR. LANG: Okay. That's all I've got.
MR. MCENTIRE: Anybody else?
MR. OKIN: Well, we'll be back at 2:00 tomorrow.
MR. MCENTIRE: Yeah. Okay. I think that adjourns the deposition Ms. Court Reporter.
(End of Proceedings.)

CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON

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I, MARK PATRICK, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
MARK PATRICK

THE STATE OF TEXAS
COUNTY OF _____

Before me, _____, on this day personally appeared MARK PATRICK, known to me (or proved to me under oath or through _____)(description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20___.

_____
Notary Public in and for
the State of Texas

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

In re	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

REPORTER'S CERTIFICATION
DEPOSITION OF MARK PATRICK
JUNE 23, 2025

I, IDA ALCALA, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, MARK PATRICK, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, 2025, to the witness or to the attorney for the witness for examination, signature and return to me by _____, 2025;

That the amount of time used by each party at the deposition is as follows:

Mr. Lang : (00:28)
Mr. York : (00:27)

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:
Mr. Michael Lang, Attorney for Dugaboy Investment Trust.
Mr. Sawnie Mcentire, Attorney for Mark Patrick.
Mr. Drew York, Attorney for Patrick Daugherty.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of the Texas Rules of Civil Procedure will be certified to after they have occurred.

Certified to by me this 23rd day of June, 2025.

_____
Ida Alcala, CSR#12565
CSR Expiration Date: 12/31/26
Firm Registration No. CRF-3
1235 North Loop West
Suite 510
Houston, Texas 77008

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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____, 2025.

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Mcentire, Custodial Attorney;

That $_____ is the deposition officer's charges to the Defendant for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3 and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this _____ day of _____, 2025.

_____
Ida Alcala, CSR#12565
Firm Registration No. CRF-3
1235 North Loop West
Suite 510
Houston, Texas 77008
CSR Expiration Date: 12/31/26

EXHIBIT 59

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	June 25, 2025
	9:30 a.m. Docket
Reorganized Debtor.	
	- MOTION TO EXTEND DURATION OF TRUSTS (4213)
	- MOTION TO APPROVE SETTLEMENT (4216)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Highland Capital Management Claimant Trust:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7760
For the Highland Capital Management Claimant Trust:	Hayley R. Winograd Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 1700 Broadway, 36th Floor New York, NY 10019 (212) 561-7732
For the Highland Capital Management Claimant Trust:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For Marc S. Kirschner, Litigation Trustee:	Robert Scott Loigman QUINN EMANUEL URQUHART & SULLIVAN, LLP 295 5th Avenue New York, NY 10016 (212) 849-7000

APPEARANCES, cont'd.:

For the Hunter Mountain Entities:	Louis M. Phillips Amelia L. Hurt KELLY HART & PITRE 301 Main Street, Suite 1600 Baton Rouge, LA 70801 (225) 381-9643
For the Dugaboy Investment Trust:	Deborah Rose Deitsch-Perez STINSON, LLP 2200 Ross Avenue, Suite 2900 Dallas, TX 75201 (214) 560-2201
For the Dugaboy Investment Trust:	Michael Justin Lang CRAWFORD WISHNEW & LANG, PLLC 1700 Pacific Avenue, Suite 2390 Dallas, TX 75201 (214) 817-4500
For Crown Global Life Insurance, Ltd. and The Dallas Foundation:	David L. Curry, Jr. OKIN ADAMS, LLP 1113 Vine Street, Suite 240 Houston, TX 77002 (713) 228-4100
For Patrick Daugherty:	Andrew K. York Drake Rayshell Joshua Smeltzer GRAY REED & MCGRAW, LLP 1601 Elm Street, Suite 4600 Dallas, TX 75201 (214) 954-4135
For the U.S. Trustee:	Erin Marie Schmidt OFFICE OF THE UNITED STATES TRUSTEE 1100 Commerce Street, Room 976 Dallas, TX 75242-1496 (214) 767-1075
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

Transcribed by: Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

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THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated.

MR. LANG: Good morning, Judge.

THE COURT: All right. We have Highland settings this morning, Case No. 19-34054. We have two motions: a motion to extend the duration of the Plan Trust, and then a motion under Rule 9019 to approve a settlement between the estate entities and Hunter Mountain entities.

All right. So, lots to get to. Let's quickly get appearances from the participating parties in interest this morning.

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski Stang Ziehl & Jones. I'm joined by my colleagues Jeffery Pomerantz, Gregory Demo, and Hayley Winograd. And we represent the Highland Capital Management Claimant Trust and Highland Capital Management, LP.

THE COURT: Okay. Good morning. Other appearances?

MR. LOIGMAN: Good morning, Your Honor. Robert Loigman from Quinn Emanuel. We represent the Highland Litigation Trustee, Marc Kirschner.

THE COURT: Good morning.

MS. DEITSCH-PEREZ: Good morning, Your Honor. This

is Deborah Deitsch-Perez from Stinson representing the Dugaboy Trust on the motion to extend the duration of the Trust.

THE COURT: Good morning.

MS. DEITSCH-PEREZ: Good morning.

MR. LANG: Michael Lang for Dugaboy Investment Trust on the 9019 motion.

THE COURT: Good morning.

MR. LANG: Good morning.

MR. PHILLIPS: Good morning, Your Honor. Louis M. Phillips and Amelia L. Hurt; Kelly Hart Hallman -- Kelly Hart Pitre, Louisiana trade name, I don't know why -- appearing on behalf of Hunter Mountain Investment Trust and the Hunter Mountain entities in connection with the 9019 motion.

THE COURT: Good morning.

MR. YORK: Good morning, Your Honor. Drew York along with Joshua Smeltzer and Drake Rayshell from Gray Reed on behalf of Patrick Daugherty with regard to the 9019 motion.

THE COURT: Good morning. Ms. Schmidt?

MS. SCHMIDT: Erin Schmidt on behalf of the U.S. Trustee.

THE COURT: Good morning.

MR. CURRY: Good morning, Your Honor. David Curry from Okin Adams on behalf of The Dallas Foundation and Crown Global Life Insurance, Ltd.

THE COURT: Good morning.

All right. Well, let me ask. I'll start with Mr. Morris, given these are your motions. Do you have any agreements about how you're going to proceed? I'm wondering, first off, are we going to have joint presentations, joint evidence on both motions, or are we going to take one at the time?

MR. MORRIS: Good morning, Your Honor. Thank you very much for hearing us yesterday. It's kind of a big day in the case. We have a milestone that we hope will greatly advance the prosecution of this case, and, frankly, what remains to be done to complete the wind-up of Highland.

There are two motions before the Court. The first is the motion to extend the Trusts. That was filed at Docket No. 4213. We're going to address that one first, Your Honor, because we have a resolution and a stipulation. There's only one objecting party. That was the Dugaboy Investment Trust. And early this morning we reached an agreement whereby Dugaboy is going to withdraw its objection, with prejudice, subject to a stipulation that we will file with the Court but that contains the following terms.

THE COURT: Okay.

MR. MORRIS: Number one, Dugaboy agrees to withdraw its objection to the motion, with prejudice.

Number two, the Trusts expect to dissolve by August 11th, 2026, so that no further extension of the duration of the Trusts will be necessary.

THE COURT: Okay.

MR. MORRIS: And number three, Dugaboy hereby preserves and does not waive its right, if any, to object to any further attempts to extend the date by which the Trusts must be dissolved or to extend the duration of the Trusts.

THE COURT: Wait. I don't understand that third one. Could you repeat it?

MR. MORRIS: It's a reservation of rights.

THE COURT: Okay.

MR. MORRIS: And so Dugaboy preserves and does not waive its right, if any, to object --

THE COURT: Well, okay. I'm sorry. Maybe I zoned out or heard something different.

MR. MORRIS: Uh-huh.

THE COURT: I thought number two of the agreement was August 11th, 2026 would be it; there would be no further extensions.

MR. MORRIS: It's a statement of expectation. It's not a representation. It's not a warranty. We do not believe today, based on the facts and circumstances that we know of, that a further extension will be necessary, but we're not waiving the right to seek it if circumstances change or something unforeseen happens. And all Dugaboy is saying is that, okay, we reserve the right, if any, to object.

THE COURT: Okay.

MR. MORRIS: It's that simple.

THE COURT: Okay. It's sort of confusing, right?

MR. MORRIS: Yeah.

THE COURT: Okay.

MR. MORRIS: Perhaps. If you have any questions, let me try and clarify.

THE COURT: Well, I guess I'll just start with Ms. Deitsch-Perez. Would you come to the podium? We've got I don't know who on the camera, but we want to make sure everyone hears.

MS. DEITSCH-PEREZ: Okay. I'll take a stab at --

THE COURT: Do you confirm what you heard and do you have any clarification of Points 2 and 3?

MS. DEITSCH-PEREZ: Maybe I can make it clear. I confirm that is the stipulation that we agreed upon, and I think all that was intended is the Trusts and the Debtor are saying they expect to be done by August 11, 2026, so that they will not need to make this motion again, but they could not and would not promise that they will be done by then. So Dugaboy is withdrawing the objection to this particular extension but is not waiving the right to object to a further request for an extension. And that's the sum of it. Does that make sense to Your Honor?

THE COURT: It does.

MS. DEITSCH-PEREZ: Okay.

THE COURT: I'm hoping it'll be over by August 11th, 2026, and we'll see where we are at that time.

Well, one of my reasons for a slight bit of confusion is, in reading the 9019 settlement that is before the Court, I saw that there were some future installments payments, if you will, to HMIT, I think up through 2029, maybe.

MR. MORRIS: Sure.

THE COURT: So I was --

MR. MORRIS: So let me clarify.

THE COURT: Okay.

MR. MORRIS: The only thing that we said that we expect to happen as of, you know, by August 11th, 2026 is that the Trusts will be dissolved. But that is not the end of their life. It is a process. Once you file for dissolution, then you have to complete the wind-down. And completing the wind-down will require the completion of all litigation. It will -- right?

All we're talking about is dissolving the Highland Claimant Trust and the Highland Litigation Subtrust so that what remains after that is the Indemnity Trust. And the Indemnity Trust will be fully funded and will be prepared to go forward. And if we ever get to a point when there's no further litigation, the corpus of that will be distributed to whatever stakeholders are entitled to it at that time.

But when we talk about being done by next year, it doesn't

mean the case will be over. It simply means that the Claimant Trust and the Highland Litigation Subtrust will be dissolved. But they still have to complete the wind-up.

THE COURT: Okay. Gotcha.

MS. DEITSCH-PEREZ: And Dugaboy is reserving its rights to object to -- if something is happening that seems improper or untoward or they're seeking additional relief, obviously, we're not waiving the unknown now.

THE COURT: Okay. Gotcha. All right. Well, I appreciate the resolution of these issues. I assume no other party in interest is going to weigh in since we only had a Dugaboy objection.

MR. MORRIS: That was the only objection we had. I'm prepared to, if Your Honor thinks it's necessary or appropriate, or both, to make a very short proffer. A proffer.

THE COURT: Okay. I'll accept that proffer at this time.

MR. MORRIS: Okay. So, Your Honor, we filed on the docket at No. 4253 Exhibits 1 through 65, and we supplemented our exhibit list at Docket No. 4271 with two additional documents, which are Exhibits 66 and 67. We don't believe there's any objection to any of those documents, and we would respectfully move for their admission into evidence.

THE COURT: All right. Could you repeat the numbers

once again?

MR. MORRIS: Yes, Your Honor. So, for the motion for an order further extending the duration of the Trusts, we have two docket entries that contain Highland's exhibits. The first is Docket No. 4253, and that has Exhibits 1 through 65.

THE COURT: Okay.

MR. MORRIS: And then we supplemented at 4271 with Docket -- with Exhibit Numbers 66 and 67.

THE COURT: All right. I presume there's no objection to these exhibits.

All right. They are admitted.

(Claimant Trust's Exhibits 1 through 67 are admitted into evidence.)

JAMES P. SEERY, JR., PROFFER OF TESTIMONY

MR. MORRIS: Okay. So, Your Honor, if called to testify, James P. Seery, Jr., the Claimant Trustee of the Highland Claimant Trust, would testify as follows.

At Exhibits 63 and 64, Highland filed excerpts of the Litigation Trust and the Litigation Subtrust -- the Claimant Trust and the Litigation Subtrust, and each of those excerpts contain Section 9.1, respectively. That's the section of the Trusts that deal with the extensions that may be necessary from to the original three-year term. And Mr. Seery would testify that he's familiar with those provisions and that he understands the requirements of those provisions include,

among other things, the requirement that all objections to claims and equity interests have been resolved and that all assets that the Trustee believes might yield sufficient value to the estate have been sold.

Mr. Seery would also testify that the Highland estate has a number of assets in its possession today, certain of which will be conveyed to Hunter Mountain if the 9019 motion is approved.

Among those assets, Mr. Seery would testify that, in accordance with the proposed settlement agreement, which is at Exhibit 17, in Paragraph 5(b), the Court will see reference to what's known as the Dugaboy Note. The Dugaboy Note is an asset of the estate that will go to Hunter Mountain if the 9019 motion is approved. If it's not approved, then Mr. Seery would testify that he's got to find another way to dispose of it. But it is an asset with a face amount today of about $17 million, so it has substantial value.

There is a note from Hunter Mountain. That also will be disposed of as set forth in Paragraph 4(a) of the proposed settlement agreement. That note is going to be used to reduce the allowed amount of Hunter Mountain's Class 10 claim if the settlement is approved. But that note is also an asset of the estate. It's worth over $60 million. I believe it actually might be in the fifties. But somewhere in the $50 to $60 million range. And that's an asset that needs to be disposed

of.

The estate has a contingent right to receive certain funds under its settlement with Mr. Okada, and it has the Kirschner Litigation. All of these assets will be disposed of. They're very illiquid assets, I'd call them, and it would be very helpful to the estate in moving this case forward if the 9019 motion is approved.

There are other assets that the estate has that will not be monetized by August 11th and which therefore require the extension of the Trusts. Mr. Seery would testify, if called to the stand, that the pursuit of the sale of these assets will yield proceeds that justified the continued pursuit of their monetization. They include interests in Highland CLO Funding, Ltd. Documents pertaining to that can be found at Exhibits 21 and 25.

The Claimant Trust also owns shares in Highland Capital Management Korea, Ltd. Documents relating to that asset can be found at Exhibits 18 through 20. That's an asset that, if Mr. Seery were to testify, he would say that he has been actively engaged in trying to liquidate that asset, but it's not going to be completed by August 11th.

There's also a note that is due from Highland Capital Management Korea, Ltd. That can be found at Exhibit 67. That's another asset that Mr. Seery has concluded and would testify to that he thinks is valuable for the estate but will

not be monetized by the end of this extension period.

And then there's the bad faith award that the estate obtained against HCRE, which remains on appeal. The appeal of that order can be found at Exhibit 15. And there's no further cost, really, to waiting for the Court's decision, but that is an asset of the estate that remains to be monetized.

So there's two buckets of assets, one of which, hopefully, if the 9019 motion is approved, will go to HMIT and that will be helpful. But there's another bucket of assets that are not implicated by the HMIT settlement that will not be monetized before August 11th that Mr. Seery would testify we need a little bit more time and that's why we're going to extend the Trusts.

Mr. Seery would also testify, finally, that there are claims and equity interests that remain unresolved. They include Mr. Daugherty's Class 8 claim. As Your Honor is probably aware at this point, Highland has objected to that claim. It seeks to disallow, subordinate, that particular claim. Otherwise, have it monetized for purposes of winding up the estate.

Mr. Daugherty has moved to dismiss that complaint. That's his right. But our scheduling order already takes us past August 11th.

And then, finally, we've got Dugaboy's Class 11 interest, which has not yet been allowed. If the 9019 motion is

approved today, we do expect to move quickly to get to that point so that we can finish that up. But we don't foresee that being completed before August 11th, either.

So, in sum, Mr. Seery would testify that, from his perspective, the estate still has assets that are valuable to the estate that will not be monetized by August 11th, and there are still one claim and one equity interest that need to be resolved in order to satisfy the test, you know, to get to the dissolution.

So that would be the sum total of his testimony. That's the completion of the proffer. And unless Your Honor has any objections, we're prepared to move to the next motion.

THE COURT: I have a couple of questions.

MR. MORRIS: Sure.

THE COURT: But first I'm going to go ahead and swear in Mr. Seery --

MR. MORRIS: Great.

THE COURT: -- to affirm this, as well as swear him in for what I'm sure will be future testimony today.

MR. MORRIS: Sure.

MR. SEERY: Would you like me to come --

THE COURT: Well, you can just stand in place. Just make sure we hear you.

(The witness is sworn as to both his proffer and future testimony.)

THE COURT: Okay. Thank you.

All right. My question is probably for you.

THE WITNESS: Uh-huh.

THE COURT: Just confirm my understanding. We have one claim and one --

MR. MORRIS: Equity interest.

THE COURT: -- equity interest to resolve? Mr. Daugherty's Class 8 claim and the Dugaboy what would be Class 11 interest?

MR. MORRIS: That is correct.

THE COURT: Did I hear that correctly, Mr. Seery?

THE WITNESS: That's correct, Your Honor.

THE COURT: Okay. Thank you.

And then my other question is, once again, a clarification. I pulled out of your attachments to your motion to extend the Exhibit B, Unresolved Pending Litigation.

MR. MORRIS: Uh-huh.

THE COURT: And at the time this was filed, May 8th, 2025, it showed nine pending matters at all court levels. And I think two of them now are finished. I'm sorry. This is a long question. But maybe I'm wrong. The first two matters, the recusal matter that was at the Fifth Circuit, as well as the gatekeeper appeal, which I know a motion to stay the mandate was at the Supreme Court, both of those are finished now? Done?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. So the nine pending matters is now down to seven. And if the Court were to approve the 9019 today, I understand that, well, it looks like, at a minimum, two more would go away?

MR. MORRIS: Precisely.

THE COURT: We have an appeal at the District Court, what we call the Claims Trading Appeal, where Highland had sued -- I'm sorry, Hunter Mountain had sued Highland and others regarding the claims trading issue, I'll call it. So that would go away?

MR. MORRIS: Yes, Your Honor.

THE COURT: And then let me see what else. I've marked all over my chart.

MR. MORRIS: And then I believe Hunter Mountain's motion for leave to file a complaint in the Delaware Chancery Court --

THE COURT: Ah.

MR. MORRIS: -- to remove Mr. Seery will also be dismissed with prejudice --

THE COURT: Okay.

MR. MORRIS: -- if the 9019 motion is approved.

THE COURT: Okay. So, that, yes, Hunter Mountain v. Seery, the Court issued a stay on that being able to go forward in Delaware.

MR. MORRIS: Precisely.

THE COURT: So that would go away.

So, of the nine matters listed, we're down to five. But I'll hear, I guess, about this later with Mr. Seery, the big what I would call Kirschner adversary against lots of defendants which has been abated for a long, long time now. Hunter Mountain would basically receive that lawsuit with those claims? The claims against it go away? And I don't know what we'll hear, I don't know what Hunter Mountain will do with that big adversary, but maybe it doesn't know yet. I don't know.

MR. MORRIS: Yeah.

THE COURT: So, --

MR. MORRIS: Not a question we've concerned ourselves with, Your Honor.

THE COURT: Okay. So that, again, I'm kind of recapping everything.

(Counsel confer.)

MR. MORRIS: Go ahead, Your Honor.

THE COURT: So, again, I'm looking at the chart. If anyone wants to know what I'm looking at, it's at Docket No. 4213-2, filed May 8th. We're down to the HCRE --

MR. MORRIS: Appeal.

THE COURT: -- appeal.

MR. MORRIS: Uh-huh. Which is fully briefed and

we're just waiting for a decision.

THE COURT: Okay. So that bad faith decision may or may not stick, but it's hanging there on appeal.

MR. MORRIS: Uh-huh.

THE COURT: We're down to a Dugaboy -- what we called the Imaging Motion. Or no?

MR. MORRIS: Correct. I guess that's been stayed, but that's out there.

THE COURT: We have the valuation motion of Dugaboy, but I don't know, is it going to be moot after today? I don't know what I'm going to hear today as far as the evidence.

MR. MORRIS: So, that has -- great question -- two plaintiffs in that lawsuit, HMIT and Dugaboy.

THE COURT: Oh, that's right. So --

MR. MORRIS: HMIT is going to dismiss it with prejudice. Dugaboy will still have an active complaint.

THE COURT: Appeal.

MR. MORRIS: My hope is that --

THE COURT: It's an appeal of --

MR. MORRIS: Yes.

THE COURT: Okay.

MR. MORRIS: My hope is that, because we produced so much valuation information to HMIT, which we then had to make available to Dugaboy because that's the way discovery works, that they'll withdraw that complaint.

THE COURT: Okay.

MR. MORRIS: I'm going to make that plea right on the record here, because they've now gotten everything they've asked for. But that's their decision to make, and it's out there. But HMIT is withdrawing itself as a party to that lawsuit, but it does remain in Dugaboy's lap.

THE COURT: Okay. So those potentially three things?

MR. MORRIS: Yeah.

THE COURT: Plus the Daugherty matter?

MR. MORRIS: Yeah.

THE COURT: Okay. Mr. Seery, did I miss something?

THE WITNESS: One clarification, Your Honor. My apologies. One clarification. In the Class 11 subordinated interests, there's a Dugaboy capital account of $740,000. There's also the Strand capital account -- both of these are controlled by Mr. Dondero -- of $994,000. And then Mr. Okada and his affiliates have a combined capital account of $248,000. So we'll -- I said just Dugaboy, but it's actually Dugaboy, Strand, and then Okada and two family trusts of his.

THE COURT: Okay.

MR. MORRIS: And if the 9019 motion is granted, --

THE WITNESS: It's in the footnote. It's in the footnote in the motion.

THE COURT: Yes. I actually had that in my notes.

MR. MORRIS: Yeah.

THE COURT: So I glossed over Class 11 just being Dugaboy. There are Strand and Okada.

All right. So I appreciate that clarification. We're down hopefully to very little litigation. But we have no control over higher courts, when they have time to look at it.

MR. MORRIS: Or future litigation, now that the gatekeeper has been curtailed.

THE COURT: Okay. All right.

Anyone wish to say anything about this motion to extend?

All right. Well, based on the pleadings, the argument, the evidence, I do think it is necessary and appropriate and reasonable to extend the duration of the Highland Trusts through August 11th, 2026. The relief is something that is contemplated as a possibility under the trust documents. Moreover, I think the Court has some authority under Bankruptcy Rule 9006(b) and Bankruptcy Code Section 105 to grant this relief.

The evidence shows there are unliquidated assets and some unfinished litigation that must be resolved before the Trust is in a position to wind down. So, again, I think it's necessary, prudent, and in the best interest. The motion is granted, and the Court duly acknowledges the comments with regard to the stipulation of Dugaboy and the estate. All right.

MR. MORRIS: Thank you very much. So, may I move to

the 9019 motion?

THE COURT: You may.

MR. MORRIS: Okay. With respect to the 9019 motion, there were originally three Objecting Parties: the Dugaboy Investment Trust, Patrick Daugherty, and The Dallas Foundation and an entity called Crown Global.

I'm pleased to report, and I think Your Honor may already be aware, that a settlement has been reached to dispose of The Dallas Foundation and the Crown Global objection. There is a written agreement to that effect that effectuates that. And I'd like to just turn the podium over to Mr. Phillips. Louis Phillips represents the HMIT Entities. I know Mr. Curry is here on behalf of the objecting parties, The Dallas Foundation, but I think -- I think I'll let Mr. Phillips address, you know, the specific terms of the resolution of that objection.

THE COURT: All right. Thank you. And I will say that my staff reached out yesterday to -- I don't know if it was Mr. Curry or someone in your office -- wanting to know have you delivered exhibit notebooks. And it was at that point my staff heard, well, we've resolved.

MR. CURRY: We had just finished.

THE COURT: Okay. All right. So I'm happy to hear what the resolution is.

MR. PHILLIPS: Good morning, Your Honor. Louis M.

Phillips on behalf of the Hunter Mountain Investment Trust and the named parties therein.

We had a written stipulation that has been signed by my firm, by Mr. Curry's firm, by the Pachulski firm, and by the Quinn Emanuel firm that is to be submitted to the -- is to be filed on the record. It also contains a reference to a settlement agreement that will be attached. But we will read the stipulation into the record, if Your Honor would allow me to.

THE COURT: All right. You may.

MR. PHILLIPS: And Mr. Curry is here, and he can tell me whether or not I have read correctly, but I think I have it.

THE COURT: Okay. All right.

MR. PHILLIPS: (reading) Now, wherefore, it is jointly -- hereby jointly stipulated and agreed as follows. The Foundation Parties -- Mr. Curry's clients -- withdraw The Foundation Objection, which is a defined term in the stipulation, with prejudice, in accordance with the terms of the term sheet annexed hereto as Attachment 1. And Attachment 1 will be attached to the stipulation.

Paragraph 2. The Foundation Parties, the HMIT Entities -- that's Hunter Mountain Entities and the Movants; that is, Mr. Morris' client and Quinn Emanuel on behalf of the Litigation Subtrust -- agree that the following language shall be

contained in the proposed order on the 9019 motion. And that's clearly the proposed order. This is not dependent upon the motion being granted. Notwithstanding anything in the settlement agreement or the 9019 order to the contrary, none of The Dallas Foundation, EDF, Okada Family, or Crown (The Foundation Parties) are or will be included in the definition of HMIT Releasors or Highland Releasors. For the avoidance of doubt, however, any attempt by The Foundation Parties to assert a claim against an HMIT released party by, through, or under, including derivatively a Highland entity, or against a Highland released party by, through, or under, including derivatively an HMIT entity, is barred by this order and the settlement agreement.

That is the sum and substance of the stipulation. The settlement agreement we don't think needs to be read to the Court because it's a signed settlement agreement that will be attached as Attachment 1 to the stipulation. And I believe I read it correctly.

THE COURT: Mr. Curry, did he read it correctly?

MR. CURRY: Mr. Phillips did read it correctly, Your Honor. And thank you.

And we want to thank Trustee's counsel and Mr. Phillips for working with us to address some very real concerns. And through the stipulation, we still have some work to do, but we have the time to do it, and maybe move it to where we can

actually get it resolved.

THE COURT: Okay. Well, there are some things I am concerned -- well, I should say, all I really feel the need to go into is you're releasing your objection, your clients are, and all of the parties here, parties to the proposed settlement and the estates, the Debtors, Hunter Mountain, are agreeing that your clients are not releasors under the 9019 settlement if the Court approves it.

MR. CURRY: Correct, Your Honor. Unless and except our clients were to attempt to assert a released claim against a released party, and that's what the "provided, however" was to clarify.

MR. PHILLIPS: And this doesn't affect the estate at all. It basically affects the HMI -- the Hunter Mountain entities. But the language that we have read in the stipulation has been agreed to and is contained within the order that will be proposed.

THE COURT: Okay. You said it better than I said it. The estate is releasing claims --

MR. PHILLIPS: I can't believe that, Your Honor, but thank you.

THE COURT: Well, the estate is releasing claims that it has --

MR. PHILLIPS: Correct.

THE COURT: -- or in Trusts have -- I shouldn't have

said the estate. It's the Trust entities and what's left of the Reorganized Debtors are releasing any claims they have against Hunter Mountain in the proposed settlement --

MR. PHILIPS: Yes.

THE COURT: -- if it's approved. But any direct claims of your clients are not --

MR. CURRY: Well, direct claims that our client has or derivative claims, for example, against Hunter Mountain that are derivative through Hunter Mountain.

THE COURT: Okay. All right.

MR. PHILLIPS: Yeah.

MR. CURRY: Yeah. That was the -- what we were trying to make sure.

THE COURT: Yes. All right. Well, and when I said this is all I care about, what I mean is I don't even know who the heck Crown Insurance is.

MR. PHILLIPS: Correct.

THE COURT: There was a very interesting party in interest objection asserted by the Debtor. And I've learned a lot about a lot of entities during all these years, but that was a new one on me. I understood that it's somewhere in the framework of the --

MR. PHILLIPS: Yes, Your Honor.

THE COURT: -- Charitable DAF.

MR. PHILLIPS: Let's say it's somewhere in the

universe, Your Honor.

THE COURT: The universe? Okay.

MR. PHILLIPS: The universe. Not necessarily the Charitable DAF or Hunter Mountain.

THE COURT: Okay.

MR. PHILLIPS: But in the universe.

THE COURT: Well, but the point is, we've announced anything relevant to --

MR. PHILLIPS: Correct.

THE COURT: -- the Reorganized Debtor, --

MR. PHILLIPS: Correct.

THE COURT: -- Claimant Trust, Subtrust.

MR. PHILLIPS: And the motion -- and the objections of all these entities are withdrawn with prejudice.

THE COURT: All right.

MR. CURRY: And Your Honor, the one thing that I will note, part of our agreement, and it's in the signed term sheet that you'll see, is that we've agreed that if there's a dispute over the settlement to withdraw our objection, this Court will have at least concurrent jurisdiction to resolve that dispute, because it is a settlement to resolve an objection to a core proceeding.

THE COURT: Okay. Thank you.

MR. PHILLIPS: And we have agreed and we do agree that the Court has jurisdiction. It has jurisdiction.

THE COURT: Okay. For what that is worth.

MR. PHILLIPS: Well, that's what we can agree to.

THE COURT: All right. I appreciate that.

Anyone wish to say anything about what's been announced?

All right. Well, I accept this resolution and withdrawal of --

MR. PHILLIPS: Okay. We will be filing --

THE COURT: -- the objection.

MR. PHILLIPS: We will be filing, at the close of this hearing, this stipulation, and we will be clicking whatever ECF box request that the Court so ordered on the stipulation.

THE COURT: Okay. We will be on the lookout for that.

All right. Well, Mr. Lang, you stood up on behalf of Dugaboy.

MR. LANG: I just want to make the Court aware of a letter that was sent last night that involves this from the Caymans, from Grant Thornton.

MR. PHILLIPS: We object.

MR. LANG: I just want to make the Court -- they were asking for a 45-day that the Joint Liquidators --

MR. PHILLIPS: We object to this, Your Honor. That's not a part of the record. This is a person from outer space. Not outer space, but the Cayman Islands. And it's a letter

that we --

THE COURT: Coming from someone --

MR. PHILLIPS: It looks like a letter --

THE COURT: -- who is called Yosemite Sam, I understand, outside of court.

MR. PHILLIPS: Yeah. Yeah. I didn't want to bring that up, but Mr. Morris --

THE COURT: Okay. Well, it's stuck in my brain forever now.

MR. PHILLIPS: -- says it's his favorite cartoon character, so it must be okay.

THE COURT: Okay. Well, okay, I don't want to make light. I think this goes back to what I was saying about there are certain things I care about and certain things I don't care about. And I read from the pleadings, I haven't heard evidence but I've read from the pleadings that there is a lot going on in the Cayman Islands with regard to what I call the Charitable DAF structure or Hunter Mountain.

MR. LANG: Yes.

THE COURT: Parties in that universe. And I don't plan to exercise any control or jurisdiction over that, so I'm hesitant to hear what it is you want to present. I don't know, maybe on cross-examination of Mark Patrick today it may or may not be relevant. But what is it --

MR. LANG: All they ask for is a 45-day basically

abeyance or continuance of the decision on the 9019, to allow them to investigate and weigh in on it.

MR. PHILLIPS: Your Honor?

MR. LANG: They're Joint Liquidators. That's -- I'm just making the Court aware of the request.

THE COURT: Okay. Well, they're not here to articulate that. So I respect your wanting to be transparent and whatnot, but I'm not going to let it stop me from going forward today. Okay.

MR. LANG: Thank you.

THE COURT: Thank you.

MR. PHILLIPS: Your Honor, if I may be excused, that's our position with respect to the withdrawal. We appreciate Your Honor's attention. Thank you.

THE COURT: Okay. Thank you.

MR. CURRY: Thank you, Your Honor.

THE COURT: Anyone else wish to weigh in?

All right. Well, I do, as I was saying, accept the withdrawal of The Dallas Foundation and related entities' objection to the 9019 settlement.

So does that leave only the Daugherty objection to the settlement? Well, and the Dugaboy.

MR. MORRIS: And the Dugaboy, yes.

THE COURT: And Dugaboy, of course.

MR. MORRIS: That's right.

THE COURT: Okay.

MR. MORRIS: So, --

THE COURT: So how did you want to proceed?

MR. MORRIS: So, the way I propose to proceed, Your Honor, I have an opening statement to make --

THE COURT: Okay.

MR. MORRIS: -- with a PowerPoint presentation to present. I would propose that, as the Movant, I go first. Then we can hear from Dugaboy, we can hear from Mr. Daugherty, and then we can put Mr. Seery on the stand.

Assuming that there is no challenge to Mark Patrick's authority to enter into the settlement agreement on behalf of all of the HMIT entities, I would not plan on calling either Mr. Dondero or Ms. Deitsch-Perez, who are under subpoena here, because the challenge to authority was really coming from The Dallas Foundation. Their objection has now been withdrawn. So as long as Mr. Daugherty -- well, really, as long as Dugaboy doesn't challenge Mr. Patrick's authority to enter into the settlement agreement on behalf of the HMIT entities, I think we'll just put on the one witness and be done.

THE COURT: All right. Just so we know what lies ahead, --

MR. MORRIS: Uh-huh.

THE COURT: -- I don't think that Dugaboy objected to Mr. Patrick's authority. I do recall it was just The

Foundation.

MR. LANG: There was no objection on the -- there was no objection.

THE COURT: Okay. And same with Mr. Daugherty? No objection about the authority of Mark Patrick to enter into the settlement?

MR. YORK: There was no objection.

THE COURT: All right.

MR. MORRIS: All right. May I proceed?

THE COURT: You may proceed.

MR. MORRIS: Okay. So, may I approach, Your Honor? I've got a --

THE COURT: You may. Is this a PowerPoint? And everyone else has it, correct?

(Pause.)

THE COURT: You may proceed.

MR. MORRIS: Thank you, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for Highland Capital Management, LP and the Highland Claimant Trust.

Before I begin, Your Honor, I'd like to move my exhibits into evidence because I will be referring to them in my opening.

THE COURT: All right. So I think I said on Monday the first thing I was going to ask, and I've already blown that, was did you all have good faith discussions regarding

admission of each other's exhibits? And I did see Mr. Lang filed a day or two ago his list of objections. It looked like you were like you were down to about nine or eleven exhibits you were objecting to.

(Counsel confer.)

THE COURT: Out of 123 designations, which I think probably grew overnight to --

MR. MORRIS: Oh, okay. Well, --

MR. LANG: I just have to make clear for the record.

MR. MORRIS: You go ahead and do that.

MR. LANG: Your Honor, I've been told that Dugaboy does challenge the authority. It is not in our objection.

MR. PHILLIPS: It's not in his --

THE COURT: Well, can I ask why it was not in your objection?

MR. LANG: I do not know. I was not counsel of record when the objection was filed. I do not know what was known or not known at that time.

THE COURT: So, --

MR. LANG: So I guess we just seek leave to --

THE COURT: -- if you did not have him on -- was Mark Patrick on your exhibit list? I don't think he was, right?

MR. LANG: He was not.

THE COURT: Okay. So how would you address that? Again, we've had, I know, some back and forth over who was

going to represent Dugaboy on this matter.

MR. LANG: Yes.

THE COURT: I remember the substitutions and whatnot. But --

MR. LANG: We found out late last night that The Foundation was resolving their issue, and that kind of left us in a position.

THE COURT: So what are you saying? You all were relying on --

MR. LANG: Well, the issue had --

THE COURT: -- The Foundation to carry the flag on this one?

MR. LANG: They had raised the issue. They were pursuing the issue. We went through discovery and they were pursuing it. It was already in front of the Court.

THE COURT: All right. What would you like to say, Mr. Morris?

MR. MORRIS: Your Honor, this is more than disappointing. The fact of the matter is Mr. Dondero is funding both the Cayman Islands litigation as well as The Dallas Foundation's prosecution of the objection. The fact that The Dallas Foundation settled doesn't open the door to Mr. Dondero to assert objections that he's never asserted before.

I will tell you what will happen. If Your Honor allows

this, I will have to call Mr. Dondero and Ms. Deitsch-Perez to the stand to offer evidence under subpoena that they personally acknowledge and understand, because Mr. Dondero's signature is on documents that were signed in the year 2025, that Mr. Patrick is authorized to represent HMIT. I really didn't want to do that. But if they want to pursue it, I'll have to do my job.

THE COURT: All right.

MR. LANG: And I want to clarify one thing.

THE COURT: Uh-huh.

MR. LANG: And it goes back to something we already discussed, which is the authority issue is derived from the Cayman Island Joint Liquidators' appointment on May 6th, 2020. And so how that changes the authority, it's -- I think the issue is does he have authority, like Mr. Morris --

THE COURT: All right. Well, before I comment, Mr. Phillips, it's your client representative that we're talking about here. What do you say?

MR. PHILLIPS: Very disappointing, but -- and further revealing the limits of my imagination. There is no objection to authority. There's no evidence of record of objection to authority. There's no evidence even in The Dallas Foundation's papers about authority. Dugaboy did not raise objections to authority. Daugherty did not raise objections to authority. And Mr. Morris was willing to release Ms.

Deitsch-Perez and Mr. Dondero from subpoena in connection with an order that this Court entered that Hunter Mountain objected to. And outside the Court, the evidence will establish, the evidence submitted by Mr. Morris will establish that Hunter Mountain, through authority of Mr. Patrick, objected to Ms. Deitsch-Perez signing on behalf of Hunter Mountain because she did not seek approval and did not have authorization to sign a stipulation before this Court.

Subsequently, after signing the stipulation and entry of the order, we suggested that we would not deal with Ms. Deitsch-Perez, we would only deal with unconflicted counsel, and we dealt with unconflicted counsel to make an agreement with HCLOM and another of Mr. Dondero's entities to avoid filing a motion for reconsideration before this Court based on the fact that, as we have suggested in the motion that we didn't file, Hunter Mountain's approval was not real.

So Mr. Morris has these people under subpoena because we signed an agreement that Mr. Dondero signed to avoid the filing of a motion for reconsideration before this Court, recognizing that Mr. Patrick had authority for Hunter Mountain to sign the agreement. And so that's the purpose of his subpoena.

But our position is there's no suggestion in pleadings by Dugaboy or Daugherty that challenge the authority of Mr. Patrick to execute on behalf of any of the Hunter Mountain

entities. And the one party who, without suggesting an evidentiary basis, but that's fine, they say maybe they did have an evidentiary -- we -- and they withdrew their objection.

THE COURT: Okay. Let me --

MR. MORRIS: Okay. I'm sorry. Just really --

THE COURT: Thirty second.

MR. MORRIS: Really quickly.

THE COURT: Uh-huh.

MR. MORRIS: The letter that Mr. Lang just referred to from the Joint Official Liquidators, addressed to us, asking for an extension of time, doesn't even challenge Mr. Patrick's authority to act today on behalf of the HMIT entities to enter into the settlement agreement. The Joint Official Liquidators wrote to us last night, and they don't say what Mr. Lang is now saying.

MR. PHILLIPS: And the only thing I would say is we got a letter by email from somebody who says, I am who I am. It came through email PDF. We don't challenge the authority. But we would respectfully request -- we're not there. We've made no appearance. We don't challenge the authority. But please wait -- ask the Court to wait the 45 minutes -- 45 days for us. We got a letter. PDF. We don't know who sent it.

THE COURT: Okay.

MR. PHILLIPS: It wouldn't be admissible even if

someone tried to introduce it as evidence.

THE COURT: Okay. Let me just say a few things here. This has felt like a very strange sideshow, I'm going to say. When I read The Foundation's objection, I was, again, scratching my head, who in the heck is Crown Insurance? I know who Dallas Foundation is because there have been charts submitted to me in the past, and I know it's part of the I'm going to say Mr. Phillips' client set over the months, the Charitable Foundation structure. But I'm like, how in the heck do these people have standing? Okay? I have to always consider standing. That's every trial judge's first obligation, does this party have standing? Not a creditor. Not an equity holder. But somehow I guess they're going to explain through evidence how they're a person aggrieved by the proposed settlement.

So that's why I kind of -- hopefully, it doesn't sound flippant -- thought this sounded like a sideshow, because this is a stranger, really, to weigh in.

Okay. So now I'm hearing that a party in interest, which Dugaboy is -- I guess some might argue that, but I think they're affected by the settlement, so that makes them a party in interest -- you're making the same argument. And it's because of a rotation of counsel you didn't make it sooner.

Okay. So I'm just trying to be transparent here, tell you what the Court is thinking. I guess what the Court is

thinking is Mark Patrick is the client representative, so I'm told by the Movants on the 9019, and you, Mr. Phillips, he's the party representative for Hunter Mountain.

MR. PHILLIPS: Yes, Your Honor.

THE COURT: I don't, I guess, know what harm there is, except a longer hearing, in, okay, put him on the stand to testify about the bona fides of the settlement. It's more evidence. But if you all want to call Mr. Dondero, I'm going to require that.

MR. MORRIS: Your Honor?

THE COURT: I mean, as a counterbalance, since it's appearing from the pleadings to be --

MR. MORRIS: Your Honor, respectfully, Mr. Patrick is not on their witness list. He's not on our witness list.

THE COURT: Wasn't he on somebody's witness list?

MR. MORRIS: He was on The Dallas Foundation's witness list.

THE COURT: Oh.

MR. MORRIS: He's not on their witness list. He's not on our witness list. He should not testify today because they're raising an issue that they didn't raise ever before. This is improper. They should just be shut down here.

THE COURT: I think probably you should be shut down. But I kind of go back and forth, what's the harm in having the representative, the person I'm told is the representative of

Highland?

MR. PHILLIPS: Your Honor?

THE COURT: I could limit it to one hour. And the flip side is that Dondero himself, as I guess the representative of Dugaboy, would have to also take the stand, limited to one hour.

MR. PHILLIPS: I'd like to make one note, Your Honor, about the documents that Mr. Morris has introduced. That document list -- and I don't have the numbers in front of me -- but part of the presentation and the reason Mr. Patrick is not on the Movants' motion -- witness and exhibit list, the documents that have been introduced are all of -- include all of the documents evidencing Mr. Patrick's authority as the control person of the entire Hunter Mountain group.

THE COURT: Which they've stipulated.

MR. PHILLIPS: Which they've stipulated to.

THE COURT: Uh-huh.

MR. MORRIS: And to be clear, Your Honor, they can be found at Exhibits 70 through 104. We've got 34 documents in evidence that establish that Mr. Patrick is authorized to act on behalf of each of the HMIT entities. All that's going to happen is we're now going to spend time dealing with an issue that you already described as a sideshow, and we're going to do it for a party who didn't put Mr. Patrick on a witness list, who hasn't objected on this basis, and we've got a

mountain of evidence that shows that he's completely authorized to do this. I just --

MR. PHILLIPS: To which there's no objection.

MR. MORRIS: And you can also look, Your Honor, at Exhibit 69. That's the agreement that Mr. Dondero signed with Mr. Patrick after he got outed for authorizing Ms. Deitsch-Perez to sign a document on behalf of HMIT without Mark Patrick's knowledge or approval. He signed that. Six months ago. And we're going to have a trial here over whether Mark Patrick is authorized to act on behalf of HMIT?

A VOICE: That was long ago.

MR. MORRIS: This is not -- this is not --

THE COURT: We're not going to have a trial. And I fully acknowledge that I am possibly abusing discretion by allowing this. We have our rules, and our rules were not complied with, and it does feel a little bit like ambush. Okay?

But on the flip side of it, it doesn't seem entirely unreasonable to have the representative, the purported representative of Hunter Mountain, who is the counterparty, if you will, to this very major settlement, take the stand. And I'll limit it. And, again, I condition it on Mr. Dondero, the ultimate beneficiary of the Dugaboy Trust, as it's been represented to me in prior filings, --

MR. MORRIS: Correct.

THE COURT: -- he'll have to stay an equal amount of time on the stand. Okay?

MR. MORRIS: Okay.

THE COURT: Okay. Hang on. I've got my smarter staff member handing me a note. Okay.

(Pause.)

THE COURT: Okay. Well, so that's how we're going to stand.

Now, I am going to address Mr. Daugherty here. We're not going to let Mr. Daugherty cross-examine Patrick. Clearly, his objection has been around, and he never said anything about --

MR. YORK: Certainly not as to authority. However, we should be able to examine him as it relates to the portion of the objection that goes to whether the settlement is in the best interest, given the claims that are being -- the Kirschner claims that are being transferred by Highland to the HMIT entities.

THE COURT: All right. Well, you all are going to have to share your 30 minutes.

MR. YORK: That's fine.

THE COURT: Okay? We're giving 30 minutes to Debtor entities, Highland entities, and Hunter Mountain entities collectively, and 30 minutes to Dugaboy and Daugherty collectively. Okay? So, I'm going to have my law clerk

timing you like you're on the clock.

MR. MORRIS: Okay.

THE COURT: Okay?

MR. MORRIS: May I proceed?

THE COURT: You may proceed.

MR. MORRIS: Thank you, Your Honor. So, appearing at Docket 4255 is the Movants' exhibit list, with Exhibits 1 through 123. At Docket 4277 are Exhibits 124 and 125. And at Docket 4280, we've got Exhibit 126.

The Movants respectfully move into evidence all of those documents, with the exception of Exhibits 124 and 125 on Docket No. 4277. Those are the transcripts of The Dallas Foundation representatives, and since we have reached an agreement and The Dallas Foundation has withdrawn their objection, we are not going to offer those two transcripts into evidence as part of the record in this matter.

But Exhibits 1 through 123, and Exhibit 126, we move into evidence.

THE COURT: All right. And as I thought we were going to start talking about a moment ago, Mr. Lang objected to 11 of these 123 designations. Do those still remain? If they do, we're just going to see if they want to be I think offered --

MR. LANG: No, I think we've --

THE COURT: -- the old-fashioned way, but I think

that might be more efficient. I have, in your objection, which is at Docket 4273, you objected to Numbers 10, 12, 13, 57 and 59, and then 64 through 69. Eleven items.

MR. LANG: Mr. Morris clarified that 12 and 13 are one document. But I still, I think that, again, for purposes of the authority issue, Exhibit 13 we don't think is relevant.

MR. MORRIS: Exhibit 13, Your Honor. We'll just take them one at a time.

THE COURT: Yes, go ahead and address it.

MR. MORRIS: Is relevant because it's simply a document that was provided to Highland by Hunter Mountain as part of the negotiations. And we've been asked to produce all of the documents related to the negotiations. This is one of the documents that we received.

THE COURT: Okay. And do I understand 12 and 13 are actually the same thing, or --

MR. MORRIS: Yeah. Well, 12 is the email, 13 is the attachment.

THE COURT: Okay. I overrule the relevance objection. Those will be admitted.

(Claimant Trust's Exhibits 12 and 13 are admitted into evidence.)

MR. LANG: 57.

MR. MORRIS: 57 is also a part of the settlement documents. It's, I think, an email exchange between Mr. Seery

and UBS, which was one of the Class 9 claimants, and we had to obtain their consent and that's part of the process of getting to the settlement agreement.

MR. LANG: I think the objection is it doesn't include the attachment.

MR. MORRIS: It's got all -- it's got numerous attachments on it.

MR. LANG: To 57?

MR. MORRIS: Yeah.

MR. LANG: Mine did not.

MR. MORRIS: Your Honor, we'll withdraw the exhibit.

THE COURT: Okay.

MR. MORRIS: Okay.

THE COURT: 59. Well, you didn't address #10.

MR. LANG: Oh, sorry.

THE COURT: That was the first one.

MR. LANG: Yeah.

MR. MORRIS: We'll withdraw #10.

THE COURT: All right.

MR. MORRIS: Okay.

THE COURT: So, 59?

MR. MORRIS: 59? Your Honor, I'm not surprised they object, because it's at the core of the Court's ability to authorize this settlement.

MR. LANG: We withdrew that.

MR. MORRIS: Oh, you withdrew that?

MR. LANG: Withdrew.

MR. MORRIS: Oh, okay. They withdrew that.

THE COURT: Okay. So, 59 will be admitted.

(Claimant Trust's Exhibit 59 is admitted into evidence.)

MR. MORRIS: And then I think the last is 64 to 69.

THE COURT: Uh-huh.

MR. MORRIS: We were actually prepared to withdraw those exhibits because we didn't think there was a challenge to authority. Now that there's a challenge to authority, we're going to offer all of those in because they're highly relevant to the acknowledge of Mr. Patrick's authority.

THE COURT: All right. And your objection was solely to relevance?

MR. LANG: The objection was relevance because they predate the May 6th issue in the Caymans, which is what caused the entire structure to -- the authority from the top down to be questioned.

THE COURT: All right. Well, you can cross-examine if you want on those items.

MR. LANG: Okay.

THE COURT: But I find they're relevant so they will be admitted, 64 through 69.

(Claimant Trust's Exhibits 64 through 69 are admitted into evidence.)

[Court Edit: Claimant Trust's Exhibits 1 through 9, 11 through 56, 58 through 123, and 126 are admitted into evidence.]

THE COURT: All right. And as far as the exhibits of Dugaboy, I think it was just the plan and settlement agreement were all that had been designated. Correct?

MR. LANG: Yes.

MR. MORRIS: No objection.

THE COURT: So, no objection. Those will be admitted.

(Dugaboy Investment Trust's exhibits are admitted into evidence.)

THE COURT: And Daugherty's exhibits?

MR. YORK: Yes, Your Honor. So, Mr. Morris and I conferred yesterday about both sides' exhibits. And my understanding is we've reached an agreement that both sides' exhibits are not objected to. And so therefore we'd move to admit Daugherty's as well.

THE COURT: All right.

MR. YORK: 1 through 42, I believe, it is.

THE COURT: All right. So you confirm?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. The Court will admit all of Daugherty's 1 through 42, and they appear at Docket Entry 4266.

(Patrick Daugherty's Exhibits 1 through 42 are admitted into evidence.)

THE COURT: All right. Opening statements.

OPENING STATEMENT ON BEHALF OF THE CLAIMANT TRUST

MR. MORRIS: All right. Good morning, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for Highland Capital Management, LP and the Highland Claimant Trust.

If we can go to the first slide, Your Honor. This is a 9019 motion. It's not a terribly high bar. What the Movant has to show here is that the settlement agreement was the product of arm's-length, good-faith negotiations, and effectively that it's in the best interests of its stakeholders.

THE COURT: Did you want this put on the screen, or does everyone have a hard copy?

MR. MORRIS: Counsel have a hard copy.

THE COURT: Oh, okay.

MR. MORRIS: Yeah. The evidence is going to show, and there really is no dispute, that the settlement agreement is the product of arm's-length, good-faith negotiations. Mr. Seery is going to testify that the negotiations began in late March and they concluded on May 19th. Exhibits 2 through 57, with the exception of the one or two I just withdrew, reflect the parties' negotiations. Mr. Seery is going to testify that the negotiations were conducted by Zoom, by phone call, there

was one in-person meeting, there was many, many email exchanges that are reflected in the exhibits.

Mr. Seery is going to testify about the substance of the negotiations at a high level. Originally, we had sought to have one agreement with Hunter Mountain and the DAF entities. Mr. Patrick was not comfortable with that. He wanted to run them separately. And there was a DAF agreement that was ultimately entered into but that nobody believed required court approval.

So, once that got completed and one of the Fifth Circuit appeals got dismissed as a result, we moved to the Hunter Mountain discussions. Those discussions were robust. There were issues about the timing of the effectiveness of certain of the benefits under the proposed agreement. Highland wanted the releases, for example, to be effective upon signing. Mr. Patrick was unwilling to agree to anything without this Court's approval.

So there were changes that were made over time in terms of the timing of the transfer of the consideration. There were discussions and negotiations and bids and asks about the amounts that would be paid, when they would be paid, the circumstances under -- that they would be paid. There was an enormous amount of information that was exchanged pursuant to a confidentiality agreement that now became public because it's relevant to the Debtors' burden or the Claimant Trust's

burden to carry the day here.

That information included claims information, the trust agreement itself, budgets, asset/liability valuation information, forecasted expenses, because HMIT rightly wondered, you know, what's going to happen to the money? Is it going to be gone before it got its agreed-upon share? So, you know, there will be, I think, indisputable evidence at the end of the day that the settlement is the product of arm's-length, good-faith negotiations.

If we move to the next slide, the evidence will also show that the proposed settlement is indisputably in the best interest of the Highland entities and their stakeholders. Upon court approval, all of the pending litigation that Your Honor identified earlier will be dismissed with prejudice, thereby greatly reducing litigation risk and attendant costs.

The stakeholders will also benefit from the allowance of the HMIT claim at a fixed amount of $337 million. And we will explain -- Mr. Seery will explain to the Court how that number was arrived at.

The estates and their stakeholders will also benefit because, under the proposed settlement, as I indicated earlier, Highland will be able to monetize or otherwise dispose of a number of illiquid assets, including the Dugaboy Note and the estate claims in the Kirschner Litigation. And perhaps most importantly to the estate, we are getting very,

very broad what we refer to as litigation protections from all of the Hunter Mountain entities. It includes not only a release but a covenant not to sue as well as, you know, we could go through it, but -- but we believe that even if Mr. Dondero or somebody else obtains control of Hunter Mountain, unless somebody sets aside this agreement, those protections are going to inure to the benefit of the Trusts, the Indemnity Trust and all of its stakeholders until the end of time, and nobody is ever going to be able to set this agreement aside because it was negotiated in good faith, it was the product of arm's-length negotiations, and it's fair and reasonable to both sides.

So those litigation protections are paramount and they provide another indicator of the benefits that the Claimant Trust is going to receive.

The next slide, Your Honor, is a demonstrative exhibit, although, as always, we have citations to the very specific documents that are now in the record. Mr. Seery will describe for you at a high level how the allowed claim of HMIT was calculated, and it's really just based on the limited partners' capital accounts as of the petition date. And I'll just leave it at that for the moment. There's no magic to it. It's objectively reasonable. It's mathematics. There's really no subjectivity that I'm aware of that goes into this. It's just, hey, let's look at the tax returns, let's look at

the financial statements, and let's look at the partnership agreement, and let's see how the capital account was structured as of the petition date. And that's how you get to, really, $396 million less the amount of the Dugaboy Note. I mean, the HMIT note.

The next slide. With the settlement, the transfer of the Kirschner Litigation is in the best interests of the Movants. I think Mr. Daugherty somehow suggests that really the best thing to do would be to prosecute that litigation. We respectfully disagree. In the Debtors' business -- in the Claimant Trust's business judgment, that would be exactly the wrong thing to do when you are settling with HMIT.

And why is that? When we commenced the Kirschner Litigation a number of years ago, the Kirschner Litigation represented a potential source of funding for indemnification expenses, and at that time, for the payment in full to creditors.

By 2023, 2024, with the success of the Highland team's monetization of assets, the need to pursue and monetize the Kirschner claims became less clear, so we put it on ice. And we voluntarily stayed the litigation to conserve resources.

The settlement with HMIT changes everything. The claims are as valid today as they were yesterday, as they were before we signed the agreement, as they were when we commenced the action. But they have very different value to Highland when

you're settling with HMIT. And that's why we're prepared to transfer the claims today.

Why? Because at this point, unlike when we commenced the action, Class 8 has been paid in full except for Mr. Daugherty's fully-reserved claim, right, in an amount that he agreed to for years and that he ratified and reaffirmed three different times in three different stipulations. That's the only thing that remains in Class 8.

THE COURT: And remind me of the dollar amounts on reserve.

MR. MORRIS: It's approximately $2.5 million. I can --

THE COURT: Okay.

MR. MORRIS: It's -- the dollar amount is specifically set forth --

(Pause.)

MR. MORRIS: It would be, I believe, in Exhibit 60, --

THE COURT: Okay.

MR. MORRIS: -- is the original tolling agreement. And in Paragraph 1 it has the very specific dollar amount. And then in Exhibits 62, 63 -- 61, 62, and 63, those are amendments to the tolling agreement that fully incorporated the original tolling agreement, including the reserve amount. So that amount has been there for years. Nobody has ever said

anything about it. Nobody has ever tried to adjust it. Nobody has ever identified a change in circumstances that would suggest a change was appropriate. But here we are.

So, why is it different and why does the Kirschner Litigation not have so much value to us when we're settling with Class 11? Because Class 8 has been paid in full. Class 9 has been paid 80 percent. If the HMIT settlement is approved, it will receive another 10 percent. So that all that remains is 10 percent of the Class 9s.

And most importantly, Your Honor, with the settlement with HMIT and the Claimant Trust's receipt of the litigation protections, the need for indemnification expenses is going to be greatly reduced. We can give the money where it belongs because all we'll have left is Mr. Dondero and Dugaboy. It really will literally be the only thing. And we need a lot to deal with that, but not as much as we needed when we had to deal with them and HMIT.

And at the end of the day, once you're settling with HMIT, prosecution of the claims would only benefit HMIT, so why should we undertake the expense of doing that?

Is that clear to Your Honor?

THE COURT: It is.

MR. MORRIS: It is? So, it's -- this has nothing to do -- and you're going to hear questions of Mr. Seery, did you value the Kirschner claims? Are you giving them away for

free? No, we didn't value them, because once you're settling with HMIT it doesn't really matter. Once you have the litigation protections, once you know that HMIT is never going to be an adversary of yours, the monetization of the Kirschner claims would insure to their benefit because they will have an allowed claim of $330 million. So even if we sued and even if we got a hundred million dollars, that's going to go to them. Why would we pick up the tab today? A very different scenario than when we prosecuted the case, when the case was commenced.

So, really, really, in the estate's best interest to get value for those claims. The value is reflected in the totality of the agreement. The Court really should look at the body of the consideration that's being received, including the litigation protections.

If we can go to the next slide, Your Honor. As long as we're on the topic of Mr. Patrick's authority, Mr. Seery is going to testify to the work that he did to satisfy himself that Mr. Patrick was duly authorized to act on behalf of each of the HMIT entities in this case.

The next slide here shows an excerpt from the Hunter Mountain Trust Agreement. It's Paragraph 7. And it says, among other things, the Administrator -- who is Mark Patrick -- shall be duly authorized, from time to time, in his sole discretion, to manage the business and affairs of the Trust.

It continues by saying that the Administrator, Mr.

Patrick, shall also have the power to settle, compromise, submit to arbitration, or to submit to any court having jurisdiction in any matter, any matters that are in dispute.

So, you know, this is just one document. It's the Hunter Mountain document. We focus on the Hunter Mountain document because that's the only one of the HMIT entities that has a stake in the Claimant Trust. But, again, Your Honor, if you just -- Mr. Seery will, at a high level, confirm that Exhibits 70 through 104 are documents that definitively establish that Mr. Patrick has the authority to enter into each of these agreements on behalf of the HMIT entities.

Not only that, but he will describe, if asked by you or anybody cross-examining him, why nobody has the ability to interfere with the effectuation of his authority. He doesn't have to get anybody's consent. He doesn't have to -- right? This is all just crystal clear. And whatever entity far up the chain may exist, Your Honor should just think of as a shareholder. And if Coca-Cola came in here and they wanted to do a 9019 motion, a shareholder can't come in and stop Coca-Cola from doing that. If they don't like what Coca-Cola is doing, go file a derivative suit. Go sue Coca-Cola in another court at another time. Not that I'm inviting litigation against Mr. Patrick, but by analogy, this is what we're talking about.

There is no restriction on Mr. Patrick's authority. The

settlement is fair and reasonable. He has authority under the governing documents to do what he has done here, and that is act in the best interests of the HMIT entities. And so this is just one page. Mr. Seery will explain, you know, just the work that he's done to satisfy himself.

The next slide, Your Honor, there's objections about how somehow the settlement agreement violates the plan or the absolute priority rule, all of that. It's not accurate. I'll just leave it at that in terms of how I characterize it.

The next slide is excerpts of -- I think it's the plan of reorganization, Your Honor. And I think we admitted the plan last night. That's Exhibit 126. And they're -- these excerpts are really important because what they show is that Classes 9 and 10 have the indisputable right to accept less favorable treatment. And that's what they've done. Okay? And I think it's Article III, Section H, Subparts 9 and 10. Holders of Class 9 and 10 interests have the right to accept less favorable treatment.

And if we can go to the next slide, I'll just briefly describe the less favorable treatment that these stakeholders have in fact accepted. As permitted by the plan, holders of Class 9 claims consented to the payment in full of Mr. Daugherty's Class 9 claim and the Class 10 distributions, in accordance with the settlement agreement, before their Class 9 claim is paid in full.

And that's Exhibit 59. It may be among the most important documents that have been admitted this morning. Exhibit 59 is the consent of the Class 9 holders other than Mr. Daugherty to accept lesser treatment.

So there's no violation of the plan at all. HMIT is also accepting less favorable treatment than it might otherwise be entitled to if it ever successfully prosecuted its claim. It has less favorable treatment because it's agreeing that it's not a Claimant Trust beneficiary, that its rights are limited to the rights that are given to it under the settlement agreement and nowhere else. It's accepting less favorable treatment because it's agreeing that the Highland entities owe no duty of any kind to any HMIT entity except as provided for in the settlement agreement. It's accepting restrictions on its ability to transfer its Class 10 interests -- more less-favorable treatment -- as a condition to the first and second distributions. They have agreed that they are subject to Mr. Seery's determination that the Highland entities are not at that time under any Threat. "Threat" is a defined term, and it has to do with litigation.

And so if Mr. Seery, in his sole discretion, believes that he needs to conserve resources because he remains years in the future under threat of litigation, he's not going to make the payments to HMIT, and HMIT is okay with that because they understand.

And, of course, in the end, they're accepting less favorable treatment because they're granting to the Claimant Trust the litigation protections.

All stakeholders have been paid in full except for the 10 percent of Class 9 and Mr. Daugherty's Class 8 claim. That claim is the subject of an objection, and as I just walked Your Honor through, it has been fully reserved in an agreed-upon amount for years.

There was some questioning during Mr. Seery's -- one of Mr. Seery's I think three depositions in the last week -- about why he didn't offer Mr. Daugherty the same treatment that he offered to the other Class 9 holders because Mr. Daugherty had about an $800,000 Class 9 claim. Your Honor will see in Exhibit 58 that that claim was paid in full, and Mr. Seery will explain that he found negotiating with Mr. Patrick to be difficult, number one. And number two, it was an amount of money that the estate could afford. And so the other Class 9 claims are substantially bigger, so rather than going through the process of attempting to negotiate with Mr. Daugherty, he just paid it in full. The Claimant Trust had every right to do that. And Mr. Daugherty should not be heard to complain that he actually got everything that he could have ever been entitled to.

THE COURT: And --

MR. MORRIS: Uh-huh?

THE COURT: I don't mean to get you off-track.

MR. MORRIS: That's all right.

THE COURT: But Class 9 claimants, I'm trying to remember who else was in that class. Was it a UBS --

MR. MORRIS: UBS.

THE COURT: -- claim?

MR. MORRIS: Exactly right.

THE COURT: Okay.

MR. MORRIS: And then affiliates of Stonehill and Farallon.

THE COURT: Okay.

MR. MORRIS: Because they had purchased --

THE COURT: They had Class 9 --

MR. MORRIS: They had purchased originally I think it was Josh Terry, and the Redeemer Committee may have had a piece. No, no. No, no, no. HarbourVest. HarbourVest had a piece. Right? So, HarbourVest sold their claim, including the Class 9 claim. Josh Terry sold his claim, including his Class 9 claim. Then there's UBS, who still holds a piece of their claim, and Mr. Daugherty. So, UBS, if you look at Exhibit 59, you'll see the signatures of UBS and the affiliates of Stonehill and Farallon, who all agreed to accept lesser treatment.

THE COURT: Okay.

MR. MORRIS: So, at the end of the day, Your Honor,

the last slide is a slide that I didn't intend to present, frankly, because I didn't ever believe that there was going to be a challenge to authority by anybody other than The Dallas Foundation. But as long as we have it attached, we might as well see it.

As you can see, Your Honor, in the lower right-hand corner, you can see Hunter Mountain is owned by Beacon Mountain, which is owned by CLO Holdco. Like, there is no -- and Mr. Patrick controls it. And it's really on the other side of the ledger, in the DAF house, so to speak, that any of The Dallas Foundation got interested.

Dugaboy is not even on here, by the way. Like, Dugaboy is nobody. The people in here who are now going to challenge the authority of Mr. Patrick, no, not on here. And they're going to do it, they're going to do it without ever having given us notice.

I know Your Honor made your ruling and we'll deal with it, but I don't know if Your Honor was aware of this: They're not on here.

Your Honor, at the end of the day, this is a really, really easy call to make from our perspective. We have been waiting for this moment for years. Finally, a responsible person understands that the way to preserve value is to put the sword down.

Mr. Patrick, I don't know what happened between him and

Mr. Dondero. I don't care. I have no knowledge of that. But clearly he is exercising independence. And that's why we're here, because we finally have somebody who says, you know what, give me everything I can possibly get and I will stop fighting. I wish other people would say that, because then this case would be over. Then the case would really be over.

But getting to a settlement with the Class 10 interest holder who is going to have an allowed claim of $337 million, such that any value in the future is going to go to HMIT, I hope that that -- you know, this is an easy call to make, Your Honor.

I have nothing further at this time, but I look forward to putting Mr. Seery on the stand and making sure that Your Honor has, you know, an adequate, sufficient, overwhelming basis, frankly, to approve this motion.

THE COURT: Okay. I don't mean to stifle you, but --

MR. MORRIS: Yeah.

THE COURT: -- anything more for an opening statement? Mr. Phillips, I'm doing friendlies and then friendlies.

OPENING STATEMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

MR. PHILLIPS: Your Honor, just briefly. Louis M. Phillips on behalf of the Hunter Mountain entities.

We fully embrace and concur with everything that Mr. Morris has told the Court. From our perspective, and the

reason that -- and you'll see, the documents include all of the back and forth -- we required the Court approval before the effectiveness of any releases, litigation protections, et cetera, for exactly the reason that we needed the Class 9 to agree. And we obtained -- the Highland entities obtained the approval of the Class 9 creditors to our treatment, and I think that the bona fides of this settlement and the value of the settlement and our -- what we are giving in the settlement is, I think, established beyond even the slightest bit of question by the fact that the Class 9 creditors and the Oversight Board of the Claimant Trust all agreed that it was important enough to the estate to get this settlement with Hunter Mountain Investment Trust that they agreed to allow Hunter Mountain Investment Trust to receive the money set forth in the settlement upon the approval. And we have agreed that, notwithstanding appeal rights of some people who really don't have the right to be here, but that's going to be determined by Your Honor, we're not worried about that. We are giving our releases. And the releases are effective upon approval by this Court. We are not requiring any type of final unappealable order that doesn't -- that waits for years before the releases are effective.

Very importantly, it seems to me, from Your Honor's perspective, and I'm reluctant to suggest that I know about that, but our releases are given upon the approval by this

Court of the settlement. They're not -- if the settlement is reversed on appeal, our releases stay.

So the Class 9s that are above the Class 10 have voted, and they have approved, and Mr. Seery is going to testify about that. And we think that in and of itself is a monumental accomplishment. And we appreciate everything Mr. Morris has said. We agree with everything Mr. Morris has said. We agree with everything Mr. Morris has said about the absence of true objection. We agree with everything Mr. Morris has said about the fallacy of suggesting that Mr. Seery had to value the Hunter Mountain -- the Kirschner Litigation proceeds, of which would come to us.

The idea that we need to worry about how much Mr. Dondero entities can pay in connection with the Kirschner Litigation so that we could value the Kirschner Litigation based on what Mr. Dondero can pay, so that to suffice with an objection by Dugaboy maybe that there was no value given. I mean, that's all backwards. Value was given as described by Mr. Morris and will be established by the evidence submitted by Mr. Seery's testimony and the documents that are already in evidence.

And that is it from our standpoint, Your Honor. Thank you.

THE COURT: Thank you. All right. I'll hear from the Objectors. Daugherty's counsel, are you going to go first?

OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

MR. YORK: Thank you, Your Honor. If I may approach.

THE COURT: You may.

MR. YORK: Good morning, Your Honor. Drew York on behalf of Mr. Daugherty.

We're here today regarding the 9019 and Mr. Daugherty's objection. The 9019 motion should be denied. If you turn to the third slide in there, we say that Highland -- Highland, I'm referring to Highland collectively for the Movants -- attempts to put the cart before the horse. So really what's going on here, Your Honor, is we're just asking the Court to follow the rules of the road that it set forth in the plan, the confirmation order, and, frankly, even Highland to follow the terms of the settlement agreement it entered into with Mr. Daugherty.

None of that is happening here as a result of this proposed settlement that's being presented to you today for consideration.

The first problem with the motion and the proposed settlement is that it violates the absolute priority rule, it violates the express terms of the Court's plan, the confirmation order, as well as the Claimant Trust Agreement, because it attempts to fund the contingent Class 10 claims without first resolving, let alone satisfying, Mr. Daugherty's remaining Class 8 claim.

And then, secondly, the settlement agreement does not satisfy the *Jackson Brewing* factors because it prioritizes the HMIT insiders over the estate creditors, including Mr. Daugherty, and it forfeits potential recovery that would go to the benefit of those to creditors to appease litigation pressure.

So, first, I'm going to talk about why the settlement violates the plan, the confirmation order, and the Trust Agreement.

As everyone is aware, the HMIT entities are asserting a Class 10 claim.

If you turn to the next page, as Mr. Morris has acknowledged and admitted here today, Mr. Daugherty has a remaining Class 8 claim. And, importantly, Your Honor, because Mr. Morris and Highland continue to argue that that claim is fully reserved, I would point out that in the settlement agreement between Mr. Daugherty and Highland the parties characterized that claim as a contingent unliquidated claim. A contingent unliquidated claim. And in fact, they went so far, Highland did, in its adversary complaint on the next slide, Your Honor, to again refer to it as an unliquidated and contingent claim that is dependent on the final outcome of the 2008 audit, including the magnitude of any adjustments.

And so Highland cannot come into this courtroom and on the

one hand argue that that claim is fully reserved, and at the same time admit that it is a contingent unliquidated claim that is subject to a myriad of adjustments depending upon the outcome of that audit.

And in reality, when you look at the tolling agreement, there is nothing that the parties said that that was a fully reserved claim at all. That's simply not what they agreed to. They just simply put a number in there, which was put into the reserve account at the time. But it did not constitute a fully reserved claim at all.

Nor has Highland pointed to anything -- in the plan, the confirmation order, or the Claimant Trust Agreement -- that allows Highland to come in and violate those documents by simply saying that we fully reserved for Mr. Daugherty's claim.

THE COURT: Okay. Well, we're going to hear the evidence, but as I understood it, it was an agreed reserved amount. And I asked earlier, was it $2.5 million or -- I feel like it was an agreed amount plus even some interest, acknowledging there might be time. I don't remember every detail from this case, but I'm just telling you that's what my memory is. Am I correct?

MR. YORK: The --

THE COURT: Mr. Daugherty agreed, here's what we'll agree is enough to set aside for our ultimately potentially

allowed claim, x amount plus interest? Can you confirm?

MR. YORK: What the tolling agreement provides is that Mr. Daugherty agreed to provide the tolling of the objection deadline. Okay. And Highland then agreed to put $2.56 million into the reserve.

And what the footnote says in the tolling agreement, Exhibit 60, is that the estimated amount of that claim as of -- and let's be clear about this -- as of October 23rd of 2020, was $2.56 million and change. And that's it. And I'm happy to have my colleague, Mr. Smeltzer, who is a tax attorney and deals with these issues all the time, can come up and explain why, at the end of the day, this is still a contingent unliquidated claim and it's subject to a myriad of factors that make it that that amount that Highland has set aside is not necessarily going to be a fully-reserved amount.

That is why the parties have -- had called it both in the settlement agreement and the tolling agreement, and Highland has continued to call it -- characterize it in its adversary complaint as a contingent unliquidated claim. So --

THE COURT: Okay. It's hard to wrap my brain around it. It's a claim that I understood really couldn't be liquidated with certainty until this potential audit of 2008 is final, and there was some discussion of how close to it being final was it. But I guess -- well, I don't know where I'm going here except to say this could be a contingent

unliquidated claim for a -- you know, it's already, what, 17 years?

MR. YORK: Based -- from when the tax return was filed? I think that's correct, Your Honor.

THE COURT: Okay. Well, this is what the adversary is about, right? I guess they're finally saying it should be estimated, liquidated, pursuant to the Bankruptcy Code and we'll be done.

MR. YORK: Correct. In violation of the terms of the settlement agreement between Mr. Daugherty and Highland. Yes, that's --

THE COURT: Wait. Wait. What?

MR. YORK: So, the settlement agreement between Daugherty and Mr. Highland provides --

THE COURT: Mr. Highland?

MR. YORK: I'm sorry. I apologize. Between Mr. Daugherty and Highland --

THE COURT: Uh-huh.

MR. YORK: -- provides that the -- as long as the IRS audit has not had a final -- there's not a final determination, --

THE COURT: Uh-huh.

MR. YORK: -- then any litigation concerning the validity or the amount of Mr. Daugherty's claim is stayed and cannot be brought before the Court. And that's exactly what

their adversary complaint did, which is -- because they admit in their adversary complaint --

THE COURT: Well, okay. I won't pursue this anymore. But what's an estate to do? They're getting criticized for the Trust going on too long. Not by your client, but -- and meanwhile you want, I mean, 2032, are we still going to be waiting on the IRS?

MR. YORK: I don't know because we don't have any insight into what the IRS audit is.

THE COURT: Well, it's been 17 years.

MR. YORK: I understand, Your Honor.

THE COURT: So, --

MR. YORK: But the bottom line is this. The plan -- that Highland entered into the terms of that settlement agreement.

THE COURT: I'm going to say it right now. I'm not keeping this estate open until 2032. I just, I was --

MR. YORK: I presume that --

THE COURT: -- kind of flippantly throwing that out there.

MR. YORK: And --

THE COURT: But this happens in bankruptcy cases a lot, where you've got a contingent unliquidated claim, and there are provisions in the Bankruptcy Code to say what can be done in that scenario. The Court can estimate or liquidate.

MR. YORK: Understood. Your point to me was -- before was that's why Highland brought the adversary complaint, and I was simply pointing out that, pursuant to the express terms of the agreement that Highland reached with Mr. Daugherty, Highland was -- is not allowed to bring the adversary complaint to challenge the validity or amount of Mr. Daugherty's claim so long as the IRS audit has not been -- had a final determination. That's exactly what's going on here with the adversary complaint that they have filed.

THE COURT: Okay.

MR. YORK: Okay. So I think Your Honor is familiar with the terms of the plan, the Fifth Amended Plan and the subordination. But specifically we have two issues. One begins with the Claimant Trust Agreement in Section 5.1(c), which provides that the equity holders shall not have any rights under the agreement unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all of general unsecured creditor beneficiaries have been paid indefeasibly, in full, including, to the extent applicable, all accrued and unpaid postpetition interest, consistent with the plan, and all disputed claims have been resolved.

That has not happened here and it cannot happen because, for one, Mr. Daugherty's unresolved Class 8 claim, and also the remaining Class 9 claims, as I think you'll hear from Mr. Seery. And so there are no rights that can be given to the

HMIT entities pursuant to -- as a Class 10 holder, an allowed Class 10 holder, pursuant to the Claimant Trust Agreement. So the proposed settlement violates the Claimant Trust Agreement's express terms.

It also violates the Court's confirmation order that was entered at -- specifically on Page 45 of the order, in Subparagraph (a): The holders of the equity interests -- which would be the Class 10 and Class 11 equity interests -- that are junior to the claims in Class 8 and Class 9 will not receive or retain under the plan, on account of such junior claim interest, any property, unless and until the claims -- the claims, not the allowed claims, but the claims -- in Class 8 and Class 9 are paid in full, plus applicable interest.

That's exactly what the settlement that is proposed here is designed to do.

And if you turn two pages in, you'll see that in addition to the assignment of the Kirschner claims, what we're also having under this proposed settlement are interim cash distributions that would be made to the HMIT entities, interim cash distributions that theoretically could be made before the resolution of Mr. Daugherty's Class 8 claim, which would be in violation of the plan, the Claimant Trust Agreement, and the confirmation order.

And that is, as best as they put in their agreement, that's approximately $23 million in cash that would be paid

out theoretically in those interim distributions.

One of the things that Mr. Morris said in his opening was that they did not -- Mr. Seery did not negotiate with Mr. Daugherty because he was difficult to deal with. Well, that's surprising, Your Honor, considering, on the other hand, Mr. Morris says to the Court that there were repeated tolling agreements or amendments to the tolling agreement that were entered into by Mr. Daugherty willingly and voluntarily to benefit Highland.

And what really happened when Mr. Morris says that there were good-faith arm's-length negotiations, well, there may have been good-faith, arm's-length negotiations between the HMIT entities and Highland, but what happened here was that Highland actually sought to ice out Mr. Daugherty from all of this completely.

And how did that happen? Well, the evidence is going to show that Highland reached out to the other Class 9 creditors over a month in advance of the motion being filed, sought their consent to the proposed settlement, told them that Mr. Daugherty was not going to be a part of it, told them that Mr. Daugherty's Class 8 claim was going to have an adversary complaint filed against it, told them that once that adversary complaint was granted and the claim was disallowed, then those funds would waterfall down to Class 9, so the Class 9 creditors would get that -- those funds that theoretically are

part of Mr. Daugherty's Class 8 claim.

So at no point in time prior to the filing of the adversary proceeding, or even prior to the filing of the motion for approval of this proposed settlement, did Highland ever contact Mr. Daugherty to attempt to discuss any of this, because they simply wanted to ice him out.

THE COURT: Okay. I'm going to hear evidence. I don't mean to cut you off, but --

MR. YORK: Sure.

THE COURT: -- I was told that Mr. Daugherty was paid $800,000 --

MR. YORK: With respect to his --

THE COURT: -- on his Class 9 claim.

MR. YORK: Correct.

THE COURT: Is that not true?

MR. YORK: So, the day --

THE COURT: Is that true?

MR. YORK: It is true. The day after the motion for entry of the proposed settlement was filed, Mr. Demo sent a letter to my office that was a payoff --

THE COURT: I just wanted to -- I don't need to know every detail.

MR. YORK: Yes. Sure.

THE COURT: Has he been paid?

MR. YORK: His Class 9 claim was paid in full the day

after the proposed settlement was filed.

THE COURT: Okay. So what is the asserted amount of his Class 8 claim?

MR. YORK: We -- again, both sides do not know because they do not have --

THE COURT: What was the asserted amount in the proof of claim that's been reserved for, the Class 8 proof of claim? What was the asserted amount?

MR. YORK: It was listed as contingent unliquidated. And as I understood it, and Your Honor --

MR. MORRIS: No. I think it's approximately $1.7 million, Your Honor.

MR. DAUGHERTY: That's not true.

THE COURT: $1.7 million?

MR. DAUGHERTY: No.

THE COURT: I would look it up, but I don't know if we --

MR. DAUGHERTY: Your Honor, I'll tell you. It was like $1.45 million, and then the interest to October, which was like another $1.3 million. I'm estimating it. But the total is around $2.6 million, $2.7 million at October/November 2020. Up to that point.

THE COURT: Okay. Well, that's kind of a weird process here for an opening statement. But I'm asking because, you know, I always try to stray people into let's be

pragmatic whenever I can. And a pragmatic approach here might have been, if your client didn't think the reserve was big enough, you all could have a discussion about, oh, instead of $2.56 million, it now should, I don't know, $3 million, whatever you say the number is. And there could have been a give and take, instead of all these people showing up in the court and having an all-day hearing.

So I'm just trying to understand that. And you're saying, okay, violation of the absolute priority, when your client took a full payment on his Class 9 claim without Class 8 being quite paid in full. I'm just trying to be pragmatic here. What would it take to make Mr. Daugherty happy? Again, that's just the bankruptcy judge speaking on Chapter 11 world that's trying to get to a pragmatic result.

MR. YORK: We're happy to have that discussion with the other side. We were -- we --

THE COURT: Well, what --

MR. YORK: Yes.

THE COURT: You can't tell me right now? You're here ready to go to battle over this settlement, and I'm trying to figure out what might happen here that would make you all withdraw your objection. And that's what we do in Chapter 11. If there's a way we can pragmatically resolve things, we do.

MR. YORK: Sure.

THE COURT: And it just, I'm picking on you because

we're talking about a $2.5 or so million claim in a situation where people are wanting the estate wrapped up and it's holding hundreds of millions of dollars, I guess.

MR. MORRIS: Not that much, Your Honor.

THE COURT: Not that much anymore. Not that much anymore. A lot has been paid out. But a lot more than $2.56 million, shall we say.

MR. YORK: Understood, Your Honor. And I'm happy to have a conversation with Mr. Morris and see if we can reach a number that's agreeable to accept as, you know, the reserve.

THE COURT: How hard could that be? I don't mean to be --

MR. YORK: Happy to do so. Sure.

THE COURT: How hard could that be, when we're talking about he's been paid $800,000 on his Class 9 ahead of his Class 8, which, to understand your argument, would be an absolute priority rule problem. But, you know, --

MR. YORK: Correct. We indicated that --

THE COURT: -- no picking and choosing what is problematic here. And we're talking about $2.56 million is set aside, and we're talking about the prospect of liquidating it and paying whatever is appropriate way before the IRS is finished. Maybe. I don't know. So how hard could it be to figure out --

MR. YORK: I'm sure we can -- we can have a

conversation real quick and try to see if we can --

THE COURT: Okay. Well, it'll have to be during a break, --

MR. YORK: Sure. Happy to.

THE COURT: -- because we're plowing ahead. Okay. Anything else on your opening statement?

MR. YORK: The only other thing I would point out with respect to the best interests of the estate is that the -- as part of the settlement, the Class 9 holders and the Class 10 holders are actually getting more favorable treatment than Mr. Daugherty's Class 8 claim because of the mutual releases that they're getting pursuant to the terms of the proposed settlement, including the fact that the Class 9 written consent holders who are all -- all have served on the board here are getting those releases as well under the proposed settlement.

THE COURT: It's not a release by your client.

MR. YORK: No, I understand that. I understand that. But they're getting mutual releases from each other on litigation that Highland has -- the Claimant Trust, excuse me, has -- Trustee has, you know, consistently said that they had all of those parties, all of those defendants, dead to rights on.

So, that's all I have.

THE COURT: Okay. I really, I'm trying to focus on

people's standing. Your client has standing. He has a proof of claim that's unresolved. But I'm just trying to understand the economic impact, I guess, on your client. And all I'm hearing is, I don't know, that maybe he thinks more than $2.56 million ought to be reserved. I mean, I'm --

MR. YORK: Given the passage of time, and also given the fact that it's still undetermined as to what's going to happen with that audit and what the penalties might be, considering that the amount that was --

THE COURT: But, again, this is bankruptcy-land. We can't wait around 20 years, 30 years. The Bankruptcy Code contemplates we can at some point estimate --

MR. YORK: Sure.

THE COURT: -- a contingent unliquidated claim.

MR. YORK: I understand.

THE COURT: So I -- all right. Thank you.

MR. YORK: Thank you.

THE COURT: And Mr. Lang?

OPENING STATEMENT ON BEHALF OF THE DUGABOY INVESTMENT TRUST

MR. LANG: We're down to three issues, one of which is the scope of the release, which I think we can work out with Mr. Morris, just to make sure people are carved out, being Dugaboy.

The second issue is the use of the dollar value from the capital account as the basis for the Class 10 claim versus

using the -- well, they're using it on the petition date versus using it -- the current capital account balance or the percentage interest of 99.5 percent, because that prevents the class, as structured, class level (inaudible). And so we have an issue with why they're using the capital account as the basis for the allowed claim, when the plan is silent on how that equity interest is to be valued.

Does that make sense?

THE COURT: Okay. You have a problem with the valuation methodology used here, which was taking the capital account balances from --

MR. LANG: On the petition date.

THE COURT: -- on the petition date?

MR. LANG: Versus using the ownership percentage of the equity on, as repeatedly stated, 99.5 percent of Highland is owned by HMIT, .5 is owned by the Class 11.

THE COURT: Okay. Well, I'm not sure what -- I guess you'll cross-examine Mr. Seery on different possible methodologies.

MR. LANG: Yes.

THE COURT: Okay.

MR. LANG: And so then the third one is the authority issue on Mr. Patrick's authority to enter into the settlement agreement and the transfer of the Dugaboy Note to Mr. Patrick's entity, HMIT.

THE COURT: All right. And, again, I'll just clarify my understanding. Dugaboy -- this came up earlier -- itself has a .1866 percent Class A limited partnership interest?

MR. LANG: I think that's approximately right. Not exact. Is that Mr. Morris' sheet?

THE COURT: It was in several pleadings.

MR. LANG: Okay. Yeah.

THE COURT: Okay. So the question will be, should that be valued at $740,000 or something different?

MR. LANG: More -- there's $65 to $70 million in assets in the estate. There's $20 million in Class 9 debt, is what Mr. Seery -- unpaid Class 9, is what Mr. Seery testified to.

THE COURT: Uh-huh.

MR. LANG: So it's $45 to $50 million would be left after payment of the Class 9. And if they use the ownership percentages, Class 11 gets some money. If they use a $333 million capital account, Class 11 gets nothing.

THE COURT: Okay. I presume that's a material difference, and I'm going to hear about that.

MR. LANG: Yes.

THE COURT: Okay. And then I guess my other thoughts on his interest -- I say his; it's Dugaboy. We tend to equate Dugaboy with Mr. Dondero since we've heard he and his family are the hundred percent beneficiaries. There I guess is a

note that is addressed in the settlement.

MR. LANG: Yes.

THE COURT: I called it the $24.2 million note in my --

MR. LANG: That was --

THE COURT: -- preparation, but it's down to --

MR. LANG: Seventeen-ish.

THE COURT: -- $17 million or whatever. So, right now, Highland is a payee on that note, as well as Get Good Trust, and Hunter Mountain under the proposed settlement gets to substitute in as a co-payee.

So I guess I'm just trying to, in my brain, figure out all the, just like I was doing with Mr. Daugherty, the economic impact of this settlement on your client. And have I just addressed the two things in your view?

MR. LANG: Yes.

THE COURT: Okay.

MR. LANG: I believe so.

THE COURT: Okay. Thank you.

All right. Can we start with evidence? At some point, we'll break for lunch, but we'll figure out as we go. I don't want to be inconvenient to people if people have ordered lunch or something.

MR. MORRIS: We are going to be finished with Mr. Seery on direct well before lunch.

THE COURT: Okay.

MR. MORRIS: Or by lunch, for sure.

THE COURT: It's 11:30.

MR. MORRIS: Yeah.

THE COURT: So, all right.

MR. MORRIS: I do -- I would be remiss if I didn't point out that Mr. Lang just raised yet another issue, the calculation of the allowed amount of HMIT's Class 10 claim. Nowhere in his pleading. Again, hearing about this for the first time as I'm standing here. He raised three issues, only one of which is in their pleading, only one of which I ever heard about from Dugaboy, and that is the scope of the release.

THE COURT: Okay. I don't know if it makes a material difference or not. I am not a mathematician. But --

MR. MORRIS: So Highland -- the Movants call Mr. Seery.

THE COURT: All right. Mr. Seery, if you could approach the witness box. I swore you in earlier for purposes of all testimony today, so you are under oath.

MR. SEERY: Thank you, Your Honor.

JAMES SEERY, CLAIMANT TRUST'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery.

A Good morning.
Q Do you have three binders in front of you?
A I have four binders in front of me.
Q Okay. I just want to make sure you have ours.
A I think -- yes, sir.
Q The fourth has the last few exhibits that we filed on the docket.

Should we wait for Mr. Edmond?

THE WITNESS: That would be good.

THE COURT: Yes. I just noticed. Okay. The recording is always going, so never fear.

(Pause.)

THE COURT: All right.

THE WITNESS: Apologies, Your Honor.

THE COURT: Oh, I didn't see what happened. Was there a spill episode?

And please, if people need breaks, let me know. I sometimes go long without appropriate breaks, so let me know, anybody, if we need to break for bathroom.

MR. MORRIS: May I proceed, Your Honor.

THE COURT: You may.

MR. MORRIS: All right.

BY MR. MORRIS:
Q Are you comfortable, Mr. Seery?
A Yes.

Q I want to actually start a little unscripted with the argument that was just made on behalf of Mr. Daugherty. Did you listen to that?

A I did, Your Honor. Yes, I did. I'll speak to Your Honor. Yes, I did, Your Honor.

Q Did Mr. Daugherty have a Class 9 claim?

A He did have a Class 9 claim.

Q And what was the value of the Class 9 interest that he held?

A It was approximately $3.7 million.

Q And who are the other Class 9 claim holders?

A There are three -- I'm sorry, there are four other Class 9 holders. There is Muck Holdings, LLC. There is Jessup Holdings, LLC. There is UBS AG. And there's UBS Securities, LLC.

Q Okay. And if you can turn to Exhibit 58, which is in Volume 1.

A VOICE: Mr. Morris, what was the exhibit number?

MR. MORRIS: It's 58.

A VOICE: Thank you.

MR. MORRIS: You're welcome.

BY MR. MORRIS:

Q Do you have that in front of you, sir?

A Yes.

Q What is that?

A That is a distribution notice to Mr. Daugherty from the Highland Claimant Trust with the eighth distribution. And I believe this would be related to his Class 9 claim. It may be some 8 -- some Class 8 as well. But March 25 is -- I'm sorry, May 25, my eyes are not that great for close up, this is just related to the payoff of his Class 9 claim. So he'd had a $3.7 million. This was the last -- final payment, so he's been paid in full on his Class 9 claim.

Q So do I have this right, that before you sent this $800,000-plus to him, he had already received $2.9 million on account of his Class 9 claim?

A That's approximately correct, yes.

Q And how many different distributions were made to Mr. Daugherty on account of his Class 9 claim before this last one?

A Two -- two or three. I believe the way we had phrased and put 8 is our total distributions including 8 and 9. So he had a larger Class 8 claim as well. I think it was approximately $8.25 million. That's been paid in full. His Class 9 claim was getting paid in full by this one.

Q Okay. And did Mr. Daugherty receive these prior distributions -- withdrawn. Did the other holders of Class 9 claims also receive pro rata their Class 9 distributions at the same time as Mr. Daugherty?

A Yes. The distributions were pro rata.

Q Okay. Did Mr. Daugherty ever return any of the Class 9 checks that he received and say, oh my goodness, it violates the plan and the absolute priority rule and everything else because his Class 8 claim hasn't been paid in full?

A No, he did not.

Q Did he -- did he suggest that UBS or Muck or Jessup should return their checks that they received on account of their Class 9 claims because his Class 8 claim had remained unresolved?

A No, he did not.

Q Okay. Let's go to the reason that we're really here today, the agreement itself. Did you negotiate the settlement on behalf of the Highland entities?

A Yes, I did.

Q Can you describe for the Court how that came about?

A In December, we had a hearing on -- this is a little bit convoluted, I apologize -- but in December we had a hearing on the HCLOM claim in court, and we settled that claim as a $10 million Class 10 interest.

We moved into the new year and we heard some -- at some point that HMIT disagreed with that settlement, even though HMIT had signed that settlement as acceptable to it in form and substance. And the reason was because HMIT had been the only Class 10 -- not allowed, but the only Class 10 interest in -- under the plan, and defined that way, and we had agreed

pursuant to the plan to put HCLOM in there.

And although HMIT had signed in form and substance acceptable by its attorney, we learned that Mark Patrick had not been consulted and that attorney had simply -- because we were in the room -- had gone in and gotten permission from Mr. Dondero to approve that settlement in form and substance. We didn't know it at the time.

That went away pretty quickly, and we understood that somehow it got resolved.

Shortly after that, sometime I believe in January or early February, there was contact between HMIT counsel and our counsel about a potential settlement. And we had two issues, really, with Mr. Patrick, who controlled two separate entities. There's the DAF entities he controlled and there's the HMIT entities. And we wanted to make sure -- and we had disputes with both of them. We had a Fifth Circuit appeal coming up in DAF and HMIT. And so we were contacted and said, okay, we're willing to settle this if we can get to a place that makes sense to us. And so that was the commencement of those negotiations.

Q And can you describe -- how long did the negotiations last?

A Well, there was negotiation around the NDA, which took some time, and I think we probably got that finalized at around the middle to end of March. And then we began

negotiations in earnest during April. And we took pretty much the full month to get these negotiations done, maybe a month and a half.

Q Can you describe for the Court just how the negotiations were conducted?

A Well, initially, we ensured that the ground rules would be set. We didn't want to waste our time and expense if we weren't going to reach agreement around particularly litigation protections, because that's essential to us, and having any settlement required that.

Secondly, we then -- from their side, they wanted information. So, pursuant to that NDA, which was rather robust, we provided substantial information.

We then had a -- I believe one or two Zoom calls, and then a face-to-face meeting, and then subsequently a number of Zoom calls with our counsel -- usually, these were always with counsel -- so, our counsel, their counsel, principals, my team, Mr. Patrick and his team, to go through each of the items that we exchanged. And then we worked through a framework to -- back and forth on that to a term sheet, to a negotiated structured settlement along the lines of the one you see.

Q And did the parties exchange information as part of the process?

A Yeah. As I explained, we, under our NDA, we gave a lot of

information. We got information back from Mr. Patrick, Mr. Phillips, their teams, about the structure of their entities, how we could interact with them, who was responsible for each entity. And that caused us to, frankly, move from just HMIT to a couple other entities to make sure we had full protection.

Q Did you provide information concerning assets, budgets, expenses, and the like?

A Yeah. The detailed information we provided, it was pretty extensive. So we gave a high-level view of our budget, assuming that we had a settlement with them. We have an asset list that we keep and where each asset was located. So, dollars amounts, what kind of form it was in, whether it was cash, whether it was U.S. Treasuries, whether it was, you know, equity interests. Some couple other assets, as Mr. Morris explained in the opening, had not yet been disposed of. And the valuations we put on those assets.

Q Can you turn, I guess, to any volume, and let's just look at the exhibit list. Are you generally familiar with the documentation concerning the negotiations?

A Yes.

Q Can you confirm that Exhibits 2 through 57 are the emails and information that were disclosed between the Highland side and the HMIT side during the negotiations?

A Yes. And I -- I could look through 2 through 57 now, but

--

Q Yeah.

A -- I have looked through them before, and this is the information back and forth. We generally exchanged, other than at the face-to-face meeting, we exchanged information on Zoom calls as well, but when we get documents we gave them counsel-to-counsel.

Q Okay. And did you instruct me to produce all of the communications with the HMIT side in connection with the discovery requests that were served in this case?

A Yes. We had discovery requests that we went through in detail and reviewed them, and we produced in accordance with those requests.

Q Are you aware of any document that we didn't produce that reflects the parties' negotiations of this agreement?

A No, not at all.

Q Can you describe for the Court the general deal points that were negotiated? Withdrawn. Who was your counterparty to these negotiations?

A The principal on the HMIT side is Mr. Mark Patrick. He had his team. And I was responsible on our side with my team.

Q And can you just describe for the Court what the primary negotiating points were between the two teams?

A Yeah. Number one for us was dismissal of outstanding litigations. So we needed, with prejudice, dismissal of those

litigations. Otherwise, why are we bothering?

Number two, we wanted to make sure that we had litigation protections. These have been around since -- we came up with them during our mediation. They're really important to us. They set up a structure where we can actually count on the estate and the principals of the estate and the indemnified parties of the estate not being attacked. So that was essential to us.

In exchange, we had to fix their claim and allow it in an amount pursuant to the plan, which requires us to fix an amount. And that's the Class 10 interest that they have, which is senior to the Class 11 interests under the plan and the Claimant Trust Agreement.

And then the way the Trust is set up in the plan, it's a waterfall. They -- we advocated for getting everything for us upfront and putting everything for them at the back. They, understandably, didn't like that as much and wanted distributions upfront. So we negotiated around those terms. And I think those are the biggest terms.

We had some assets that we were -- we were -- difficult to monetize that we also were happy to dispose of in this way, with a credit, you know, towards their claim amount.

Q Did you -- and I may have missed this; I apologize if I did -- but did you also negotiate the amounts and the timing of the distributions that would be made to the HMIT entities?

A Yeah. That's what I alluded to, where we -- we had hoped to get everything for us upfront, give them everything later. I think it's the *Wimpy* 'For a hamburger you give me today, I'll gladly pay you Tuesday' structure. That didn't like that as much, so we did work on timing. And that did bring into consideration the other Class 9 holders and timing with respect to payments to the Class 9.

Q Was the topic of the allowed amount of HMIT's Class 10 interest the subject of negotiation?

A The topic of the allowed --

Q Did you discuss how the amount of its allowed interest would be calculated?

A Oh, yeah, that was a, you know, a critical part of the -- or, you know, essential part of the structure. What's the allowed amount they're going to get? The plan requires an amount fixed for that class. We had already had a $10 million HCLOM amount allowed into that class. So we needed to fix that amount.

Q So let's transition to that particular topic, the calculation of HMIT's Class 10 interest. Are you familiar with the methodology that was used to arrive at the Class 10 amount?

A Yes.

Q Can you tell me the process, before we get to the methodology itself? Like, what work was done to figure that

out?
A Well, the structure of limited partnership is that the equity account is treated as what's called a capital account. Each limited partner in a limited partnership has a capital account that tracks their equity interest. As a default rule, it's the amount that a limited partner can expect to get on a sale of the partnership or a liquidation of the partnership. So we used the capital account that had been maintained continuously by Highland to set their capital account amount.

I think the partnership agreement talks about 99-1/2 percent for HMIT. It doesn't talk about dollars because that's kept in the accounting for the partnership. And that amount was consistently kept by Highland up to the petition date. And even after the petition date in the monthly operating reports.
Q If you take a look back at the exhibit list, I would direct your attention to Page 12 of 15. Actually, it starts at the Page 11. At the bottom, it's got the heading, Capital Account Amounts. Are you familiar with Exhibits 113 through 118? And if you need to look at the exhibits, take your time.
A Oh, I'm sorry. I thought you told me 15.
Q No. One -- I did. I mentioned Page 15. But we're just looking at Exhibits 113 to 118.

THE COURT: 113 to what?

MR. MORRIS: 18.

THE COURT: Okay.

THE WITNESS: Um, --

MR. MORRIS: If you look at the index, Your Honor, at the bottom of Page 15 -- 11, you'll see a heading, Capital Accounts --

THE COURT: Right.

MR. MORRIS: -- Amounts. And then that captures Exhibits 113 to 118.

THE WITNESS: Yes.

BY MR. MORRIS:

Q Are those the documents that you and your team relied upon in order to calculate the amount of the allowed Class 10 interest for HMIT?

A These are some of them. I don't know if you have the tax returns in here and the K-1s. Oh, here they are. 115.

Q Yeah. That's 115?

A Yeah. You've got the K-1s for 2018, which fix an amount. Those are signed by Mr. Dondero, and they give the amounts to each partner. And then you've got the adjustments, because those are done in -- they're 2018 year-end. They were done in September of 2019, about a month before the filing.

Q And is that Exhibit 116?

A It's 115 and 116. I believe that's -- 116 is 2019, I believe, and that would have been signed postpetition by -- I believe that was signed by Waterhouse.

Q Okay.
A So it sets out the K-1. The numbers that we have are slightly different because they're in the -- they're not middle of the year, but they're for the petition date of 10/16/19. And there are -- there's economic activity that happens during the year, that you take the year-end from '18 and you have economic activity that would affect, pursuant to the partnership, the capital account of each partner during that year, fixed it on the petition date, and then it's been forward since.
Q Did you apply any of your own subjective views or beliefs in the calculation of the amount of the Class 10 interest held by HMIT?
A No. This was math.
Q And did you hear Dugaboy's counsel suggest in the opening that there was a different methodology that perhaps you could have used, a pro rata methodology, instead of the methodology you used?
A I heard what he said, but it doesn't make any sense. You can't fix an amount that way.
Q And do you understand that Dugaboy, under the partnership agreement, is subordinated to HMIT?
A Dugaboy is subordinated under the partnership agreement for certain distributions. But importantly for our purposes, they're subordinated under the plan. So the Class 11

interests are explicitly subordinated to the Class 10 interests, in both the plan and the Claimant Trust Agreement.

Q Did the Debtor consider putting Dugaboy and HMIT in the same class? Back when the plan was being formulated?

A I -- I don't recall.

Q Do you recall why they're in separate classes?

A They -- they're in separate classes because HMIT had a senior -- a right to senior distributions under the partnership agreement. We set it up that way. Nobody objected to it. That was part of the confirmed plan and the confirmed order.

Q Thank you very much. Let's talk for just a moment about Mr. Patrick's authority. Before entering into the settlement agreement, did you do anything to satisfy yourself that Mr. Patrick had the authority to enter into the settlement agreement on behalf of each of the HMIT entities?

A Yes.

Q What did you do to satisfy yourself?

A Well, as a default rule, I always look at the agreements that I'm going to enter into and the organizational docs. And we did do that. We looked at each of the organizational docs to --

Q Let me stop you there for a second. Are those the documents that are in the exhibit list from 70 through 104?

A I'd have to check the actual numbers, but --

Q If you just look at the exhibit list.

A Oh.

Q It's at the front. You'll see on Page 8 of 15 of the exhibit list there's a heading, --

A Yes.

Q -- E, Patrick Authority, and then I'm asking you if you are aware of what Exhibits 70 through 104 are?

A Yes. So, these, these are -- there's a number of organizational documents that we looked and made sure that Mr. Patrick had authority.

We also knew from our own files that Mr. Patrick, you know, previously had different interests assigned to him, and we know from Mr. Patrick and documents he's given us that John Honis, who was a former controller of some of -- controlled some of these entities and a friend of Dondero's who previously worked at Highland, is on some retail boards, in 2022 transferred those interests to an entity controlled by Mr. Patrick.

Moreover, Mr. Patrick was here in court as the HMIT Administrator, trying to sue the Highland estate. He testified on behalf of HMIT as the Administrator. And the documents are very clear that the Administrator has full control of these entities.

Q We've heard some argument about a Cayman Islands proceeding. Are you generally aware of what's happening in

the Cayman Islands?

A I hesitate to say generally aware. I'm aware that there's a proceeding in the Cayman Islands about involving a blocker corp. And there's disclosure in this Court about what that entity is. It's a blocker corp. in the Caymans that prevents the ultimate charitable entities -- and I put that in quotes -- to -- from receiving UBTI, which is Unrelated Business Income. And in that case, they would have to pay tax on it, and the idea is that they don't want to pay taxes and they don't pay taxes. So that corp. apparently is in some sort of proceeding. That's on the DAF side. That is not on the HMIT side.

Q Okay. So, based on the work that you did and the documents that you reviewed, did you form a view as to whether or not Mr. Patrick is authorized to enter into the settlement agreement on behalf of each of the HMIT entities?

A Yes.

Q And what view did you reach?

A He has complete authority over each of these entities. They run up to entities that he controls or he owns. And he's had that, and it's the structure that was set up a long time ago, and any changes to that structure are just consistent with the documents that let him do these things. And the proceeding in Cayman, whatever that is, has no impact on Mr. Patrick's authority over these entities or any of the entities

in this chain.

Q Did you see anything in the diligence that you conducted that required Mr. Patrick to seek anybody's authority, consent, or approval before entering into the settlement agreement on behalf of the HMIT entities?

A No. And we could go through each document. He has complete authority on each of these entities. And even the objections that were filed that were withdrawn from The Dallas Foundation, they have no -- it's absolutely clear that they have no rights to deal with at all the management of each of these entities. They don't have an ownership interest in it. Crown issued an annuity policy that's a variable policy. They have no rights.

Q All right. Let's turn to the agreement itself. Can you tell the Court why you believe that the settlement agreement is in the Claimant Trust's best interests?

A Number one, this case has been going on for a full five years. We have spent tens of millions of dollars dealing with vexatious and frivolous litigation and attacks. The opportunity to settle with a Class 10 holder and allow their claim under the terms of the settlement is extremely valuable because it moves us much, much closer to a potential resolution of this case, which we would all love to resolve.

Number two, it's fair value for the estate. We are making sure, while we're paying some money out in front, we have

triggers on the backend payments to ensure that the Indemnity Trust has enough assets to protect parties if there are unforeseen litigations. And I can almost bet there'll be at least one or two of those. So it's really, really valuable in that respect.

Three, it cuts down tremendously on what future expenses could be. Because we have gotten these litigation protections, we've basically walled off a potential avenue to be attacked. And I think the structure of this deal is valuable, not only to the fiduciaries and folks who have been responsible for managing this process and who are indemnified by the Claimant Trust or HCMLP, it also enables us to, down the road, pay off the Class 9s and ultimately make distributions to the Class 10s.

Q Is one of the other benefits to this agreement is that it enables the Claimant Trust to dispose of certain illiquid assets?

A Well, that's a -- that is a benefit, because we do have to resolve these claims and dispose of these assets, and we're not in a position to hang around until 2030 or more to do that.

So we've got the Kirschner claims, which would go to HMIT. Again, the way that the waterfall is set up, to the extent that they have value, they are very expensive to pursue. We've spent a ton of money setting them up. We've produced

seven million documents, pages, and received zero in return. We stayed them because we didn't think we needed them for the Class 8 and 9 and it was prudent to do so, and the question was would we need them for indemnification. So disposing of those claims now at this time as part of this settlement, where that value would go to Class 10 anyway, is very valuable.

Q Had you made any efforts prior to entering into this agreement to monetize or otherwise sell the Dugaboy Note?

A Yes.

Q Can you describe for the Court what your efforts were in that regard?

A So, we set out to try to monetize the Dugaboy Note. I contacted -- we put together what we call a teaser, laying out what we knew about Dugaboy, at least up until the time that Dugaboy was no longer part of our computer system. Laid out what we thought the assets were. There's not a lot of public information. Laid out the amortizing of the note. It's a 3.2 percent-ish, 3.26 percent note, I believe, goes to 2047, '46 on the amortization, 2047. And then presented that to I think it's five different investors in distressed funds. Had no interest whatsoever. One investor laughed at me, which I understood that he was aware of the parties and the principals and the collection efforts that would be difficult on that note.

The note is performing, because if it hadn't performed I would have accelerated on the first second and we would have collected the whole thing. But we've seen that show in the other Notes Litigation. And so we didn't -- we didn't get any reception.

We also reached out to Mr. Dondero, in writing, through D.C. Sauder, and made them an offer and tried to get them to respond, and they indicated they had no interest in the note.

Q Turning back to the exhibit list, if you can turn your attention to Page 11 of 15 of the exhibit list, is Section F, Exhibits 105 through 112, the documents that reflect the note and your efforts to dispose of the note?

A Yes.

Q And let's take a look at Exhibit 112 quickly, since that involves Mr. Dondero. Can you just tell the Court what this exhibit is?

A Yes. This is an exchange between D.C. Sauder, Matt McGraner, both of whom work for Dondero, and Dave Klos, our CFO. I'd authorized Dave to make an offer to them to see if we could get cash for the Dugaboy Note. And as you see right below the reply from Mr. Klos, which is -- this is friendly, but Mr. Sauder's indication that they have no interest.

Q Okay. So Highland offered to sell the Dugaboy Note to Mr. Dondero or entities controlled by him, and that offer was rejected without a counteroffer. Do I have that right?

A That's correct.

Q Okay. Let's finish up here. Are you familiar with the objections of Dugaboy and Mr. Daugherty that the settlement somehow violates the plan because it's making distributions to Class 10 before junior classes are paid in full?

A Yes. I'm familiar with those.

Q Do you believe the settlement violates the plan?

A Not at all.

Q And why is that?

A The plan specifically contemplates that -- I don't think it's -- we showed the 9 and 10s, but I think it's any claimant could take less than is being offered by the plan. What we did very specifically is go to the Class 9 claimants and discuss with them this opportunity to settle with HMIT and what it would take, which included some, as I described earlier, payments upfront.

After being fully informed -- they asked a lot of questions, they pushed back quite a bit, as you can expect that they would -- and we reached agreement with those Class 9 claimants in writing to approve the structure of the deal and the settlement and the concurrent payments, as well as the final small payment to Mr. Daugherty on behalf of his Class 9 claim.

Q Could I trouble you to turn to Exhibit 59, please, Mr. Seery?

A I've got it.
Q Are you familiar with that document?
A I am, yes.
Q Can you explain to the Court what that document is?
A This document is the written consent that we entered into with the Class 9 claimants, approving the settlement agreement as well as the payment to Mr. Daugherty.
Q Okay.
A And -- and -- so these -- the payment to Mr. Daugherty would have been non-pro rata, so they agreed to that. And the concurrent payments under the settlement agreement to Class 10 were agreed to by the Class 9 claim holders.
Q So looking at Page 2 at the top, do I have this right, that Mr. Daugherty's original Class 9 subordinated claim was in the amount of $3.75 million, and that with the payment described in this document his claim was paid in full?
A That's correct, yes.
Q And did he complain that he was getting paid in full but the other Class 9 holders were not?
A No. That had never been his complaint.
Q Did he complain that he was getting paid in full on his Class 9 claim but his Class 8 claim remained unresolved?
A No. I think that, as indicated before in my testimony and indicated here, this was the last payment, the 781. Before that, he'd received almost $3 million on account of his Class

9 claim. And pro rata with the other Class 9 claimants.
Q I think you mentioned that your understanding is that, under the plan, creditors can elect to receive less favorable treatment than the plan otherwise provides. Is that right?
A That's correct. And I think that's a pretty standard provision in virtually every plan that I see.
Q Can we just grab that for a second? It's the last exhibit, 126, which is probably in the skinny binder, if you have one.
A Yes. Do you want me to go to the section?
Q Yeah. Just one minute. I want to make sure the judge is with us. Give her a second.
MR. MORRIS: Are you with us, Your Honor?
THE COURT: Yes.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q So if you can turn to Page 23 of Exhibit 126. Does Section 9, under Treatment, Romanette (ii), is that the provision that you were just describing that gives Class 9 holders the ability to receive such other less-favorable treatment as to which such holder and the Claimant Trust may agree upon in writing?
A That's correct.
Q And the same is true with respect to the Class 10 claims, at the top of Page 24?

A That's also correct, yes.
Q All right. And so was the consent that was executed by the Class 9 holders that's Exhibit 59 done in satisfaction of these plan provisions?
A I'd say it's consistent with these. They could elect to receive it or not, but this was, you know, did it under this provision and they were entitled to elect to take lesser treatment, if that's what they agree to.
Q Okay. Can you describe for the Court why you believe that the Class 9 claim holders are receiving less-favorable treatment under -- as a result of this settlement agreement than they would otherwise be entitled to under the plan?
A Well, they would be entitled to receive payments in front of any payments that would be made to Class 10. In addition, they would have been entitled to receive a pro rata distribution of the $800,000 that was paid to Mr. Daugherty, and they agreed to waive those provisions.
Q Okay. Is it your understanding that HMIT is also accepting less favorable treatment than it might otherwise receive if it pursued and succeeded in the prosecution of its claim?
A I suppose, ultimately, if everything was resolved, that they could have gotten a Class 10 interest that wasn't structured along the lines of the settlement agreement. So the settlement agreement takes some of that structure and what

arguably would be value away from them, and this is the amount that they've agreed to have as their allowed claim, as structured by the settlement agreement.

Q And is it your understanding that under the settlement agreement HMIT has disavowed any rights under the Claimant Trust Agreement?

A Under the Claimant Trust Agreement, yes. They have rights under the settlement agreement to receive distributions, and those will ultimately come from the Indemnity Trust as we wind down the Claimant Trust.

Q And did HMIT also agree that it would not be a Claimant Trust beneficiary under the Claimant Trust?

A Yes. And that's very important to us because we have seen lots of litigation, lots of emails, trying to use these types of structures just to create claims, even when there's literally no basis for it. I should -- well, I'll control myself.

Q Yeah. We can stop there.

MR. MORRIS: Your Honor, I have no further questions at this time.

THE COURT: All right. We're going to figure out, are we taking a bathroom break or a short lunch break. I'll poll the audience and then I'll decide. Do people want to take maybe a 30 to 45-minute lunch break, or just a bathroom break and keep going?

THE WITNESS: Thirty minutes.

THE COURT: I'll say -- are you going to have any further examination?

MR. PHILLIPS: I'm going to maybe ask one question, just to bring it up. It's already been -- but one question.

THE COURT: Okay. And then what about Dugaboy and Daugherty? Guesstimate how much examination you'll have.

MR. YORK: Fifteen minutes, maybe.

MR. LANG: Twenty minutes or so.

THE COURT: Why don't we take a five-minute bathroom break, --

MR. PHILLIPS: Sure.

THE COURT: -- and then we'll at least finish this witness.

MR. PHILLIPS: Perfect.

THE COURT: All right?

MR. PHILLIPS: Thank you, Your Honor.

THE WITNESS: Thank you.

THE CLERK: All rise.

(A recess ensued from 12:07 p.m. until 12:15 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

(Pause.)

THE COURT: All right. Can I get some help rounding people up?

(Pause.)

THE COURT: All right. We're missing -- okay. We're going back on the record in Highland Capital. We still have Mr. Seery on the witness stand. Mr. Phillips, you had examination. You said one question.

MR. PHILLIPS: I did, Your Honor. And I meant it.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. PHILLIPS:

Q Could you look at Exhibit 118, please?

A You said 118?

Q Yes, sir.

A Certainly.

Q Did the calculation of the Class 10 claim amount of $336,940,230.58, is that the result of applying the full value to the Highland or Highland Claimant Trust of the HMIT note receivable?

A Apologies, because I can't read this because it's too small, but I can answer the question.

THE COURT: Would you like this?

THE WITNESS: I think I can answer the question without it.

THE COURT: Okay.

THE WITNESS: The -- what we used was the petition date capital account.

BY MR. PHILLIPS:

Q Correct.

A And just like every other claim in bankruptcy, fixed at the petition date. And what we subtracted from that petition date was the petition date amount principal and interest of that HMIT note which was owed to Highland Capital.

Q Thank you.

THE COURT: All right. That was one question. All right. Counsel?

MR. YORK: Thank you, Your Honor. Get it organized here.

CROSS-EXAMINATION

BY MR. YORK:

Q Good afternoon, Mr. Seery.

A Good afternoon.

Q Would you take a look at Exhibit 1 in Daugherty's witness and exhibit binder? It's the settlement agreement between Highland and Mr. Daugherty, I believe.

A Yes, I have it.

Q All right. And can you confirm that is the settlement agreement that Highland and Mr. Daugherty entered into in connection with the claims Mr. Daugherty asserted in the bankruptcy?

A It appears to be, yes.

Q Would you turn to Section 9, then, which is on Page #11,

starts on Page #11?

A Yes.

Q And that relates to a reserved claim that Mr. Daugherty had as part of his proof of claim against Highland in the bankruptcy, correct?

A That's correct.

Q And would you agree with me that the second line of Section 9 there of the settlement agreement describes that claim as a contingent unliquidated claim against the Debtor?

A I would not agree with you on that, no.

Q Why not?

A Because it says, Daugherty contends --

Q Ah. Daugherty contends.

A -- he has a contingent unliquidated claim against the Debtor.

Q Okay. Well, why don't you then turn with me to Daugherty Exhibit #2, which is the -- which is the -- Highland's adversary complaint that was filed against Mr. Daugherty on I believe May 2nd of 2025. Correct?

A I don't recall the specific date and it's blurred at the top. So if you say so, I'll accept that.

Q All right. And if you look at Paragraph 1, the third line, there's a sentence there that says, All of Mr. Daugherty's claims were settled except his unliquidated contingent claim that the Debtor has a continuing and

indefinite obligation to make him whole if a tax refund he apparently received for tax year 2008 on account of his partnership interest is ever successfully challenged by the IRS.

Did I read that correctly?

A You did read that correctly, yes.

Q All right. This reserved claim under the settlement agreement is a Class 8 unsecured claim, correct?

A It is the claim that he asserted and that we initially classed under Class 8 in a fixed amount for a tax refund which is on his statement that he got that he claims he's entitled to more, which would be unsecured as of the petition date. I believe the amount on his payment statement from 2009 is $1.475 million.

Q All right.

THE COURT: Could you pull the microphone closer to you?

THE WITNESS: I'm sorry, Your Honor.

THE COURT: Okay. Good.

MR. YORK: All right.

BY MR. YORK:

Q And, again, my question is pretty simple. And it's a Class 8 unsecured claim, right?

A It's not a Class 8. It was in Class 8. It's been objected to.

Q Right.
A So it is not in a class now at all. We seek to disallow it in its entirety, or, at worst, subordinate it to all creditor claims.
Q Understood. But it has been asserted as a Class 8 general unsecured claim, right?
A He asserted it as that, yes.
Q Okay. And is it fair to say that in the adversary complaint, if you go to Page -- I'm sorry, Paragraph 4 -- Highland alleges that: However, even if Mr. Daugherty's claim is not disallowed in its entire -- I think that should be entirety. Right?
A It should be, yes.
Q It remains contingent on the outcome of the 2008 audit. Correct? Did I read that correctly?
A You did read that correctly, yes.
Q And the next sentence says, It is unclear when, how, or if the 2008 audit will finally be resolved. Correct?
A Correct.
Q And in fact, if you go to, then, Page #7 of the complaint and you look at Footnote 6, at the very end of that footnote it indicates that Highland has an understanding that the resolution may not be expected until approximately 2029. Is that correct?
A The litig... I can't read it because it's small, but the

litigation may not be resolved. The IRS has already issued a final determination on the audit.

Q How do you know that?

A I was advised that by another partner.

Q Who?

A Kurt Plumer.

Q Have you seen the FPAA that was issued by the IRS?

A No, I have not.

Q Have you asked for it?

A Yes.

Q You did, personally?

A My lawyers did.

Q Your lawyers did?

A Yes.

Q Okay. But you -- but you did not, right? Just to be clear.

A No, I did not. My lawyers, acting at my direction, did.

Q Asked the tax matters partner for Highland for that information?

A Asked Mr. Daugherty.

Q Asked Mr. --

A I think asked you, I'm sorry.

Q Oh, asked me for that information?

A Yes.

Q Well, so tell me, why is Mr. Daugherty -- first off, do

you know if Mr. Daugherty has received the FPAA?
A I don't know.
Q Okay. Do you know if anybody else has received an FPAA?
A I was told there was a final determination. I don't know if they've actually received an FPAA. But I do know that Mr. Daugherty has produced a document where the IRS has requested additional information for him. Since they hadn't done that for 17 years, I suspect that they've reached a final determination of the audit.
Q All right. So you don't know whether an FPAA has actually been issued?
A I --
Q True?
A I don't know. And for the Court's benefit, that's a Final Partnership something Determination.
Q Okay. What -- where --
THE COURT: F-A --
THE WITNESS: F-P-P -- I think it's --
MR. YORK: F-P-A-A.
THE WITNESS: -- F-P-A-A.
THE COURT: Okay. The court reporter will no doubt ask, so good.
BY MR. YORK:
Q Tell me, where in the universe is it that -- is it Mr. Daugherty's obligation to provide Highland with the FPAA?

A I don't -- I don't think there's any such obligation that I've seen.

Q And in fact, the IRS audit is handled by the tax matters partner for Highland Capital, correct?

A The IRS audit for Highland Capital's -- from Highland Capital's position is handled by that. The IRS handles their side.

Q Right. From Highland's side. Okay. And that tax matters partner is doing that on behalf of Highland Capital, right?

A I think at this point it's doing it on behalf of the old Highland Capital, not Reorg Highland Capital. We don't have any liability with respect to it, nor do we have any visibility as to what's going on in the tax audit.

Q So even though, under the partnership agreement, that's the tax matters partner that's referred to, Highland Capital cannot compel that tax matters partner to provide that information to them, if an FPAA actually exists?

A I don't think so. That partnership agreement is the pre-effective date partnership agreement.

Q All right.

A The new Highland Reorg Debtor doesn't have these partners and is not a tax matter partner for those -- those audits.

Q So let's go back, then, to Paragraph 4 of the adversary complaint that was filed. And I want to look at the next sentence that Highland wrote there. It says: Moreover, if

the claim is not disallowed, it will need to be estimated, after taking into account the likely outcome of the 2008 audit, including adjustments that result therefrom.

Did I read that correctly?

A You read that correctly.

Q Have -- has anyone at Highland conducted any analysis as of today to determine what Mr. Daugherty's potential liability would be from that IRS audit if that audit was completed today and all interest and penalties were assessed as of today?

A Yes.

Q How much?

A It would be $1.475 million, the amount of his prepetition claim in his proof of claim. Since it's unsecured, whatever happens with the IRS is not a concern of Highland. His claim is that he didn't get that amount as a refund. Either he got that amount or he got some -- some lower amount. It would be a petition -- prepetition-date amount. And under Texas law, he would be entitled to prejudgment interest from 2009 to the petition date at a rate of five percent.

Q Which would be how much?

A It would be approximately $2.2 million in aggregate.

Q Okay. And there would be -- you're saying there would be no penalties or any other -- any other interests or assessments that would -- Mr. Daugherty would be liable for that Highland would also then be liable for under that claim?

A No. There would not. It would not impact his claim against Highland. His claim against Highland is simply: I did not get this refund.

He got the refund. He's now claiming it might be adjusted. If the IRS otherwise has penalties, interest against him for his tax attributes somewhere between 2009 and 2019, that wouldn't be subject to his proof of claim and it wouldn't be the responsibility of Highland.

Q Even if Highland had promised at the time that that refund was made that it would -- it would make him whole with respect to any IRS audit whatsoever?

A It simply --

MR. MORRIS: Objection to the form of the question.

THE WITNESS: It simply didn't do that.

MR. MORRIS: Yeah.

THE COURT: Okay. Overruled.

THE WITNESS: We can -- you could litigate the claim, but that's just not what it says.

BY MR. YORK:

Q So you talked earlier about the Class 9 consent that was obtained, and no one from Highland reached out to Mr. Daugherty to try to seek his consent. Right?

A That's correct.

Q Why not?

A Because I didn't want to.

Q Why?
A Because Mr. Daugherty is an extremely difficult person to deal with. The last time I dealt with Mr. Daugherty on the phone with respect to anything, I had extreme difficulty and got sucked into a stalking lawsuit that I had to testify to that is a complete mess that I want nothing to do with. So originally my counsel said, have no communication with him. But with respect to this, we were objecting to his claim. We knew he would try to hold this up. You have tried to do that and demanded $20 million. So that's why we didn't reach out to you. We just paid the 9 and we have a fully-reserved amount on the 8.
Q You thought that the stalking case that you were pulled into was completely fabricated, didn't you?
A I thought that at the time. I'm not as sure anymore.
Q Oh, really?
A Yeah.
Q Okay. And you actually also told Mr. Daugherty that Mr. Ellington, who brought that case, was a complete liar and POS, right?
A I don't know if I used POS, but I do not think Mr. Ellington is an honest person.
MR. MORRIS: Your Honor, at some point I'm going to on relevance grounds. I think we've got a settlement agreement before the Court that we're trying to get approved

today, not to take discovery on any other matters.

THE COURT: Okay. I'm going to overrule to the extent there was an objection, but I think it's appropriate to worry that we're straying down a road that is not relevant. So, --

MR. YORK: Understood.

THE COURT: -- reign it in.

MR. YORK: All right.

BY MR. YORK:

Q You'd agree that the -- under the terms of the proposed settlement, there will be some interim distributions will be made to the HMIT entities in cash totaling approximately $23 million. Correct?

A Not necessarily, no.

Q Why not?

A Because there's an initial distribution. I believe it's $10 million.

Q Yes.

A And then subsequent distributions are predicated on whether there are threats, either outstanding litigation or threats as defined in the agreement.

Q And so long as those threats don't occur, then those interim -- those additional interim distributions will be made, right?

A Yes. The Indemnity Trust would make those distributions

at those times, and then I have to make -- it's a double trigger, because it has to be no threats and I have to determine that the Indemnity Trust had sufficient assets to meet its obligations for both actual and contingent indemnification obligations.

Q But at a minimum, the HMIT entities will receive at least $10 million?

A Yes.

Q On an interim basis?

A Yes.

Q All right. And you'd agree with me that, under the terms of the plan, the plan provides that the classes get paid in order of priority, correct?

A That's correct.

Q All right. And if you turn to Daugherty Exhibit 4, which is the confirmation order, at Page 45. And Subsection A there in the middle of that has a sentence that says: Accordingly, as the holders of the equity -- excuse me. Strike that. Let me start over. Are you there yet, Mr. --

A Now I am.

Q All right. Accordingly, as the holders of equity interests that are junior to the claims in Class 8 and Class 9 will not receive or retain under the plan on account of such junior claim interest in any property unless and until the claims in Class 8 and Class 9 are paid in full, plus

applicable interest, --

Did I read all that correctly?

A Yes.

Q Okay. And the term "Claim" there is a capitalized term, right?

A Yes.

Q It's not -- it doesn't say allowed claims. It just says claims. Right?

A That's correct.

Q All right. All right. Now, if you'd turn with me to the Claimant Trust Agreement, which is Daugherty Exhibit 5, and go to Section 5(c). Excuse me. 5.1(c). I apologize.

A Yes.

Q And this is -- this is -- relates to the contingent trust interests associated with the Class 10 and Class 11 limited partnership interests in Highland, correct?

A Generally, yes.

Q All right. And you'd agree with me that, in the -- about four lines down, it says: The Claimant Trustee shall allocate to each holder of allowed Class 10-B and C limited partnership interests and each holder of allowed Class 11 Class A limited partnership interests a contingent trust interest equal to the ratio that the amount of each holder's allowed Class 10 or Class 11 interest bears to the total amount of the Class 11 or -- Class 10 or Class 11 interest, excuse me, as applicable

under the plan.

Did I read all of that correctly?

A I believe you did, yes.

Q All right. And under the terms of the proposed settlement, the HMIT entities are getting an allowed Class 10 interest, correct?

A That's correct, yes.

Q All right. And then the next sentence goes on to say: The contingent trust interest shall not vest and the equity holder shall not have any rights under this agreement unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid postpetition interest consistent with the plan and all disputed claims have been resolved. The GUC Payment Certification.

Did I read that correctly?

A You did, except you used the article "The" before "contingent trust interest" at the start of the sentence.

Q Fair enough. And the GUC beneficiaries there would be the general unsecured creditor beneficiaries, correct?

A That's correct.

Q And this certification has not been issued yet by the Claimant Trustee in this bankruptcy, correct?

A That's correct.

Q In part because of Mr. Daugherty's remaining unresolved Class 8 claim, correct?
A In part, yes.
Q And also in part because of the remaining Class 9 claimant holders who still have money owed to them on their Class 9 claims?
A In part, yes.
Q Okay. Does the term of the proposed settlement agreement provide those Class 9 consent holders with releases from the HMIT entities?
A No.
Q It does not?
A No.
Q At all?
A No.
Q Even if they were in their capacity serving as board members for Highland Capital?
A Certain of the Class 9 holders are also on the Oversight Board. In their capacity as Oversight Board members, yes, they get -- they get broad releases. UBS, for example, is not. There are no releases in there for the two UBS entities.
Q Would you now -- you can set that binder aside. And if you'd turn with me to Exhibit 60 in the -- Highland's exhibit list.
A Six zero?

Q Yes, sir.
A Yes.
Q This is a copy of the tolling agreement extending objection deadline between -- that's on -- dated July 27th of 2022 between Mr. Daugherty and Highland Capital Management, LP and Highland Claimant Trust. Correct?
A Yes. That's what it appears to be, yes.
Q All right. If you would, go with me to Page 2 at the bottom. There is a Footnote #3. Do you see that?
A Yes.
Q And that footnote relates to, up above, a defined term called a "Reserved Claim," the Reserved Claim being what was discussed earlier in Mr. Daugherty's settlement agreement with Highland, right?
A That's correct, yes.
Q And it states in here that that Reserved Claim means "the contingent and unliquidated claim as referenced in Proof of Claim #205."
Did I read that portion of the footnote correctly?
A Yes.
Q All right. And it goes further to say that the amount listed there of 2.65 million three hundred -- two point six -- let me start ever. $2,650,353 is the amount estimated as of October 23, 2020. Correct?
A That's correct.

Q All right. It doesn't say it's -- anywhere in there that it's a fully -- it fully reserves that unliquidated contingent claim. Correct?

A In what you just read, no.

Q All right. And if you go to Page 1 -- or, I'm sorry, to Page 3, Paragraph 1, the covenant to reserve where Highland agrees to reserve $2,650,353 on account of the reserved claim, does it say anywhere in there that that is -- fully reserves that contingent unliquidated claim anywhere?

A It says exactly what it says. And you read it.

Q That's not my question. Does it say --

A I don't -- well, it says, Further agree to reserve $2.650 [million] on account of the reserved claim in disputed claim reserve.

Q All right. Does it say anywhere in there that that is the fully-reserved amount of that claim?

A Not in that sentence, no.

Q Thank you. All right.

MR. YORK: Your Honor, give me one second. Let me confer.

THE COURT: Okay.

(Pause.)

BY MR. YORK:

Q Mr. Seery, UBS is one of the consent holders, Class 9 consent holders related to the HMIT settlement. Correct?

A There are two UBS entities, UBS AG 66 and UBS Securities, LLC.

Q All right. Did either of those entities sit on the Unsecured Creditors' Committee in this bankruptcy?

A A UBS entity did. I'm not sure which of those did, or whether it was both with one counsel. I don't -- there's a UBS entity on that Creditors' Committee.

Q Is the -- are the members of the Unsecured Creditors' Committee within the definition of the Highland released parties under the proposed HMIT settlement? Do you know?

A I don't know. The members of the Creditors' Committee, I believe, have exculpation anyway, so I don't -- I don't -- I don't know if it captures the old members of the Creditors' Committee. I don't -- for example -- I don't think so. I don't -- I don't know.

MR. YORK: Pass the witness.

THE COURT: All right. Mr. Lang?

THE WITNESS: Do you have a separate binder?

MR. LANG: No.

THE WITNESS: Okay. Will you be using Mr. Daugherty's binder?

MR. LANG: No.

CROSS-EXAMINATION

BY MR. LANG:

Q All right, Mr. Seery. Just to be clear, the Class B and C

-- or the Class A interests and the -- of Highland under the plan, they have 99.5 percent of the -- Highland Capital Management. Correct?

A Could --

Q Sorry. The Class B and C --

A Limited partnership interest.

Q -- shareholder -- limited partnership interests were 99 point -- or, were .5 percent of Highland Capital Management?

A I -- I'm not trying to be difficult.

Q No, it's fine. It's a terrible -- terrible --

A I don't -- I just don't -- I don't understand your question. I apologize.

Q Okay. So, at the time of the petition, --

A Yes.

Q -- Hunter Mountain Investment Trust owned 99.5 percent of Highland Capital Management?

A It owned 99-1/2 percent of the limited partnership interest in Highland Capital Management.

Q And the remainder -- and HMIT has the Class 10 claims. Correct?

A You said something, the remainder? The --

Q Oh, sorry. The remaining interests are owned by the Class 11 claims under the plan.

A The remaining partnership interests are among those entities I testified earlier to, which are Dugaboy, Strand, --

Q And Okada?
A -- Mark Okada individually, and two Mark Okada and Pamela Okada trusts.
Q Okay. And the total assets in the estate right currently you testified are between $65 to $70 million?
A I -- off the top of my head, I don't recall, but it -- rough range, it could be in that general vicinity. That does not include the payments that have to be made to the 9s and expenses. So I believe there's documents in here that we could go through, if you like.
Q And I believe you testified that the remaining unpaid 9s are owed approximately $20 million?
A Approximately $20 million, yes.
Q Okay. And the plan does not say that the equity claims for Class 10 and 11 are to be determined by the capital account values of the limited partnership interests in the Debtor LP?
A That's correct. It says to set an amount. It doesn't tell you how to do the amount.
Q Okay. And under the settlement agreement, Class 10 interests will be allowed in the amount of $336,940,230.58?
A Approximately $336 million, yes.
Q $336 million. Fair. And this is the capital account balance as of -- HMIT's capital account balance as of the petition date, less, I believe, the HMIT note?

A That's correct. So that amount is the net amount.
Q The net? And do you know how the capital account balances were calculated --
A Yes.
Q -- on the petition date?
A Yes.
Q And how were they calculated?
A So, you take the 2018 year-end capital account amount, and then there's activity in the company that gets passed through through the partnership. The partnership agreement -- in this instance, the prepetition Debtor partnership agreement passed through profits and losses on a pro rata basis. There was activity in the first half of the year that affected that capital account. You can see that reflected in the year-end auditeds as well as the K-1 statement that -- for 2018 that was given to HMIT. That would be their 2018 year-end. That then, from an accounting perspective, was used and brought down to the petition date. And between the petition date and year-end 2019, there was additional capital activity, the biggest one of which was the reserve -- full reserve for the $50-plus million for the HMIT note. And so then you'll see the 2009 auditeds that are signed off by Mr. Waterhouse. And in those interim months, then you also see the gross amount of the partner capital each month in the monthly operating reports.

Q And correct me if I'm wrong, but I believe you testified that the capital account balances continued to go down after 2019. So you have the petition date, you have the next year, and did they continue to --

A I don't think I testified to that. What I testified to is that there was economic activity in 2019 that affected the year-end '18 to the petition date. And then from the petition date there was year-end activity -- there was activity from the petition date to year-end '19 that would affect the capital account as reflected in the 2018 auditeds -- they weren't auditeds -- 2018 tax returns signed off by Waterhouse. The biggest part of that activity was the application or the reserve for the Hunter Mountain Note.

Q And was there any activity after the 2019 tax return?

A There was postpetition activity in the partnership, certainly.

Q And did it reduce the capital accounts during those years?

A I assume it would have reduced all of the capital accounts pro rata.

Q Okay. And why'd you use the petition date as the date to determine the value of the capital accounts?

A Because this is bankruptcy and that's the date on which you fix all your claims and interests.

Q If you used -- have you ever used equity ownership percentages to determine the payment to the equity versus

their capital account balances?
A In this case, or elsewhere?
Q Elsewhere.
A I think that's standard. I can't cite you a specific thing, but typically when a partnership liquidates or a partnership is sold, amounts get distributed pursuant to the capital accounts and -- and -- in up to amounts in the capital accounts.
Q You would agree, if you use the percentage of ownership, being 99.5 percent for Class 10 and the .5 percent for Class 11, would potentially leave money for the Class 11 creditors to recover?
A I don't think so. No, I don't agree with that.
Q Why do you say that?
A Because Class 11 is subordinated to Class 10.
Q Okay. So explain how, if $60 million exists and you pay $20 million to the Class 9, --
A Roughly. Yeah.
Q Rough. Just rough math.
A Okay.
Q That leaves $40 million.
A Okay.
Q Correct? And if the ownership interests or the allowed claim for HMIT was 99.5 percent, wouldn't that leave .5 percent of $40 million for the remaining creditors?

A That doesn't make any sense, because 99-1/2 percent of a senior thing means you get everything. So that Class 10 has to be paid in full before the 11.

In addition, there's already an agreed-upon amount on HCLOM for $10 million. So how do I give HCLOM $10 million and 99-1/2 percent to somebody else? There has to be numbers.

Q But to be clear, the plan does not say that the equity claims are determined on capital accounts. Correct?

A That's correct.

Q All right.

MR. LANG: No further questions.

THE COURT: All right. Any redirect?

MR. MORRIS: Just one moment, Your Honor.

(Pause.)

MR. MORRIS: We have no questions, Your Honor.

THE COURT: All right. Any redirect from --

MR. PHILLIPS: No, Your Honor. Thank you.

THE COURT: -- the one question?

Okay. Thank you, Mr. Seery. You are excused from the witness box.

THE WITNESS: Thank you, Your Honor.

(The witness steps down.)

THE COURT: Okay. I'm going to again take proposals. I can live with a 30-minute lunch break. I and my staff can. But it's easier for us than all of you. So do you all want to

negotiate for more?

MR. MORRIS: I just wanted to let the Court know that, with that, the Movants rest. We're not -- we're not going to call anybody else.

THE COURT: Okay.

MR. MORRIS: We reserve the right to cross-examine. We reserve the right to call rebuttal witnesses, including Ms. Deitsch-Perez and Mr. Dondero, depending on what testimony is elicited. So we reserve the right to call rebuttal witnesses. But we're not calling anybody further on our direct case, and we rest.

THE COURT: Okay. So let me --

MR. MORRIS: I'll let them --

THE COURT: -- follow up on that point.

MR. MORRIS: Uh-huh.

THE COURT: There had been a discussion of Mr. Patrick.

MR. MORRIS: Uh-huh.

THE COURT: Limited to one total hour. Thirty minutes collectively, Debtor and HMIT. Thirty minutes collectively, Dugaboy and Daugherty.

MR. MORRIS: You know what, Your Honor.

THE COURT: You're -- you're not asking --

MR. MORRIS: No, maybe I -- I forgot that you had told us we could do it, too. So let's take the lunch break,

let us figure it out, we'll let you know when we come back.

THE COURT: Well, I'm clarifying because I'm deciding --

MR. MORRIS: Yeah.

THE COURT: -- who gets to go first.

MR. MORRIS: Understood.

THE COURT: Each witness.

MR. MORRIS: Understood.

THE COURT: And I presume --

MR. MORRIS: Understood.

THE COURT: -- the Debtor/HMIT would go first.

MR. MORRIS: Yeah.

THE COURT: And then with regard to Dondero, --

MR. MORRIS: Yeah.

THE COURT: -- you all would go first.

MR. MORRIS: So I withdraw what I said. Let us confer during the lunch break and we'll figure out who's going first, whether we do rest or whether we put Mr. Patrick on for a short direct.

THE COURT: Okay. Which leads me to our lunch break. Do people want to negotiate for more than 30 minutes? I don't want to make someone collapse if --

MR. MORRIS: Thirty minutes, or 1:30?

MR. PHILLIPS: 1:30.

MR. MORRIS: 1:30, Your Honor. It's nice and round.

MR. PHILLIPS: One clarification, Your Honor. Because I don't -- I don't -- if one side doesn't take the half hour, does that go over to the other side, or --

THE COURT: No.

MR. PHILLIPS: No?

THE COURT: I don't think -- I'm just giving --

MR. PHILLIPS: Great. Thank you.

THE COURT: And my law clerk said maybe I was confusing about that earlier today.

MR. MORRIS: Yeah.

THE COURT: One hour total, but 30 minutes each. And if one collective team doesn't use the whole 30 minutes, we're not --

MR. MORRIS: Yeah.

THE COURT: -- giving it to the other side. Okay?

MR. PHILLIPS: That was my question.

MR. MORRIS: Understood, Your Honor.

THE COURT: And while I'll let you all discuss whatever you want, what I envisioned is you all would go first with Mr. Patrick, --

MR. MORRIS: Uh-huh.

THE COURT: -- and then Dugaboy and Daugherty would go first on Mr. Dondero. But if you all collectively think it makes sense to do something different, I'll hear.

MR. MORRIS: No. That makes sense, Your Honor.

MR. PHILLIPS: Thank you, Your Honor.

THE COURT: All right. So we'll come back at 1:30 --

MR. YORK: Yes.

THE COURT: -- and resume.

MR. YORK: Thank you so much.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(A luncheon recess ensued from 12:51 p.m. until 1:33 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. We're back on the record in the Highland Capital matter, the Rule 9019 motion for approval of a settlement. When we broke, we were waiting to talk about Mr. Patrick and Mr. Dondero as witnesses. Are they going -- is Patrick going to be your witness?

MR. MORRIS: No, Your Honor. We're going to reserve our 30 minutes for rebuttal.

THE COURT: Okay. Thank you.

All right. I'll hear from the Objectors now.

(Pause.)

MR. YORK: Sorry, Your Honor. I didn't realize they were going to observe. So, --

THE COURT: Well, yes. If you understood what I was saying before the break, I presumed they might want to go first with Mr. Patrick, but it was -- you're the one who

wanted him, so if they want to go second, they can go second.

MR. YORK: Well, --

THE COURT: Well, I say "you're." I'm sorry.

MR. LANG: No, it's okay.

THE COURT: Mr. Lang wanted to go --

MR. YORK: Yeah. So are we definitely doing Mark Patrick now?

MR. PHILLIPS: No.

MR. YORK: Oh, okay.

MR. PHILLIPS: We just rested.

THE COURT: Okay.

MR. MORRIS: They can call whoever they want.

THE COURT: They have rested. If you don't want to go forward with any witnesses, you don't have to.

MR. YORK: Oh, we --

THE COURT: But you had wanted to go forward -- you wanted to question Patrick and I said, if he's going to be a witness, then Dondero should also be a witness. Okay? And at most an hour collectively for each witness. If you don't want to call either one of them, you don't have to call either one of them.

MR. LANG: We're going to. I think that they were just going to call Daugherty first. I didn't know if you had an order that you wanted to do this in.

THE COURT: Well, no. I don't care. I guess I don't

care. Was Daugherty listed? I mean, --

MR. YORK: Yes.

THE COURT: I'm sorry. Did you say Daugherty or Dondero?

MR. LANG: Daugherty.

THE COURT: Okay. I'm sorry. So you want to call Daugherty?

MR. YORK: Yes.

THE COURT: And you listed him as a witness?

MR. YORK: Yes.

THE COURT: So you may call Daugherty.

MR. YORK: All right.

MR. MORRIS: Yes. I --

MR. YORK: We'll call Patrick Daugherty, then.

THE COURT: Okay.

MR. MORRIS: I don't believe Dugaboy did, but --

MR. YORK: Right.

MR. MORRIS: -- if they -- if they want to call him, by all means.

THE COURT: Okay.

MR. MORRIS: Yep.

THE COURT: All right. Mr. Daugherty, if you could approach the witness box, I will swear you in. Please raise your right hand.

PATRICK DAUGHERTY, PATRICK DAUGHERTY'S WITNESS, SWORN

THE COURT: All right. Please be seated.

THE WITNESS: Oh, wow. A lot of water up here.

THE COURT: Plenty of water for everyone.

DIRECT EXAMINATION

BY MR. YORK:

Q Good afternoon, Mr. Daugherty. Could you state your name for the record, please?

A Patrick H. Daugherty.

Q Mr. Daugherty, are you a creditor in the Highland Capital bankruptcy?

A Yes, I am.

Q All right. And would you turn to, in the Daugherty exhibit binder, turn to Exhibit 1, please?

A Yes.

Q And this is a settlement agreement between you and Highland Capital Management relating to claims -- your proof of claim that you made in this bankruptcy, correct?

A Yes.

Q And we looked earlier. You were in the courtroom for Mr. Seery's testimony, correct?

A I was.

Q All right. And we talked in Section 9 about the defined Reserved Claim in there. Do you remember that?

A I did.

Q All right. Can you describe what --

A I consider it the Compensation Claim, but yes.
Q Can you describe what the Reserved Claim is?
A Yeah. Basically, it, background, it dates back to the financial crisis of 2008, 2009. Highland was on the brink of filing for bankruptcy. We had a creditor bank led by Bank of America and Scotia, and we were in default. And so the banks came in, declared default, and basically put a limit or terminated our ability to pay cash bonuses. And that -- right after Lehman Brothers failed, so call it September 2008 and going into 2009.

And the problem with that is we were losing people right and left. We had about 22 senior-level guys. We were down -- and I say guys. I think there were some women, too. But we were down to about 12 people. And they were trying to stem the tide of people running out of the doors in order to save the value of Highland. We started the year at about $40 billion under management, and by that time, we were -- I think we were as low as $19 or $20 billion under management.

Hedge funds were rolling up. CLOs did fine. Private equity did fine. Retail funds were having problems. And separate accounts were okay. But we were definitely a firm in crisis and trying to hold on to people.

So the nature of this compensation claim, you know, every year, everybody except Dondero and Okada would get what's called a compensations and award letter. Because Dondero and

Okada were really the only partners. I think you can kind of see that, given your experience. They were called the founding partners. They were the only ones that got true distributions from the firm annually. Guys like us, you know, the other 12 or so, we got cash bonuses and incentive comp and deferred comp. And, you know, obviously, cash compensation was a big part of our compensation, and they were prohibited from the banks from paying it.

So Dondero, with the help of Rick Swadley and some of the other tax people, I don't know if we used out outside firms or not, they came up with this scheme, if you will, where Highland was going to go and use whatever they came up with with the partnerships and whatnot and then generate a tax refund to the senior-level guys. As or in lieu of the cash bonuses that couldn't be paid, they were going to go make these elections and then we were going to get this money.

And if you look at our awards agreement, it says you're going to get *x* amount of money. And it's in the line that historically is the cash bonus.

Also, when we got like our email or whatever that year from Patrick Boyce, our CFO, he was like, Congratulations, your bonus this year was *x*. And it was whatever that amount was on your compensation and award letter.

Well, several of us had the same accountant, John Garvey, at Bland Garvey. Me, Joe Daugherty, and Davis Deadman. And

we took this concept to our accountant and he's like, man, that's really precedent. And so you guys are going to have to basically protect yourselves from -- sorry, go ahead. Make your objection. I'm sure I'm --

MR. MORRIS: I just, I just don't remember what the question was at this point and he's testifying to --

THE WITNESS: Why I got this thing.

THE COURT: It was --

THE WITNESS: My apologies.

MR. MORRIS: -- to conversations and hearsay.

THE COURT: What is the --

MR. YORK: Let me ask a question and I'm going to try to --

THE COURT: -- proof of claim about, was the essence of the question.

MR. YORK: Yeah. Right.

THE COURT: So I sustain. We're getting a little narrative, shall we say.

THE WITNESS: My apologies.

MR. YORK: So, --

THE WITNESS: I'll tighten it up.

BY MR. YORK:

Q All right. So, Mr. Daugherty, what you were getting under this scheme, as you describe it, was a cash bonus that was masked as a refund, correct?

A Look, Highland paid for it however they're going to pay for it. They're the one who created whatever that they did. But for us, it was a cash bonus.

Q Okay.

A But given that I was -- what I was just alluding to, there were concerns about the tax impacts if the IRS didn't agree with Highland. And so what we did is we negotiated for and got from Dondero -- really, I mean, Jim ultimately made the decisions at Highland. He said, look, if you don't -- if this doesn't work, if it doesn't go through, we'll make you whole. And so we got that provision in the compensation and award letter that says if the actual refund deviates materially from the refund, then you'll get substitute compensation. And that was enough for us, --

Q And --

A -- and that's what led to this claim.

Q And was it your understanding that, in terms of making you whole, that was not just whatever you had to pay back for the refund, but also interest and penalties?

A Yeah.

MR. MORRIS: Objection. Leading.

THE COURT: Sustained.

THE WITNESS: That's fair enough.

BY MR. YORK:

Q What was your understanding as to what that 'make you

whole' constituted?
A It was basically to put me and the others back in the position of getting to that number that was listed in the document. So if there were any interest, penalties, pullbacks from the IRS, then we would be made whole at that -- we'd get back the net of that number. However, if the IRS was fine with it, we wouldn't get anything.
Q So there's a chance, depending on how the IRS audit turns out, if the IRS says what Highland did was fine, then you don't owe the IRS anything, right?
A Yeah. That's been a critical thing, that I may not owe the IRS anything, and certainly I wouldn't expect Highland to give me anything.
Q And at that point, what's been reserved as your reserved claim would effectively at that point, from the IRS perspective, the IRS audit perspective, would be a zero dollar amount, right?
A Yeah. I mean, more so. I mean, Jim Seery offered to buy me out with an amount of the reserved claim. And I said, listen, I'm not looking for a windfall here. What I'm looking for is to be made whole, --
Q Right.
A -- it's my insurance policy on what I earned back in 2008, because the alternative is I will have ended up working for free in 2008, plus have to pay penalties and interest going

forward that could wipe out my net worth.

Q All right.

A So I wanted the insurance policy aspect of it.

Q So you heard Mr. Seery's testimony earlier where he said the total amount you would owe was somewhere in the range of $1.4 to $1.5 million if there was --

A He's wrong about that, if that's what he said.

Q Why?

A At the time -- I think the number he was referencing was in our claim number that I filed back in, I want to say, October 2020. And the $1.45 million, what was in the compensation -- was the number in the compensation and awards letter.

The other number that I spoke about from the gallery out there was one point -- I don't know, whatever the interest -- whatever I guessed the interest might be. And then I didn't have anything for penalties. So, at that particular time, took those numbers and said, okay, if the IRS says no way on all this, this is what I'd have to pay, not including penalties.

Q All right. So you've seen today and you listened to the testimony about the footnote in Highland's adversary complaint against you in which they say that the resolution may not be until 2029 of this IRS audit?

A That's correct. I've heard that.

Q All right.
A I've seen it and heard it.
Q All right. As you've sat here today, have you done any calculation back of the napkin to try to estimate what your potential exposure would be to the IRS in terms of interest and penalties as a result of that audit dispute if it wasn't resolved until 2029?
A Yeah. I listened to the judge. I went and ran '33 because that was a number that was just thrown out. At '33, if it's 2033, it's $7.4 million, and if it's 2029 it's $5.7 million.
Q What sort of financial impact would that have on you?
A The latter would pretty much wipe me out. I'm sorry. The former would -- the $5.7 million would wipe me out. The latter would cause me to file for bankruptcy.
Q Okay. Mr. Seery also discussed his -- that he had heard through the grapevine that the IRS audit had been resolved. Has anyone from Highland ever told you that the IRS audit is resolved?
A No one's told me that from anywhere, anyhow, anyway.
Q Have you had a conver... have you had -- so nobody at all, right?
A No one at all.
Q Have you -- did you have a conversation recently with Kurt Plumer over it?

A I did. I had lunch with him at Hillstone.
Q Did he mention it at all?
A No.
Q All right. Could you turn with me to, in your exhibit binder, Exhibit 8, please?
A Yeah.
Q All right. Can you just identify for us what this document is?
A This is a letter I got from the IRS dated November 20th, 2024, basically telling me that the case is open and I may owe money.
Q And specifically, if we look at the first paragraph, it says, "Why You're Receiving This Letter," in bold, right?
A It does.
Q And then below that it says: We might have to adjust your tax return based on our examination of the Highland Capital Management listed above.
Did I read that part correctly?
A Yes.
Q And so is it your understanding that your -- that this is related to the IRS audit of Highland?
A That is my understanding.
Q And that your tax return, your personal tax return may be adjusted as a result of that?
A Mine and my wife's.

Q Which would mean you're subject to interests and penalties as well?
A As is she.
Q Okay. And is this the only letter you've ever received from the IRS?
A No.
Q Related to the Highland Capital Management audit?
A No.
Q All right. Do you receive these periodically?
A Yes. The initial one came I want to say about five months after we filed the returns in two thousand -- it was for the calendar year 2008, so it was April 15th, 2009, I want to say. Maybe it was -- I think the first one came around October, late October 2009.
Q And --
A Like this. I can't -- I don't remember it verbatim.
Q Is this the last communication you have received from the IRS relating to Highland's IRS audit?
A This was it. Yeah.
Q Okay. Has anyone from the IRS ever told you that an FPAA has been issued --
A No.
Q -- with respect to the Highland's audit?
A No. I don't even know what that -- I didn't even know what that was.

Q And you've never received an FPAA from the IRS, right?
A I have not.
Q And you've never -- nobody else has ever sent you an FPAA related to the Highland audit, right?
A No.
MR. MORRIS: I'm being kind, but this is just --
THE COURT: It's leading.
MR. MORRIS: -- testifying from the podium.
THE COURT: Sustained.
THE WITNESS: Yeah.
BY MR. YORK:
Q All right. Mr. Daugherty, would you turn -- we'll switch topics real quick to the tolling agreement. Would you turn in Volume 1 of the Highland exhibits to Exhibit 60, please?
A Volume 1, and then which one, I'm sorry?
Q Exhibit 60.
A Yeah. Yes, I'm there.
Q Why did you enter into -- well, back up. Strike that. Start over. This is the tolling agreement extending a claim objection deadline between you and Highland Capital and the Highland Claimant Trust as of July 27th, 2022, correct?
A That is correct.
Q And is it your signature on Page 6 or 7 of the document on the left-hand side?
A It appears to be, yes.

Q All right. Why did you enter in this tolling agreement? Why did you enter into --

A I'm sorry, what was your question?

Q Why did you enter into this tolling agreement?

A Jim Seery had reached out to me in 2022 and said that they had a problem with -- the Court had an objection deadline that was running and that was somewhat inconsistent with the settlement agreement that we had just gotten approved in early March of 2022 that said they couldn't object, they being Highland, object to the legitimacy or amount of my compensation claim.

So he said, look, you know, we're in a little bit of a predicament here. We can go to the Court or we can try and work this out. And I'm like, hey, I'm fine to work it out. I don't want the estate to be burdened or any way. So we went back and forth on the document, and ultimately I felt that it was the right thing to do. The spirit of our settlement was, you know, I -- they couldn't -- they couldn't challenge this part of my claim, but the *quid pro quo* was I'm not going to be able to beat them out on a technicality by running in here, saying, ah, the objection deadline, you know, expired.

So his solution seemed to be a reasonable one. And we worked with their counsel, I think Demo and to some degree Morris, to work that out for them.

Q How did the estimate come about in Footnote 3?

A I don't know. Nobody ever asked me about it. There was no -- Mr. Morris is right, there was no negotiation about it. Because, frankly, I didn't see that as my problem. They had something to fulfill pursuant to the plan. And there was no back and forth on that reserve amount with Seery whatsoever. He just said, This is what we're doing and, you know, we're going to put this -- and my perception is I didn't have any right to challenge it other than what was in my settlement agreement. And I looked at that as a one-time right to go and seek an estimate, and I didn't want to do it that early in the process.

Q Would you take a look with me at the last recital that's on Page 3 of the document? All right. It says, --

A Oh. You're going to make me read. All right.

Q It says: Whereas, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, and without any party admitting liability, fault, or wrongdoing, or releasing or waiving any rights or defenses with respect to the reserved claim, the parties desire to enter into this agreement to extend the claim objection deadline solely with respect to the reserved claim to January 11th, 2023 at 5:00 p.m. Central Time, defined as the Objection Deadline.

Did I read that part correctly?

A You did.

Q What was your understanding of this recital provision

being put in here?

A Well, I think I just kind of summarized it. There was a problem that the parties didn't, you know, fully recognize could occur that would give me a windfall, and so this was to kind of solve that on an interim basis until we got to a final resolution on this tax refund thing.

I mean, the honest truth, God -- Judge. Not God, Judge. But the honest-to-God's truth is Seery and I had a very good relationship, and we were going back and forth, and his view was that this thing could get resolved in 2022.

Q Did you have an understanding as to whether or not you were reserving all rights with respect to your reserved claim under the terms of the tolling agreement?

A Absolutely I did. Both in emails and in the document.

Q All right.

MR. YORK: Pass the witness.

THE COURT: All right. Any cross? I'm assuming Dugaboy did not have questions. And, Mr. Daugherty, I should have --

MR. LANG: No, we do not.

THE COURT: Okay. Thank you. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Daugherty. Take your time.

A How are you, Mr. Morris?

Q Good. I just have a few questions. You have been paid in full on your Class 9 claim, correct?

A Evidently, yes.

Q And that Class 9 claim was for $3.7 million, correct?

A I believe it was $3.75 million.

Q Thank you for the clarification. Do you recall how many payments you received that resulted in your receipt of $3.75 million?

A I don't.

Q When you received those payments, did you tell Mr. Seery -- did you send it back to Mr. Seery out of any concern that your Class 8 claim has not been resolved?

A No.

Q When you received those payments, did you object to Mr. Seery or to anybody else that it was improper for the other Class 9 holders to receive the payments when your Class 8 claim had not been resolved?

A I had no idea what they were receiving.

Q Did you have any reason to believe that you were receiving a benefit that the other Class 9 claim holders were not receiving?

A Again, I had no idea what they were receiving, so I can't compare the two.

Q Okay. But it is true that you accepted without protest your Class 9 payments, even though your Class 8 claim had not

been resolved, correct?
A I think that's accurate.
Q Okay. I think you mentioned in your proof of claim it had $1.4 million; is that right?
A Again, I'm cuffing it. If you could grab it, I'll -- I want to say it was -- the proof of claim had two components, as I mentioned. There was a, as I mentioned, there was the compensation award amount from my compensation letter of like $1.475 million.
Q Uh-huh.
A Don't quote me on that, but close enough.
Q Approximate.
A And then an interest component that would take me up to that particular time if the IRS reversed it.
Q Okay.
A But no penalties were included.
Q And that approximately $1.45 million, that's money that you received back in 2009?
A I didn't get that full amount in 2009. That was -- I don't want to broaden this up too much, but many times what was promised was not what was delivered. So I got a lesser amount from the IRS.
Q How much less did you receive?
A I want to say, on a net basis, it was just under $1.2 million.

Q Okay. And so it's true that you've had the benefit of the $1.2 million for 15 years now?
A When you say the benefit, what do you mean?
Q It went into your pocket 15 years ago.
A Yeah, but it's a contingent liability I have back to the IRS, so I can't say that it's, you know, not without reservations.
Q But you've had possession of that million and a half dollars now for 15 years, correct?
A Right. And with it comes an obligation --
Q Okay.
A -- contingent back to the IRS.
Q Your claim is a prepetition claim; is that right?
A What do you mean by my claim? Are you talking about the compensation one?
Q Yes.
A Yeah. I mean, that -- that contractual obligation originated in, well, yeah, February 2009.
Q It's not an administrative claim, right?
A I don't believe so, no.
Q It's just -- it's just a claim that existed prior to the petition date. Fair?
A That is fair.
Q Okay. With respect to the reserve, you did agree to that amount of the reserve, fair?

A I did not. I mean, I -- I signed the document, but I did not agree to that amount.
Q Well, --
A I did not negotiate for it or anything like that.
Q Well, but if you turn to Exhibit 60 that you just looked at, --
A sure.
Q -- and you go towards the end of the document, that is your signature on the first Page 7, right?
A Yeah. I've already admitted that.
Q And Paragraph 1 of the agreement that you signed specifically set the reserve at the amount set forth in Paragraph 1, correct?
A That much is true.
Q Okay. And you --
A You just said, did I agree to it, and I'm like, it was in the document.
Q It's in the agreement that you signed, correct?
A For sure.
Q Okay. And you've never asked for that amount to be adjusted, correct?
A I've spoken many times to Mr. Seery and told him that it will need to be adjusted upward as years go by. We've had quite a dialogue along those lines.
Q Okay. But he's never agreed to do that, correct?

A He said when the time comes, we'll figure out -- listen, we had a very collaborative relationship up until like the last year. And so it was like, hey, I'm not going to press you. You don't -- he's fighting off Dondero right and left. You know, and I'm like, I don't want to get in the middle of all this. You go do what you've got to do. We'll both sit tight. In fact, there was dialogue to that very effect.

Q Uh-huh.

A And so this was just all part of sitting tight, thinking that the right thing would be done when we got final analysis to this.

Q Okay. So would you just agree with me that, since signing this agreement, you haven't come to court to seek an adjustment --

A No.

Q -- of the reserve?

A I did not want to be a burden.

Q Okay. And since signing this agreement back in 2022, you and Mr. Seery have not come to an agreement on any adjustment to the reserve, correct?

A We have not.

Q Okay. Do you believe that you have claims against Highland's employees?

MR. YORK: I'm going to object on relevance grounds. Also, outside the scope.

THE COURT: What is the relevance?

MR. MORRIS: We're going to get to the $20 million demand in a moment. I'm laying the foundation. But we have anybody on anybody --

THE COURT: But what's the $20 million demand?

MR. MORRIS: I'll get to it in a moment.

THE WITNESS: There's --

THE COURT: I can't figure out if --

MR. MORRIS: I can make a proffer if you'd like.

THE COURT: -- that's relevant.

MR. MORRIS: I can make a proffer, Your Honor. I'll tell you. I'll tell you right now.

On June 5th, Mr. York called me and said that Mr. Daugherty asserts that he has claims against the Highland employees, and if Highland didn't pay him $20 million he was going to sue them, and he was going to file this objection together with a petition in the Supreme Court opposing Highland's request to stay the issuance of a mandate in the Fifth Circuit.

MR. YORK: First off, if Mr. Morris is going to become a witness, we've got a problem here. Secondly, any sort of communications between us would be 408. And third, it's not relevant to the issue we're here on today.

THE COURT: Okay.

MR. MORRIS: My response to that, Your Honor?

THE COURT: All right. I'm going to allow a little latitude, --

MR. MORRIS: Yeah.

THE COURT: -- but I'm still unclear --

MR. MORRIS: It's about -- it's about three questions.

THE COURT: Okay.

MR. MORRIS: It's about three questions.

THE COURT: You may proceed.

BY MR. MORRIS:

Q Do you believe you have claims against Highland's employees?

A Me personally, no.

Q Okay. Do you -- did you authorize your lawyer to call me and to demand $20 million in exchange for a release and your standing down from filing any objection to this motion?

A I'm not aware that that ever happened. Nobody demanded anything of you.

Q Really?

A Yeah.

Q Do you know that your lawyer used the number $20 million to me?

A Oh, I've read the emails back and forth between you.

Q So why don't you explain to Judge Jernigan what your understanding is as to what your lawyer meant when used $20

million to me.

A I can't say for sure what he meant, but I can tell you from my perspective what I understood.

Q What did you understand?

A I have another entity that I picked up in the settlement with Highland called the Highland Employee Retention Asset Fund. And again, pursuant to the settlement agreement, I mean -- I guess supposedly, I guess, when I think about it, I do have claims individually, because it's with me, that agreement.

But it said that Highland had to turn over all the books and records of the HERA fund. And Mr. Morris was on many of those emails. And they had turned over some of the books and records, but they didn't turn over any of the books and records that implicated Thomas Surgent and David Klos in defrauding HERA in allocating Highland's expenses when they were litigating me, against me, back to HERA.

So I do have a settlement agreement with Highland and these employees, but Highland Employee Retention Assets needs their books and records. And we've made it very clear to you on numerous emails where you, you know, kind of muscled up on us and said this is all you're going to get and tough if you don't like it or whatever.

And so the deeper we get into this, we did get discovery from others, we found that Highland's been withholding

material information.

So as it relates to -- I mean, you're doing that little squeaky thing, and I think he's a fantastic lawyer, but the reality is you guys have created some damages to HERA that you may be accountable for. Your clients, not you.

Q Okay. In the four years since we signed the settlement agreement, you've never asserted a breach of contract claim, have you?

A Well, because we thought you were complying with it. So if you want to go into the details there, in 2022, we were -- asked for more information. 2023, we asked for more information. 2024, we asked for more information. And so those are continuing breaches.

Again, I -- I don't want to go to war with Highland. You're too damn good of an attorney, you're scaring me a little bit. But --

Q I don't want to.

A You know, listen. You know I think well of you.

Q I appreciate that.

A But, you know, I mean, I just wanted the information. I'm not looking to go to war with you guys. I got enough battles that I've got to fight. And so, you know, I guess a number was thrown out or whatever. I don't know the full context of it. But it wasn't -- it wasn't for this IRS compensation issue.

Q But what was the -- my last question. What was the $20 million demand for?

A Again, it's just a number. Y'all were having settlement negotiations. So, I mean, you work off of it.

Q All right.

MR. MORRIS: I have no further questions, Your Honor.

THE WITNESS: Yeah.

THE COURT: All right. Any redirect?

MR. PHILLIPS: I have no questions, Your Honor.

THE COURT: All right. Okay.

MR. YORK: Apologies. I wanted to make sure.

THE COURT: Yes.

MR. YORK: No redirect, Your Honor.

EXAMINATION BY THE COURT

THE COURT: Okay. If you've watched Highland hearings, you know the judge sometimes has questions. I am still trying to understand the 1.4, the 1.2, the 1.475. I understand broadly that, in essence, a cash bonus was negotiated back in early 2009, I think you said.

THE WITNESS: Yes.

THE COURT: After 2008. And so that's, in essence, what was contractually negotiated. But I understand there was a hook, if you will, we're calling it a contingency, whatever word you want to use, where if one day there was an IRS audit and I guess Highland had extra liability for 2008, that this

-- I don't know if I understood it or not.

THE WITNESS: Do you want me to try and guess what you're asking, or --

THE COURT: Try to guess what I'm asking. Again, I'm --

THE WITNESS: The liability -- so, Highland chose to use this tax scheme as a currency to pay us a cash bonus. From our perspective, we weren't stupid. We're like, well, okay, that's great, but if the IRS says --

THE COURT: Okay, I just want to know what -- you say you were contractually entitled to $1.4 million.

THE WITNESS: That's what I was supposed to get for that bonus year.

THE COURT: Okay. But there was a tax contingency, if you will, where -- that's where I want you to jump in.

THE WITNESS: So, Highland had a tax problem. They came up with this mechanism to use whatever they were doing with the IRS to create the cash to pay us a bonus. We looked at it and said, well, this looks fishy -- by the way, every year before that and after that, I've just gotten a cash bonus. But for this one year, when the banks are saying, no, no, no, we get this. And so we looked at this and said, look, this sounds fishy, but if you can't pull it off, we need to be made whole. I can't be in a situation where here I am in 2025 and I may have to pay $5, $6 million to the IRS for the

pleasure of working at Highland.

THE COURT: Okay. See, that's where my disconnect is.

THE WITNESS: Uh-huh.

THE COURT: Because I thought this all turned on a Highland tax return.

THE WITNESS: Oh, no, no. So, Highland did the planning and the creation of the scheme, and I guess ultimately it was Highland's tax return, but it flowed through to us as pass-throughs. K-1s, what have you.

THE COURT: Right.

THE WITNESS: So I guess it's both.

THE COURT: Okay. You were a partner.

THE WITNESS: Well, that's debatable, too. That's debatable, too, because I had a --

THE COURT: Okay. I thought you weren't, but --

THE WITNESS: Well, I wasn't --

THE COURT: But you got -- okay. Let me just skip to, --

THE WITNESS: Yeah.

THE COURT: -- I guess, the important part. You did, you got paid? You said $1.2 million?

THE WITNESS: Yeah. I got a refund back from the IRS for around that amount. Slightly under $1.2 million.

THE COURT: So the contingency you are worried about

that you think gives you a contingent claim against Highland is, what, the IRS comes back and says --

THE WITNESS: And they say, Give us that money back plus interest plus penalties or we're taking your house. And it's a very real threat, because this has gone on, as you've noted, forever. And I went from having a one-point-whatever bonus to possibly having to pay six, seven, eight, I don't know how long this lasts, million dollars back to the IRS for an election that was made by them. As a substitute for paying me a cash bonus the regular way, they did it this way. And that's why we put and negotiated for that term in the compensation agreement that said, if for whatever reason the actual refund is different, we get made whole.

THE COURT: Okay. I may be overthinking this, I do do that sometimes, but I'm still, I'm trying to understand why your claim would escalate up to, you know, you said maybe $5.7 million if, in 2029, this all plays out with the IRS.

THE WITNESS: That --

THE COURT: Because you've gotten the benefit of that money and --

THE WITNESS: Well, no, because if the IRS says --

THE COURT: -- return on that.

THE WITNESS: Sorry. I didn't mean to interrupt.

THE COURT: You know what I'm saying? So I'm trying to figure out why it would grow in the way that you're

suggesting.

THE WITNESS: Can I respond?

THE COURT: Yes.

THE WITNESS: So I've gotten money that the IRS says is not mine. Right? And the IRS says --

THE COURT: And you've had the use of it.

THE WITNESS: Oh, yes.

THE COURT: You've presumably invested it and --

THE WITNESS: Well, no, I mean, you can't --

THE COURT: Well, you've had the ability to. Uh-huh.

THE WITNESS: But you don't want to take risk with something that's not yours, so you're kind of limited, right? But I have, I have that amount of money. Here's the problem, Your Honor, with that. If the IRS says, Give us back our money, here's the interest, here's the principal. Oh, by the way, if it's $7, $8 million, I can't -- I don't have that. I've got to file for bankruptcy in order to give the IRS back money that I'm having to pay them for the pleasure that I had of working for Highland in 2008 when I helped save the company and create a lot of the assets that paid all these people in the room. MGM Studios, Trussway.

THE COURT: Okay.

THE WITNESS: Okay.

THE COURT: Yeah. We are going beyond this.

THE WITNESS: Fair enough.

THE COURT: I was just, I'm zeroing in on this because I'm trying to figure out, I mean, it matters to me if that reserve is likely fair enough, the reserve I'm told you agreed to is fair enough. And I'm having trouble figuring out, I mean, if you've had the use of this money for 17 years or whatever that is, why you would get this extra interest add-on that you're -- $5.7 million or whatever it would be. You know, $3 million more.

THE WITNESS: Can I answer that question?

THE COURT: Uh-huh.

THE WITNESS: Because the IRS didn't look at it as my money. They looked at it as their money. And so if you look at the plain language of the compensation award letter, if the actual amount deviates from the amount that was granted, then Highland was going to give me substitute compensation to make me whole. Making me whole includes the penalties and the interest that I would owe the IRS. Because if you look at it any other way, I had to pay money to work at Highland.

THE COURT: Do I have that letter in my evidence?

THE WITNESS: You should. Drew?

THE COURT: Do I? Maybe I'll just cut this off and look at the letter.

MR. YORK: It's at Daugherty 2, and it's at the back of --

THE WITNESS: There's multiple letters, but this is

one of them.

THE COURT: The letter that you say this claim stems from.

THE WITNESS: Sure.

THE COURT: I'll just cut it off and look at that.

THE WITNESS: Yeah, you can tell her where it is.

MR. YORK: So I think it's at the back of the statement on PD-2. It's at the last page, Your Honor.

THE COURT: Which one?

MR. YORK: P -- Daugherty 2.

THE COURT: Oh, 2? I've got emails.

THE WITNESS: P-2? I don't think so.

THE COURT: Okay. We can move on.

MR. YORK: That's fine. We'll work this out.

THE COURT: Before we're done here today, I want to look at the letter to better understand how the claim could grow substantially to --

MR. YORK: Yeah.

THE COURT: -- $5.7 million by 2029. Okay. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

THE WITNESS: Oh, I found -- I just found it and then I closed it.

THE COURT: Okay. Well, you can --

THE WITNESS: My bad.

THE COURT: -- call my attention to it when you find it.

THE WITNESS: All right.

(The witness steps down.)

THE COURT: All right. Your next witness?

MR. YORK: I believe we're calling Mark Patrick.

THE COURT: All right, Mr. Patrick. All right. Please raise your right hand.

MARK PATRICK, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

THE COURT: All right. Please be seated.

And, Courtney, you're going to start the clock going. I show 2:12. I don't know if my clock's right.

You may proceed.

MR. LANG: And, Your Honor, may I hand the witness -- this is from Mr. Morris' opening. May I use this as Exhibit 3?

THE COURT: Oh, okay. You're talking about the back page of his PowerPoint?

MR. LANG: Yes. Org chart.

THE COURT: Yes. I've got it in front of me. And for the record, I'm going to put this PowerPoint, even though it's not an exhibit *per se*, as a demonstrative aid in the file for this matter. And so it's the last item of the Highland PowerPoint. All right.

MR. LANG: Yes.

DIRECT EXAMINATION

BY MR. LANG:

Q Mr. Patrick, does this Hunter Mountain Investment Trust org chart that I just handed you accurately reflect the structure of the Hunter Mountain Investment Trust ownership today?

A Just give me a few moments to review.

Q Sure.

MR. LEWIS: Your Honor, I had mentioned early on that we object to this whole line of questioning because it's outside the scope of the objection of Dugaboy. And I don't want to interrupt, but I want to make sure that my objection is continuing, because this has nothing to do with the objection presented by Dugaboy.

THE COURT: All right.

MR. PHILLIPS: So we object to the question.

THE COURT: Okay. So the record will reflect basically a running objection from Hunter Mountain?

MR. PHILLIPS: We would appreciate that, Your Honor.

THE COURT: Okay. In light of the failure of Dugaboy to disclose Mark Patrick as a witness, as well as the failure to challenge in a written objection his authority. Okay. So I recognized that this was quite a persuasive objection, but given the magnitude, I would say, of what is going on here,

potentially a settlement that could come very close to ending this long-running plan implementation process, I'm erring, if it's an error, I'm erring on the side of allowing this. All right. But you have a running objection that the record will reflect if one day there is an appeal.

MR. MORRIS: And, Your Honor, the Highland Claimant Trust and the Highland Litigation Subtrust and Highland Capital Management, LP join Mr. Phillips' objection.

THE COURT: Okay. Understood.

MR. PHILLIPS: Thank you very much, Your Honor.

THE COURT: All right.

BY MR. LANG:

Q Mr. Patrick, have you had time to study this Hunter Mountain Investment Trust org chart?

A Yes, I have.

Q And does this accurately show the ownership structure for Hunter Mountain Investment Trust today?

A I'm not sure, without reviewing the underlying corporate documents on some of these entities that you have listed here.

Q Did you help prepare this chart?

A No.

Q No? Okay. So Hunter Mountain Investment Trust is owned by Beacon Mountain, LLC, correct?

A Yes.

Q And Beacon Mountain, LLC is owned by CLO Holdco, LLC,

correct?
A Correct.
Q And CLO Holdco, LLC is owned by CLO Holdco, Limited?
A That's correct.
Q And CLO Holdco, Limited is owned by Charitable DAF Fund, LP?
A Correct.
Q And Charitable DAF Fund 1, LP is owned by CDMC FAD, LLC?
A The ultimate beneficial owner is DFW Charitable Foundation. To my -- to the best of my recollection, I would say that appears accurate. I'm just not a hundred percent.
Q Okay. And --
A But I am a hundred percent that DFW Charitable Foundation is the ultimate beneficial owner. And I'm a hundred percent that Dugaboy Investment Trust has no interest in it. And I'm also a hundred percent that The Dallas Foundation or any --
MR. LANG: Judge, I haven't asked --
THE WITNESS: -- or any other nonprofit has any --
MR. LANG: -- any of these questions.
THE COURT: Okay. There's an objection, nonresponsive. I sustain.
BY MR. LANG:
Q Mr. Patrick, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, correct?
A (Pause.) I'm just waiting for a relevancy. I don't

understand how that's relevant to my authority --

THE COURT: Okay. You're not allowed to make a relevancy objection. Okay.

MR. PHILLIPS: Your Honor, I think the problem is that, if I could, we have made an objection. And our objection, our running objection is founded on relevancy and founded on improper process. So I would like to just tell the Court, and so my client representative can hear it, that the fact that I'm not standing up every time there's a problematic question, --

THE COURT: Okay.

MR. PHILLIPS: -- because every question is problematic, my objection is being maintained to every question that's being asked.

THE COURT: Okay. You understand that, right?

THE WITNESS: I --

THE COURT: There's a running relevancy objection. You're the witness. You can't make the objection. But it's on the record for whatever use it might have down the road.

MR. PHILLIPS: I have objected to every question that's coming in connection with this line of questioning on the basis of relevance.

THE COURT: I got it. I think we all have it.

MR. PHILLIPS: I'm just --

MR. LANG: Understood.

THE COURT: Yes. And you're thinking he's eating into your 30 minutes?

MR. LANG: Yes.

THE COURT: Okay. We've got it.

THE CLERK: I stopped the time.

MR. LANG: So -- thank you.

THE COURT: Did you stop the time for a minute?

THE CLERK: Yes, I did.

MR. LANG: Thank you.

THE COURT: Okay.

BY MR. LANG:

Q So, to my question, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, correct? Charitable DAF Holdco, Limited?

A And where is that on the chart?

Q I'm asking, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, Limited.

A Can you show me a corporate document so I know the precise corporation you're referring to?

Q You're the -- you are the manager of -- or the control person of CDHGP Limited, correct?

A Again, I'd have to refresh my recollection, but I am the control person over CDMC.

Q Okay. And CDMC --

A As well as Charitable DAF Fund. I'll represent that to

you.

Q Okay. Was there a transaction in December of 2024 where Charitable DAF Holdco, Limited sold its interest or transferred its interest in Charitable DAF Fund, LP to CDMC FAD, LLC?

A I know you're trying to help other litigation and --

MR. PHILLIPS: Mark.

THE COURT: Okay. Nonresponsive.

THE WITNESS: Your Honor, he's using your time to fish for other litigation to support that --

THE COURT: Okay. Okay. We have a running objection to relevance. I'm going to say that one more time. Okay. Just answer the question as best you can.

THE WITNESS: I'd have to review the corporate documents to refresh my recollection for that time period.

BY MR. LANG:

Q Up until December of 2024, Charitable DAF Fund, LP was owned 100 percent by Charitable DAF Holdco, Limited, wasn't it?

A I don't know what entity you're referring to without a refreshment of corporate documents of that entity. There could be a lot of entities called that.

Q You're aware that there is a proceeding in the Caymans investigating the December 2024 transaction that sold -- where Charitable DAF Holdco, Limited sold its interest in -- and or

transferred its interest in Charitable DAF Fund, LP to CDMC FAD, LLC?

A There are several parts to that question. So the answer is no.

Q Are you aware of a proceeding pending in the Caymans involving Charitable DAF Holdco, Limited?

A Again, I don't know what entity you're referring to. Show me a -- show me a corporate document.

MR. LANG: Your Honor, this was on the Foundation's exhibit list. We cross-designated any document designated as an exhibit by any other party in this case. And I'd like to hand this to the witness.

MR. MORRIS: Which exhibit is it?

THE COURT: Which is -- yes.

MR. LANG: It was on the -- it was on the DAF -- or, the Foundation's exhibit list.

MR. MORRIS: They haven't been admitted into evidence and they've withdrawn their objection. We object, Your Honor.

THE COURT: Yes, they've not been admitted.

MR. LANG: Okay. Well, can I --

MR. PHILLIPS: We object to that, Your Honor. We object to any witness --

MR. LANG: We cross-designated every --

THE COURT: I already discussed at the beginning what we were admitting and that was not disclosed.

MR. LANG: Okay.

THE COURT: As I recall, I said you've only designated the plan and settlement agreement, and the answer was yes.

MR. LANG: Okay.

BY MR. LANG:

Q And we're aware that the Joint Official -- are you aware that there is a Joint Official Liquidator appointed over a Charitable DAF entity in the Cayman Islands?

MR. PHILLIPS: Objection to form.

THE WITNESS: Again, without more specific --

THE COURT: Overruled. Yes.

THE WITNESS: -- specificity, there could be a thousand different actions that you're referring to, in my mind.

BY MR. LANG:

Q Are you aware that the Joint Official Liquidators in the Caymans are investigating transactions involving Charitable DAF Fund, LP and Charitable DAF Holdco, Limited?

A Again, again, I don't specifically know what you're referring to.

MR. PHILLIPS: Your Honor, may I -- excuse me. I don't know that my running objection includes an objection to form for each of the questions. This objection is to form of the questions about, quote, --

THE COURT: What's wrong with the form?

MR. PHILLIPS: -- investigation.

THE COURT: What is wrong with the form of that question? I'm not clear.

MR. PHILLIPS: My objection to form is that the question is an open-ended question with an undefined term, investigation.

THE COURT: Overruled. I don't think that's a vague term. So you may answer.

THE WITNESS: If you show me some document, some complaint or something, I'll be very happy to verify whatever questions related to that. But just giving me verbal words of entities and names and actions, I don't know precisely what you are talking about.

BY MR. LANG:

Q Mr. Patrick, who set up the entities in the Hunter Mountain Investment Trust org chart that is sitting in front of you?

A I'm sorry. Repeat the question?

Q Who set up the various entities that are in the org chart that is on your -- on the stand?

MR. PHILLIPS: Objection to form. Set up. What does that mean?

THE WITNESS: It -- yeah, it's very --

THE COURT: I think we know what it means. Creating,

perhaps.

BY MR. LANG:

Q Created?

A Who? Are you asking if I created it?

Q Did you participate in creating them?

A Did I participate? In which ones?

Q CDMC FAD, LLC.

A What do you mean by participate?

Q Were you involved in creating -- did you initiate the creation of CDMC FAD, LLC?

A Lawyers were.

Q Did you engage in any capacity on behalf of any entity? Were you involved in engaging the lawyers to set up CDMC FAD, LLC?

A Yes, I engaged lawyers to set up entities.

MR. LANG: Objection. Nonresponsive.

THE COURT: Sustained.

MR. LANG: Did you --

THE COURT: He asked about this one particular entity, I think.

BY MR. LANG:

Q Did you --

A Which entity, again, did you ask?

Q CDMC FAD, LLC.

A Yes, I believe I hired a lawyer.

Q And when did CDMC FAD, LLC become a hundred percent owner of Charitable DAF Fund, LP?

A Around the end of March of 2025. I believe.

Q And were you involved in the transaction between -- in which CDMC FAD, LLC obtained a hundred percent interest in Charitable DAF Fund, LP?

A What do you mean by involved? How?

THE COURT: Okay. I can see what's happening here or I have an impression of what's happening here. I feel like you're slowing down this process where I've given 30 minutes to this lawyer. Okay? And I feel like you're feigning confusion. I don't mean to be insulting, but that's how it comes across. Okay? So I need you to speed up your answers and not be confused about things you shouldn't be confused about. Okay?

THE WITNESS: Okay.

THE COURT: I feel like it's late 1980s *Dondi*. Does anyone know what I mean by that? Okay. We've been there, done that, in the federal courts, and we don't like the looking at -- you're not looking up at the ceiling. That's what they did in *Dondi*. Confusion. Delay. Okay?

So I don't mean to chastise you. I'm just telling you that you're going to make us be here a lot longer, and nobody wants that, because I will give him extra time for this. Okay?

THE WITNESS: Understood.

THE COURT: Thank you.

BY MR. LANG:

Q Okay. So you were involved in the transaction in which CDMC FAD, LLC acquired 100 percent ownership interest in Charitable DAF Fund, LP in or around March of 2025, correct?

A Correct.

Q Who did CDMC FAD, LLC obtain its interests in Charitable DAF Fund, LP from in March of 2025?

A From an -- from an entity called Charitable DAF Holdco, Ltd.

Q Charitable DAF Holdco, Ltd., the entity that I asked about earlier, correct?

A Of the same name.

Q Yes. And Charitable DAF Holdco, Ltd. has had Joint Liquidated -- Liquidators, Joint Official Liquidators appointed over it in the Cayman Islands, correct?

A Yes.

Q And those Joint Official Liquidators were appointed over Charitable DAF Holdco, Limited in or around May 6th, 2025?

A In May is what I recall.

MR. LANG: Your Honor, we'll pass the witness.

THE COURT: All right. Do we have any questions?

MR. YORK: No questions, Your Honor.

THE COURT: Okay. Any cross?

MR. MORRIS: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Patrick, do you know who initiated the proceedings to get the appointment of the Joint Official Liquidators in the Cayman Islands?

A The director and myself, we initially filed for a voluntary joint liquidation in May.

Q And did there come a time when the Cayman court appointed the Joint Official Liquidators?

A Yes.

Q Do you know who asked the court to appoint the Joint Official Liquidators?

A We did, as well as other -- it was an agreement with the participation holders of that entity.

Q And who are the participation holders of that entity?

A It was the DFW Charitable Foundation as a 51 percent holder as well as the Highland Dallas Foundation, Highland Santa Barbara Foundation, and the Highland Kansas City Foundation.

Q And those three foundations that you just mentioned, do you know who controls them?

A Jim Dondero.

Q Is it your understanding that Mr. Dondero was funding the litigation in the Cayman Islands?

A Yes.
Q The Joint Official Liquidators, are you aware of any statement that they've ever made that you are not authorized to act on behalf of any of the HMIT entities?
A Yeah, they've never made a statement that I'm not authorized to act under any of those entities.
Q Okay. Did you receive a letter last night that was purportedly authored by the Joint Official Liquidators?
A Yes.
Q Did you review that letter?
A Yes.
Q Did that letter refer to today's hearing?
A Yes.
Q Are you aware of the Joint Official Liquidators making any appearance in this proceeding?
A No, I'm not aware they made any appearance in this proceeding.
Q Based on your recollection of the contents of that letter, did the Joint Official Liquidators challenge your authority to enter into the settlement agreement on behalf of the HMIT entities?
A No, they did not, because there's no ownership interest.
Q Okay. And what do you mean by that?
A The entity in liquidation owns nothing. And the DFW Charitable Foundation is the ultimate beneficial owner.

Q Are you aware that The Dallas Foundation filed an objection to the settlement agreement on behalf of Empower Dallas Foundation, the Okada Family Foundation, and Crown Global?

A Yes.

Q Are you aware that that objection was withdrawn?

A Yes.

Q Was the withdrawal of that objection the product of negotiations that your counsel had with lawyers for The Dallas Foundation and Crown Global?

A Yes, it was.

Q Did The Dallas Foundation or Crown Global require you to surrender your control position of the HMIT entities as a condition to the withdrawal of their objection?

A To give up my control? No.

Q They didn't ask you to do that, did they?

A No. No.

Q You are the control person for each of the HMIT entities that are party to the settlement agreement, correct?

A That is correct.

Q Are you aware of any requirement in any of the governance documents --

MR. CURRY: Your Honor, I'm not questioning, but I'm going to object to the line of questioning here about what was asked and what was not received into negotiations, because,

frankly, you're getting an imperfect picture there. And I don't think it should be misrepresented. The communications didn't happen with Mr. Patrick.

THE COURT: Okay. I don't know if that objection was a confidential settlement communications.

MR. CURRY: It's a combination of foundation and that he's going into confidential settlement discussions.

MR. MORRIS: Your Honor, it's a very simple question. I'll ask it again.

THE COURT: Okay. We'll let --

BY MR. MORRIS:

Q To the best of best of your knowledge, Mr. Patrick, did The Dallas Foundation or any of the entities on whose behalf it filed its objection require you to surrender your position as the control person of the HMIT entities in exchange for the withdrawal of their objection?

A No, they did not.

Q Thank you. Are you aware -- are you familiar with the governance documents for the HMIT entities?

A Yes, I am.

Q Are you aware of any restriction on your ability to act on behalf of those HMIT entities with respect to -- withdrawn. Are you required to obtain the consent of anyone in order to enter into the settlement agreement on behalf of the HMIT entities?

A No, I am not. I'm the sole authority and control person for that entity.

Q And do you believe that you're entering into the settlement agreement on behalf of the HMIT entities in good faith?

A Yes, I do.

Q Have you received legal counsel before entering into the agreement?

A Yes, I have.

Q Do you believe that you've negotiated the best terms that you could get on behalf of the HMIT entities?

A Yes, I do.

Q Do you believe that you received the information that you believed you required in order to make an informed decision before you entered into the settlement agreement on behalf of the HMIT entities?

A Yes, I did.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Mr. Phillips, anything from you?

MR. PHILLIPS: No questions.

THE COURT: Okay. Any redirect?

MR. LANG: Briefly.

THE COURT: Uh-huh.

MR. LANG: Your Honor, because they mentioned the

letter of last night from Grant Thornton, the Liquidators, I'm going to offer that into evidence as the letter that we talked about this morning. But Mr. Morris directly asked him if he reviewed it and asked him questions about it.

THE COURT: Response?

MR. MORRIS: No objection, Your Honor. Go right ahead.

THE COURT: I'll admit it.

MR. LANG: This is --

THE COURT: Do I have it in my notebook?

MR. LANG: -- Dugaboy --

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. LANG:

Q Mr. Patrick, I've handed you --

THE COURT: We're going to call this Dugaboy 3?

MR. LANG: Dugaboy 3.

THE COURT: Okay.

(Dugaboy Investment Trust's Exhibit 3 is admitted into evidence.)

BY MR. LANG:

Q Mr. Patrick, I've handed you a letter. It's from Grant Thornton dated June 24th, 2025. Do you see that?

A Yes.

Q And is this a true and correct copy of the letter that you

received or that you reviewed from the Joint Liquidators that you referred to in your answers to Mr. Morris' questions?

A Well, it's a PDF. I mean, I'm assuming it's from the Official Liquidators.

Q But this is the letter you were referring to in your testimony a few minutes ago?

A Yes.

Q And do you see on the second paragraph it says that, on May 6th, 2025, the Grand Court of Cayman Islands Financial Services Division appointed Margot MacInnis and Sandipan Bhowmik, each of Grant Thornton Special Services (Cayman) Limited, as the Joint Official Liquidators of the company. Do you see that?

A Yes.

Q And do you see on the second page, it says: Since our appointment, we have been diligently investigating these transactions, including a corporate transaction that occurred in or around December 2024 where the company transferred a hundred percent of its interest in the Fund to CDMC FAD, LLC, which resulted in the company being the sole member of CDM and subsequent redemptions of the company's interests in CDM.

Do you see that?

A Yes.

Q Is that your understanding of what is happening in the Caymans right now, is investigating these transactions?

A Correct.

MR. LANG: Pass the witness.

MR. MORRIS: May I just have that letter, please?

THE COURT: Any recross?

MR. MORRIS: Yeah, just real brief.

RECROSS-EXAMINATION

BY MR. MORRIS:

Q None of the transactions that you were just asked about has anything to do with any of the HMIT entities, correct?

A That's absolutely correct.

Q Okay. And now that we have the letter in the record, if you could look at the third paragraph. Do you see --

A Yeah.

Q Do you see it refers to the Highland Dallas Foundation, Highland Santa Barbara Foundation, and Highland Kansas City Foundation?

A Yes.

Q Are those the three entities that you referred to earlier that are, to the best of your understanding, controlled by Mr. Dondero?

A Yes.

Q Okay. And this is the letter that you said you reviewed and concluded that the Joint Official Liquidators weren't challenging your authority to enter into the agreement on behalf of the HMIT entities; do I have that right?

A Yes. Yes, you do.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: Okay. I have a question or two.

EXAMINATION BY THE COURT

THE COURT: And again, I apologize if I sounded harsh earlier. I recognize different people present different ways when they testify. It just appeared to me that maybe we were slowing things down unnecessarily. All right?

THE WITNESS: I apologize, too. I'm just a little emotionally upset they're using this proceeding for a benefit someplace else.

THE COURT: Okay. My question, very general question: Do you think this settlement is fair and equitable as far as HMIT is concerned?

THE WITNESS: Absolutely.

THE COURT: And could you tell me why?

THE WITNESS: Yeah. There was no obvious pathway for HMIT to, in my mind, to receive the residual interest of the bankruptcy estate without a settlement with the Debtor. Otherwise, it just seemed to me that it would go on forever. And then I balanced that against the existing litigation and the probability of the outcome weighted against the costs, and determined that it made sense from HMIT's perspective to enter into the settlement agreement.

THE COURT: Okay. And you understand that, as part

of this, you're giving up some litigation claims that have been waged now for a couple of years or more?

THE WITNESS: That is correct, but I'm also receiving the Kirschner Litigation, which I did negotiate to receive.

THE COURT: Okay. And there was a note that the estate -- I've heard it called at some point the $57 million note that HMIT owed Highland, a December 2015 note -- that basically gets credited against the capital account. You understand that?

THE WITNESS: Yes, I do.

THE COURT: Okay. And then you understand that if I approve this deal, I'm not sure why there's going to be $500,000 to HMIT and then also another $10 million to HMIT, but subsequent payments could get held up if there are litigation threats to the Highland Claimant Trust. You understand that, correct?

THE WITNESS: Yes, I do.

THE COURT: Okay. I just, I have to ask. I'm confused about what's going on here. I thought that -- well, let me just ask this: Would you consider yourself crossways with Mr. Dondero now?

THE WITNESS: No, but I'll answer the question. Upon advice of counsel, I quit Skyview Group. And upon advice of counsel, I terminated the back office services that Skyview Group was providing to the DAF.

THE COURT: Okay. Well, you said you're getting maybe a little emotional because of other litigation. I'm just trying -- I don't understand what all that other --

THE WITNESS: Unrelated -- well, unrelated to that. They're clearly trying to use this forum to benefit their Cayman actions. They hired U.S. counsel called Reed Smith, and they've been begging for an organization chart to issue a variety of frivolous lawsuits against the operating DAF entities. So I do apologize, but that's a little upsetting to me because I know we're going to -- that I've just fed them a list of targets in another unrelated matter.

THE COURT: Okay. Reed Smith. Here we go again with -- they've made an appearance for Mr. Seery in this litigation.

MR. MORRIS: Exactly. And we have raised that issue.

THE COURT: Okay.

MR. MORRIS: And I'm surprised to hear that they think they still have the ability to do this. But we will pursue that later.

THE COURT: Okay. All right. I had nothing further. Thank you, Mr. Patrick.

(The witness steps down.)

THE COURT: All right. So where are we now? I said that, again, just trying to balance the playing field, if Dugaboy was given the ability to question Mr. Patrick, then I

would allow I guess you want to call it rebuttal in the form of the Debtor, Reorganized Debtor/Claimant to call Mr. Dondero. Do you choose to call him?

MR. MORRIS: I'm not.

THE COURT: Oh, and I guess I'll allow you, --

MR. MORRIS: Yeah.

THE COURT: -- if you want to put on your client representative, Mr. Lang.

MR. LANG: We call Jim Dondero.

THE COURT: All right. Yes, we are timing.

Please raise your right hand, sir, Mr. Dondero.

JAMES "JIM" DONDERO, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

THE COURT: All right. Thank you. The time is running.

THE WITNESS: Thank you for the time.

DIRECT EXAMINATION

BY MR. LANG:

Q Mr. Dondero, do you claim that Mr. Patrick lost authority to enter into the 9019 settlement -- or, the settlement agreement that's the subject of the 9019 motion today?

A Yes.

Q And when do you claim Mr. Patrick lost authority to enter into that settlement agreement?

A I think it's best if I give a timeline. He left Sky -- can I give a --

MR. PHILLIPS: Objection, Your Honor. Nonresponsive.

THE COURT: Overruled. He can give a timeline.

THE WITNESS: He left Skyview in October, November, walked out the door, never talked to anybody again, never talked to the charities again except through counsel. Never collected severance, anything else. Just walked out the door.

As part of Skyview's review of what he'd been working on and what was the nature and what might have been happening, they discovered numerous abnormalities. They discovered--

THE COURT: Do we have an objection?

MR. MORRIS: We do. We're not going to use this opportunity to smear Mr. Patrick. If the notion is that the breach of the ability to act with authority occurred in May, he should start his timeline in May.

THE COURT: Well, I assumed he was just giving background to explain.

THE WITNESS: Yes.

THE COURT: So I'll overrule.

THE WITNESS: Thank you. I'm going to just give you a little bit of background. Everything that I'm stating is in the public record. I won't do anything to besmirch Mark Patrick. It's all in the public record. It's all in the Cayman pleadings. But there was affidavits regarding embezzlements by vendors where he would request overbilling and the money sent to his house.

MR. PHILLIPS: Your Honor, we're talking about documents outside the scope, not identified, not listed. Objection.

THE WITNESS: It's all --

MR. PHILLIPS: This is not a timeline.

THE COURT: This --

THE WITNESS: It's --

THE COURT: Sustained. We don't have anything in the record. This is --

THE WITNESS: Okay. It's all in the public arena. And so is the insider trading.

MR. PHILLIPS: Objection, Your Honor.

THE WITNESS: So, --

THE COURT: Okay. I sustain.

THE WITNESS: Okay. All right.

And then, yeah, and then there was monies missing. There were large amounts of monies missing from the estate. There was unexplained $16 million of expenses in '23.

MR. PHILLIPS: Objection, Your Honor. They're --

THE COURT: Okay. Explain the relevance, Mr. Lang.

MR. LANG: I thought he was just giving a background.

THE COURT: It's getting rather --

THE WITNESS: Okay, Your Honor. Well, --

THE COURT: -- colorful, shall we say. All right?

THE WITNESS: Okay. Without giving specifics

regarding the embezzlement or --

MR. PHILLIPS: Your Honor?

MR. MORRIS: We move to strike, Your Honor.

MR. PHILLIPS: We move to strike all of this.

MR. MORRIS: We move to strike all of this.

THE COURT: Okay. I grant. We don't have any evidence of embezzlement.

THE WITNESS: Okay. All right. Without detailing any of the bad acts that we -- that it looked like happened from the investigation, we took all the bad acts and all the investigations and we gave them to the three underlying charities. Let's remember the DAF is a legacy charity I set up 15 years ago, or actually, Mark Patrick did the documentation back when he was a loyal employee. And it was three -- around $300 million and about $600 million of liability, I mean, legal claims and other things that were meant to be a family legacy, where the donations would help the community. We've given out more than $50 million over the years. And the recognition would help our various companies or our families. That's what it was. Okay?

Went to the three underlying charities who were the beneficiaries of the DAF as it existed: Santa Barbara, Dallas Foundation, Kansas City. These are large charities that have been around for a hundred years. I don't control them by any form or fashion. As a matter of fact, the Hunts are $4

billion out of the $6 billion in Kansas City. I think I'm a hundred million or whatever. The DAF was a hundred million. I think the Hunts would be disturbed to hear that I control it.

Anyway, so all those charities were beneficiaries. And so we went to them with all the investigative results. And at first, they tried to verify, they tried to have an audience with Mark Patrick. They wanted details. They wanted what -- financials. They wanted to know what was happening. And nothing was forthcoming from Mark Patrick. He didn't think he owed them any fiduciary responsibilities.

MR. PHILLIPS: Objection. Hearsay.

THE WITNESS: No, that's --

THE COURT: What is the out-of-court statement? I'm not sure.

MR. MORRIS: Mark Patrick thinks that he doesn't owe any fiduciary duties.

MR. PHILLIPS: They did an investigation. They tried to do *x*. They tried to do *y*.

THE COURT: Oh, okay. Technically not hearsay, but I think we're getting --

THE WITNESS: Okay.

THE COURT: -- a little far beyond the subject matter. So if we could reign it in, please.

THE WITNESS: Okay. In February, they were noted,

they were notified, or, in particular, Dallas Foundation was notified that their Empower subsidiary, which owned a hundred percent of the HMIT interests that we were talking about, was transferred to an undisclosed company for a million dollars. Without any transparency, without any understanding of who the new owner was, they filed for receivership in Cayman. To the best of the charity's knowledge and based on all the documentation --

MR. PHILLIPS: Your Honor, objection.

THE COURT: Okay. Let me try to understand the relevance. Do you think I opened this up by asking if there was a falling out essentially between you and Patrick? Is that why you're going into this? Or --

THE WITNESS: No, no, no. No. The falling-out is much bigger than this. But I'm just saying the day receivership was filed was the day Mark Patrick lost authority. And I think anybody would look at it that way. It was for liquidation in the Cayman --

THE COURT: Okay. That's his view and we'll either see the --

THE WITNESS: Okay.

THE COURT: -- documents that support that or not.

THE WITNESS: All right. So, your -- yes. Because the question was when do I think he lost authority. I -- you could make the argument he lost it a lot sooner, because for

months beforehand the charities had written him letters saying they wanted their assets distributed in kind, they lost faith in --

THE COURT: Okay.

THE WITNESS: Yeah.

MR. PHILLIPS: Again, Your Honor, objection.

THE COURT: This is hearsay. Okay. I sustain.

THE WITNESS: Okay. Well, they did.

So, eventually, and it takes a lot to get four little old ladies at different charities to get together and agree to file a charity in liquidation, but they did in the Caymans. Okay? And then lo and behold, the response from Mark Patrick was, ha-ha, there are no assets there anymore, I moved them all to my living room --

MR. PHILLIPS: Move to strike, Your Honor.

THE WITNESS: -- at DFW.

MR. PHILLIPS: There's no evidence in the record of this. There was no evidence of any statement. Move to strike.

THE COURT: There's not, right?

THE WITNESS: Well, no, there is, because what Mark Patrick --

THE COURT: Sustained. I don't have it.

MR. PHILLIPS: Your Honor, there is no evidence of any of this.

THE WITNESS: Well, Mark Patrick's testimony, he said -- he said that our receivership was right after his receivership. He had liquidated and taken all the assets out from Dallas, Santa Barbara, and whatever, and moved it all to his charity. So when we tried -- when the poor charities in Texas in the U.S. tried to file for liquidation, his response was ha-ha. And there were no assets there, you know, because he had already filed --

MR. PHILLIPS: Objection.

THE WITNESS: He -- he --

THE COURT: Okay, I've sustained the objection to the ha-ha. Okay.

THE WITNESS: Okay. But he had, he had filed --

MR. PHILLIPS: Your Honor, please, move to strike.

THE COURT: Okay. Let's strike everything after that last question. Ask your next question.

MR. LANG: I don't remember what the first question was.

BY MR. LANG:

Q What happened -- or, what's your understanding of the proceedings in the Caymans?

MR. PHILLIPS: Your Honor, objection. Form. Understanding of the proceedings in the Caymans?

MR. LANG: His understanding is, I mean, his understanding. What's his endgame?

THE COURT: All right. I sustain.

MR. LANG: Okay.

THE WITNESS: The Cayman Islands --

MR. PHILLIPS: Your Honor?

MR. LANG: Hold --

THE COURT: I sustained, so --

THE WITNESS: Oh, sustained. Sorry. Okay.

BY MR. LANG:

Q What is your endgame with respect to your objection over the authority of Mr. Patrick to enter into the settlement agreement that is subject of the 9019?

A The three charities in the U.S. are affected materially. Dallas Foundation can't make payroll as of October. Dallas Foundation --

MR. PHILLIPS: Your Honor, I'll object to this testimony. The Dallas Foundation has withdrawn its objection on behalf of -- Dallas Foundation appearing on behalf of Empower, the Okada Family Foundation, and Crown Global. The Dallas Foundation is no longer a party here and did not even object in its -- an individual capacity. Object.

THE COURT: I sustain the objection. They had an objection. They withdrew it.

Moreover, as I announced early on today, I was really questioning their standing to weigh in.

So in light of all of that, I'm not going to allow

testimony regarding the impact there has been on Dallas Foundation as a result of something Mark Patrick may have done. Okay?

THE WITNESS: Okay. I can answer it differently.

THE COURT: Well, wait for your question. Okay.

BY MR. LANG:

Q Well, what -- what is the --

A What is my goal?

Q Well, yes, what is your goal?

THE COURT: Okay. Yes. Why are you objecting? Why is Dugaboy objecting? How about that?

MR. LANG: Safely.

THE WITNESS: Safely. Without stating where the assets are or might be, they are not with the three charities they were with a year ago. They have zero. And I would like to get those assets back.

(Pause.)

THE COURT: Okay. Go ahead. I have a couple of questions, but maybe you'll hit on them.

MR. LANG: Oh.

BY MR. LANG:

Q Mr. Dondero, are you asking the Court to -- are you objecting to the settlement agreement that is the subject of the 9019, asking the Court to allow the Joint Liquidators in the Caymans to weigh in on the settlement agreement?

A Yes. Or described a little differently, there's no irreparable harm --

MR. PHILLIPS: Objection. Nonresponsive.

BY MR. LANG:

Q Well, let me ask you this: Are you asking --

THE COURT: Let him answer.

MR. LANG: Yes.

THE COURT: Go ahead and answer.

BY MR. LANG:

Q Go ahead.

A There's no irreparable harm for a bit of delay to get to the bottom of where the assets are and what bad deeds have occurred.

Q Is that the reason why you're objecting, is to delay this for 45 days or so?

A Well, I believe the HMIT million-dollar transaction in February was a steal. I believe it was a stolen asset that he -- Mark Patrick's trying to monetize. And I don't believe it's monetized at nearly its fair value. And so I believe that it needs to be reviewed.

Q Are you asking the Court to -- are you objecting simply to allow the Liquidators in the Caymans time to review this transaction and the settlement agreement?

A Yes. There needs to be more time.

Q Okay.

MR. LANG: I'll pass the witness.

THE COURT: All right. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Dondero.

A How's it going?

Q Okay. You referred to the three underlying charities as being The Dallas Foundation, The Highland Santa Barbara Foundation, and The Highland Kansas City Foundation. Do I have that right?

A The three are The Dallas Foundation, Santa Barbara, Kansas City. There's a holding company or there's an entity below it, below each one that I'm on the board of, but it's separate and distinct from the overall charity.

Q Okay. But the ones that are separate and distinct that have the Highland name, --

A Yes.

Q -- those are the ones that you control, correct?

A No. I'm on the board. There's three or four people on the board.

Q Okay. But --

A But we don't control. Otherwise, you know, we would have not recommended the settlement.

Q Does the Hunt family make their contributions to The Dallas Foundation, The Santa Barbara Foundation, and The

Kansas City Foundation, or do they make them to The Highland Dallas Foundation, The Highland Santa Barbara Foundation, and The Highland Kansas City Foundation?

A Most families do it through DAF, so they probably have their own -- they're just involved with Kansas City, as far as I know. I don't know if they're involved in any of these others. But they probably have a Hunt Kansas City.

Q But the ones with the Highland name are the ones who initiated the proceeding in the Cayman Islands to get the Joint Official Liquidators appointed over this entity down there, right?

A Yes, I believe so.

Q And you personally funded that litigation, correct?

A The charities can't make payroll.

Q And the charities, did you tell the charities what's happening here?

A Yes. They're aware.

Q When did you tell the charities what's happening here?

A They've known it for weeks.

Q And they haven't filed any objection in this court, correct?

A They thought it was best for Dallas to file it.

Q And Dallas settled; isn't that right?

A To the surprise of all the other charities.

Q Okay. So today, there's actually no charity who is

objecting to the settlement agreement, correct?
A Because it was -- she got bludgeoned in depositions over the weekend and it happened last night and nobody was aware of it.
Q I didn't bludgeon anybody.
A Well, --
Q I don't bludgeon people.
A She switched course after a Sunday full-day deposition or half-day deposition.
Q Okay. So the charities that you speak of aren't objecting, correct?
A Well, if we had more time. We only had six hours' notice that Dallas fell away. I think they probably would object.
Q And you say -- you began to have concerns about Mark Patrick going all the way back to 2023, right?
A 2023? A little bit, yeah.
Q And then you had real concerns in 2024, right?
A Yeah. I mean, he's an odd duck, but he was really odd towards the end.
Q Did you file a declara... is one of those public documents you mentioned in the Cayman Islands, that's your affidavit, right?
A I believe so.
Q Do you want to grab Binder 3 of 3?
A Sure.

Q And turn to Exhibit 119?
A Yes.
Q Okay. And this is the declara... this is the affidavit that you filed in the Cayman Islands?
A Yes.
Q And if you turn to Page 4, in Paragraph 25 you begin to recite events concerning Mark Patrick that concerned you, correct?
A Yes. I'm glad you're bringing this into evidence.
Q Yes. And in the two years since you started having concerns, has anybody sued Mark Patrick for breach of fiduciary duty?
A No.
Q Have you recommended to any of these charities: Mark Patrick is doing wrong, let's go sue him?
A We were unaware on 90 percent of it until he left.
Q You were aware of everything that's in your declaration. It says in 2023, you have notice of these emails. Right? And you did an investigation in 2024, correct?
A Yes. But it took a while to get the affidavits from third parties.
Q You had the whole investigation done in 2024 and nobody sued Mark Patrick, right?
A We didn't sue him. Correct.
Q You're just mad that you lost control. Isn't that right?

A No.
Q Turn to Paragraph 33, please. You accuse Mr. Patrick of misusing material nonpublic inside information. Is that right?
A Yes.
Q What material nonpublic inside information did he abuse?
A I wasn't involved in the specifics. My understanding is that he had an awareness of a tender or some financial transaction and then was providing inside information to attorneys and then had them do something. But I don't -- I don't know the specifics.
Q Sir, under oath, in this affidavit that you submitted to the Cayman Islands, you accuse Mark Patrick of obtaining and abusing material nonpublic inside information. Can you just tell Judge Jernigan what you had in mind?
A Whatever it says I have in mind. I'm just saying I didn't remember the specifics. I can read it, though, if you'd like me to read it.
Q Well, was it something about a put option?
A Yes.
Q Did he tell The Dallas Foundation that it had a put option? Does that refresh your recollection?
A I don't remember the details.
Q Do you remember who the counterparty was to the put option?

A Counterparty. One of the mutual funds.
Q Does it refresh your recollection that it was the Dugaboy?
A No.
Q Do you remember, sir?
A I don't remember.
Q I'm going to try. I'm going to try and refresh your recollection. Do you remember that Mark Patrick suggested to The Dallas Foundation that it could recover millions of dollars if it simply exercised the put option with Dugaboy?
A My recollection is it was a mutual fund, and it wasn't millions of dollars, but it would disrupt the transaction that was already in place. That's my recollection.
Q Okay.
A And I don't see Dugaboy anywhere in here, by the way.
Q I know. I was wondering if you could just -- I asked you, but it doesn't sound like you know specifically what the material nonpublic --
A Well, --
Q -- inside information is that you accused Mr. Patrick of abusing at that time.
A I know it's been reported. We can get you the details.
Q Okay. You, in fact, acted on behalf of HMIT, didn't you?
A Who is HMIT?
Q Apologies. You personally -- there's no question in your mind that Mark Patrick is the Administrator at HMIT, correct?

A I'm sorry, I'm drawing a blank on HMIT. What is HMIT?
Q I apologize. Hunter Mountain Investment Trust.
A Oh. Okay.
Q I'm calling it HMIT.
A Okay. All right. Sorry.
Q I probably not saying it clearly. I apologize. H-M-I-T. HMIT, that's what I call it. Is there something better that you prefer?
A No, that's fine. Yeah.
Q Okay. So HMIT. Mark Patrick is the Administrator at HMIT, right?
A I believe his status, his dirty hands, I believe he's trying to monetize a stolen asset.
MR. PHILLIPS: Objection, Your Honor. Nonresponsive.
THE COURT: Sustained.
THE WITNESS: No, I -- I saw it. I don't agree --
MR. PHILLIPS: Objection, Your Honor.
THE COURT: Sustained.
MR. PHILLIPS: Move to strike.
THE COURT: Granted.
THE WITNESS: I do not agree.
BY MR. MORRIS:
Q Okay. Has he -- he was at one time the Administrator. You would agree with that, right?
A Yes.

Q And did he stop becoming the Administrator in your mind when the Joint Official Liquidators were appointed?
A Yes. I believe.
Q Okay. So, in your mind, that's when it happened?
Can you describe for the Court the relationship between the entity in the Cayman Islands and HMIT?
A The entity in the Cayman Island, as far as we knew, was the org structure that all the assets were either in or controlled by in the organizational structure before all the HGEQ things that you went over earlier with Mark Patrick.
Q Okay. I'm not asking -- it's my fault. Do you believe the entity in the Cayman Islands controls HMIT?
A HMIT was one of the assets that were owned by the charities until it was moved for a million dollar to who know who.
Q And do you know how many layers there are between the Cayman Islands entity and HMIT?
A I do not.
Q Is it fair to -- in your view, do you believe that the Cayman Islands entity had a direct -- withdrawn. Do you believe that the Cayman Islands entity had an indirect ownership interest in HMIT?
A We believed it was direct.
Q Direct. So it was the owner?
A Well, it was -- it was the direct before it got moved in

February.

Q Hasn't Beacon always been the owner of -- the beneficial owner of HMIT?

A Then it was Beacon that was moved. There was -- charities were notified in February that, for $1 million, the HMIT was sold to an undisclosed, unknown person.

Q Do you believe that the entity in the Cayman Islands ever had the ability to control Hunter Mountain Investment Trust?

A Yeah. It was an asset in the portfolio.

Q And do you believe that that gives it the right to control HMIT?

A Yes. I think the Liquidators will prove that. I think they can go back in time on bad acts and bad behavior and they can regroup assets to their rightful owners.

Q So your concern here is not with corporate authority, it's with the bad acts. Is that fair?

A Well, no. I think you lose your corporate authority when you're fiducially irresponsible or commit corporate crimes.

Q Okay. But you've never -- you've never brought a lawsuit accusing him of that. Fair?

A I think you'll see a litany of stuff come out of the Cayman Islands.

MR. PHILLIPS: Objection. Nonresponsive.

MR. MORRIS: I'm sure we might someday.

THE COURT: Sustained.

THE WITNESS: Yeah. But, no. But I have not, no.

BY MR. MORRIS:

Q Yeah. But you personally, have you ever been the Administrator of Hunter Mountain Investment Trust?

A Not that I'm aware of.

Q Have you ever had any role whatsoever with respect to the Hunter Mountain Investment Trust?

A Not that I -- not that I recall.

Q Okay. Do you recall last December we were here on some litigation concerning HCLOM's scheduled claim?

A You have to give me more of a clue.

Q Remember HCLOM had that $10 million scheduled claim and Highland had filed a bad faith motion and we were all here in court and we wound up settling that matter and HCLOM got a Class 10 interest for $10 million?

A Yes, I vaguely remember that.

Q Okay. And you were here and you were representing HCLOM, right?

A Okay. I don't remember specifics, but, yes, go ahead.

Q Okay. And do you recall that Highland required Hunter Mountain Investment Trust's consent as part of the transaction?

A Vaguely.

Q And you personally authorized that consent back in December, didn't you?

A No.
Q Who did?
A Whoever would have spoke for HMIT at the time.
Q Okay. Let's take a look at Exhibit 68, please.
A So, Binder 2?
Q Yes, please.
A Sorry, this says Pat Daugherty. This is 1 of 3. This one. Okay. Did you say 68?
Q Yes.
A It's not in here, either. 68.
Q So you see that's an order of the Court?
A Yes.
Q And this resolves HCLOM's claim? Take your time.
A I'll leave it in case someone else needs it. Okay.
Q And do you see on the last page of the document there's an electronic signature by Deborah Deitsch-Perez at the Stinson firm as counsel for Hunter Mountain Investment Trust and Dugaboy Investment Trust? Do you see that?
A I'm sorry. I went to the very last page with Mark and I. Is there another page? Oh, okay. Yes. Okay.
Q So you see Stinson has signed both on behalf of you personally and HCLOM, and at the bottom, Stinson and Ms. Deitsch-Perez has also signed on behalf of Hunter Mountain Investment Trust and the Dugaboy Investment Trust? Do you see that?

A Yes. But then it's separate on 69, right?
Q Yeah. We're just looking at 68.
A Okay.
Q Do you know who authorized Ms. Deitsch-Perez to sign her name and tell the Court that the Dugaboy Investment Trust had approved this form of order both as to form and substance? Who acted on behalf of Dugaboy?
A I have no idea. I hope she keeps it straight when she's signing stuff.
Q Well, on whose behalf are you here today?
A Dugaboy's.
Q And are you a representative of Dugaboy?
A Representative? I'm primary beneficiary until I pass.
Q And who's the trustee of Dugaboy?
A I believe it's my sister at the moment.
Q Does she know you're here today testifying on behalf of Dugaboy?
A She knows I'm in court. I didn't -- I wasn't specific.
Q Did you talk to her about the Dugaboy -- does she -- does she even know about the Dugaboy objection?
A I don't know.
Q Okay. So how about Hunter Mountain Investment Trust? Do you know who authorized Ms. Deitsch-Perez to sign this document on behalf of Hunter Mountain Investment Trust?
A When was this? In December or January?

Q Yeah.
A I'm assuming -- I'm assuming Mark Patrick.
Q Late December.
A I'm assuming Mark Patrick. But I don't know.
Q Did you hear about a week later that Mr. Phillips called your lawyer and accused her of signing this document without authority from Hunter Mountain Investment Trust's authorized representative, Mr. Patrick?
A In hindsight, he's been in on it for a while, so --
Q What do you mean, he's been in on it for a while?
A I think he knows the plan Mark Patrick's been putting in place for quite a while.
Q But this document was signed without his knowledge or consent; isn't that right?
A I don't know.
Q And you had to sign a new agreement with Mark Patrick as the authorized representative of HMIT. Didn't you do that, sir?
A I don't know.
Q Okay. Let's take a look at guess I guess probably Exhibit 69. So this is an intercreditor and participation agreement. Do you see that?
A Yes.
Q And it's dated January 10th, 2025, correct?
A Yes.

Q And even though you -- even though Skyview had completed this investigation in which it was alleged that Mr. Patrick misused material nonpublic inside information and he had terminated his relationship with Skyview, you still entered into this agreement with him as the authorized representative of HMIT, correct?

A Those were different work streams, you know, so they were -- but yes.

MR. PHILLIPS: Objection. Nonresponsive.

THE COURT: Sustained.

BY MR. MORRIS:

Q That is -- that is your signature on the last page, correct?

A Yeah. I mean, --

Q It's a simple question. That's your signature, right?

A Yes.

Q And you understood that you were signing an agreement with Mark Patrick, correct?

A Yes.

Q And you signed this agreement in order to avoid Mr. Phillips filing a motion in this court for reconsideration of an order that she signed not knowing that Hunter Mountain had given its consent without authority. Isn't that right?

A No, I had no -- none of that --

Q So what's your memory? Why do you think you entered into

this agreement?
A Because the lawyers put it in front of me as a finished product from what had been going on recently.
Q And you had no understanding of what it was?
A Not with the innuendo and agenda that you were describing. No. I mean, I just -- I knew what it generally involved. That's it.
Q But you would agree with me that you entered into an agreement knowing that Mark Patrick was signing on behalf of Hunter Mountain, correct?
A Yes.
Q I mean, it's right below your name, right?
A Yes.
Q You couldn't have missed it.
A Yes. That part, I'll agree with.
Q Okay. And you signed the agreement with Mark acting as the authorized agent and representative of Hunter Mountain, notwithstanding all of the bad acts that you supposedly were aware of at the time. Correct?
A Object to aware of at the time. They were all coming together in parallel work paths.
THE COURT: Okay.
MR. PHILLIPS: Object. Nonresponsive.
THE COURT: Sustained. Like I told Mr. Patrick, the witness does not get to object.

THE WITNESS: Okay.

BY MR. MORRIS:

Q And just to close the loop, Mr. Dondero, you fully funded The Dallas Foundation's objection, correct?

A And I made additional donations so that they could pursue bad actors and get their money back.

Q You funded the litigation so that The Dallas Foundation could pursue their objection, correct?

A I made additional donations so that they could get some assets back so that they could be a charity again and make donations.

Q Do you get a tax deduction for that donation?

A Yes.

Q Okay. That's nice.

Let's just finish up with the Joint Official Liquidators. Have you spoken to them?

A I do not believe so.

Q Has anybody acting on your behalf spoken with the Joint Official Liquidators?

A I don't know. I think the Joint Official Liquidators are an accounting firm. I think they're Grant Thornton. I think people have spoken to the attorneys down there, but I don't know -- I haven't spoken to Grant Thornton and I don't know if anybody else has.

Q Okay. Did you see the letter that your counsel marked as

the exhibit, the one that was sent last night?
A I've not heard it -- I've not read it, but I've heard you guys read it today.
Q Yeah. Are you aware of the Joint Official Liquidators saying at any time that they didn't believe Mark Patrick had the authority to enter into the settlement agreement on behalf of the HMIT entities?
A I have not.
Q Okay.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Phillips?
MR. PHILLIPS: Yeah.
THE COURT: Wait. What are we at timewise?
THE CLERK: So their 30 minutes is over. If you intended to give them 30 minutes for Patrick and --
THE COURT: Yes. Yes. They collectively got 30 minutes.
THE CLERK: For both of those --
THE COURT: Yes.
THE CLERK: -- witnesses. Okay. Yes, they're out.
THE COURT: How much did Mr. Morris use?
THE CLERK: Well, I don't know. I just was --
THE COURT: No, no, no, no. 30 minutes for each side for each Patrick and Dondero.
MR. MORRIS: About eight minutes.

THE CLERK: Yes. Mr. Morris -- I think Mr. Phillips may have asked one question, but Mr. Morris mostly -- 30 minutes.

THE COURT: No. On this witness, Phillips hadn't gone.

THE CLERK: No, not this witness.

THE COURT: Okay. That's all I care about, this witness.

THE CLERK: I don't know this witness.

THE COURT: Okay. Do you have a question, Mr. Phillips?

THE CLERK: I was doing 30 minutes for the total.

THE COURT: No, no, no, no, no.

MR. PHILLIPS: Your Honor, I can resolve this. I can resolve this. We have no questions.

THE COURT: Okay. Thank you. Where are we? Mr. Lang, any redirect?

MR. LANG: I'm not sure.

THE COURT: Okay.

THE WITNESS: The last one.

MR. PHILLIPS: Your Honor, the witness is telling the lawyer what question to ask.

THE COURT: Okay.

MR. LANG: I believe I've already asked, which is the endgame.

THE COURT: Okay. Just let's move on. Anything else? What was the question?

REDIRECT EXAMINATION

BY MR. LANG:

Q Mr. Dondero, what are you looking to accomplish through this objection?

MR. PHILLIPS: Asked and answered.

THE COURT: Sustained. Sustained. He did. He was asked and answered.

BY MR. LANG:

Q The endgame in general.

MR. PHILLIPS: Asked and answered.

THE COURT: Answered and answered. Move on.

THE WITNESS: No, no. No, I haven't. No, I --

MR. PHILLIPS: Asked and answered. Move to strike.

THE COURT: You asked him this on your direct earlier.

MR. LANG: I did.

THE WITNESS: But, in general, regarding the --

MR. PHILLIPS: Your Honor?

THE WITNESS: Not just this.

THE COURT: Sustained. Ask another question.

MR. LANG: I don't have any more questions.

THE COURT: Okay. I have a question.

EXAMINATION BY THE COURT

THE COURT: Here is something that I want to understand. What I have before me is whether a settlement with Hunter Mountain, a settlement between the Highland entities, the Claimant Trust, the Subtrusts, and the Hunter Mountain entities, seven of them, is fair and equitable, is in the best interest of the estate. If you were the director, the manager, the representative of Hunter Mountain estate, what would your answer be?

THE WITNESS: It's not in the ZIP Code.

THE COURT: It's not in the ZIP Code?

THE WITNESS: Of fair. Yes.

THE COURT: Okay. Why do you think it's not in the ZIP Code of fair?

THE WITNESS: Okay. We filed in Delaware on a $100 million judgment. Pachulski was our counsel. They told us --

THE COURT: I know all this.

THE WITNESS: It just --

THE COURT: I'm talking about the settlement in front of me right now.

THE WITNESS: -- we'd be in and out in three months, right? We got liquidated instead. We got liquidated for over $850 million, which not enough people talk about. Okay? It would've been $950 million if Seery had done a good job, but it was $850 million we got liquidated for. Okay? The POCs were pumped up. People who supposedly had no claim, all of a

sudden, $300 million.

There's $700 million missing or misallocated from the estate. Okay? There was -- all the original creditors, all the original creditors sold 99 percent of their interest for $160 million. The Farallon and Stonehill went to the beach. There was enough money on the balance sheet. Seery could have given them the $160 million and tossed us the keys. Instead, he had relations, deep relations, undisclosed business relationships with Farallon and Stonehill, --

THE COURT: Okay. I do want you to know --

THE WITNESS: No, but --

THE COURT: -- I've read all this many times.

THE WITNESS: Okay. But so -- so these --

THE COURT: I promise I read every piece of paper submitted.

THE WITNESS: Okay. So, so he sold the POCs to them, and it's been -- they've tripled their money in two and a half years. The professional fees have been $300-odd million. There's interrelationships between all the professionals -- Farallon, Stonehill, Grosvenor, the Hellman & Friedman guys, the Millennium guys who took whatever. All this stuff has to come out.

We're on the edge of a giant RICO case eventually. We're -- that's -- we're on the edge of a giant RICO case. And they should not be giving up their rights for $10, $20 million.

It's crazy for them to give up their rights at Dallas Foundation for 10 or 20 million bucks.

There's $700 million missing. All the original creditors sold for $160 million. The estate was sold for over $850 million. Where'd all the money go? Where'd all the money go and why? You know.

We get updates quarterly, once in a while, well, this much went out to this law firm, this much went out to this, whatever, but no one looks at the gross amount and where'd all the money go? And why? Why did it have to -- why did it have to go down like that? Why do we have to fire --

THE COURT: Okay. I know you have an objection.

THE WITNESS: -- all the employees?

THE COURT: This is narrative.

MR. MORRIS: Yeah. And --

THE COURT: I understand all --

MR. MORRIS: -- I'm not going to cross-examine him, but this is -- this is not accurate.

THE COURT: I understand all of these arguments. You know, I --

THE WITNESS: But I'm just --

THE COURT: Your lawyers at least know, if you don't know, that we wrote a 100-plus-page opinion on the motion of Hunter Mountain to sue for all of this. Okay? So I promise I've heard this and looked at it. But right now, Hunter

Mountain, through Mark Patrick, you question his authority, but they are ready to lay down their swords and not pursue that motion for leave to sue based on the claims trading, and --

THE WITNESS: Have you seen all the insider trading, Farallon, Stonehill? Have you seen the trading and claims on insider information? Have you seen all that stuff?

THE COURT: I've seen the allegations but I --

THE WITNESS: Well, why would you release all those people right now before the RICO?

THE COURT: So I -- Dugaboy -- you've been asked what is your goal? Dugaboy a .18 limited partnership interest --

THE WITNESS: Correct.

THE COURT: -- that is subordinated to Hunter Mountain. I'm just trying to understand the scenario where it makes sense to keep fighting for years to come.

THE WITNESS: Well, RICO transcends this, right? I mean, RICO brings everybody in. Until we get --

THE COURT: Okay. You think it's -- and my question, why is this not fair and equitable and in the best interest of the estate, you think it's better to litigate several more years and maybe have a chance, you know, --

THE WITNESS: At $600 mill. At $600 million.

THE COURT: -- Hunter Mountain would have a chance to --

THE WITNESS: $600 million. Yes.

THE COURT: Okay.

THE WITNESS: Versus $20 million now. But you have to remember, it's all part of -- you have to pay attention to this Mark Patrick stuff.

MR. PHILLIPS: Your Honor?

THE COURT: Okay. Yes. I asked my question. I'm trying to understand why Dugaboy, why its position is this is not fair and equitable and in the best interest and in the range of reasonableness. Those are the buzz words that a judge has to focus on.

THE WITNESS: It's not fair to the charities. I still think no one's ever seen --

THE COURT: The charities aren't parties here.

THE WITNESS: Not yet. Give them a little time. They just heard about the settlement yesterday.

THE COURT: Well, isn't that what the Cayman Islands is all about? What I do doesn't necessarily affect what's happening there.

THE WITNESS: Well, no, but you're saying they're not here today. If you delayed this three weeks, they'd be here. It's just a couple --

THE COURT: They were here and they chose to withdraw.

THE WITNESS: One. One. Just one charity. But the

others, if you give them some time, they'll be here.

THE COURT: Okay. Okay. I think you've answered my question, your theory of how this should play out and how you want it to play out. Okay. All right.

THE WITNESS: Thank you.

THE COURT: That's all. Thank you.

THE WITNESS: Thank you for the time.

THE COURT: Uh-huh.

(The witness steps down.)

THE COURT: All right. I think that concludes our evidence, correct?

MR. YORK: Yes, Your Honor. At least from Daugherty and --

THE COURT: Okay. The Objectors rest. Any rebuttal?

MR. PHILLIPS: No, Your Honor.

THE COURT: Okay.

MR. YORK: Your Honor, would it be okay if we took a five-minute comfort break?

THE COURT: Yes. We may as well turn it into a 10-minute break because that's what's going to happen. All right. We'll be back at 3:40.

THE CLERK: All rise.

(A recess ensued from 3:30 p.m. until 3:44 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. We're back on the

record in Highland Capital. I will hear closing arguments. And I dangled something out there before lunch and I've never heard any follow-up. I guess no agreement with Daugherty could be reached on the reserve?

MR. YORK: Haven't had that conversation, Your Honor.

THE COURT: You didn't have that conversation? Oh, well. Why didn't you have that conversation?

MR. YORK: We were, during the lunch break, working busily to prepare the rebuttal to Mr. Seery's testimony, --

MR. MORRIS: Yeah.

MR. YORK: -- Your Honor. And so --

THE COURT: Okay. You told me you'd talk about it.

MR. MORRIS: May I proceed, Your Honor?

THE COURT: I guess I don't matter. Do I not matter when I suggest something like that?

Okay. Go ahead.

CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

MR. MORRIS: Good afternoon, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for Highland Capital Management, LP and the Highland Claimant Trust and on behalf of the Highland Litigation Subtrust.

I know that we've got Bob Loigman in the courtroom, but I know that -- at least I hope he joins me in this closing argument. I suspect he does.

I don't want to be too long here, Your Honor. We don't

have a high burden. This is a 9019 motion, for goodness' sakes. I've never been involved in such a contentious 9019 motion in my life. We had three depositions on Friday. We had two on Sunday. I think we had two on Monday. For a 9019, I've had one witness sit multiple times.

It's been an extraordinary experience. But at the end of the day, nobody's really challenging the settlement agreement. You've got people challenging, you know, the Cayman Islands. You've got people challenging, is it -- you know, can you jam it in under the plan? We're not jamming anything under the plan. We're following the plan provisions.

Nobody's challenging the bona fides of the motion. Nobody is challenging whether it's the product of good-faith, arm's-length negotiations.

You heard Mr. Seery testify at length about the process. You've got 55 different documents in the record proving that this agreement is the product of arm's-length, good-faith negotiations between parties represented by sophisticated counsel that resulted from an exchange of information, an exchange of proposals, back and forth, and here we are.

It's also in the best interests of the estate. Really not challenged by anybody. Nobody is contending that Highland is getting a raw deal here. Nobody. And the proof that Highland is getting fair consideration and that this settlement is in the best interest of the Claimant Trust and its stakeholders,

it's obvious we are terminating costly, wasteful, and I dare say frivolous litigation. We are disposing of several illiquid assets. We are getting litigation protections that will inure to the benefit of the released parties, the Highland release parties and it will, we believe, provide the protection that we deserve.

It's not just releases. It's covenants not to sue. It's all kinds of bells and whistles in there. Substantial benefits to the estate. And so nobody's really objecting to that.

Nobody's really objecting to the fairness of the settlement to the HMIT parties except for Mr. Dondero, and he's just mad that peace is breaking out. He's just mad because he's not going to be able to litigate anymore. It's not relevant to a 9019 motion. But even if it was, it's ridiculous. It's just ridiculous.

The settlement is fair and reasonable and in the best interest of the creditors. It's the product of good-faith, arm's-length negotiations. And on that alone, it should be approved.

We've had a lot of testimony today about Mark Patrick's authority. The only actual evidence that concerns Mark Patrick's authority are the exhibits in the binder and Jim Seery's testimony about the diligence that he did. And the exhibits in the binder all prove that Mark Patrick has the

authority to act and bind the HMIT entities to the settlement agreement. It's Paragraph 7 of the HMIT trust agreement itself.

Did the objecting parties point you to one single document to support their speculative argument, because it's not anything more than that, that somehow Mark Patrick isn't authorized to do this? There is not a scintilla of evidence that Mark Patrick is not authorized to do this.

And if Your Honor had any concerns about Mr. Patrick, I think he answered them at the end. That he understood exactly what the terms of the agreement are. That he had a reasonable opportunity to consult with counsel and to negotiate. That he knows exactly what he's doing on behalf of these entities. That he believes the best path forward from the HMIT entities is to grab the value today instead of letting it waste.

We welcome Mr. Patrick to the table. It makes a lot of sense. We've been trying to get to this point forever.

Mr. Daugherty. You know, I have no gripes with Mr. Daugherty. I don't know quite what's motivating him these days, but he admitted and the evidence is clear that when he was a Class 9 claim holder, I forget if it's two or three or four occasions, he accepted $3.7 million in multiple payments, without any concern at all as to whether or not it violated the plan, even though his Class 8 claim had remained unresolved.

He didn't send the money back. He didn't say, Mr. Seery, you can't do this because it violates the plan. He knowingly and willingly accepted the benefits of being a Class 9 claim holder. And now he comes and objects on the basis that somehow it's not fair to him as a Class 8 holder? This is what we call estoppel. Right?

I wasn't in a position to really make the argument because I didn't quite understand it until today. Like, how does he come in today and say you can't do this, Your Honor? You can't allow Class 9 and 10 to get a nickel until he's done, when he himself has accepted millions of dollars before his claim is resolved? That doesn't sound right to me. And I don't think the Court should accept that argument.

Just quickly, because I don't want to give it any weight, frankly, but this whole business of the Cayman Islands and the JOLs, the only facts Your Honor has to take into account are that they were appointed before this motion was filed. They've never appeared here. They've never objected. And there is no evidence in the record to suggest, let alone to prove, that the JOLs contend that Mark Patrick does not have the authority to enter into the settlement on behalf of the HMIT entities. There's no evidence of any kind.

What you need to know and need to remember, though, is that whole proceeding in the Cayman Islands is being brought on behalf of not The Kansas City Foundation or The Dallas

Foundation, but The Highland Kansas City Foundation, The Highland Dallas. It's Mr. Dondero, and he's funding it, and it says it in Paragraph I think 47 or 48 of his declaration. He's funding all of that. And he funded The Dallas Foundation's objection here.

And that's why he's upset, because they settled last night without telling him because they didn't want any part of this, Your Honor. That's the truth. That's why they're not here. And they, right, they're the people who suggested that maybe something untoward happened and maybe someday -- because this is the way their objection is characterized. Complete speculation.

If you go back and look at the objection, it's someday, somebody might do something and might someday set it aside. That wasn't a proper basis at the time, but we know that Mark Patrick remains in control of the HMIT entities today because nobody has told the Court otherwise. And we know that The Dallas Foundation has withdrawn its objection. As I asked Mr. Patrick, have you been, you know, removed or clipped or terminated or in any way restricted in your capacity as the Administrator and control person of the HMIT entities as a result of the settlement, and the answer was no.

There's nothing to see here, Your Honor, except the opportunity for the Highland Claimant Trust and its affiliated entities in moving this case forward in an enormously positive

and constructive direction.

We have the opportunity today to put to rest a lot of pending litigation. We have the opportunity today to put to rest a lot of future potential litigation that undoubtedly would have come to pass had these entities remained under the indirect control of Mr. Dondero, because we know that that was the case.

If you remember, Your Honor, we sat here two years ago, June 8th, 2023, on the evidentiary hearing on Hunter Mountain's motion for leave to bring the claims trading case. And if Your Honor will remember, Mr. Patrick at that time was forced to admit that the entirety of that case came in from Mr. Dondero, that he had no knowledge of any facts that related to anything.

I would ask Your Honor to go and compare The Dallas Foundation's objection with Mr. Dondero's declaration that he filed in the Cayman Islands. I'm not going to say they're verbatim, but they are largely, largely the same. This is just Jim Dondero being Jim Dondero, and that is not a basis to overrule or deny the motion under Rule 9019.

It's a product of good faith negotiations, it is clearly in the best interests of the estate, and we respectfully request that as soon as possible Your Honor grant motion.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Any closing from the Movant, Co-Movant?

MR. PHILLIPS: Your Honor, thank you very much. Louis M. Phillips on behalf of the --

THE COURT: I don't know if you're the Co-Movant. You're a party to the proposed settlement.

MR. PHILLIPS: I'm not a Co-Movant.

THE COURT: Okay.

MR. PHILLIPS: I'm a party to the settlement.

THE COURT: Uh-huh.

MR. PHILLIPS: I didn't quite make it to that status to be a Co-Movant.

CLOSING ARGUMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

MR. PHILLIPS: But anyway, we appreciate the Court's time. We appreciate the Court's attention. This was, as the evidence established, we provided and were provided an immense amount of information.

Much of the information, certainly the information about Mr. Patrick's control of the HMIT entities, was provided by us. It was reviewed by Mr. Seery. And Mr. Seery made a very strong case for the amount of diligence he did on our side of the equation. It's not nearly as relevant to Your Honor's decision about whether to approve the settlement whether we got a good deal or not, but the deal we got, we think, is very fair.

The deal we got was negotiated with counsel, with

businesspeople who are very sophisticated. We have agreed on the methodology and of the calculation of our Class 10 claim. The Debtor and the Debtor estate or the Claimant Trust or whoever held the HMIT note got full value for the HMIT note. Any additional value from the HMIT note would come back to HMIT. The Kirschner Litigation would be for the benefit of HMIT. The Dugaboy Note would be for the benefit of HMIT.

All of that is being put into a package and is being resolved, affiliated, administered in a very effective and efficient manner. We are getting some money. We appreciate. We tried to get more. We couldn't. They tried to pay less. We made a deal.

So, Your Honor, I echo and thank Mr. Morris for all of his comments. I appreciate counsel being involved here today. We think this is a fair and equitable settlement. There is no question under 9019 that this settlement should be approved. And the suggestion that this Court should allow itself to just be a vehicle for continued litigation, when we have analyzed it, perhaps from a different perspective, and made the decision that it is time to make our deal now, it is time to take HMIT out of the litigation picture and into the fold of a party in interest of a fixed claim with fixed treatment that's different from the plan, authorized by the plan. And we appreciate it.

Thank you, Your Honor.

THE COURT: Thank you. All right. Mr. Loigman, we didn't mean to ignore you.

CLOSING ARGUMENT ON BEHALF OF MARC S. KIRSCHNER, LITIGATION TRUSTEE

MR. LOIGMAN: Thank you, Your Honor. Robert Loigman, Quinn Emanuel. You didn't ignore me. Louis was just quicker to jump up than I was.

And I step up solely because you asked whether the Co-Movant had anything to add. And we have nothing further to add to what Mr. Morris said. We agree with it wholly. We think this is a fair and complete settlement, and we would ask that the Court approve the settlement under the 9019 motion.

THE COURT: Thank you.

MR. LOIGMAN: Thank You, Your Honor.

THE COURT: All right. The Objectors?

MR. MORRIS: Your Honor?

THE COURT: Oh.

MR. MORRIS: Just to clarify, the motion was made under 9019 and Section 363. I just don't want that to get lost. That's all.

THE COURT: Okay. 363, use of property. Okay.

The Objectors?

CLOSING ARGUMENT ON BEHALF OF PATRICK DAUGHERTY

MR. YORK: Thank you, Your Honor. I'll be very brief.

I certainly appreciate that the Court desires to have this bankruptcy wrapped up, given how long it's gone on now, for six -- approximately six years in this court. The fact of the matter is that the settlement agreement that Highland proposes to enter into with Hunter Mountain Investment Trust entities violates the express terms of the plan, the confirmation order, and the Claimant Trust Agreement.

And they have not pointed to any language in there or to argue otherwise. Their only argument has been that they've set a reserve aside. And there's no provision in any of those documents that provides that that's an excuse for them to violate the express terms of the confirmation order, the plan, or the Claimant Trust Agreement, including specifically the language that Class 10 claims are not to receive or retain anything under the plan on account of their interest unless and until the Class 8 and Class 9 claims are paid in full plus applicable interest. And --

THE COURT: I really want to understand that argument. Mr. Seery correctly testified that, pretty much in every Chapter 11 plan we see, there's a disputed claim reserve. Well, I guess unless we have really unsophisticated creditors who don't insist on that. But we had sophisticated creditors. So why doesn't that mechanism, which I would call tried and true, we see it in most cases, why doesn't that resolve this issue you're raising?

MR. YORK: Well, --

THE COURT: And I focused in more than maybe I needed to about the nature of Mr. Daugherty's remaining claim, his Class 8 claim. What was the scope? What's the maximum amount it could be? When might it be resolved? Because I think we have a tried-and-true mechanism that addresses his concerns. Tell me why it doesn't.

MR. YORK: Well, --

THE COURT: Really, I want to understand what you think I'm missing.

MR. YORK: Well, so I think twofold, Your Honor. The first is that the dispute reserve that exists normally would be for whatever the amount of the disputed claim is. And here we're dealing with, as both sides have acknowledged, a claim that they at best could estimate, but they don't know for certain, given all of the machinations that could come out of the IRS audit.

And secondly, specifically with respect to the confirmation order, if it had said that the net 10 and 11 claims could be paid as long as the allowed 8 and 9 claims were paid, then the dispute reserve would provide that protection. But that's not what the language in the confirmation order says. It says claims, not allowed claims. And therefore it's referring to all claims, including disputed claims. And --

THE COURT: But we have a disputed claim reserve. Okay. We have a disputed claim reserve.

MR. YORK: There is, yes, there is a reserve.

THE COURT: So is it your argument that I can't approve a settlement like this until Mr. Daugherty's claim has been resolved with certainty, which might be in 2033 or whatever? I can't keep a bankruptcy estate open, allowing administrative expenses to continue to accrue, because of one contingent unliquidated claim that may never even develop.

MR. YORK: Your Honor, I appreciate the Court's frustration with that, but that's the way that the documents are written in terms of the confirmation order. And so it's an --

THE COURT: So the disputed claim reserve is meaningless?

MR. YORK: No, it is not -- a disputed claim reserve exists, but it does not, under the terms of the confirmation order, in terms of allowing the payment of Class 10 and Class 11 claims, those can't be done until the Class 8 claims are resolved.

THE COURT: You would have -- just a moment -- you would have me keep this estate open for as long as it takes, 2033, whatever, without allowing Class 10 and Class 11 theoretically to get anything?

MR. YORK: At least under --

THE COURT: Let's just let the -- with all respect to Mr. Seery, he's charging a handsome amount. It was agreed to or approved by the Court. Let's just let him continue accruing until 2033 because of Mr. Daugherty's prospect of the IRS saying you owe $1.4 million plus interest and penalties, when he's gotten the use of that all? Help me. This doesn't make sense to me.

MR. YORK: Sure. One way this could be solved is that the payments to -- the cash payments, for example, that are to be made to the HMIT entities, under the proposed settlement could be held in abeyance until the resolution of the Class 8 claim. The Court could modify the proposed settlement based on that. That's one way to deal with the issue, for example.

THE COURT: Do what? Hold it in abeyance?

MR. YORK: Yes. For -- the payments to be made to the Hunter Mountain Investment Trust under the proposed settlement could be -- could be done in accordance with the terms of the confirmation order. We'll just hold those payments until such time.

THE COURT: We who? Put it in the Court Registry?

MR. YORK: Or --

THE COURT: Where it will earn 0.18 percent?

MR. YORK: No. No. It can remain within the Claimant Trust until the time at which the Class 8 claim is

finally and fully resolved.

THE COURT: Okay. Meanwhile, I've approved the extension of the Trusts for one year, with Dugaboy saying, we don't think this should happen again and again and again. We reserve our rights. That's not a good solution.

MR. YORK: Your Honor, I understand the Court's frustration, but this is the terms of the plan and the confirmation order that were entered. Highland needs to follow it.

THE COURT: Okay. What about the estoppel argument that I heard Mr. Morris make?

MR. YORK: Well, sure. So, the first time they raise it is here today. And the one thing that -- the difference is that allowing this settlement to go forward is an effective liquidation of the estate versus where things are now, in which any payments that were made is not an effective liquidation. It doesn't expose anyone that would have priority to Class 10 with respect to anything that happens in the future from, you know, not having sufficient funds to deal with it. That's all.

THE COURT: Okay.

MR. YORK: Thank you, Your Honor.

THE COURT: Thank you. All right. Mr. Lang?

CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

MR. LANG: I'll be brief. Your Honor, there are

three issues that we've raised. One is the capital account balance being used for the claim for the Class 10 holders. The plan does not specify that the capital account balance is to be used. Allowing the $336 million claim to Class 10 ensures that Class 11 will not ever receive a dime. That's guaranteed.

Alternatively, upon the satisfaction of the Class 9, the $20 million approximately owed to Class 9, the holders of HMIT should receive 99.5 percent of the total residual. We think that would be a more fair outcome to the Class 11 claimants.

THE COURT: Wait, say again?

MR. LANG: That, so, of total assets, $70 million approximately, $20 million is owed to Class 9.

THE COURT: Uh-huh.

MR. LANG: Of the remainder from that, HMIT should receive 99.5 percent of those assets, whatever they are, the value, rather than a $336 million claim. That was the objection.

THE COURT: But I didn't get any evidence of a separate way of competing -- of doing that. I heard credible testimony from Mr. Seery about why he used the math he used and I didn't hear any countervailing evidence of, wait, this is a more fair, realistic way of computing it. And what I did hear is the .5 percent limited partnership interest of Dugaboy is subordinated in its payment rights under the limited

partnership agreement of Highland.

MR. LANG: It's subordinated under the plan, but yes, the plan does not say to use --

THE COURT: Under the partnership agreement is the reason the plan did it, is what I've been presented.

MR. LANG: I believe Mr. Seery -- and I could be wrong -- I think I heard him say that he has used the other method, but I could have misheard him in the testimony.

THE COURT: Well, that's not what I heard. I heard him emphasizing the fact that the Class 8 interests, including that of Dugaboy, are subordinated with regard to payment rights under the Highland partnership agreement. And so that's why he didn't think it made sense to just apply percentages.

MR. LANG: That's what he testified to.

THE COURT: So I'm just -- anyway, I'm just trying to figure out what the countervailing evidence is here to suggest his methodology is wrong.

MR. LANG: I believe the partner -- or, the plan says that the Class 10, when the GUC certification is a Class 10, and the Class 11 received pro rata, it doesn't specify the account balance is to be used as the number to determine what they receive.

THE COURT: Okay. You want to point out what you are focused on?

MR. LANG: I believe it's under Treatment.

THE COURT: Okay.

MR. LANG: Section --

THE COURT: I don't want to hunt. I want you to tell me what the language is that you think is supportive of that.

MR. LANG: And the second -- I guess the secondary issue that we probably should just get to is the release. We think it's broad, and just Dugaboy and Dondero are carved out. And Mr. Morris did send me a proposal last -- yesterday evening that I haven't gotten to. But that is an objection that we have, is just to make sure that the -- that nobody can argue that the release covers any claim Dugaboy might have, if any.

THE COURT: Okay. I think many hours ago I remember this being mentioned. I guess it was a little bit more broad than just -- I think it was Highland employees. I don't know.

What is the agreement, Mr. Morris, if you're awake there, on --

MR. MORRIS: I am awake, Your Honor. Apologies.

THE COURT: Okay. I didn't mean to be flippant.

MR. MORRIS: Yeah.

THE COURT: I get punchy and --

MR. MORRIS: That's okay. With respect to the release?

THE COURT: Right.

MR. MORRIS: We don't have an agreement. We have an agreement -- well, I sent a proposal last night, but it didn't get responded to. If they want to accept that proposal, that's terrific.

THE COURT: Okay. I don't know what the agreement says. Are you saying you want to accept what they proposed last night?

MR. LANG: No, I have edits to it. I just couldn't -- I was tied up on another filing last night. I have not been able to get to it today.

THE COURT: Okay. I'm going to make a ruling today. Okay? If it means y'all sit here in the courtroom a while, fine. But just like all of you, I have a mountain of other stuff waiting for me, so I really want to rule today. So, --

MR. LANG: Understood.

THE COURT: Yeah.

MR. LANG: Maybe we can work on it as soon as I'm done and I can get back to 'em --

THE COURT: Okay.

MR. LANG: -- and get back to you.

Your Honor, the -- it's on Page 23 of the plan. It talks about the Class 10 and Class 11, where the partnership interests, that their treatment, they shall receive as pro rata share of the contingent Claimant Trust interests. And all we're asking is that be used or applied as a 99.5/.5

distribution.

(Pause.)

THE COURT: I'm sorry. Go ahead.

MR. LANG: Oh, sorry. I thought you were looking for it.

And the last issue is authority. The only point of the authority argument, Your Honor, is that the Joint Administrators were appointed down in the Caymans to investigate the transaction that moved basically the entire ownership, because it's owned a hundred percent down to HMIT, out. They're investigating the transactions. They have not stipulated to authority. They're looking at everything. They've requested a 45-day delay on this motion. And that's all that -- not even asking to deny the 9019. They were just asking time to basically bless this transaction so that nobody could come back and make an issue of it. But I understand your desire to rule today.

THE COURT: Okay. Any rebuttal?

MR. MORRIS: Yeah, briefly, Your Honor.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

MR. MORRIS: I just want to point the Court to two provisions of the operative documents that I think --

THE COURT: Okay.

MR. MORRIS: -- will resolve even further the issues that we've presented today.

The Claimant Trust Agreement -- and I apologize, I don't know if the whole document is in evidence, but I will respectfully suggest to the Court that the Claimant Trust Agreement provides in Article 5, Section 5.1(c), --

THE COURT: Okay. Let me catch up.

MR. MORRIS: Yes.

(Counsel confer.)

THE COURT: It's not Debtor's Exhibit 5.

MR. MORRIS: Yeah.

THE COURT: Daugherty's Exhibit 5?

MR. MORRIS: It's Daugherty Exhibit 5?

MR. YORK: Yes.

THE COURT: Okay.

MR. YORK: So we have a full copy at Daugherty --

THE COURT: I've got it. Daugherty's Exhibit 5.

MR. MORRIS: Okay. So if you could just go to Page 27, Your Honor. And this is in response to Mr. Lang's argument about the calculation of the allowed claim. You'll see it deals with contingent trust interests. And the very last sentence says the equity trust --

THE COURT: Wait. What page again?

MR. MORRIS: 27.

THE COURT: Okay.

MR. MORRIS: Do you see Section C in the middle is Contingent Trust Interests?

THE COURT: No.

THE CLERK: It's 26 of the Claimant Trust Agreement, 27 of the --

THE COURT: Ah, it's 26. Yes. On the bottom, it's 26; on the top, it's 27 of 38.

MR. MORRIS: Okay.

THE COURT: Okay.

MR. MORRIS: And at the end of Section C, it says explicitly: The equity trust interests distributed to allowed holders of Class A limited partnership interests -- that's Dugaboy --

THE COURT: Uh-huh.

MR. MORRIS: -- shall be subordinated to the equity interests distributed to the allowed holders of Class B and C. That's Hunter Mountain. Okay?

So the trust agreement provides for exactly what we're doing here. Dugaboy is in fact subordinated to HMIT. It doesn't get paid until HMIT gets paid in full. And Mr. Seery I think compellingly testified as to the reasonable calculation that he did based on very objective numbers to determine each respective limited partner's capital account.

With respect to Mr. Daugherty, the plan, which is on the docket at 1943, has a definition of Disputed Claim Reserve. And it states, among other things, that the amount of the disputed claim upon which the disputed claim --

THE COURT: Give me the page number.

MR. MORRIS: I apologize, Your Honor.

THE COURT: I've got it right in front of me.

MR. MORRIS: It's Page 7 of the plan.

THE COURT: Okay. All right. I'm there. The Defined Term.

MR. MORRIS: So the Defined Term "Disputed Claim, Claims Reserve Amount" in the middle says: The amount of the disputed claim upon which the disputed claims reserve is calculated shall be -- they've got an A and then a B -- the amount agreed to by the holder of the disputed claim and the Claimant Trustee or Reorganized Debtor, as applicable. And then it says D: Or is otherwise ordered by the Bankruptcy Court, including an estimated -- an order estimating the disputed claim.

And that last provision is vital, Your Honor, because that is the hook upon which you can always hang your hat when you decide that we are not going to wait until 2023 [sic] when the IRS audit may be resolved, because you have the ability, as ordered by the Bankruptcy Court, including estimating the amount of the disputed claim. Which is one of the causes of action that we've asserted in the complaint. It's either to subordinate -- actually, it's to disallow, to subordinate, or to estimate. Because this case does have to end, Your Honor. We actually think he should be bound by the definition in B.

It is an agreed-upon amount.

I've heard the testimony from Mr. Daugherty that there was no negotiation, but he didn't deny that he signed a document that is called an agreement that sets forth the disputed claim amount. And that is an agreement, and I think that satisfies that definition. And even if it didn't, at some point this case has to end.

Thank you, Your Honor.

THE COURT: Okay. Thank you.

All right. Well, it's been a long day and even a longer case. I think a lot of people were on the receiving end of a little bit of my grumpiness at times today, and I apologize for that.

I always feel compelled to say to the lawyers and parties when I rule from the bench that I can assure you it's not knee-jerk. I can assure you my law clerk and I have read every piece of paper submitted. And we come in here I think well-prepared and we just want to listen to the evidence to see if it supports -- who it supports. So I am going to rule from the bench.

I first want to make clear that with regard to the motion before the Court, the motion which was filed May 19th at Docket Entry 4216, pursuant to Bankruptcy Rule 9019 and Bankruptcy Code Section 363, the Court is being asked to approve a very broad settlement that is between what are

defined as the HMIT entities, seven entities in all; Hunter Mountain Investment Trust; as well as Beacon Mountain, LLC; Rand Advisors, LLC; Rand PE Fund 1, LP; Rand PE Fund Management, LLC; Atlas IDF, LP; and Atlas IDF GP, PLLC. So this proposed compromise and settlement is between all of those Hunter Mountain entities as well as the Reorganized Debtor, the Highland Claimant Trust, the Highland Litigation Subtrust, and the Highland Indemnity Trust.

I first will note that notice has been fulsome, reasonable under the circumstances, to provide due process to anyone affected by the proposed compromise.

The Court would note that the legal standard is a very well-known and established legal standard here. Among other things, the Court is to look at whether the settlement is fair, reasonable, and in the best interest of the estate; whether it would appear reasonable business judgment has been exercised; is the compromise and settlement within the range of reasonableness?

And this involves looking at, among other things, the probability of success in the litigation -- that would be all the various litigation involving HMIT, if it were to go forward; the complexity and likely duration of further litigation and attendant expense, inconvenience, and delay; and all other factors bearing on the wisdom of the compromise. We know that's *Cajun Electric*, *Jackson Brewing*, *Foster*

Mortgage, among other cases. I probably left out *AWECO*.

Anyway, applying all of those legal standards here, I do think the evidence was very thorough in showing that the compromise is a product of good faith and arm's-length negotiations. Indeed, it was almost shocking to this Court when I saw the motion, having the history I have with all of the contested issues, adversary proceedings that have transpired over the past few years between Hunter Mountain and the Debtor.

I do think the evidence is that it's fair and equitable and in the best interest of the estate and within the range of reasonableness, given due regard for all of the expense, delay, and likelihood of success.

I'll just briefly recount that, as noted early today, there was an Exhibit B attached to the 9019 motion that listed nine unresolved pending pieces of litigation that the Highland entities are embroiled in. Two of those are now gone. This was filed May 8th, and as of January 25th, they're gone. So seven pieces of litigation, of which two will go entirely away if I approve this settlement. The Kirschner adversary claims against Hunter Mountain will go away.

We have very little, very little, relatively speaking, left in this bankruptcy case to resolve if I approve this settlement. That alone is very, very significant. Again, we have large shall I say issues with Hunter Mountain. Highland

says Hunter Mountain owes the Highland entities something like $57.69 million on a note that Hunter Mountain is payor on dated December 21st, 2015.

The flip side of that is that Hunter Mountain was sued by Kirschner in the Kirschner action on various claims, including this $57 million note. We have had Hunter Mountain file multiple motions for leave to sue Highland, the Claimant Trust, Mr. Seery. And those have been denied, but are in appeal status or remand status or some further litigation status.

And again, we have numerous issues. Hunter Mountain having sought valuation. The Court denied that. It's on appeal.

So, so much goes away, so much further litigation goes away and we make a monumental step in ending this long-running case if I approve this settlement.

Now, on the flip side of this, I know that Dugaboy, through the voice of Mr. Dondero today, expressed that Hunter Mountain is, I forget the words he used, but not -- this isn't close to being fair and equitable as far as he was concerned for Hunter Mountain. That Hunter Mountain, in addition to being through with litigation in this bankruptcy-land, would be paid $500,000 within five days. They would also be paid separately $10 million as an initial distribution, with the hope of two more $6.5 million distributions in '27 and '28.

And it would get a note, which I think has $24 million -- I think it was less than that, $17 or $18 million left on it, perhaps, on which Dugaboy is a maker. The debtor is one of the two payees. The Debtor gives up its rights in that note.

It looks like Hunter Mountain is getting a lot. And again, the way this estate has been liquidated, there is money that can flow to it as a Class 10 equity here, as the evidence has shown.

So I am approving the settlement. I am specifically overruling the remaining objections of both Dugaboy and Mr. Daugherty.

As far as Mr. Daugherty's argument that the settlement violates the absolute priority rule or violates the terms of the plan or the confirmation order or the trust agreement by, putting words in his mouth, skipping over the full payment of whatever his Class 8 claim is going to be and allowing a subordinate class, Class 10, to get paid, I have flipped and studied the wording of the plan and the confirmation order and the defined term for Disputed Reserve. And I referred to a disputed reserve as a tried-and-true provision in Chapter 11 plans. I think it does what needs to happen for precisely this kind of situation, that as long as an appropriate amount is being held in reserve, and the Court can decide what is an appropriate amount, we don't have to hold up a bankruptcy estate for years and years.

So the disputed claim reserve is what allows me to find this is fair and equitable and this isn't some sort of violation of the absolute priority rule. I think this is precisely the reason the disputed claim reserve mechanism is in place, so that we can get on with the business of getting more people paid sooner.

And based on the evidence I've heard, it is an appropriate amount, I think. We're doing a lot of crystal-balling, what may or may not ever happen when, but I think, based on all the persuasive evidence I've heard, the Daugherty objection should be overruled.

As far as Dugaboy, I, as noted, am overruling that objection. I didn't have any persuasive evidence, solid evidence to show me that Mark Patrick doesn't have appropriate corporate governance authority to enter into this settlement agreement.

I realize there's a lot swirling around in the Cayman Islands, and that's going to play out however it plays out. But as of today, I don't have any evidence that he doesn't have authority currently to enter into the settlement. And it speaks volumes that The Foundation backed down. It would seem that they have been convinced that the lack-of-authority argument was not one they wanted to press today. So that is overruled.

I feel like we have all seen this movie many times before.

I wanted to understand, perhaps I went deeper than I needed to, I know Mr. Phillips thinks I went deeper than I needed in hearing some of the testimony from Mr. Patrick and Mr. Dondero, but I'm just trying to understand what's happening here. Why people who were so lockstep and friendly for years of this case suddenly, when we're right on the brink of maybe the case being put to bed -- I'm optimistic; it's not quite that close -- all of a sudden they're at loggerheads.

And so how many times have I seen this over the years, whether it's a breakdown in business and personal relationships, Mr. Daugherty, Mr. Terry, Grant Scott, now Mark Patrick? I'm probably leaving out someone. I don't know. I feel like I'm watching the same movie. Okay, now these two have parted ways. Now these two have parted ways.

And then, as I recall, when Grant Scott withdrew his objection to the HarbourVest settlement all these years ago, 2020, 2021, which he had been lodging for Charitable DAF, I think it was, --

MR. MORRIS: Yes, Your Honor.

THE COURT: -- then what happens? Well, I think Mark Patrick came in to work or replace Grant Scott, and then a bunch of people ended up getting sued in a different court regarding the settlement I approved, the HarbourVest settlement I approved.

So why am I saying this? I just, I'm trying to understand

things I'll never understand. I wanted to maybe hear something that would make me better understand what's happened now between Hunter Mountain, Mark Patrick, and Dondero and Dugaboy, because it sure seems like they were on the same team for many years. But it was very likely irrelevant, as Mr. Phillips kept getting up and down and saying. I just was seeing if it would lead to something relevant that would bear on the wisdom of this compromise, since that's one of my other legal standards. I'm supposed to consider all factors that might bear on the wisdom of the compromise. And so I guess that's where I was going in allowing all of that to come in.

All right. Well, while everyone is not thrilled with this compromise and settlement, I heartily congratulate the human beings that made it happen, and they know who they are. Maybe I do, maybe I don't. But I think it's rather amazing. And I hope that we are not coming to court for hearings in 2032. I don't know who among us will be alive. I'm not going to be alive by then. Certain people might cheer if that's the case. But I congratulate the human beings who made this happen. And you know who you are. Maybe I do, maybe I don't, but I congratulate you.

All right. So I reserve the right to supplement or amend this oral bench ruling in a more fulsome written order. I am asking Mr. Morris and his team to be the scriveners on that order. And obviously, you're going to run it by the other

lawyers here who participated today.

Is there anything else before we wrap it up?

MR. MORRIS: Just one other thing, Your Honor. And I greatly appreciate your comments.

When we draft the order, are we authorized to say that this settlement is approved not only pursuant to 9019 but to 363? Because there are asset sales that are part of this. We moved under that provision, and I didn't hear Your Honor reference that, --

THE COURT: Okay.

MR. MORRIS: -- but we would like to include that in the order.

THE COURT: You may. And that is precisely why I said I reserve the right to supplement or amend, because many times I get out of here and look at this transcript and, ooh, I forgot to say whatever.

MR. MORRIS: Yeah.

THE COURT: So I meant to say that and I didn't, so you may add that.

MR. MORRIS: And I assume all Your Honor wants is a fairly simple form of order that incorporates --

THE COURT: I do not want a 40-page order.

MR. MORRIS: Right.

THE COURT: Okay?

MR. MORRIS: Just an order that incorporates your

comments on the record, and to the extent that Your Honor wants to amend that, you'll do so at your leisure?

THE COURT: Yes.

MR. MORRIS: Perfect.

THE COURT: All right.

MR. MORRIS: Thank you.

THE COURT: Thank you all. We're adjourned.

MR. PHILLIPS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 4:38 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/27/2024**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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HIGHLAND CAPITAL
MANAGEMENT

Highland Capital Management, L.P.

Motion Pursuant to Rule 9019 and Code §363 For Approval of HMIT Settlement

(Docket No. 4216)

June 25, 2025

PSZJ PACHULSKI STANG ZIEHL & JONES

The Evidence Will Show the Settlement Agreement Is the Product of Good Faith, Arms-Length Negotiations

- **The negotiations began in late March and concluded on May 19.** Exs. 2-57
- **The negotiations were conducted by Zoom calls, phone calls, and one in-person meeting.**
- **The structure and terms of the Agreement changed over time:**
  - HMIT/DAF vs. Stand-alone
  - Timing of effectiveness (signing / court approval / final order)
  - Amount / timing / conditions of Distributions
- **Exchange of substantial information under a Confidentiality Agreement**
  - Claims information
  - Trust Agreement and budgets
  - Asset, liability, and valuation Information
  - Forecasted expenses

The Proposed Settlement Is In the Best Interests of the Highland Entities and Their Stakeholders

- Upon Bankruptcy Court approval, all Pending Litigation (as defined) will be dismissed with prejudice, thereby reducing litigation risk and the attendant costs. Ex. 1, Ex. 1 § 1(a)
- HMIT's Class 10 Interest will be allowed in a fixed amount of approximately $337 million. *Id.* § 4(a)[1]
- The Highland Entities are able to dispose of certain illiquid assets, including the Dugaboy Note and the Estate Claims asserted in the Kirschner Litigation. *Id.* §§ 5(b), 8(a)
- The Highland Entities obtain broad Litigation Protections that will ensure that there will be no future litigation with the HMIT Entities regardless of who controls them. *Id.* §§ 9-12

1. HMIT is barred from transferring the Class 10 Interest or any rights related thereto. *Id.* at § 4(c).

The Calculation of HMIT's Allowed Class 10 Interest

Total partners capital – Petition Date		**$396,613,941.24**	11.19 Monthly Operating Report spreadsheet – Ex. 117 and all monthly operating reports on file.[1]

Ownership by partner	Class	Ownership %	
Hunter Mountain Investment Trust ("HMIT")	B/C	99.5000%	4th A&R LPA – Ex. 114; 2018/2019 tax returns Ex. 115/116.
Strand Advisors, Inc.	A	0.2508%	
The Dugaboy Investment Trust	A	0.1866%	
Mark Okada	A	0.0487%	
"MAP 1"	A	0.0098%	
"MAP 2"	A	0.0042%	

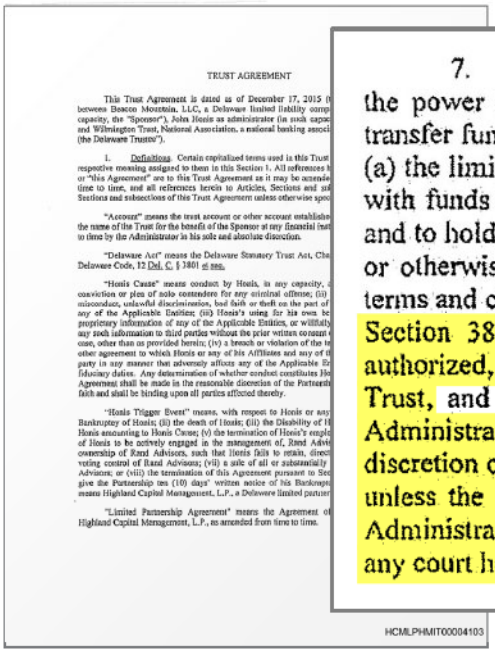
HMIT Petition Date Capital Account		**$394,630,871.53**	Calculation: Total partners' capital (above) x 99.5% [2]
Less: HMIT Petition Date Note Receivable (P&I)		**$(59,690,640.95)**	20191015 HMIT Note Receivable JE – Ex. 118
Class 10 Interest to be allowed per settlement		**$336,940,230.58**	Calculation: Petition Date Capital Account less Petition Date Note Receivable – Ex. 1

1. Monthly operating reports can be found at the following Docket #'s: 289, 418, 497, 558, 634, 686, 800, 905, 913, 1014, 1115, 1329, 1493, 1710, 1949, 2030. Each describes Petition Date Partners' Capital, rounded to the nearest $1,000 and presented in thousands (ie presented as $396,614 [in thousands] rather than $396,613,941.24).
2. Although not as of the Petition Date, see also Exhibits 115 and 116 for 2018 and 2019 IRS partnership tax returns of Highland Capital Management, LP, including capital accounts by partner. HMIT's capital account balances as of December 31, 2018 and December 31, 2019 were $370,103,735 and $347,989,195, respectively. The December 31, 2019 capital account reserved the balance of the HMIT note receivable.

With the Settlement, Transfer of the Kirschner Litigation Is In the Movants' Best Interests

- Upon approval, the Kirschner Litigation will be transferred to HMIT
- When commenced, the Kirschner Litigation was expected to be a potential source of funding indemnification expenses and distributions to creditors
- By 2023 and 2024, with the success of the Highland team, the need to pursue and monetize the Kirschner Claims became less clear, so the case was stayed to conserve resources
- With the settlement, the pursuit of the Kirschner claims in the hands of Highland is no longer justified because (a) all but 10% of the Class 9 Claims will be paid; (b) the Litigation Protections reduce the need to fund indemnity obligations; and (c) HMIT would be the primary beneficiary of the Kirschner Claims

As the Administrator, Mark Patrick Is Authorized to Enter Into the Settlement on HMIT's Behalf [1]



TRUST AGREEMENT

This Trust Agreement is dated as of December 17, 2015 (t
between Beacon Mountain, LLC, a Delaware limited liability compa
capacity, the "Sponsor"), John Honis as administrator (in such capac
and Wilmington Trust, National Association, a national banking associ
(the Delaware Trustee").

1. Definitions. Certain capitalized terms used in this Trust
respective meaning assigned to them in this Section 1. All references h
or "this Agreement" are to this Trust Agreement as it may be amende
time to time, and all references herein to Articles, Sections and sub
Sections and subsections of this Trust Agreement unless otherwise spec

"Account" means the trust account or other account establishe
the name of the Trust for the benefit of the Sponsor at any financial inst
to time by the Administrator in his sole and absolute discretion.

"Delaware Act" means the Delaware Statutory Trust Act, Cha
Delaware Code, 12 Del. C. § 3801 et seq.

"Honis Cause" means conduct by Honis, in any capacity,
conviction or plea of nolo contendere for any criminal offense; (ii)
misconduct, unlawful discrimination, bad faith or theft on the part of
any of the Applicable Entities; (iii) Honis's using for his own be
proprietary information of any of the Applicable Entities, or willfully
any such information to third parties without the prior written consent
case, other than as provided herein; (iv) a breach or violation of the te
other agreement to which Honis or any of his Affiliates and any of t
party in any manner that adversely affects any of the Applicable En
fiduciary duties. Any determination of whether conduct constitutes Ho
Agreement shall be made in the reasonable discretion of the Partnersh
faith and shall be binding upon all parties affected thereby.

"Honis Trigger Event" means, with respect to Honis or any
Bankruptcy of Honis; (ii) the death of Honis; (iii) the Disability of H
Honis amounting to Honis Cause; (v) the termination of Honis's employ
of Honis to be actively engaged in the management of, Rand Advis
ownership of Rand Advisors, such that Honis fails to retain, direct
voting control of Rand Advisors; (vii) a sale of all or substantially
Advisors; or (viii) the termination of this Agreement pursuant to Sec
give the Partnership ten (10) days' written notice of his Bankrupt
means Highland Capital Management, L.P., a Delaware limited partner

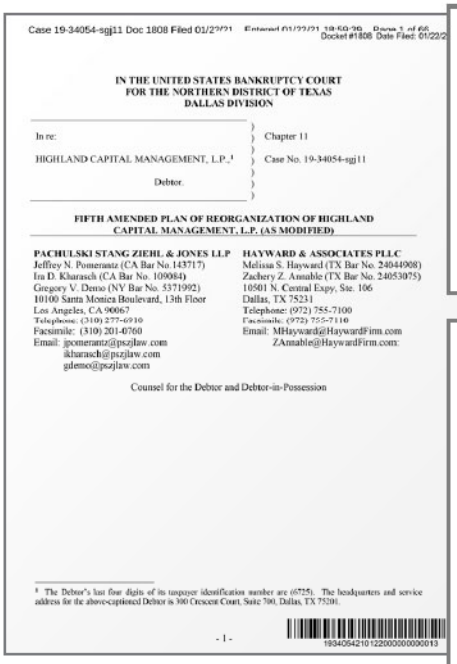
"Limited Partnership Agreement" means the Agreement of
Highland Capital Management, L.P., as amended from time to time.

HCMLPHMIT00004103

7. Purpose and Powers of the Trust; Administrator's Powers. The Trust shall have the power and authority (i) to accept funds and other assets, (ii) to contribute or otherwise transfer funds and other assets to the Account, (iii) to acquire Limited Partnership Interests from (a) the limited partners of the Limited Partnership and (b) the Limited Partnership, in each case, with funds in the Account or other sources of funds, including through the incurrence of debt, and to hold such Limited Partnership Interests in the Account or otherwise and (iv) to dispose of or otherwise allocate such Limited Partnership Interests pursuant to and accordance with the terms and conditions of the Limited Partnership Agreement. The Administrator shall pursuant to Section 3806(b)(7) of the Delaware Act have the power and authority, and shall be duly authorized, from time to time, in his sole discretion to manage the business and affairs of the Trust, and to take the actions described in (i) through (iv) on behalf of the Trust. The Administrator shall have all additional powers and authority necessary or desirable, in the sole discretion of the Sponsor, for prompt and effective administration of the Trust created hereunder, unless the particular power or authority is specifically denied by this Trust Agreement. The Administrator shall also have the power to settle, compromise, submit to arbitration, or submit to any court having jurisdiction in the matter any matters in dispute.

1. Ex. 70

Classes 9 and 10 May Accept Other Less Favorable Treatment



Case 19-34054-sgj11 Doc 1808 Filed 01/22/21 Entered 01/22/21 19:59:36 Page 1 of 66
Docket #1808 Date Filed: 01/22/2

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

In re: } Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.[1] } Case No. 19-34054-sgj11
Debtor. }

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

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

- 1 -

1934054210122000000000013

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

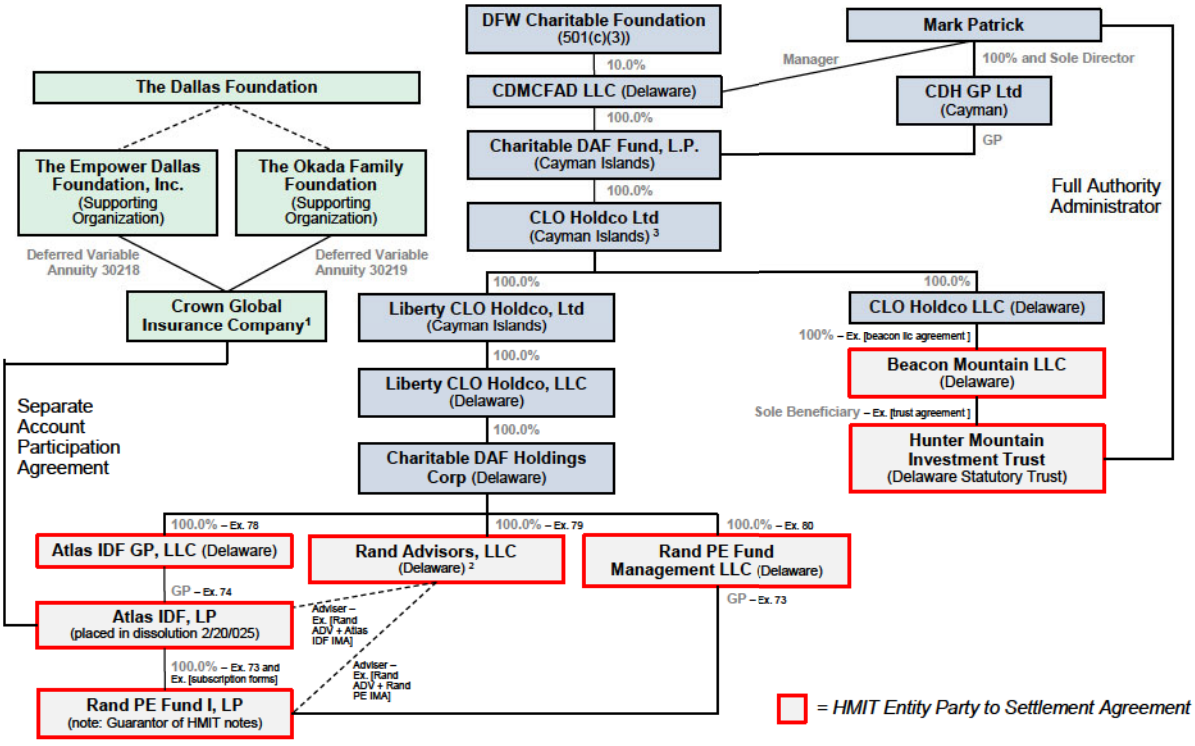
The Affected Stakeholders Have Agreed to Accept Less Favorable Treatment

- As permitted by the Plan, Holders of Class 9 Claims consented to (a) the payment in full of Daugherty's Class 9 Claim, and (b) the Class 10 Distributions in accordance with the terms of the HMIT Settlement Agreement, before their Class 9 Claims are paid in full. Ex. 59

- HMIT accepts less favorable treatment by agreeing (a) that it is not a "Claimant Trust Beneficiary," (b) that its rights are limited to those under the Settlement Agreement, (c) the Highland Entities owe HMIT no duties except as arising under the Settlement Agreement, (d) to restrictions on transfers of the Class 10 interest, (e) to condition the First and Second Subsequent Distributions on there being no threats or need to satisfy Indemnity Obligations, and (f) to grant the Litigation Protections. Ex. 1, Ex. 1 §§ 4(b)-(c), 6(c), 9, 11-12, 14-16

- All other stakeholders have been paid in full except for Daugherty's disputed Class 8 Claim, which has been fully reserved at an agreed-upon amount for years. Exs. 60-63

Hunter Mountain Investment Trust Org Chart



1. Crown Global Insurance Company is sole LP of Atlas IDF, LP. It issued Deferred Variable Annuity Contracts to the Empower Dallas Foundation, Inc. and the Okada Family Foundation in 2015, both of whom selected a 100% allocation to this investment. Both entities are supporting Organizations of The Dallas Foundation.
2. Rand Advisors, LLC is also the sub-adviser to Rand Advisors Series I Insurance Fund ("Insurance Fund"). Total discretionary regulatory AUM a/o 12/31/24 was $154mm (Insurance Fund: $123.9mm, Atlas IDF, LP: $29.9mm; Rand PE Fund I: $0).
3. For presentation purposes, other subsidiaries of CLO Holdco, Ltd. are not depicted. These subsidiaries consist of HCT Holdco 2, Ltd. and MGM Studios Holdco, Ltd. Neither of these entities is a Party to the Settlement Agreement. Each of these entities and evidence of their ownership by CLO Holdco, Ltd. can be found at Dkt. 2547.

EXHIBIT 61

EXHIBIT
6

CAUSE NO. _____

THE HIGHLAND DALLAS FOUNDATION, INC., et al., *Plaintiffs*, **v.** **MARK PATRICK, et al.,** *Defendants.*	**IN THE TEXAS BUSINESS COURT** **1ST DIVISION** **DALLAS, TEXAS**

DECLARATION OF JAMES DAVID DONDERO

I, **JAMES DAVID DONDERO**, of 300 Crescent Court, Suite 700, Dallas, Texas, United States, 75201, DECLARE under penalty of perjury:

1. I am the President of NexPoint Advisors, L.P. (***NexPoint***), an investment advisor registered with the U.S. Securities and Exchange Commission (***SEC***). I am a Certified Public Accountant and Chartered Financial Analyst with over forty years of investment advisory experience managing billions of dollars of investments across various assets classes.

2. I make this declaration from matters within my own personal knowledge and believe the information contained herein to be true and accurate in all respects.

3. I founded NexPoint in 2012. NexPoint is an alternative investment firm, with a particular focus on investment in the real estate sector. NexPoint has assets under management exceeding $16 billion in value. I was formerly the President of Highland Capital Management, L.P. (***Highland***), also an SEC registered investment advisor which I founded in 1993. From that time until 2015, Highland was majority owned by me and/or

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my affiliates. In December 2015, I divested my majority stake of Highland (***2015 Transaction***).

THE FUND

4. In addition to my business interests, I am a regular donor to philanthropic and charitable causes. The Fund is one of the vehicles I utilize to donate such funds to charitable organizations.

5. In 2010, the finance, accounting, and tax staff of Highland identified certain assets to be donated to a charitable foundation. In 2011, I requested the Donor Advised Fund (or DAF) to be formed and structured in a way that allowed these donations to be receipted and distributed to certain charitable foundations, as the ultimate beneficial owners of the Fund's economic interest. The structure proposed by the tax and legal advisors to effect this was for the Fund to have one limited partner (i.e. the LP) which would issue 'participation shares' to be held by certain charitable supporting organizations (together, the ***Supporting Organizations***) and in turn each of those entities would provide funding directly to certain charitable foundations in the U.S. (together, the ***Charities***).

6. The Amended and Restated Limited Partnership Agreement of the Fund dated 7 November 2011 (***ARLPA***), and the Amended and Restated Memorandum and Articles of Association of the LP dated 19 January 2015 (***Articles***), govern the Fund and its partners.

7. The LP held 100% of the economic interest in the Fund. The Fund's general partner, Charitable DAF GP, LLC (the ***GP***), a Delaware company incorporated on 25 October 2011, held management shares.

8. The LP issued 100 management shares (the ***Management Shares***) with the only voting rights for any and all shareholders in the LP. In essence, the Articles and ARLPA therefore grant complete control of the Fund structure to the holder of the Management Shares in

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the LP and the entirety of the issued share capital of the GP. Those shares have at all material times been held by a single individual, who as a result has substantial control over the entire Fund structure (the ***Control Position***).

9. The ARLPA provides that the Fund was formed to make investments, directly or indirectly, on behalf of certain entities "*for the economic benefit of the Limited Partner and its Indirect Charitable Owners*" and contemplates the engagement of investment (and other service) advisors to effect this. In this context, the Control Position is responsible for the governance and management functions of the Fund as required in order for the Fund to carry out its sole purpose of benefiting the Supporting Organizations and the Charities they support.

10. The governing documents of the Fund plainly state in multiple places that all of the powers of the Control Position exist solely for the purpose of benefitting the Supporting Organizations and their Charities. This ubiquitous language was created for an express purpose. The expectation by the founders of the Fund (myself included) at the time it was formed was that the governing documents would ensure that the Control Position would be bound through his or her fiduciary obligations to safeguard and advance the interests of the charitable organizations that held actual beneficial ownership of the Fund.

GRANT SCOTT

11. I initially selected Grant Scott for the Control Position, a person I have known for years who also has great integrity.

12. From 2010 until the 2015 Transaction, the Fund operated as a non-discretionary advised account of Highland, meaning Highland provided back-and-middle-office staff to the Fund and also provided recommendations regarding potential investments to Mr. Scott as the Control Person. However, Mr. Scott had complete discretion in adopting or rejecting the

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investment recommendations provided to the Fund by Highland. He also had final discretion over payments made by the Fund to third parties. In his position as the Control Person, Mr. Scott was paid $60,000 per annum.

13. After the 2015 Transaction, my affiliates and I no longer owned a majority stake in Highland. Subsequently, I was advised that, as a result of the change of ownership, the Fund was permitted to enter into a paying Investment Advisory Agreement with Highland. This form of investment advisory agreement was in place from January 2017 until it was terminated effective March 2021.

MARK PATRICK

14. Mark Patrick was hired as Tax Counsel at Highland in 2008. His job duties included maximizing tax saving to Highland's limited partners, including me and my affiliates. In that role, Mr. Patrick directly represented me as my personal tax counsel. He represented me in tax efficiency planning and tax- deductible charitable giving, among other things. He provided the same services for various trusts and companies affiliated with me. Mr. Patrick served that role at Highland from 2008 until his departure in February 2021.

15. In March 2021, Mr. Patrick was hired by Skyview as Tax Counsel and continued to perform substantially similar tax counsel duties for me. At Mr. Patrick's request, his job title was changed to "Managing Director, Tax" in September 2021, although his role with respect to me and my affiliates remained substantially the same.

16. The legal structure of the Fund (including as regards its partners and ultimate beneficiaries as discussed above) was created in 2011 on the advice of Mr. Patrick working with outside counsel. Mr. Patrick advised me that, to avoid potential negative findings by the U.S. Internal Revenue Service, as the donor/grantor of assets to the Fund, I could not have any control over the Fund or its entities. I followed his advice as my tax counsel.

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17. In March 2021, Mr. Scott informed me that he wanted to resign from the Control Position. The Fund had become engaged in certain disputes arising from the bankruptcy of Highland filed in 2019, and he did not believe he was equipped to handle those disputes. Mr. Patrick suggested to Mr. Scott and me that he was prepared to take on the Control Position and, in that role, to handle the litigation related to the Highland Bankruptcy as it affected the Fund. At the time, Mr. Patrick was my attorney and Mr. Scott was my trusted friend, and I was happy for Mr. Scott to pass the Control Position to Mr. Patrick.

18. On 25 March 2021, Mr. Scott: (i) resigned as director of the LP, (ii) appointed Mr. Patrick as director of the LP, and (iii) transferred to Mr. Patrick the Management Shares for nominal consideration. Mr. Patrick therefore assumed the Control Position from that date.

19. At some point, I understand that a person named Paul Murphy based in the Cayman Islands also was appointed as director to the LP and a portion of the Fund's subsidiaries, giving those entities two directors. However, I understand that in the event of a dissenting vote by Mr. Murphy, Mr. Patrick's vote counts as the tiebreaker for corporate voting.

MR. PATRICK'S CONTROL OF THE FUND

20. In the initial period following Mr. Patrick's assumption of the Control Position, there was no noticeable change in the management of the Fund. NexPoint provided, without charge, investment ideas to the Fund, as Highland previously had done, and Mr. Patrick was free (as Mr. Scott had been) to decide whether or not the Fund wished to follow NexPoint's recommendations. This approach was similar to the non-discretionary advised account status of the Fund prior to 2017.

21. Subsequently, however, communications between Mr. Patrick, Skyview, and me began to become less frequent, and over time I came to suspect that Mr. Patrick was utilizing the Control Position not for the benefit of the Supporting Organizations, the Charities or the

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Fund, but rather for his own personal enrichment.

22. On 28 June 2023, Mr. Patrick sent an email to Lauren Short, an employee of NexPoint, requesting that the Highland Dallas Foundation (i.e. the Supporting Organization that supports the Dallas Foundation) "*direct $10,000*" to Creative HEARTS TX, a non-profit entity formed on 13 June 2023. Following due diligence, Ms. Short learned that the directors of the entity were Mr. Patrick, Darees Patrick and Alyse Patrick (his daughter and wife). Mr. Patrick had made the grant request without disclosing his and/or his family's involvement.

23. Ms. Short discussed the matter with Mr. Patrick, who did not provide many details, but said the non-profit was formed to facilitate paying for trainers or speakers on self-defense training for teenage girls. Ms. Short understood that Patrick's expectation was that this would be an annual donation to a "club" at his daughter's school. While Ms. Short inquired, there was no detail forthcoming as to whether or not Creative Hearts would be a pass-through donating the monies to other charities or would directly do any work with the trainers or speakers itself. There also was not clarity if Creative Hearts' members intended to take a salary from the grant. The grant payment was authorized on September 5, 2023, but Mr. Patrick was informed that further payments were unlikely. I was informed of this process by Ms. Short and her supervisor. Contemporaneously with the grant approval, my team also informed the Dallas Foundation of the situation.

24. As another example, in or around September 2023, I was contacted by Kevin Cronin of Fortaris Capital Advisors (***Fortaris***). Fortaris provides litigation support services including due diligence, internal investigations, fraud detection, asset verification and in-depth background checks. Mr. Cronin is a former police sergeant and Special Agent with the Department of Homeland Security.

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25. Fortaris was at the time engaged by the Fund in respect of an unrelated matter and Mr. Cronin was known to me personally. In September 2023, Mr. Cronin and I met, and he informed me that he had been approached by Mr. Patrick with a proposition whereby Mr. Patrick (on behalf of the Fund) would engage an entity controlled by Mr. Cronin (other than Fortaris) at a monthly fee of between $25,000 and $50,000, and that this fee would be split between Fortaris and Mr. Patrick as a supplement to Mr. Patrick's compensation. Mr. Cronin informed me that he had asked Mr. Patrick if this arrangement would amount to fraud, and that Mr. Patrick's response had been: "*you can't steal from yourself*."

26. Mr. Cronin informed me that he understood from this statement that Mr. Patrick believed he owned the Fund and could use the funds controlled by it however he pleased. Mr. Cronin further informed me that he was uncomfortable about Mr. Patrick's proposal and that he subsequently communicated this to Mr. Patrick, whereupon Mr. Patrick cut off all further communications between them.

27. Mr. Cronin's allegations that Mr. Patrick was seeking to make a secret, undisclosed personal profit from the Fund were extremely concerning. I have subsequently been informed by my attorneys in the United States that, had Mr. Cronin agreed with this proposal, it would have likely constituted U.S. federal wire fraud, and/or violations of the Texas Penal Code's prohibitions on bribery and misapplication of fiduciary property. Shortly after Mr. Cronin contacted me, I met with Mr. Patrick and confronted him about the allegations, which he admitted to me were true. I informed the Supporting Organizations about the matter and Mr. Patrick's admission. However, at the time, both the Supporting Organizations and I were concerned that under the Articles, the Supporting Organizations did not have the power (in their capacity as Participating Shareholders) to limit Mr. Patrick's powers or remove him from his position.

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28. Given the situations described above, and the lack of communication about the Fund, I became increasingly concerned about Mr. Patrick's management of the Fund, including the potential misuse and/or misappropriation of its assets. In June 2024 therefore I requested that my team at NexPoint analyze the financial information of the Fund that I had in my possession, covering the calendar years ending 2018 to 2023 and the first half of 2024. My team produced an annual expense summary of that information (the ***Expense Summary***) which indicated substantial increases in expenditures during Mr. Patrick's tenure, particularly during early 2023 and mid-2024, as follows:

(a) Directors' fees increased from around $40,000 in 2022 to almost $600,000 in 2023 – and increased even further to around $2.25 million in the first half of 2024 alone.

(b) Expenses overall for the first half of 2024 were around $18.3 million – roughly the same amount spent over the entire course of 2023 (i.e. $18.6 million).

29. The Expense Summary reinforced my concern that Mr. Patrick is using the Control Position for his own enrichment rather than to benefit the Supporting Organizations and the causes they support. I therefore directed my employees at NexPoint to provide the Expense Summary to the Supporting Organizations, and which they promptly did.

30. In August 2024, I became aware of yet another issue concerning Mr. Patrick. NexPoint and its affiliates, through their investment activities, regularly obtain material non-public information (***MNPI***) related to those investments. As a service provider to NexPoint and its affiliates, Skyview employees also obtain the same MNPI. Trading on the basis of MNPI amounts to 'insider trading' which is prohibited under U.S. securities laws. As a result, NexPoint and its affiliates, and Skyview, all have the same robust regulatory compliance program to prevent, among other things, insider trading (***Compliance Policy***). NexPoint and its affiliates, and Skyview, require their employees to abide by the

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Compliance Policy at all times and employees are required to confirm in writing on a quarterly basis that they will not use MNPI while trading. Mr. Patrick completed the annual 2023, Q4 2023, Q1 2024, and Q2 2024 certifications, among others.

31. I was informed that my director of charitable giving had been contacted by Ms. Diaz, the CEO of the Highland Dallas Foundation, Inc. (***Dallas Foundation***), one of the Charities. Ms. Diaz stated that on August 28, 2024, Mr. Patrick contacted the Dallas Foundation's attorney to provide information about an asset held by the Dallas Foundation, which was held directly and separately from the Fund. This information was obtained by Mr. Patrick through his employment at Skyview and constituted MNPI, which is prohibited by U.S. securities laws from being disclosed and/or acted upon. On the basis of this MNPI, Mr. Patrick advised the Dallas Foundation to exercise a put option it held in a NexPoint affiliated asset. The Dallas Foundation did not act on the information or recommendation provided by Mr. Patrick, but in the event it had exercised the put option, both the Dallas Foundation and Mr. Patrick would have committed violations of the U.S. securities laws that prohibit insider trading.

32. Upon receipt of the allegations against Mr. Patrick, Skyview's compliance department commenced an internal investigation which, due to the serious nature of the allegations, was conducted without Mr. Patrick's knowledge, so as to avoid potentially tipping off Mr. Patrick about the investigation. By the end of September 2024, the investigation was substantially complete, and the conclusion had been reached that Mr. Patrick's actions constituted a serious breach of his compliance and employee obligations. On October 1, 2024, as part of the finalization of the investigation report, Skyview's chief compliance officer interviewed Ms. Diaz about the allegations against Mr. Patrick, which I understand confirmed Skyview's conclusions. The final investigation report was issued on October 11,

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2024 and concluded that Mr. Patrick had attempted a serious breach of U.S. securities laws.

33. On October 2, 2024, Mr. Patrick abruptly resigned his position from Skyview and thereafter became openly hostile towards the Charities, my affiliated companies, and me. Although neither I nor anyone at Skyview has direct evidence of Mr. Patrick having been tipped off about the investigation, the timing of his resignation causes me to conclude that Mr. Patrick became aware of the investigation into his behavior and resigned before the report was published.

34. On the same day that Mr. Patrick resigned his position at Skyview, he also terminated Skyview's service agreement with the Fund, and as a result all legal, compliance, back office and other services provided to the Fund. Mr. Patrick and Mr. Murphy have stated that that they intend to take on the role of investment advisors for the Fund. I am not aware of Mr. Murphy's qualifications for this role, nor am I aware of any third-party investment advisor that has been retained by the Fund to fill this role. Based on my knowledge and expertise in investment management, and my sixteen years working with Mr. Patrick as my counsel, I believe that Mr. Patrick is a well-qualified tax counsel, but does not have the experience, training, or expertise to be an investment professional.

FUNDING OF PROCEEDINGS

35. As stated above, I do not hold a controlling interest in any of the Charities or the Supporting Organizations. However, I sit on the boards of the Supporting Organizations for the purpose of understanding how the Charities are deploying the Fund's assets for charitable purposes, and the impact of those donations in the community. I am only one of three votes, and the other two votes on each board are held by the respective Charity. Historically, the boards have had no hesitation in exercising their powers to chart

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independent courses even if those decisions differ from my preferences.

36. The Supporting Organizations approached me about the costs associated with legal action and their reticence to use funds that should and otherwise would be used for charitable purposes, and asked whether I would be prepared to fund the action personally. I agreed to do so. I have not and will not at any time receive a benefit, nor do I have control of the proceedings, because of this funding arrangement. The Supporting Organizations have decision making authority in relation to these proceedings. My concern is solely to ensure that the Fund, and the funds that I have donated over time that are held in the Fund, are used only to benefit the Charities and the causes they support.

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My name is James David Dondero, my date of birth is June 29, 1962, and my address is 300 Crecent Court, Dallas, Texas 75201. I declare under penalty of perjury that the foregoing is true and correct. Executed in Dallas County, State of Texas, on the 1st day of July 2025.

JAMES DAVID DONDERO

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EXHIBIT 62

E-filed in the Office of the Clerk
for the Business Court of Texas
7/1/2025 9:35 PM
Accepted by: Alexis Jennings
Case Number: 25-BC01B-0027

25-BC01B-0027

CAUSE NO. _____

THE HIGHLAND DALLAS FOUNDATION, INC., THE HIGHLAND KANSAS CITY FOUNDATION, INC., and THE HIGHLAND SANTA BARBARA FOUNDATION, INC., *Plaintiffs*, **v.** **MARK PATRICK and DFW CHARITABLE FOUNDATION, CDMCFAD, LLC, CHARITABLE DAF GP, LLC and CDH GP, Ltd.,** *Defendants.*	**IN THE TEXAS BUSINESS COURT** **1ST DIVISION** **DALLAS, TEXAS**

PLAINTIFFS' ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION, AND EMERGENCY REQUEST FOR APPOINTMENT OF RECEIVER

TO THE HONORABLE JUDGE OF SAID COURT: The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc., (collectively, the "Plaintiffs" or "Supporting Organizations") file this Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Application for Appointment of Receiver, and in support thereof, respectfully show the Court as follows:

I. PRELIMINARY STATEMENT

1.1 Defendant, Mark Patrick, through a host of corporate manipulations, took over $270 million in cash and assets that supported some of the most important community-based

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charities in the country. In Patrick's own testimony from just last Wednesday, June 25th, the Supporting Organizations, plaintiffs here, were left with "nothing."[1]

1.2 Through the mechanism of Charitable DAF GP, LLC (organized in Delaware) and later via a secretly incorporated entity, CDH GP, Ltd., Mark Patrick held the sole control position of what was a $270 million charitable fund (Charitable DAF Fund, LP) that four charities and the Supporting Organizations relied on to perform vital and sustained philanthropic work in specific communities in the United States. Patrick flagrantly violated both his express and implied fiduciary duties to the Supporting Organizations. He did so in order to redirect the fund's beneficial ownership to a brand-new sham charitable organization controlled by him, DFW Charitable Foundation. These actions come against a backdrop and pattern of sustained self-aggrandizement by Patrick using the fund's resources and his technical authority over them. If the Defendants here are not immediately prevented from taking further adverse actions, then placed into receivership and subjected to judicial scrutiny, the Plaintiffs will be cut off from the lifeblood of their charitable work by the very person whose duty was to act in their interests. Accordingly, Plaintiffs seek a Temporary Restraining Order and Temporary Injunction freezing the funds, followed by the appointment of a Receiver over the funds and the organization holding them.

II. DISCOVERY CONTROL PLAN AND MONETARY RELIEF

2.1 Plaintiffs intend that discovery be conducted under Level 2 as set forth in Rule 190.3 of the Texas Rules of Civil Procedure. Plaintiffs reserve the right to request to conduct discovery pursuant to "Level 3" as set forth in Rule 190 of the Texas Rules of Civil Procedure.

[1] *See* Ex.5, June 25, 2025 Transcript of Proceedings; Testimony of Mark Patrick, p. 185:22-25; *In re Highland Capital Management, LP*, Case No. 19-34054-sgj-11 (App. Pg. 200)

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2.2 Plaintiffs seek damages in excess of $5,000,000 exclusive of interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs.

III. PARTIES

3.1 T**he Highland Dallas Foundation, Inc. ("HDF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. HDF provides funding to The Dallas Foundation, a Texas charitable entity established in 1929, which has awarded over $1 billion in charitable grants that support a broad range of public needs.

3.2 **The Highland Kansas City Foundation, Inc. ("HKCF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. HKCF provides funding to the Greater Kansas City Community Foundation, established in 1978, which has awarded over $7 billion in in charitable grants that support a broad range of public needs.

3.3 **The Highland Santa Barbara Foundation, Inc. ("HSBF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. HSBF provides funding to the Santa Barbara Foundation, established in 1928, that supports a broad range of public needs.

3.4 **DFW Charitable Foundation ("DFWCF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. It was organized on December 9, 2024, with Defendant Mark Patrick as DFWCF's sole member. It purports to be a nonprofit nonstock corporation serving exclusively charitable purposes. DFWCF is headquartered at Mark Patrick's residence at 6716 Glenhurst Drive, Dallas, Texas 75254. DFWCF maintains a registered office at Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, where it may be served with process.

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3.5 **Mark Patrick ("Patrick")** is an individual who resides in Texas and holds management control over the Fund structure, as explained more thoroughly below. Patrick resides and may be served with process at 6716 Glenhurst Drive, Dallas, Texas 75254, or served anywhere he may be found.

3.6 **CDMCFAD, LLC** is a Delaware limited liability company with headquarters at 6716 Glenhurst Drive, Dallas, Texas 75254. It may be served with process at Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

3.7 **CDH GP, Ltd**. is a Cayman Island limited company with its registered office at Campbells Corporate Services Limited, Floor 4 Willow House, Cricket Square, Grand Cayman Ky1-9010. It may be served with process through Patrick, its 100% owner and sole director, at 6716 Glenhurst Drive, Dallas, Texas 75254, or anywhere he may be found.

3.8 **CHARITABLE DAF GP, LLC** is a Delaware limited liability company registered as a foreign company in the Cayman Islands and having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands. It may be served with process at Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

IV. JURISDICTION AND VENUE

4.1 Pursuant to Government Code § 25A.004, this Court has jurisdiction over this matter because the amount in controversy exceeds $5 million excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs:

- and is an action regarding the governance, governing documents, or internal affairs of organizations, namely Charitable DAF Fund, L.P., and DAF HoldCo, Ltd;

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- and is an action by an owner of an organization, namely the Supporting Organizations as participating and beneficial owners of DAF HoldCo, Ltd and thereby Charitable DAF, L.P., and is brought against a controlling person and managerial official of the organization, namely Patrick, Charitable DAF, GP, LLC, CDH GP, Ltd and Patrick's controlled entities, DFWCF, and CDMCFAD, LLC; and alleges numerous fiduciary and other breaches of Patrick's, Charitable DAF, GP, LLC's, and CDH GP, Ltd's obligations in the capacity of a controlling person and managerial official of DAF HoldCo, Ltd and Charitable DAF, L.P.;
- and is an action alleging that Patrick, as a controlling person, and managerial official, with the entities he dominated and used, breached a duty owed to the Supporting Organizations as a controlling owner of DAF HoldCo, Ltd, CDMCFAD, LLC, and Charitable DAF, L.P., DFW Charitable Foundation by reason of the Patrick's status as an owner of management interests, controlling person, and managerial official, including the breach of a duty of loyalty and good faith.

4.2 The Court also has related supplemental jurisdiction per Government Code § 25A.004.

4.3 The Court also maintains plenary power to appoint a receiver under Texas Government Code § 24.003, Texas Civil Practice and Remedies Code § 64.001(a)(3), Texas Business and Organizations Code §§ 11.401 and 11.410, and through the Court's inherent powers at equity.

4.4 Personal jurisdiction is proper by Texas courts pursuant to Texas Civil Practice & Remedies Code § 17.042 because Defendants committed tortious actions, including Texas resident,

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Mark Patrick, who improperly took approximately $270 million in value, and other conduct within Texas, incorporated herein, which are the subject of this Petition. Defendants are therefore subject to specific personal jurisdiction because of the complained-of acts that they committed in Texas. Defendants all have substantial business operations, assets, and other connections to Texas. Defendants are subject to general personal jurisdiction in Texas because they both reside in, and have continuous and systematic contacts with, Texas. Defendants have also consented to the jurisdiction of Texas courts.

4.5 Venue is proper in this county under Texas Civil Practice & Remedies Code § 15.002 because Defendant Patrick is a resident of Dallas County, Texas and Patrick undertook and directed a substantial portion of the complained-of acts in Dallas County, Texas. On information and belief, DFWCF, CDH GP, Ltd. and CDMCFAD are headquartered in Dallas County. Dallas County is within the 1st Division of the Texas Business Court.

V. FACTUAL BACKGROUND

A. *The Fund Structure*

5.1 James Dondero was the President of Highland Capital Management, L.P. ("**Highland**"), an SEC registered investment advisor. At Mr. Dondero's direction, in 2010, the finance, accounting, and tax staff of Highland identified certain assets to be donated to a charitable foundation. The goal was to create a permanent, self-sustaining, self-governing charitable infrastructure to facilitate sustained philanthropic efforts in specific communities in the United States.

5.2 To that end, in 2011, "Charitable DAF Fund, L.P. ("**Charitable DAF Fund**") was formed to hold the donated assets.

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5.3 The Charitable DAF Fund primarily holds assets through a wholly-owned subsidiary entity called CLO HoldCo, Ltd. ("**CLO HoldCo**").

5.4 At the same time the Charitable DAF Fund was created, Charitable DAF HoldCo, Ltd ("**Charitable DAF HoldCo**"), a Cayman Islands entity, was also organized. Charitable DAF HoldCo held all of the economic interest in the Charitable DAF Fund. In other words, Charitable DAF HoldCo was the beneficial owner of all monies flowing from the assets held in the Charitable DAF Fund.

5.5 The ultimate purpose of forming Charitable DAF Fund and Charitable DAF HoldCo was to benefit certain, substantial regional nonprofit charities and their supporting organizations in California, Kansas, and Texas. Participating shares in Charitable DAF HoldCo were therefore issued to four Supporting Organizations, which were the ultimate beneficial owners of the assets held in the Charitable DAF Fund. Together, the four Supporting Organizations owned 100% of Charitable DAF HoldCo. The four Supporting Organization held their beneficial ownership in the assets of the Charitable DAF Fund by virtue of those Participating Shares in Charitable DAF HoldCo. Put simply: the four Supporting Organizations owned 100% of Charitable DAF HoldCo, which was the beneficial owner of all the assets in the Charitable DAF Fund. Three of the four Supporting Organizations are the Plaintiffs in this Lawsuit.

5.6 In turn and as intended, the funds provided to the Plaintiff Supporting Organizations from the Charitable DAF Fund empowered them to provide funding directly to charitable foundations in three regions of the United States. Specifically, The Dallas Foundation, The Greater Kansas City Community Foundation, and The Santa Barbara Foundation (together, the "**Charities**") are each affiliated with one of the Supporting Organizations and receive regular grants for charitable work ultimately funded by Charitable DAF Fund.

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5.7 Since the Charitable DAF Fund's inception, the Supporting Organizations have granted over $42 million to charitable organizations, including donations to 275 organizations, with average annual grant payments of $3.7 million. The Supporting Organizations and the charitable organizations perform irreplaceable philanthropic work in their respective communities, and do so in a steady, reliable manner that permits them to build progress on initiatives year after year.

B. ***Control of the Fund***

5.8 The founders of the Charitable DAF Fund and of Charitable DAF HoldCo wanted to ensure that the fund assets were professionally managed by experts. So, although the Supporting Organizations were the sole beneficiaries of the Charitable DAF Fund and together held all of the economic interest in it, management control of the Charitable DAF Fund and Charitable DAF HoldCo was vested not with those organizations but rather in "Management Shares," with general partner status. These "Management Shares" provided the only voting rights for any and all shareholders in Charitable DAF HoldCo. But they did not convey a right to any economic benefit of the assets in the Charitable DAF Fund, which belonged solely to the Supporting Organizations.

5.9 So, the "Management Shares" exercised control over the assets and over the operations of Charitable DAF HoldCo, even though they conveyed no economic benefit. In the interest of efficient management, the Management Shares and general partner status in the Charitable DAF Fund were concentrated in one person, the "**Control Position**." The Control Position was therefore responsible to manage the Charitable DAF Fund and Charitable DAF HoldCo for the economic benefit of their economic beneficiaries—the "Supporting Organizations," which held their "Participating Shares." The Control Position therefore owed the

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Supporting Organizations fiduciary duties of candor, care, and loyalty, including a prohibition against any self-dealing.

5.10 In essence, the governing documents of Charitable DAF HoldCo grant complete control of Charitable DAF Fund structure to the holder of the 100 Management Shares in Charitable DAF HoldCo. Those shares have at all material times been held by a single individual, who as a result has substantial control over the entire Charitable DAF Fund structure.

5.11 The Charitable DAF Fund, however, is also expressly, separately controlled by the Control Position. Similar to control over Charitable DAF HoldCo, control over the Charitable DAF Fund is separate from the beneficial economic ownership of the Charitable DAF Fund (which belongs entirely to the Supporting Organizations). Control over the Charitable DAF Fund was reposited in the Control Position through its complete ownership of a Delaware entity named Charitable DAF GP, LLC[2] (the "**Delaware GP**"). The Delaware GP was the managing general partner in the Charitable DAF Fund.

5.12 The Amended and Restated Limited Partnership Agreement of the Charitable DAF Fund, dated November 7, 2011 (the "**ARLPA**"), and the Amended and Restated Memorandum and Articles of Association of the LP dated January 19, 2015 ("**Articles**"), govern the Charitable DAF Fund and its partners. The ARLPA makes it clear the Control Position is to exercise his powers for the sole benefit of the Supporting Organizations.

5.13 For example, the Preamble to the ARLPA states: "WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code

[2] The Charitable DAF GP, LLC, held all the general partnership shares in Charitable DAF Fund, which provided all management control over the Charitable DAF Fund, but conveyed no beneficial economic interest.

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of 1986, as amended and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein[.]"

5.14 Likewise, Section 1.3 (Purpose and Powers) states that the Control Position must manage the fund assets "*for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners*."[3]

5.15 Section 1.6 (Powers) likewise emphasizes: "[T]he General Partner [Control Position] . . . is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; *provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner*."[4]

5.16 The ARLPA thus provides that Charitable DAF Fund was formed to make investments, directly or indirectly, "for the economic benefit of the Limited Partner [DAF HoldCo] and its Indirect Charitable Owners" and contemplates the engagement of investment (and other service) advisors to achieve this. In this context, the Control Position is responsible for the governance and management functions of the Charitable DAF Fund as required for it to carry out its sole purpose of benefiting the Supporting Organizations and the Charities they support. The ARLPA is infused throughout with the singular command: The Control Position has great authority but is required to act with fidelity in exercising it for the benefit of the Supporting Organizations.

5.17 Grant Scott was initially selected for the Control Position. Mr. Scott was a longtime friend of Mr. Dondero's and a lawyer in North Carolina. Mr. Dondero knew and trusted Mr. Scott.

[3] Emphasis added.
[4] Emphasis added.

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Mr. Scott effectively served the Supporting Organizations' charitable purposes in his role in the Control Position. For this, Mr. Scott received $60,000 in annual compensation—a compensation rate that remained unchanged for the better part of decade. During this time, the Supporting Organizations and their respective charitable foundations made great strides in creating philanthropic, and charitable, work that was efficient, that was steady and reliable, and that grew and built on their progress year after year.

C. ***Mark Patrick's Assumption of Control***

5.18 Highland filed for bankruptcy in October 2019 ("**Highland Bankruptcy**") and, as a result, the Charitable DAF Fund became engaged in certain disputes arising from the bankruptcy, increasing the time and responsibilities associated with the Control Position. Mr. Scott did not feel qualified to manage those disputes and decided to resign from the Control Position.

5.19 Mark Patrick, a tax attorney and employee of Mr. Dondero who had played a significant role in developing the overall Charitable DAF Fund structure while at Highland, suggested to Mr. Scott and Mr. Dondero that he was prepared to take on the Control Position and, in that role, to handle the litigation related to the Highland Bankruptcy as it affected Charitable DAF Fund. At the time, Patrick was an employee of Mr. Dondero's enterprises and was serving as Mr. Dondero's attorney and Mr. Dondero had no objection to Mr. Scott transferring the Control Position to Patrick. As a result of his attorney and employee status, Mr. Patrick owed significant fiduciary duties to Mr. Dondero's entities and to the Charitable DAF Fund structure—fiduciary duties that he has violated in a series of self-serving and self-dealing transactions.

5.20 On March 25, 2021, Mr. Scott resigned and appointed Patrick as director of DAF HoldCo, transferring all his management shares and membership interest to Patrick for nominal consideration. Patrick therefore assumed the Control Position from that date. Patrick then hired

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Paul Murphy, a Cayman Islands' director, to join him in his efforts to abscond with the $270 million in assets.

5.21 At the time Patrick assumed the Control Position, he was employed at Skyview Partners, a service organization that provided support primarily to Mr. Dondero and entities in which Mr. Dondero had an interest. As an employee of Skyview, he owed fiduciary duties to his employer.

D. ***Patrick's Breaches of Fiduciary Duty***

5.22 In 2023, while still employed by Dondero entities, and as the sole fiduciary for the Charitable DAF Fund and DAF HoldCo, Patrick initiated a two-year pattern of malfeasance all culminating in his current effort to abscond with $270 million. His initial small infidelities quickly blossomed into a brazen, fraudulent play for the Charitable DAF Fund and its $270 million in holdings, putting at risk the charitable works supported by the Supporting Organizations.

E. ***Undisclosed Self-Dealing***

5.23 In June 2023, Patrick requested that The Highland Dallas Foundation, Inc. direct $10,000 to Creative HEARTS TX, a non-profit entity formed on June 13, 2023. Patrick expected this to be an annually recurring donation. Patrick failed to disclose that he, his wife, and daughter were the directors of this entity, which had been created approximately two weeks earlier. The Highland Dallas Foundation, Inc. funded an initial $10,000 contribution but declined to commit to doing so annually.

F. ***Attempted Fraudulent Kickback Scheme***

5.24 In September 2023, Patrick approached Kevin Cronin, CEO of Fortaris Capital Advisors, proposing a fraudulent kickback scheme to personally benefit Patrick. Fortaris previously provided legitimate services to the Charitable DAF Fund. Now, Patrick proposed that

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the Charitable DAF Fund engage a new vendor controlled by Mr. Cronin. Patrick proposed that the Charitable DAF Fund pay this sham vendor a monthly fee of $25,000-$50,000. The sham vendor, however, would not provide any services to the Charitable DAF Fund. Instead, Patrick expected to collect half of the fee as undisclosed supplemental compensation. That is, he expected to collect something for nothing in a classic fraud.

5.25 Mr. Cronin declined and relayed what occurred to Mr. Dondero. Mr Dondero then confronted Patrick, who admitted that what Mr. Cronin reported was true.

5.26 Mr. Dondero ensured that Supporting Organizations were also informed about Patrick's kickback scheme. Despite significant concern, the Supporting Organizations had doubts about whether, based on the governing documents and Patrick's positions, they could remove Patrick from the Control Position.

G. ***Insider Trading***

5.27 In August 2024, Patrick tried to capitalize on material non-public information obtained through his employment at Skyview to advise The Dallas Foundation to exercise a put option in a NexPoint affiliated asset, constituting attempted violations of U.S. securities laws. The Dallas Foundation declined to trade on Patrick's improper tip.

5.28 Skyview's compliance department conducted an internal investigation that concluded Patrick's actions constituted serious breaches of compliance obligations and attempted serious breaches of U.S. securities laws.

5.29 Patrick resigned from Skyview immediately before the investigation was finalized and simultaneously terminated the Charitable DAF Fund's services agreement with Skyview without justification and against the Charitable DAF Fund's interests.

H. ***Financial Irregularities and Lack of Transparency***

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5.30 After resigning from Skyview, Patrick began shrouding the Charitable DAF Fund structure's overall financial reporting and communications to the point that the Supporting Organizations were essentially cut off from any view into the financial transactions and soundness of the fund. As of September 2024, the Charitable DAF Fund held approximately $270 million strictly for the financial benefit of the Supporting Organizations and ultimately their supported Charities.

5.31 But a review of the Charitable DAF Fund's last accessible financial records showed dramatic and unexplained increases in expenditures:

- Directors' fees increased from $40,000 in 2022 to almost $600,000 in 2023, and to approximately $2.25 million in the first half of 2024 alone (a 12,400% increase from 2022 if annualized).
- Legal expenses increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022 (a 300% increase if annualized).
- Overall expenses for the first half of 2024 were around $18.3 million, compared to $18.6 million for all of 2023.

5.32 Despite repeated requests from the Supporting Organizations and their counsel and counsel for the Charitable DAF Fund, Patrick and Murphy have ignored and refused to provide requested financial information or explanations for these dramatic expenditure increases.

5.33 Patrick must have personally benefited from the dramatic increases in director's fees and, given Patrick's prior attempt to implement a kickback scheme through Mr. Cronin, the other remarkable increases in expenses raise deep concerns about potential self-dealing.

I. ***Patrick Ignores the Supporting Organizations Concerns***

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5.34 On November 11, 2024, given what the Supporting Organizations already knew, the three major Supporting Organizations drafted a letter to Murphy, the Cayman Islands director, stating that "we no longer have confidence that the governance structures of, including but not limited to Charitable DAF-GP, LLC, Charitable DAF HoldCo, Ltd., Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (collectively the "**DAF-related entities**"), can function appropriately. We believe a reorganization must occur or the DAF-related entities should be equitably wound up because the governance structure has become unworkable."[5]

5.35 The letter continued, "because we have substantial concerns, out of an abundance of caution, and until an accounting can be conducted, we believe it is inappropriate for anyone to authorize the depletion of further assets of DAF-related entities. We urge you to take our accounting and governance concerns seriously because depletion of assets in the DAF-related entities has a direct impact on our mission and the charitable good works in our communities."[6]

5.36 Patrick and Murphy never responded to the letter, other than a threat that if the Supporting Organizations did not withdraw it, then Patrick and Murphy would embark on an effort at the Internal Revenue Service to revoke the Supporting Organizations' charitable status.

5.37 In January 2025, the Supporting Organizations demanded Patrick and Murphy provide clarity into the Charitable DAF Fund's financial position, expressing dismay that Patrick and Murphy continued to ignore their repeated requests for information. Murphy responded via email to this request stating that he and Patrick would "present directly to the foundations/supporting organi[z]ations" to address some of the concerns in the No Confidence Letter. Murphy never did.[7]

[5] *See* Ex. 4-A, Ltr. of Nov. 11, 2024 (Appx. Pg. 162-163)
[6] *Id.*
[7] *See* Ex. 4-B, Email chain ending Jan. 23, 2025 (Appx. Pg. 171)

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5.38 Counsel for the Supporting Organizations and for the Charitable DAF Fund exchanged further communications, but Patrick, Murphy, and the Charitable DAF Fund's counsel never provided answers and information in response to the Supporting Organizations' basic requests. Instead, they wrapped all their future communications in half-truths and subterfuge.[8] At the same time, they offered the Supporting Organizations vague assurances that all their maneuvers were to improve the structure, focus, and performance of the fund, for the benefit of the Supporting Organizations.

5.39 The Charitable DAF Fund's counsel promised a meeting to address the Supporting Organizations' concerns, but after the Supporting Organizations' counsel suggested dates, the Charitable DAF Fund and its counsel delayed and delayed until it eventually went silent.[9]

5.40 In the interim, Patrick accelerated his multi-year fraud.

J. ***Dilution Scheme and Liquidation Maneuver***

5.41 Between December 2024 and the present, Patrick executed a series of moves to dilute the Supporting Organization's interests in the Charitable DAF Fund, and alienate those same assets entirely away from them. The purpose and result of Patrick's moves was to entirely eliminate the Supporting Organization's ownership of the Charitable DAF Fund assets. In short, he stole them.

5.42 In December 2024, Patrick formed new entities (as described below) with Patrick as the sole director. He then replaced the current entities holding and controlling the Charitable DAF Fund with his own entities, essentially transferring all ownership and control to himself in a brazen act of self-dealing. He never notified the Supporting Organizations of this massive

[8] *See* Exs. 4-A, Ltr. of Feb. 14, 2025 & Ex. 4-C Ltr. of Feb. 27, 2025 (Appx. Pg. 162-182).
[9] *See* Ex. 4-C, Email chain ending April 9, 2025 (Appx Pg. 179-182).

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reorganization of the Charitable DAF Fund. Indeed, the Supporting Organizations found out about this monumental reorganization only when Patrick and his counsel had to admit it in a Cayman court as part of the Supporting Organization's successful effort to appoint Cayman Liquidators to unravel Patrick's fraud in that jurisdiction.

5.43 In a move that would make most fraudsters blanch, and certainly continued to violate all his fiduciary duties, on December 9, 2024, Patrick formed Defendant DFWCF (also referred to herein as the "**Sham Charity**"), a Delaware nonprofit corporation. Patrick named himself the Sham Charity's sole member and its registered address was Patrick's home. Patrick then issued his charity a fifty-one percent (51%) interest in the charitable assets. In essence, Patrick awarded himself the ability to distribute over half of the Charitable DAF Fund's $270 million in economic interest to his own entity, from his living room in Dallas.

5.44 Three days later, on December 12, 2024, Patrick incorporated CDMCFAD, LLC, a Delaware limited liability company.

5.45 In secret, and without notice to the Supporting Organizations, on December 18, 2024, Charitable DAF HoldCo transferred to CDMCFAD, LLC 100 percent of its interest in Charitable DAF Fund, and Charitable DAF HoldCo acquired 100 percent of the interest in CDMCFAD, LLC. As a result, CDMCFAD effectively was inserted as a blocking company in between Charitable DAF HoldCo, owned by the Supporting Organizations, and the Charitable DAF Fund itself (where the assets resided). Suddenly, the Supporting Organizations no longer held a 100 beneficial interest in the entity that held the assets of Charitable DAF Fund. Instead, Patrick ensured a different and new entity (CDMCFAD) held Charitable DAF Fund.

5.46 Patrick's fraud continued to evolve in February 2025. On February 7, 2025, again without notice to the Supporting Organizations, DAF HoldCo (in an *ultra vires act)* allotted 318

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participating shares to DFWCF, the Sham Charity controlled by Patrick. This sham dilution reduced the Supporting Organizations' cumulative holding in Charitable DAF HoldCo from 100% of the participation shares to 48.9%. Following the new issuance: (i) HDFI's interest was diluted from 32.787% to 16.05%; (ii) HKCF's interest was diluted from 32.787% to 16.05%; (iii) HSBFI's interest was diluted from 32.787% to 16.05% and (iv) the HCMLP Charitable Fund's[10] interest was diluted from 1.639% to 0.80%. Said another way, Patrick absconded with over half of the participating interest of the Supporting Organizations and other charitable funds. Before, during, and after this action—and at all times it was contemplated and executed—Patrick and Charitable DAF HoldCo still owed fiduciary duties to the Supporting Organizations.

5.47 In February 2025, the Sham Charity acquired IRS 501(c)(3) tax exempt status. The By-Laws of the Charitable DAF Fund required that its limited partnership interests be owned by an entity with such tax-exempt status. Therefore, obtaining 501(c)(3) status for the Sham Charity was a necessary step to effectuate Patrick's complete control of the assets of Charitable DAF Fund.

5.48 On March 27, 2025, Patrick caused CDMCFAD (the holder of $270 million in assets) to issue shares to the Sham Charity, *and only to the Sham Charity*. He issued no shares in CDMCFAD to the Supporting Organizations. His fraudulent scam was nearly complete. Now, Patrick's Sham Charity controlled all the direct economic interest in the entity Patrick had inserted between Charitable DAF HoldCo and the assets in Charitable DAF Fund, and the Supporting Organizations were left out in the cold.

5.49 On April 2, 2025, Patrick caused Charitable DAF HoldCo to redeem its interests in CDMCFAD for a total payment of $1.6 million. That is, he exchanged $270 million for $1.6

[10] The HCMLP Charitable Fund is a separate charity which provides funding for the North Texas Community Foundation. While it is not a named plaintiff, the damages it incurred because of the acts of Patrick are notable and relevant to show Patrick's impact across the State of Texas.

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million, a ridiculous transaction bereft of reasonably equivalent value.[11] After the transaction, Charitable DAF HoldCo purportedly had no assets and no remaining interest in Charitable DAF Fund. As a result, Patrick's Sham Charity, Defendant DFWCF, was the sole limited partner and beneficial owner of Charitable DAF Fund, through its now-100% ownership of CDMCFAD, and CDMCFAD's 100% ownership of the fund. This final step completely severed the Supporting Organizations and their nonprofit charities from the assets of the Charitable DAF Fund. In Patrick's own words under oath, "the entity in liquidation [Charitable DAF Holdco, Ltd.] owns nothing."[12]

5.50 Before the start of these self-dealing transactions, in October 2024, the Supporting Organizations owned 100% of the Participation Shares representing the economic ownership of $270 million in assets. As of April 2025, the Supporting Organizations owned Participation Shares worth zero. While Patrick allegedly distributed a paltry portion of $1.6 million to the Supporting Organizations, receipt of those funds has yet to be verified. Again, all of his self-dealing activity took place with no clarity or transparency. Patrick converted the Supporting Organizations' assets to Patrick's personal benefit and ownership, and violated his fiduciary duties of care, candor, and loyalty that he owed to the Supporting Organizations.

K. ***The Cayman Island Proceedings***

5.51 On April 2, 2025, again unbeknownst to the Supporting Organizations, Patrick placed DAF HoldCo into *voluntary* liquidation in the Cayman Islands through written resolutions of directors executed by Patrick, with joint voluntary liquidators appointed.

5.52 But the Supporting Organizations already did know: that Patrick had (1) actively thwarted all financial transparency; (2) refused to address the Supporting Organizations well-

[11] *See* Ex. 3, p. 5, Written Resolutions of the Directors of the Company dated 2 April 2025 (Appx. Pg. 102-103)
[12] *See* Ex.5, June 25, 2025 Transcript of Proceedings; Testimony of Mark Patrick, p. 185:22-25; *In re Highland Capital Management, LP*, CaseNo. 19-34054-sgj-11; (Appx. Pg. 200).

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founded concerns including their expression of no-confidence; (3) engaged in a pattern of fraudulent self-dealing; (4) taken all participating ownership from the Supporting Organizations without any approval or appropriate compensation; and (5) and restructured the underlying funds. This was enough to convince the Supporting Organizations to take action.

5.53 The Supporting Organizations filed an *involuntary* Petition for Winding Up in the Grand Court of the Cayman Islands (the "**Grand Court**"), Financial Services Division, Cause No. FSD 99 OF 2025 (JAJ), styled *In the Matter of Section 92 of the Companies Act (2025 Revision) and In the Matter of Charitable DAF HoldCo, Ltd.* Absent doing so, the Supporting Organizations would not have learned about Patrick's voluntary liquidation.

5.54 Cayman Islands counsel for the Supporting Organizations alleged essentially the same facts as recounted in this Petition before the Grand Court. However, Defendants DFWCF and CDMCFAD are Delaware-organized entities and were not expressly named in the Grand Court proceedings.

5.55 The Grand Court, after lengthy hearing and in consideration of written submissions and evidentiary exhibits, ordered among other things[13]:

> 5. The joint official liquidators are authorized to exercise the following powers in Part I of Third Schedule 3 to the Companies Act, without requiring further sanction by the Court:
>
> a) the power to commence legal proceedings in the name and on behalf of the Company to obtain the provision of information and/or documents and/or the examination of individuals in the Cayman Islands or the United States; and
>
> b) the power to apply in the Cayman Islands or the United States for the preservation, freezing or attachment of assets to which the Company is or may arguably be entitled.

[13] Ex. 8, Supervision Order (Appx. Pg. 244-246)

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> 6. The joint official liquidators are in addition authorized to exercise the following powers and to take the following steps without further sanction by the Court:
>
> a) the power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;
>
> b) the power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised; and
>
> c) the power to seek registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the exercise of the powers specified in paragraphs 5(a) or 5(b) of this Order.

5.56 While the Cayman Islands-appointed official liquidators now conduct their investigation of the assets and other matters pertaining to the Cayman Islands' proceedings, Defendants Patrick, DFWCF, and CDMCFAD (all sited in the United States, and more specifically Dallas County) remain in actual control and beneficial ownership of all assets that were held by the Charitable DAF Fund and DAF HoldCo. In the meantime, the rightful beneficial owners, the Supporting Organizations, are without the benefit of the considerable assets formerly held by the Charitable DAF Fund and without any insight into the current status and security of the assets. This not only damages the Supporting Organizations, but the charitable causes in their communities that rely on funding from the Charitable DAF Fund.

VI. CAUSES OF ACTION

Count I - Breach of Fiduciary Duty Against Patrick, CDH GP, Ltd., and Charitable DAF GP, LLC

6.1 Paragraphs 1.1 - 5.56 are incorporated as if fully restated herein.

6.2 In "a limited partnership, the general partner stands in the same fiduciary capacity to the limited partners as a trustee stands to the beneficiaries of a trust." *Hughes v. St. David's Support Corp.,* 944 S.W.2d 423, 425–26 (Tex. App.—Austin 1997, writ denied); *Feeley v. NHAOCG, LLC*, 62 A.3d 649, 661 (Del. Ch. 2012) (There "has never been any serious doubt that

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the general partner of a Delaware limited partnership owes fiduciary duties."). Likewise, under traditional principles of equity, and various statutes generally hold that a manager of an LLC would qualify as a fiduciary of that LLC and its members. *Auriga Capital Corp. v. Gatz Properties,* 40 A.3d 839, 850 (Del. Ch. 2012), judgment entered sub nom. *Auriga Capital Corp. v. Gatz Properties, LLC* (Del. Ch. 2012), aff'd, 59 A.3d 1206 (Del. 2012); *Davis v. Crawford*, 700 S.W.3d 438, 449 (Tex. App.—Eastland 2024, no pet.) ("[T]he relationship between a managing member of an LLC and a nonmanaging member is similar to that of a general partner/limited partner relationship, and that such an arrangement thereby creates a fiduciary obligation on the part of the managing member.").

6.3 By virtue of Patrick's Control Positions related to the overall Charitable DAF Fund structure and specifically DAF HoldCo and the Charitable DAF Fund, Patrick owed fiduciary duties to the Plaintiffs.

6.4 Patrick breached his fiduciary duties to the Plaintiffs by stripping them of their legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit.

6.5 Patrick breached these duties through self-dealing, attempted secret profit schemes, use of inside information, financial mismanagement, orchestrating asset sales at below-market values, and transferring beneficial ownership to the Sham Charity.

6.6 Patrick breached his fiduciary duties by mismanaging the Charitable DAF Fund's finances, and dramatically increasing director compensation to his own benefit.

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6.7 Patrick breached his fiduciary duty by successfully soliciting a charitable contribution ultimately from a Supporting Organization to a charity controlled by Patrick and his immediate family without disclosing the relationship.

6.8 The actions incorporated herein have wrongfully deprived the Plaintiffs of substantial economic support and assets, harming, and threatening irreparable harm to, the Plaintiffs and the Charities that they support. Plaintiffs have suffered damages as a result of Patrick's breach of his fiduciary duties.

Count II - Constructive Fraud Against Patrick

6.9 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

6.10 "Constructive fraud is the breach of a legal or equitable duty that the law declares fraudulent because it violates a fiduciary relationship." *Hubbard v. Shankle*, 138 S.W.3d 474, 483 (Tex. App.—Fort Worth 2004, pet. denied). "[I]n a claim for constructive fraud, the actor's intent is irrelevant." *Strobach v. WesTex Cmty. Credit Union*, 621 S.W.3d 856, 879 (Tex. App.—El Paso 2021, pet. denied). "[C]onstructive fraud is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests." *Id.*

6.11 As a fiduciary, Patrick's conduct in diluting the Plaintiffs' interests, selling assets at below-market values to undisclosed parties, and liquidating DAF HoldCo and transferring its interests to the Sham Charity without notice constitutes constructive fraud.

6.12 Patrick injured public interests by his conduct. Plaintiffs have suffered damages as a result of Patrick's fraud.

Count III - Unjust Enrichment Against Patrick, CDMCFAD, and DFWCF

6.13 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

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6.14 A claim of unjust enrichment applies when a party obtains "a benefit from another by fraud, duress, or the taking of an undue advantage." *Sw. Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 921 (Tex. 2010)).

6.15 Patrick and DFWCF stripped the Plaintiffs of their rightful legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit.

6.16 Patrick and DFWCF took these interests and assets for their own benefit via fraud and taking undue advantage of the access available through the Control Positions and overlapping control with DFWCF.

6.17 Patrick also took undue advantage through self-dealing, attempted secret profit schemes, use of inside information, financial mismanagement, orchestrating asset sales at below-market values, and transferring beneficial ownership to the Sham Charity.

6.18 Patrick and DFWCF have been unjustly enriched at the expense of the Plaintiffs. Plaintiffs have been damages by Patrick's unjust enrichment.

Count IV – Conversion Against Patrick, CDMCFAD, and DFWCF

6.19 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

6.20 Conversion requires a showing that (1) the plaintiff owned, had legal possession, or was entitled to possession of the property, (2) the defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with the plaintiff's rights, and (3) the defendant refused the plaintiff's demand for return of the property. *Automek, Inc. v. Orandy*, 105 S.W.3d 60, 63 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

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6.21 The Plaintiffs held legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit.

6.22 Patrick with DFWCF has unlawfully and without authorization, assumed and exercised dominion over the Plaintiffs' legal, equitable, and beneficial interests in the Charitable DAF Fund structure including their participation in DAF HoldCo, the Charitable DAF Fund, and Charitable DAF Fund assets through the dilution scheme that diverted all the legal and beneficial economic interests to Patrick's controlled entity, DFWCF.

6.23 The Plaintiffs requested distribution in kind of the Charitable DAF Fund structure assets, which Patrick and now, DFWCF, have ignored and refused. Plaintiffs have been damages as a result of these conversions.

Count V – Imposition of Constructive Trust Against Patrick, CDMCFAD, and DFWCF

6.24 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

6.25 "A constructive trust is considered a legal fiction and is a creation of equity to prevent a wrongdoer from profiting from his wrongful acts." *In re Harding*, 563 S.W.3d 366, 372 (Tex. App.—Texarkana 2018, no pet.). "[T]o obtain a constructive trust, [a party] must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and (3) tracing to an identifiable res." *Id.* (cleaned up).

6.26 Patrick through DFWCF has breached his fiduciary relationship with the Plaintiffs by converting legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit, resulting in the unjust enrichment of DFWCF and Patrick.

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6.27 All the legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit in the overall Charitable DAF Fund structure should be imposed with a constructive trust running to the benefit of the Plaintiffs.

VII. EMERGENCY APPLICATION FOR RECEIVERSHIP

7.1 Paragraphs 1.1 - 5.56 are incorporated as if fully restated herein.

7.2 The Plaintiffs seek the immediate appointment of a receiver over Defendants DFWCF and CDMCFAD, LLC (the "**Receivership Entities**") under three independent bases: Texas Civil Practice & Remedies Code §§ 64.001(a)(3), (7), Texas Business and Organizations Code § 11.410, and the Court's inherent equitable powers.

A. *Texas Civil Practice & Remedies Code*

7.3 [U]nder section 64.001 of the Texas Civil Practice and Remedies Code ("**CPRC**"), a court may appoint a receiver in an action between "partners or others jointly owning or interested in any property or fund," CPRC §§ 64.001(a)(3) or "in any case in which a receiver may be appointed under the rules of equity." CPRC §§ 64.001(a)(7); *Elliott v. Weatherman*, 396 S.W.3d 224, 228 (Tex. App.—Austin 2013, no pet.).

7.4 A party with a probable interest or a right to the property or fund has standing to seek the appointment of a receiver. CPRC § 64.001(b). "[T]he property or fund must be in danger of being lost, removed, or materially injured." *Id.*

7.5 A probable interest exists by statute in actions between partners and in actions between joint owners of property. CPRC § 64.001(a)(3).

7.6 One purpose of a receivership is to preserve assets and resolve issues relating to an entity's affairs where there are allegations of fraud or improper activities. *See Floyd v. MMWKM*

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Advisors, LLC, No. 05-23-00638-CV, 2024 WL 549036 at *2 (Tex. App. – Dallas 2024, pet. denied, reh'g denied).

B. *Texas Business and Organizations Code*

7.7 Like CPRC § 64.001, a court that has subject matter jurisdiction over specific property of a domestic or foreign entity in Texas may appoint a receiver for that property in several scenarios, including an action between "partners or others jointly owning or interested in the property or fund." Tex. Bus. & Orgs. Code § 11.403(a)(3).

7.8 Additionally, under Section 11.410 of the Texas Business and Organizations Code ("TBOC"), a court may appoint a receiver for all of the property, in and outside Texas, of a foreign entity doing business in Texas and its business if the court determines, in accordance with the ordinary usages of equity, that circumstances exist that necessitate the appointment of a receiver even if a receiver has not been appointed by another court. TBOC § 11.410(a).

C. *Rules of Equity*

7.9 In addition to specific statutory authority to appoint receivers, Texas courts retain inherent equitable power to do so. The CPRC, § 64.004 makes clear that the rules of equity control the appointment and power of a receiver unless inconsistent with a statutory provision.

D. *Receivership Standards Under Texas Law and Equity*

7.10 "The appointment of a receiver lies within the sound discretion of the trial court." *In re Estate of Herring*, 983 S.W.2d 61, 65 (Tex. App.—Corpus Christi–Edinburg 1998, no pet.). "The appointment of a receiver, either as authorized by statute or usages of equity, will not be disturbed on appeal unless the record reveals a clear abuse of discretion." *O & G Carriers, Inc. v. Smith Energy 1986-A P'ship*, 826 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1992, no writ).

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7.11 The party submitting an application for appointment of a receiver bears the burden of proof to present evidence justifying the appointment. *Furgerson v. First Nat'l Bank*, 218 S.W.2d 1019, 1020 (Tex. Civ. App. – Texarkana 1949, no writ). The party can meet that burden by submitting a sworn verification supporting the claimed grounds for the appointment, *In re Estate of Herring*, 983 S.W.2d 61, 65 (Tex. App. – Corpus Christi 1999, no pet.), and a court may consider oral testimony as evidence in support of an application. *See Furgerson*, 218 S.W.2d at 1020.

7.12 An application seeking a receivership pursuant to a statutory provision must allege facts that meet the elements of the provision. *Associated Bankers Credit Co. v. Meis*, 456 S.W.2d 744, 748 (Tex. Civ. App. – Corpus Christi 1970, no writ). The facts alleged in the application will be construed as favorably as possible for the applicant. *Couch Mortgage Co. v. Roberts*, 544 S.W.2d 944, 946-47 (Tex. Civ. App. – Houston [1st Dist.], no writ).

7.13 Conduct that supports a cause of action for fraud or breach of fiduciary duties is often the same type of conduct that supports an application for a receivership. *Ritchie v. Rupe*, 443 S.W.3d 856, 873 (Tex. 2014).

E. *The Supporting Organizations are entitled to the Emergency Appointment of a Receiver to Oversee the Receivership Entities*

7.14 The Plaintiffs have an ownership interest in their participating shares in DAF HoldCo and thereby its economic ownership of the Charitable DAF Fund and the assets that were rightfully held by the Charitable DAF Fund and entrusted to the control of Patrick.

7.15 Patrick wrongfully caused the Plaintiffs' participation shares to be diluted and then caused the Plaintiffs' beneficial economic interests in the Charitable DAF Fund structure to be wrongfully transferred to a collection of sham entities wholly dominated by Patrick.

7.16 Charitable DAF Fund was valued at $270 million as recently as September 2024. Now no assets remain in the Charitable DAF Fund structure. The Plaintiffs have not received any

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just compensation, participation, or other consideration for the conversion of their substantial interests in the Charitable DAF Fund structure.

7.17 Receivership Entities now maintain complete management control and beneficial rights over the Charitable DAF Fund structure's substantial assets or otherwise possess those assets to the exclusion of Charitable DAF Fund.

7.18 Patrick dominates and controls the Receivership Entities. As shown, Patrick has demonstrated a pattern of selling assets at below-market values, attempting to engage in self-dealing transactions, transacting assets at non-market terms in potential self-dealing transactions, dramatically increasing internal and professional administrative expenses that burdens and dissipates charitable assets, and secreting his activities while controlling assets dedicated to charitable causes. To preserve assets from further dissipation, a receiver should replace Patrick's oversight of the Receivership Entities and their assets, which were wrongfully acquired and held.

7.19 The Plaintiffs have been stripped of access to the benefit of assets meant to support charitable causes, resulting in financial distress and immediately threatening planned and ongoing support of countless charities including education, medical research, and community initiatives.

7.20 The Plaintiffs have demonstrated a strong likelihood of success on their claims given the documented pattern of breaches, financial irregularities and successful litigation in the Cayman Islands.

7.21 The Plaintiffs have demonstrated a clear and compelling need for immediate court oversight to prevent further injury and preserve the charitable assets at risk due to Patrick's actions via the Receivership Entities.

7.22 The participating shares in DAF HoldCo as well as assets valued at $270 Million are in danger of being lost, removed, or materially injured and circumstances exist to necessitate

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the appointment of a receiver to conserve the property, fund, and avoid further, irreparable harm to Plaintiffs.

7.23 Given Patrick's demonstrated and recent malfeasance using the Receivership Entities as tools of fraud, no other adequate remedy exists under law.

Count VI – APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION PENDING APPROVAL OF RECEIVERSHIP

8.1. Plaintiffs seek immediate injunctive relief preventing the Defendants from further use, transfer, dispersal, and/or alienation of the assets that were held in the Charitable DAF Fund as of the instant date of this filing, regardless of where they are presently held. If not enjoined, Defendants' actions pose an immediate threat of irreparable harm and injury to Plaintiffs for which there is no adequate remedy at law because the harm cannot be undone by a damages award, as once the assets are spent or dispersed, Defendants will be unable to pay a judgment. This application is supported by the sworn declarations of Julie Diaz and James David Dondero.

8.2. A writ of injunction is proper where "the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant," or where "a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual," or where "irreparable injury to real or personal property is threatened, irrespective of any remedy at law." Tex. Civ. Prac. & Rem. Code § 65.011. "A temporary injunction pending trial on the merits 'may be and usually is issued in connection with any species of litigation where it is necessary to preserve the status quo pending a final adjudication of the rights of the parties.'" *Lometa Bancshares, Inc. v. Potts*, 952 S.W.2d 631, 633 (Tex. App.-Austin 1997) (*quoting Turcotte v. Alice Nat'l Bank*, 402 S.W.2d 894, 896 (Tex.1966)). "In cases like the present, an applicant for the writ must show (1) a probable right to

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recover on the merits after final hearing and (2) a probable and irreparable injury unless the writ is issued." *Lometa*, 952 S.W.2d at 633 (citing Tex. Civ. Prac. & Rem. Code Ann. § 65.011 (West 1997); *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex.1993); *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex.1968)).

8.3. Texas courts universally recognize that in cases where dispersal or liquidation of assets required to pay a judgment is likely, temporary injunctive relief is proper to preserve the status quo and ensure that the efficacy of ultimate relief for the Plaintiffs is not defeated by financial machinations while the case is pending. In other words, "the adequacy of an available legal remedy must be judged in the circumstances of the particular case[,]" and "[i]n such circumstances, any legal remedy by way of a judgment for money damages is properly viewed as inadequate on the ground that the funds may be reduced pending final hearing and thus be unavailable in their entirety[.]" *Lometa*, 952 S.W.2d at 633; *see also Minexa Arizona, Inc. v. Staubach*, 667 S.W.2d 563, 567–68 (Tex.App.—Dallas 1984, no writ); *Sonics Int'l Inc. v. Dorchester Enters*., 593 S.W.2d 390, 393 (Tex.Civ.App.—Dallas 1980, no writ*); Baucum v. Texam Oil Corp*., 423 S.W.2d 434, 442 (Tex.Civ.App.—El Paso 1967, writ ref'd n.r.e.).

8.4. The above authorities support the award of the temporary injunctive relief requested herein, because the assets formerly held in the Charitable DAF Fund for the benefit of the Plaintiffs are already being alienated from their beneficial owners and the conduct of Defendants demonstrates the likelihood of their continued transfer, alienation, expenditure, and dispersal while this case is pending and before the rights of the Plaintiffs to those funds can be vindicated.

8.5. Unless enjoined, Patrick and the other Defendants will cause and continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law; including, without

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limitation, the dispersal, expenditure, transfer, and further alienation of more than $270 Million that can never be replaced because the Defendants will lack the means to do so.

8.6. Plaintiffs will therefore suffer immediate and irreparable injury without adequate remedy at law if a Temporary Restraining Order ("**TRO**") is not granted against the Defendants. Accordingly, Plaintiffs request the Court issue a TRO that freeze:

(a) all assets that were held in the Charitable DAF Fund as of the instant date of this filing, and

(b) prohibiting Patrick and the other Defendants, or anyone acting in concert with them or at their direction, from any use, expenditure, transfer, dispersal, dilution, encumbrance, or alienation of any of those funds pending resolution of Plaintiff's Motion for Temporary Injunction.

8.7. The harm to Plaintiffs is imminent, and if the Court does not issue a TRO and injunctive relief, it will be irreparably injured, as set forth herein. Conversely, the granting of a TRO will merely require Defendants to refrain from doing anything with the funds for two weeks. If the Defendants prevail on the merits, the funds will still be available to them for their use in future. The balance of burdens thus strongly favors Plaintiffs, who stand to lose everything absent immediate injunctive relief—over Defendants, who will at most suffer a minor inconvenience if they ultimately prevail.

8.8. The issuance of injunctive relief will not disserve the public interest. Balancing the equities and other factors, including the significant potential for irreparable harm to the Plaintiffs and the lack of harm to Defendants due to the entry of a TRO, demonstrates that the relief will not disserve the public interest. Indeed, freezing the funds at issue in place to ensure that this fraudulent

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scheme is not permitted consummation absent judicial scrutiny serves the public interest by protecting vital charitable interests.

8.9. A temporary restraining order is necessary to maintain the *status quo* during the pendency of this action. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) ("defining the status quo as "the last, actual, peaceable, non-contested status which preceded the pending controversy.") The facts above establish the required elements for Plaintiffs to obtain a TRO against Defendant, specifically: (1) a cause of action against Defendants with a probable right to relief; (2) a probable, imminent, and irreparable injury to Plaintiffs in the interim; (3) the threatened injury outweighs any damage the injunction might cause the opposing party; and (4) the injunction will not disserve the public interest. *See Butnaru v. Ford Motor Co*., 84 S.W.3d 198. 204 (Tex. 2002).

A. *Plaintiffs have a Probable Right to the Relief Sought in their Claims Against Defendants.*

8.10. Plaintiffs easily satisfy this test. Establishing a probable right to relief does not require the applicant for a TRO to establish that it will prevail at trial. *See Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993). Instead, this element requires only that the applicant allege a cause of action and present evidence that tends to sustain that cause of action. *See Miller Paper Co. v. Roberts Paper Co*., 901 S.W.2d 593, 597 (Tex. App.— Amarillo 1995, no writ). The cause of action itself need not involve permanent injunctive relief—the trial court "[has] discretion to preserve the status quo so long as [a movant] demonstrate[s] his probable right to recover damages." *Metcalfe*, 863 S.W.2d at 58; *see also Gryphon Master Fund, L.P. v. Path 1 Network Technologies, Inc*., No. 3:06 CV 0107 D, 2007 WL 1723703, at *5 (N.D. Tex., Jun. 14, 2007) (citing *Metcalfe*).

8.11. Plaintiffs have a probable right to the relief sought on its claims for breach of fiduciary duty, constructive fraud, unjust enrichment, and conversion. As alleged in more detail

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above, Defendants have committed and continue to commit acts that have raided four vital charitable organizations of $270 Million that forms the lifeblood of vital philanthropic efforts relied upon by key communities across the nation. The evidence summarized herein thus establishes that these injuries arise as a direct result of Defendants' conduct.

B. *Plaintiffs Will Suffer Immediate, Irreparable Injury in the Absence of a Temporary Restraining Order and Temporary Injunction.*

8.12. Plaintiffs will suffer immediate, irreparable injury in the absence of a temporary restraining order and temporary injunction, as summarized above. Plaintiffs will suffer precisely the sort of irreparable injuries Texas courts have sought to prevent by granting temporary injunctive relief. *Lometa*, 952 S.W.2d at 633; see also *Minexa Arizona, Inc. v. Staubach*, 667 S.W.2d 563, 567–68 (Tex.App.—Dallas 1984, no writ); *Sonics Int'l Inc. v. Dorchester Enters*., 593 S.W.2d 390, 393 (Tex.Civ.App.—Dallas 1980, no writ*); Baucum v. Texam Oil Corp*., 423 S.W.2d 434, 442 (Tex.Civ.App.—El Paso 1967, writ ref'd n.r.e.).

8.13. Plaintiffs have no adequate remedy at law. Without injunctive relief, the assets intended to benefit the Plaintiffs will be spent, dispersed, transferred, and alienated while this litigation unfolds. These losses, as well as others which will inevitably occur if Defendants are not enjoined, cannot be compensated in monetary terms once the funds are dispersed, and are the types of harm for which injunctive relief is particularly necessary and appropriate.

8.14. Accordingly, and in order to preserve the status quo during the pendency of this action, Defendants should be cited to appear and show cause why the funds at issue should not be frozen for the pendency of this Action, and why Defendants should not be temporarily restrained during the pendency of this action from directly or indirectly using, spending, transferring, encumbering, dispersing, or further alienating the funds and assets that were held in the Charitable DAF Fund as of as of the instant date of this filing.

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8.15. Plaintiffs seek a temporary restraining order and temporary injunction against Defendants freezing all funds and assets that were held in the Charitable DAF Fund as of as of the instant date of this filing, and enjoining Defendants and any others acting by, for, or in concert with them, including but not limited to their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive notice of the order by personal service or otherwise, from either directly or indirectly: spending, dispersing, using, encumbering, transferring, or alienating those funds and assets.

8.16. Plaintiffs further seeks a receivership over the funds and assets and the entities holding the funds and assets, whereupon the temporary injunctive relief sought here may properly expire because the assets will then be under the control of a receiver answering to this Court.

8.17. Plaintiffs is willing to post a bond in an amount directed by the Court.

VIII. PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Appoint a receiver to take possession and control of all assets, properties, and operations of DFW Charitable Foundation and CDMCFAD, LLC;

B. Enjoin Defendants from further disposing of, transferring, encumbering, or dissipating any Charitable DAF Fund and DAF HoldCo assets;

C. Require the reversal of the dilution scheme and unauthorized asset transfers;

D. Impose a constructive trust over the res of DAF HoldCo, CDMCFAD, LLC and the Charitable DAF Fund wrongfully taken from the Plaintiffs;

E. Award actual damages in an amount to be proven at trial;

F. Award exemplary damages as permitted by law;

G. Award attorneys' fees and costs;

H. Grant such other and further relief as the Court deems just and proper.

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Respectfully submitted,

McCarty Law PLLC

/s/ Darren L. McCarty
Darren L. McCarty
State Bar No. 24007631
darren@mccartylawpllc.com
316 West 12th Street
Suite 400
Austin, Texas 78701
512-827-2902

- and -

DUANE MORRIS LLP

Craig M. Warner
State Bar No. 24084158
cmwarner@duanemorris.com
Joseph M. Cox
State Bar No. 04950200
jmcox@duanemorris.com
Jason E. Boatright
State Bar No. 24048138
jeboatright@duanemorris.com
100 Crescent Court, Suite 1200
Dallas, Texas 75201
(214) 257-7213 – Telephone
(214) 292-8442 – Facsimile

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by electronic means on this day, July 1, 2025, on all counsel or parties of record.

/s/ Darren L. McCarty
Darren L. McCarty

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VERIFICATION

I, Julie Diaz, Vice President of Highland Dallas Foundation, Inc., and President of The Dallas Foundation, have read the above and foregoing Petition and the facts stated therein are true and correct to the best of my knowledge and belief.

Julie Diaz

My name is Julie Diaz, my date of birth is 3/23/64, and my address is 5711 Prestwick Lane Dallas. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Barnstable County, State of MA, on the 1 day of July, 2025

Julie Diaz

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The Business Court of Texas,
First Division

THE HIGHLAND DALLAS FOUNDATION, INC., THE HIGHLAND KANSAS CITY FOUNDATION, INC., and THE HIGHLAND SANTA BARBARA FOUNDATION, INC.,	§	
Plaintiffs,	§	Cause No. _____
v.	§	
MARK PATRICK and DFW CHARITABLE FOUNDATION, CDMCFAD, LLC, CHARITABLE DAF GP, LLC and CDH GP, Ltd.,	§	
Defendants.	§	

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EXHIBIT
1-A

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:06 PM 12/09/2024
FILED 04:06 PM 12/09/2024
SR 20244432762 - File Number 10030937

CERTIFICATE OF INCORPORATION
OF
DFW CHARITABLE FOUNDATION
a nonprofit nonstock corporation

I.

The name of the Corporation is DFW Charitable Foundation.

II.

The name of the incorporator is Douglas Mancino. The address of the incorporator is 2029 Century Park East, Suite 3500, Los Angeles, CA 90067.

III.

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

IV.

A. The Corporation is a nonprofit nonstock corporation and is not organized for the private gain of any person. It is organized under the General Corporation Law of the State of Delaware ("DGCL") exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law (the "Code").

B. In furtherance of its purposes, the Corporation shall have all the general powers and privileges of a corporation granted by the DGCL, as now in effect or as may hereafter be amended, including the power to solicit grants and contributions to further its charitable purposes.

V.

The Corporation shall not have any capital stock and the Corporation is not authorized . The member of the corporation is Mark Patrick. The rights and privileges of the member shall be set forth in the Corporation's bylaws, provided that the member shall not have a "membership interest" in the Corporation within the meaning of section 114(d)(2) of the DGCL.

VI.

A. No part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation. The Corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

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B. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from Federal income taxation as a corporation described in section 501(c)(3) of the Code, or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation, contributions to which are deductible under section 170(c)(2) of the Code.

VII.

The property of the Corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of the Corporation shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under section 501(c)(3) of the Code.

VIII.

A director or officer of the Corporation shall not be liable to the Corporation for monetary damages for breach of fiduciary duty as a director or officer, except for liability: (a) for any breach of the director's or officer's duty of loyalty to the Corporation or its members, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or (c) for any transaction from which the director or officer derived any improper personal benefit. If the DGCL is amended after adoption of this Article VIII to authorize Corporation action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of the foregoing provisions of this Article VIII shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time, or increase the liability of any director or officer of the Corporation with respect to any acts or omissions of such director or officer occurring prior to such repeal or modification.

IX.

The Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a member or director or officer of the Corporation, or while the person is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, limited liability company, partnership, joint venture, trust or other entity, against expenses (including reasonable attorneys' fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend, or defense of such action, suit, proceeding or claim; provided however that: (a) the foregoing shall not require the Corporation to indemnify, or advance expenses to, any member or director or officer in connection with any

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action, suit, proceeding or claim initiated by or on behalf of such member or director or officer, or any against the Corporation initiated by or on behalf of such member or director or officer; and (b) a member or director or officer seeking indemnification under this Article IX shall execute a written undertaking (reasonably acceptable to the Corporation) to repay the Corporation any expense or other amounts advanced and/or paid to such member or director or officer under this Article IX in the event that it is ultimately determined that such member or director or officer is not entitled to be indemnified by the Corporation. Such indemnification shall not be exclusive of other indemnification rights arising under any bylaw, agreement, vote of directors or member or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking such indemnification under this Article IX shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection of a member or director or officer of the Corporation with respect to any acts or omissions of such member or director or officer occurring prior to such repeal or modification.

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed by its incorporator this 9th day of December, 2024.

/s/ Douglas Mancino
Douglas Mancino, Incorporator

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EXHIBIT
1-B

CERTIFICATE OF FORMATION

OF

CDMCFAD, LLC

This Certificate of Formation of CDMCFAD, LLC (the "Company"), is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 *Del. C.* § 18-101 *et seq.*) (the "Act").

1. Name. The name of the limited liability company formed hereby is CDMCFAD, LLC.

2. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

3. Registered Agent. The name and address of the registered agent for service of process on the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation in accordance with the Act.

Name: Mark Patrick
Authorized Person

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:33 AM 12/12/2024
FILED 11:33 AM 12/12/2024
SR 20244471736 - File Number 10035168

4930-4296-2948\1

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EXHIBIT
1-C

Search Report

Entity Name :	CDH GP, Ltd.
Jurisdiction :	Cayman Islands
Registration Number :	407515
Registration Date :	27th February 2024
Entity Type :	EXEMPT
Registered Office :	CAMPBELLS CORPORATE SERVICES LIMITED Floor 4 Willow House, Cricket Square Grand Cayman KY1-9010 Cayman Islands
Initial Subscriber:	
Authorised Share Capital:	CI$41,000.00
Nature of Business:	General Partner
Financial Year End:	31st December

Status :	ACTIVE
Status Date :	27th February 2024

- INFORMATION REGARDING THE CORPORATE RECORDS AND REGISTERS ARE NOT AVAILABLE FOR PUBLIC INSPECTION
- THIS REPORT DOES NOT CONFIRM THE ENTITY IS IN GOOD STANDING

Authorisation Code : 379989138381
www.verify.gov.ky
10 February 2025

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Director Details

Entity Name: **CDH GP, LTD.**

Director Name

Mark E. Patrick

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DATED NOVEMBER 7, 2011

AMENDED AND RESTATED

EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF

CHARITABLE DAF FUND, LP

WARNING

THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS DOCUMENT INTO THE CAYMAN ISLANDS MAY GIVE RISE TO THE IMPOSITION OF CAYMAN ISLANDS STAMP DUTY

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AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP

THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the "**Agreement**") is made on November 7, 2011

BETWEEN

(1) Charitable DAF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands and having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as general partner (the "**General Partner**"); and

(2) Charitable DAF HoldCo, Ltd, a Cayman Islands exempted Company having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as limited partner (the "**Limited Partner**"); and

(3) Each individual, partnership, corporation, limited liability company, trust or other entity (each, a "**Person**") admitted as a limited partner or general partner (collectively, the "**Partners**") of the Partnership (as defined below) in accordance with this Agreement, including any Persons hereafter admitted as Partners in accordance with this Agreement and excluding any Persons who cease to be Partners in accordance with this Agreement; and

(4) Walkers Nominees Limited having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9005, Cayman Islands as the initial limited partner (the "**Initial Limited Partner**") solely for the purposes of withdrawing as such.

WHEREAS, Charitable DAF Fund, LP (the "**Partnership**") was formed and registered as an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Law (as amended) of the Cayman Islands (the "**Law**"), and since its formation has been governed by the Initial Limited Partnership Agreement of the Partnership, dated October 25, 2011 (the "**Initial Agreement**"); and

WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**") and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein; and

WHEREAS, the parties hereto wish to amend and restate the Initial Agreement in its entirety and enter into this Agreement.

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NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby adopt this Agreement to be their Limited Partnership Agreement, as follows:

IT IS AGREED:

ARTICLE I
GENERAL PROVISIONS; COMPENSATION AND EXPENSES

1.1 Continuation. The parties hereto continue the Partnership as an exempted limited partnership formed on October 25, 2011 pursuant to the Law.

1.2 Name. The business of the Partnership shall be carried on under the name of Charitable DAF Fund, LP.

1.3 Purpose and Powers. The purpose of the Partnership shall be to invest and trade, directly or indirectly, in securities of all types and other investment vehicles and instruments. At least initially, a majority of the Partnership's assets shall be invested in shares of CLO HoldCo, Ltd., a Cayman Islands exempted company ("**CLO HoldCo**"), but the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners.

1.4 Registered Office. The registered office of the Partnership is c/o Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands.

1.5 Partners. The name and addresses of the Partners are as follows:

Name	**Address**
Charitable DAF GP, LLC	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands
Charitable DAF HoldCo Ltd (Limited Partner)	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands

1.6 Powers.

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and

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obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

1.7 Term. The Partnership was established on October 25, 2011 and shall continue until terminated in accordance with this Agreement or any amendment or modification thereof.

1.8 Admission of New Partners. The General Partner may at any time admit one or more new Partners on such terms as it may determine in its sole discretion; provided that any such new Limited Partner shall have as its equity owners solely Indirect Charitable Owners.

1.9 Taxable Year. The Taxable Year of the Partnership shall be a calendar fiscal year, or such other fiscal year as the General Partner shall determine in their sole discretion from time to time.

1.10 Liability of Partners.

(a) The General Partner shall be liable for all of the debts, liabilities and obligations of the Partnership.

(b) Except to the extent otherwise required by law or this Agreement, a Limited Partner shall not be personally liable for any obligations of the Partnership to third parties nor for the return of any distributions from the Partnership to the Limited Partner. A Limited Partner may be liable for the tax audit and related expenses referred to in Section 6.1.

1.11 Limitation on Assignability of Partners' Interests.

(a) A Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner. Any attempted assignment or substitution not made in accordance with this section shall be void *ab initio*.

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(b) The General Partner may not assign their interests in the Partnership to any entity that is not under common control with the General Partner without the consent of a majority-in-interest of the Limited Partners. Notwithstanding the foregoing, the General Partner may freely assign their economic interest in the Partnership in whole or in part.

1.12 Definitions. For the purpose of this Agreement, unless the context otherwise requires:

(a) General Partner. The term "**General Partner**" shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

(b) Indirect Charitable Owners. The term "**Indirect Charitable Owner**" shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.

(c) Limited Partner. The term "**Limited Partner**" shall refer to Charitable DAF HoldCo Ltd (and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of this Agreement).

(d) Partner. The term "**Partner**" shall refer to the General Partner or the Limited Partner.

1.13 Service Providers. The General Partner may engage one or more Persons to act, or remove any one or more Persons from so acting, as service providers to the Company (including, without limitation, as manager, administrator, custodian, registrar and transfer agent, investment manager, investment adviser, sponsor and/or prime broker, auditors and legal counsel to the Partnership) in its sole discretion; provided, that any compensation paid to any such service provider that is affiliated with the General Partner shall be in an amount customary for services of a similar nature.

1.14 Partnership Expenses. The Partnership will bear its own operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees (if any), taxes, research costs, legal and accounting expenses and other operating expenses. In addition, the Partnership will bear its pro rata share of CLO HoldCo's operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees, taxes, research costs, legal and accounting expenses and other operating expenses. The Partnership will also bear (or reimburse the General Partner for) its organizational fees and expenses. To the extent the Partnership shares trading expenses with other accounts that may be managed by the General Partner or any affiliates, it will bear a proportionate share of the associated costs. In no event shall the General Partner receive any compensation from the Partnership.

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1.15 Withdrawal of Initial Limited Partner. The Initial Limited Partner hereby withdraws as a limited partner immediately following the admission of the Limited Partners and thereafter shall have no further rights, liabilities or obligations under or in respect of this Agreement in its capacity as Initial Limited Partner.

ARTICLE II
POWERS

2.1 Partnership Powers. The Partnership shall have the following powers:

(a) To purchase, sell, invest and trade, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, syndicated debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; statutory claims; royalty claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (all such items being called herein a "**Financial Instruments**"), and to sell Financial Instruments short and cover such sales;

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(b) To possess, transfer, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Financial Interests held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such Financial Interests in the name of the Partnership, in the name of any securities broker or firm, in the name of any nominee of such firm, or in the name of any other nominee or any other street name, or any combination thereof;

(c) To lend, either with or without security, any Financial Instruments, funds or other properties of the Partnership, including by entering into reverse repurchase agreements, and, from time to time, undertake leverage on behalf of the Partnership;

(d) To borrow or raise moneys and, from time to time, without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any of the foregoing instruments and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Partnership, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the Partnership for its purposes;

(e) To have and maintain one or more offices within or without the Cayman Islands and in connection therewith to rent or acquire office space, engage personnel and do such other acts and things as may be necessary or advisable in connection with the maintenance of such office or offices;

(f) To open, maintain and close bank accounts and brokerage accounts, including the power to draw checks or other orders for the payment of monies; and

(g) To enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of the foregoing objects and purposes.

2.2 Rights, Powers, Limitations on Liability and Indemnification of General Partner.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the General Partner, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including members of any committee and parties acting as agents for the execution of transactions) (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the Partnership or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the

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business of the Partnership, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Partnership, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Partnership whom such Covered Person believes is authorized to make such suggestions on behalf of the Partnership, (iii) any act or omission by the Partnership, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Partnership selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Partnership or in furtherance of the business of the Partnership in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the Partnership shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Partnership, any investment made under or in connection with this Agreement, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Partnership, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

(f) The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may

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otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) **Notwithstanding anything in this Agreement to the contrary, the aggregate maximum amount that a Covered Person may be liable to the Partnership and/or any of the Partners pursuant to this Agreement shall, to the extent not prohibited by law, never exceed the amount of management and incentive fees received by such Covered Person from the Partnership under this Agreement prior to the date that the acts or omissions giving rise to a claim for indemnification or liability shall have occurred. In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits. No Covered Person shall incur any liability for interest on any monies at any time received by such Covered Person or any investment loss or other charge resulting therefrom with respect to amounts invested hereunder.**

(i) **WAIVER OF CONSUMER RIGHTS: The Partnership and each of the Limited Partners waive all of their respective rights, if any, under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code ("DTPA"), a law that gives consumers special rights and protections. After consultation with an attorney of Partnership's own selection, Partnership voluntarily consents to this waiver. This waiver includes any right to recover attorneys' fees under the DTPA. Further, Partnership waives all of its rights to any and all protections afforded by any other state or federal Consumer Protection Acts, including the recovery of attorneys' fees.**

(j) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Covered Person, the Partnership (and not the applicable Covered Person) shall be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence or reckless or intentional misconduct of any Covered Person. Given the volume of transactions executed on behalf of the Partnership, Limited Partners acknowledge that trading errors (and similar errors) will occur and that the Partnership shall be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Covered Person.

(k) This Section 2.2 shall survive a Limited Partner's withdrawal as a limited partner of the Partnership and any termination of this Agreement.

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ARTICLE III
CAPITAL ACCOUNTS AND DIVISION OF PROFITS AND LOSSES

3.1 Capital Contributions.

(a) Each Partner has made the capital contributions to the Partnership in the amount set forth in the records of the Partnership. The Limited Partner has contributed to the Partnership all of the outstanding equity interests of CLO HoldCo.

3.2 Capital Account; Allocation of Profits and Losses.

(a) There shall be established for each Partner on the books of the Partnership as of the first day of the fiscal period during which such Partner was admitted to the Partnership a capital account for such Partner in an amount equal to his capital contribution to the Partnership.

(b) Since the General Partner's capital account and contributions shall be the minimum required by Law, all income, deductions, gains, losses and credits of the Partnership shall be allocated shall be for the benefit of the Limited Partner, except as may otherwise be required by law. In the event any valuation of assets is necessary or appropriate, the General Partner shall determine such value in any reasonable manner determined by the General Partner in its sole discretion consistent with relevant accounting principles and applicable law.

(c) For purposes of determining the share of any items allocated to any period during the relevant Taxable Year of the Partnership, such shares shall be determined by the General Partner using any method permitted by the Code and the regulations thereunder. All allocations to be made by the General Partner may be overridden if necessary to comply with the Code, the regulations thereunder or other applicable law.

(d) To the extent that the Partnership pays withholding taxes as to a Partner, such amounts shall be charged to the applicable Partner's capital account; provided, however, that any such amounts may be treated as an advance to the Partner with interest to be charged to that Partner's capital account at a rate determined by the General Partner.

(e) Each Partner agrees not to treat, on any tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with treatment of such item by the Partnership.

ARTICLE IV
LEGAL INTERESTS, DISTRIBUTIONS AND PARTIAL WITHDRAWALS FROM CAPITAL ACCOUNT

4.1 Legal Interest. Each Partner shall have and own during any Taxable Year an undivided interest in the Partnership equal to his opening capital account for such period.

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4.2 Distributions.

(a) Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses. In determining the amount of cash or securities available for distribution, the General Partner may retain reasonable reserves in such amounts as it determines may be necessary to cover expenses, contingencies and losses. Notwithstanding the foregoing, distributions made in connection with a sale of all or substantially all of the Partnership's assets or a liquidation of the Partnership shall be made in accordance with the capital account balances of the Partners within the time period set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(3).

(b) The General Partner may withhold and pay over to the U.S. Internal Revenue Service (or any other relevant taxing authority) such amounts as the Partnership is required to withhold or pay over, pursuant to the Code or any other applicable law, on account of a Partner's distributive share of the Partnership's items of gross income, income or gain.

For purposes of this Agreement, any taxes so withheld or paid over by the Partnership with respect to a Partner's distributive share of the Partnership's gross income, income or gain shall be deemed to be a distribution or payment to such Partner, reducing the amount otherwise distributable to such Partner pursuant to this Agreement and reducing the capital account of such Partner. If the amount of such taxes is greater than any such distributable amounts, then such Partner and any successor to such Partner's interest shall pay the amount of such excess to the Partnership, as a contribution to the capital of the Partnership.

4.3 Withdrawal. Without the consent of the General Partner, no Partner may withdraw as a Partner or make withdrawals from such Partner's capital account. In the event the General Partner permits any such withdrawal, the withdrawal shall be on such terms and conditions as the General Partner shall determine in its sole discretion. The General Partner may terminate all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.

ARTICLE V
DURATION OF PARTNERSHIP

5.1 Termination. The Partnership shall be required to be wound up and dissolved upon:

(a) the service of a notice by the General Partner on the other Partners requiring that the Partnership be wound up and dissolved; or

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(b) the withdrawal by or resignation of the General Partner as general partner of the Partnership; or

(c) the withdrawal of all Limited Partners.

Upon the occurrence of any such event, the Partnership's affairs shall be wound up by the General Partner or such other Person as the General Partner shall appoint.

5.2 Winding Up. Upon the Partnership being required to be wound up and dissolved, the General Partner shall proceed with the liquidation and distribution of the assets of the Partnership, and upon completion of the winding up of the Partnership, shall have the authority to and shall execute and file a dissolution notice and such other documents required to effect the dissolution and termination of the Partnership in accordance with the Law. Before the distribution of all the assets of the Partnership, the business of the Partnership and the affairs of the Partners, as such, shall continue to be governed by this Agreement. The winding up of the Partnership and payment of creditors shall be effected in accordance with the Law.

ARTICLE VI
MISCELLANEOUS

6.1 Tax Matters Partner. The General Partner shall at all times constitute, and have full powers and responsibilities, as the Tax Matters Partner of the Partnership. In the event the Partnership shall be the subject of an income tax audit by any Federal, state or local authority, to the extent the Partnership is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and his decision shall be final and binding upon, the Partnership and each Partner thereof, and the Tax Matters Partner shall be indemnified and held harmless by the Partnership and each Partner for any action so taken by him in good faith. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Partnership to the extent of available Partnership funds, and any excess shall be paid by the Partners individually in proportion to their percentage interests in the Partnership.

6.2 Right to Hire.

(a) Nothing herein shall preclude the General Partner from engaging on behalf of the Partnership the services of any person or firm, whether or not affiliated with the General Partner, including the General Partner, to render for compensation such services to the Partnership as may be necessary to implement the business purposes of the Partnership.

(b) Each of the Partners consents that the General Partner, the Investment Manager or any Limited Partner or any affiliate (as defined in the Securities Act of 1933, as amended, and the regulations thereunder) of any of them, including without limitation the investment manager of the CLO HoldCo, may engage in or possess an interest in directly or indirectly, any other present or future business venture of any nature or description for his own account, independently or with others,

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including but not limited to, any aspect of the securities business or any other business engaged in by the Partnership, and may become the general partner in other partnerships; and neither the Partnership nor any Partner shall have any rights in or to such independent venture or the income or profits derived therefrom.

(c) The General Partner, the Investment Manager and any affiliate or employee of such General Partner or Investment Manager, may hereafter render investment advisory services to other investors with respect to, and/or may own, purchase or sell, securities or other interests in property the same as or similar to those which the General Partner may purchase, hold or sell on behalf of the Partnership.

6.3 Applicable Law, etc. This Limited Partnership Agreement: (i) shall be binding on the executors, administrators, estates, heirs and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the Cayman Islands; and (iii) may be executed in more than one counterpart with the same effect as if the parties executing the several counterparts had all executed one counterpart as of the day and year first above written; provided, however, that in the aggregate, they shall have been signed by all of the Partners. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural as the identity of the person may require. The term "gross negligence" and its cognates shall be interpreted in accordance with the laws of the State of Delaware.

6.4 Power of Attorney. Each of the undersigned does hereby constitute and appoint the General Partner, with full power of substitution, his true and lawful representative and attorney in-fact, in his name, place and stead to make, execute, sign and file this Agreement and any amendment to this Agreement authorized by the terms of this Agreement, and all such other instruments, documents and certificates (and any amendments thereto) which may from time to time be required by the laws of the Cayman Islands, the United States of America, or any state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership and to take any further action that the General Partner considers advisable in its sole discretion in connection with the exercise of its authority pursuant to this Agreement. This power of attorney is intended to secure an interest in property and, in addition, the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable.

6.5 Tax Elections Under the Internal Revenue Code. The General Partner shall have the authority to make all tax elections and determinations on behalf of the Partnership under the Internal Revenue Code, the regulations promulgated thereunder or other applicable law to effect any elections, determinations or capital allocations.

6.6 Amendments to Partnership Agreement. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the consent of the General Partner together with the consent of a majority in interest of the Limited Partners, insofar as is consistent with the laws governing this Agreement. Notwithstanding the foregoing, the General Partner shall have the right to effect

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amendments to this Agreement without the consent of any Limited Partner, including without limitation, to reflect: a change in the location of the Partnership's principal place of business; a change in the registered office or registered agent; a change in the name of the Partnership; admission of Partners in accordance with this Agreement; a change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the Tax Matters Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for Federal income tax purposes; a change of the provisions relating to the management fee or other compensation to the Investment Manager or the General Partner so that such provisions conform to any applicable requirements of the U.S. Securities and Exchange Commission and other regulatory authorities; a change (i) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any Federal or state agency or contained in any Federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, (ii) that is required or contemplated by this Agreement, or (iii) that is necessary or desirable to implement new regulations published by the Internal Revenue Service with respect to partnership allocations of income, gain, loss, deduction and credit; a change to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to the matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof; or a change that does not adversely affect the Limited Partners in any material respect; *provided, that* in no event shall the General Partner effect any amendment to this Agreement that has the effect of giving the General Partner any economic benefits in the assets of the Partnership; *provided further, that* the General Partner shall give notice to the Limited Partners of any such amendment.

6.7 Investment Representation. Each Partner hereby acknowledges and represents that it acquired its interest in the Partnership for investment purposes only and not with a view to its resale or distribution.

6.8 Notices. All notices, requests or approvals that any party hereto is required or desires to give to any Partner or to the Partnership shall be in writing signed by or on behalf of the party giving the same and delivered personally or sent overnight express mail by a reputable private carrier or by prepaid registered or certified mail, return receipt requested, addressed (i) to the Limited Partner at the addresses set forth beneath his signature to this Agreement; (ii) to the Partnership at the principal place of business of the Partnership with a copy of each such notice sent simultaneously to the General Partner and the Investment Manager at Nextbank Tower, 13455 Noel Road, 8th Floor, Dallas, Texas 75240; or (iii) to the respective party at such other address or addresses as the party may specify from time to time in a writing given to the Partnership in the manner provided in this Section 6.8 of ARTICLE VI. Notice shall be deemed to have been duly given and received (i) on the date of delivery, if personally delivered, (ii) on the next business day subsequent to sending by overnight express mail as aforesaid, or (iii) on the third day subsequent to mailing if mailed as aforesaid; provided that any withdrawal notices shall not be deemed to have been given until actually received by the Partnership.

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6.9 General Partner Determinations. Any determinations or calculations made by the General Partner shall, if made in good faith and in the absence of manifest error, be binding upon the Partnership and its Limited Partners.

6.10 Dispute Resolution. The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation.

(1) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(2) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(3) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(4) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration. If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of this document will control.

(1) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the

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Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

(2) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.

(3) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive.

(4) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The

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total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

(5) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.

(6) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

6.11 Successors and Assigns. Subject to the limitations set forth in Section 1.11, this Agreement shall inure to the benefit of and be binding upon the parties and to their respective heirs, executors, administrators, successors and permitted assigns. For the avoidance of doubt, any Limited Partner who becomes a former Limited Partner shall remain bound to all terms and conditions of this Agreement.

6.12 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

6.13 No Third Party Rights. Except for rights expressly granted hereunder to the Covered Persons, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.

6.14 No Right to Partition. Each of the Partners, on behalf of themselves and their shareholders, partners, principals, members, successors and assigns, if any and as permitted hereunder, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

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SIGNATURE PAGE FOR AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: _____

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name:
Title:

Witnessed by: _____

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SIGNATURE PAGE FOR AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: Candi L. Rigg
Candi L. Rigg

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name: ROD PALMER
Title:

Witnessed by: Gráma Ó Cuív

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EXHIBIT
2-B

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

WALKERS

190 Elgin Avenue, George Town
Grand Cayman KY1-9001, Cayman Islands
T +1 345 949 0100 F +1 345 949 7886 www.walkersglobal.com

REF: SSJ/VT/H0851-120776

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THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

1. The name of the company is Charitable DAF HoldCo, Ltd (the "**Company**").

2. The registered office of the Company will be situated at the offices of Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is US$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US$0.01 each 100 Management Shares of a nominal or par value of US$0.01 each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

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THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

ARTICLES OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Gross Negligence**" has the meaning ascribed under the laws of the State of Delaware in the United States.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Management Share**" means a voting non-participating share in the capital of the Company of $0.01 nominal or par value, that shall be non-redeemable at the option of the holder but redeemable by the Company in accordance with these Articles, and issued subject to and in accordance with the provisions of the Law and these Articles and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Shares.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.

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"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Participating Share**" means a non-voting, participating, non-redeemable share in the capital of the Company of $0.01 nominal or par value issued subject to and in accordance with the provisions of the Law and these Articles, and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Share. All references to "**Participating Shares**" herein shall be deemed to be Participating Shares of any or all Classes or Series as the context may require. For the avoidance of doubt, in these Articles the expression "Participating Share" shall include a fraction of a Participating Share.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Restricted Person**" means any Person holding Participating Shares:

(a) in breach of the law or requirements of any country or governmental authority;

(b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the US Internal Revenue Code of 1986, as amended (the "**Code**") or an entity or organisation all of whose beneficiaries are exempt under Section 501(c)(3) of the Code; or

(c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

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"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a Management Share or Participating Share or both as the context so requires.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

"**United States**" means the United States of America (including the District of Columbia), its states, territories and possessions.

In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

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(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

2. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

3. The business of the Company may be commenced at any time after incorporation.

4. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

5. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Participating Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

6. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

7. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

(a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

(b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

8. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Participating Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions,

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preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

9. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

10. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MANAGEMENT SHARES

11. The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganisation or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.

12. Any Management Shares held by Grant Scott will be automatically redeemed by the Company upon his death or upon the Company receiving written notice from two board certified physicians confirming that he is of unsound mind or otherwise incapacitated ("**Automatic Redemption**").

13. If at the time of an Automatic Redemption, Grant Scott is the sole Director of the Company, such office will be automatically vacated by Grant Scott.

14. Upon an Automatic Redemption, the Company shall issue 100 Management Shares to a successor management shareholder ("**Successor Management Shareholder**") designated by James Dondero ("**Designator**"), or, if he is unable or declines to act, by an individual or individuals designated by James Dondero ("**Successor Designator**"), in either case within 15 days of the Automatic Redemption. If the Designator is:

(a) deceased and has not named a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made in accordance with the provisions of the Designator's will, or if his will contains no such provisions, by the qualified personal representative of his estate (the "**Designator's Personal Representative**"); or

(b) otherwise incapacitated and has not previously designated a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made by the Designator's attorney-in-fact appointed for such purpose, under a valid, effective power of attorney instrument (the "**Designator's Attorney**").

15. Any designation of a Successor Management Shareholder must be notified to the Company in writing and signed by either the Designator, the Successor Designator, the Designator's Personal Representative, or the Designator's Attorney, as appropriate, and accompanied by a consent to become a Shareholder signed by the Successor Management Shareholder ("**Issue Notice**"). The issue of the 100 Management Shares to the Successor Management Shareholder shall take effect upon receipt by the Company of the Issue Notice and the Register will be updated accordingly.

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16. The Designator may name a Successor Designator (including an individual, or a series of individuals) at any time pursuant to a written notice delivered to the Company during his lifetime or by a provision in his will. Each Successor Designator upon succeeding and replacing the Designator or a prior Successor Designator, may in the same manner as set out above, designate an individual, or a series of individuals, to succeed him as Successor Designator. In the event of a conflict between such instruments, the one bearing the latest date shall control. A Successor Designator will assume such office upon consenting to so act.

17. The Successor Management Shareholder may not be a "disqualified person" (as that term is defined in Section 4946 of the United States Internal Revenue Code of 1986, as amended), other than a foundation manager, with respect to Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., or Highland Kansas City Foundation, Inc.

18. In connection with the appointment of the Successor Management Shareholder, the Company and its registered office service provider will be entitled to rely on the advice of counsel confirming that the designation of the Successor Management Shareholder has been made in accordance with the procedures set out in these Articles.

PARTICIPATING SHARES

19. Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

MODIFICATION OF RIGHTS

20. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Participating Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that the variation or abrogation of the rights attached to such Classes proposed for consideration is the same variation or abrogation for all such relevant Classes, but in any other case shall treat them as separate Classes.

21. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company.

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CERTIFICATES

22. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

23. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

TRANSFER OF SHARES

24. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

25. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor including any purported transfer that does not comply with applicable securities or tax laws.

26. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

27. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

28. If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles.

TRANSMISSION OF SHARES

29. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.

30. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person

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could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

31. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

32. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

33. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

34. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

35. Subject to the Law, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;

(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law; and

(d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.

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36. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

37. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.

38. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

39. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Law. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.

40. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.

41. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:

(a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;

(b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Law, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.

42. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

43. The Directors may, whenever they think fit, convene a general meeting of the Company.

44. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.

45. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the

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objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

46. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

47. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

48. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

49. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

50. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

51. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

52. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

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53. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

54. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

55. The chairman may adjourn a meeting from time to time and from place to place either:

(a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting); or

(b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:

(i) secure the orderly conduct or proceedings of the meeting; or

(ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

60. On a show of hands every holder of Management Shares present in person and every Person representing such a Shareholder by proxy shall have one vote, and on a poll every holder of

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Management Shares present in person and every Person representing such Shareholder by proxy shall be entitled to one vote in respect of each of the Management Shares held by them.

61. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

62. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

63. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

66. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

67. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

68. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

69. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

70. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

71. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

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72. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

73. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

74. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

75. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

76. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

77. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR

78. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be deemed to be an officer of the Company solely as a result of his appointment as an alternate. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.

79. Any Director may appoint any Person , whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

80. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

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81. The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

82. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

83. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

84. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

85. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.

86. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

87. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

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88. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

89. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

90. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

91. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

92. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

93. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or

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(f) is removed from office pursuant to any other provision of these Articles, including without limitation, in the circumstance set out in Article 13.

PROCEEDINGS OF DIRECTORS

94. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

95. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

96. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.

97. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

98. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

99. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

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100. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

101. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

102. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.

103. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

104. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

105. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

106. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

107. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

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DIVIDENDS

108. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Law and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

109. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

110. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

111. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

112. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

113. Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.

114. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

115. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

116. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

117. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

118. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not

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being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

119. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

120. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

121. Subject to the Law and these Articles, the Directors may:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Participating Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Participating Shares held by them respectively; or

(ii) paying up in full unissued Participating Shares or debentures of a nominal amount equal to that sum,

and allot the Participating Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Participating Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Participating Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Participating Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Participating Shares,

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and any such agreement made under this authority being effective and binding on all those Shareholders; and

(e) generally do all acts and things required to give effect to any of the actions contemplated by this Article.

SHARE PREMIUM ACCOUNT

122. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.

123. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

124. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

125. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

126. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

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127. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

128. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

NON-RECOGNITION OF TRUSTS

129. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

130. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

131. Subject to any rights and restrictions for the time being attributed to any Class or Series, the assets available for distribution among the Shareholders shall then be applied in the following priority:

(a) first, in the payment to the holders of Participating Shares and Management Shares, *pari passu*, of a sum equal to the par value of the Participating Shares or Management Shares held by them; and

(b) second, in the payment of any balance to holders of Participating Shares, such payment being made in proportion to the number Participating Shares of the relevant Class and Series held.

132. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Participating Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such

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assets in trustees upon such trusts for the benefit of the Participating Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

133. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

134. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

135. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

136. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

137. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

138. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Law.

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DISCLOSURE

139. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares or any Class or Series may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

INDEMNITY

140. To the fullest extent permitted by law, no Director, Secretary, Assistant Secretary, committee member or other officer for the time being and from time to time of the Company (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be liable to the Company or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or Gross Negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

141. Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

142. To the fullest extent permitted by law, the Company shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Company, any investment made, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Company, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or Gross Negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or Gross Negligence.

143. Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

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144. The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

DISPUTE RESOLUTION

145. The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with these Articles or otherwise involving the Company, its Shareholders and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation:

(i) any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect;

(ii) the mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute;

(iii) the mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings; and

(iv) each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties,

(b) Arbitration:

if a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in these Articles and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of these Articles will control:

(i) the arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any

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issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the United States Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, *provided, however*, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a State arbitration act of the United States preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures;

(ii) the arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law;

(iii) the party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive;

(iv) no discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted;

(v) all aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a

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reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term; and

(vi) the result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

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EXHIBIT
3

1. Defendant
2. Geoffrey Sykes
3. First Affidavit
4. Exhibit "GS-1"
5. 27 April 2025

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 99 OF 2025 (JAJ)

IN THE MATTER OF: **SECTION 92 OF THE COMPANIES ACT (2025 REVISION)**

AND IN THE MATTER OF: **CHARITABLE DAF HOLDCO, LTD (IN VOLUNATRY LIQUIDATION)**

BETWEEN

(1) THE HIGHLAND DALLAS FOUNDATION, INC.
(2) THE HIGHLAND KANSAS CITY FOUNDATION, INC.
(3) THE HIGHLAND SANTA BARBARA FOUNDATION, INC.
(4) THE HCMLP CHARITABLE FUND

PLAINTIFFS

and

CHARITABLE DAF HOLDCO, LTD (IN VOLUNTARY LIQUIDATION)

DEFENDANT

THIS IS EXHIBIT "**GS-1**" TO THE AFFIDAVIT OF

GEOFFREY SYKES

SWORN BEFORE ME THIS 27TH DAY OF APRIL 2025

Fiona MacAdam
Notary Public in and for the Cayman Islands
My commission expires January 31, 2026
Date: 27 April 2025.

NOTARY PUBLIC

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JOHNSTONE
LAW

24 April 2025

Charitable DAF HoldCo Ltd
c/o Campbells Corporate Services Limited
Floor 4, Willow House, Cricket Square
Grand Cayman, KY1-9010
Cayman Islands

Dear Sir or Madam

In the matter of Charitable DAF HoldCo Ltd | FSD No. 99 of 2025 | Service of Documents

We act for the participating shareholders of the Charitable DAF HoldCo Ltd (***Company***), namely: (i) Highland Dallas Foundation, Inc., (ii) Highland Kansas City Foundation, Inc., (iii) Highland Santa Barbara Foundation, Inc., and (iv) HCMLP Charitable Fund (***Supporting Organisations***) which presented a winding up petition in relation to the Company (***Petition***), and a summons dated 10 April 2025 (***Summons***).

The Summons is listed for hearing before Justice Asif at 2pm on 28 April 2025.

Please find enclosed by way of service copies of the following:

1. The Petition (including Notice of Hearing)
2. The Summons
3. Affirmation of Julie Diaz and Exhibit JD-1
4. Affirmation of James Dondero and Exhibit JDD-1
5. Consent to act of Margot MacInnis and Exhibit MM-1
6. Consent to act of Sandipan Bhowmik and Exhibit SB-1

Acknowledgment of Service

I _____ am duly authorised to accept service of the enclosed documents, which were served at _____ pm on 24 April 2025.

_____
Signed

If you have any questions in relation to the above, please contact our office.

Yours faithfully

Johnstone Law

Johnstone Law

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Walkers

BY EMAIL

25 April 2025 Our Ref: PP/PA/187150

Johnstone Law
10 Market Street, PO Box 926
Grand Cayman KY1-9006

Dear Mr Johnstone

CHARITABLE DAF HOLDCO, LTD (IN VOLUNTARY LIQUIDATION) (THE "COMPANY")

1. We act as Cayman Islands counsel to the Company.

2. We refer to the documents served yesterday by your firm on the Company at its registered office, which include a winding up petition ("**Petition**"), an application for the appointment of provisional liquidators ("**PL Application**"), and a cover letter of service ("**Service Letter**").

The Company is already in Voluntary Liquidation

3. Please note the following (all documents enclosed):

   (a) On 29 March 2025, Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd executed a consent to act as joint voluntary liquidators of the Company ("**JVLs**").

   (b) On 2 April 2025: (i) the directors of the Company executed written resolutions including to recommend to the management shareholder that the Company be wound up voluntarily and the JVLs be appointed; (ii) the management shareholder executed special resolutions that the Company be wound up voluntarily and the JVLs be appointed; and (iii) the directors of the Company executed a declaration of solvency.

   (c) On 14 April 2025, Gazette Issue No. 8/2025 was published, which included notice that on 2 April 2025 the Company was placed into Voluntary Liquidation and the JVLs appointed.

4. Further, please see enclosed:

   (a) The current Memorandum and Articles of the Company, dated 20 February 2025 ("**M&A**").

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(b) The current Register of Members of the Company, dated 25 April 2025.

(c) An email chain between your firm and our firm dated 23-24 April 2025.

5. As outlined above, the Company is in Voluntary Liquidation.

6. That fact should have been evident from a search of the Gazette prior to service, as per the enclosed notice referred to at paragraph 3(c) above.

7. Further, the email chain referred to at paragraph 4(c) above is all that we received from your firm by way of pre-action correspondence. We enquired as to the nature of the proceedings to be served, and had we been informed that it was a winding up petition and application for the appointment of provisional liquidators (rather than simply that the proceedings were in the process of being served on the Company's registered office), we would have informed you that the Company was already in Voluntary Liquidation.

8. There is nothing in the M&A which entitles your clients to receive notice from the Company of its entry into Voluntary Liquidation.

The appropriate course of action

9. As the Company is already in Voluntary Liquidation, the Petition and PL Application are plainly redundant, and we invite your clients to withdraw them without delay.

10. If the JVLs (or your clients) consider it appropriate that the Voluntary Liquidation be brought under the supervision of the court, any of them may make an application for a supervision order pursuant to the Companies Act section 131. If your clients would like to discuss such an application with the JVLs, including in respect of funding, please let us know.

11. In the event that the Petition and PL Application are not withdrawn, or at the very least the hearing of the PL Application (which we understand from your firm's Service Letter is listed on Monday 28 April 2025 at 2pm) is not adjourned, this letter must be brought to the attention of the Court, and we will appear on behalf of the Company.

12. If it becomes appropriate to do so, we will put this letter before the Court including on the question of costs.

Yours faithfully

Walkers (Cayman) LLP

WALKERS (CAYMAN) LLP

Direct Tel: +1 345 914 6365
Email: Barnaby.Gowrie@walkersglobal.com

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THE COMPANIES ACT (AS AMENDED)

JOINT VOLUNTARY LIQUIDATORS' CONSENT TO ACT

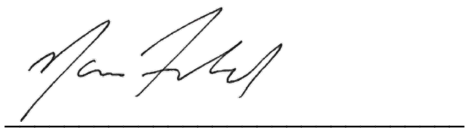
CHARITABLE DAF HOLDCO, LTD. (IN VOLUNTARY LIQUIDATION) (THE "COMPANY")

REGISTRATION NO: 263805

To: The Registrar of Companies

TAKE NOTICE that we, Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY1-1204, Cayman Islands, hereby consent to act as Joint Voluntary Liquidators of the above-named Company with effect from the commencement of the liquidation.

DATED this 29th day of March, 2025.



Mitchell Mansfield
Joint Voluntary Liquidator

E: mitchell.mansfield@kroll.com
T: +1 345 743 8805



William Clarke
Joint Voluntary Liquidator

E: will.clarke@kroll.com
T: +1 345 623 9905

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CHARITABLE DAF HOLDCO, LTD.
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE
DIRECTORS OF THE COMPANY DATED 2 APRIL 2025

Capitalised terms used herein shall have the meaning ascribed to such terms in the Company's Amended and Restated Memorandum and Articles of Association (as adopted by Special Resolution dated 20 February 2025), unless the context otherwise requires.

The undersigned, being all the Directors of the Company for the time being, hereby take the following actions and adopt the following resolutions.

1. VOLUNTARY LIQUIDATION

1.1 **IT IS NOTED** that:

(a) the Company's sole investment, being 100% of the limited liability company interests in CDMCFAD, LLC, a Delaware limited liability company, was redeemed on 27 March 2025 (the "**CDMCFAD Redemption**");

(b) proceeds lawfully available for distribution from the CDMCFAD Redemption in the amount of $1,612,192 were distributed to holders of Participating Shares of the Company by way of a cash dividend paid on April 2;

(c) the Company will not be engaging in any further business or investment activity and the operations of the Company have been fully wound down;

(d) the Company has no assets and no liabilities;

(e) in the circumstances, there is no reason for the Company to continue as a going concern and the Directors are of the view that the Company should therefore be wound up voluntarily;

(f) Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY1-1204, Cayman Islands have indicated that they consent to act as joint voluntary liquidators of the Company (the "**JVLs**") if so appointed;

(g) the Directors have received and reviewed a liquidation proposal from the JVLs, together with its terms and conditions (the "**Liquidation Proposal**");

(h) the Directors have conducted a full enquiry into the Company's affairs and to the best of the Directors' knowledge and belief the Company will be able to pay its debts in full together with interest at the prescribed rate within twelve-month period from the commencement of the voluntary winding up; and

(i) the Directors have received a form of the declaration of solvency for execution pursuant to section 124 of the Companies Act (as amended) (the "**Declaration of Solvency**").

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1.2 **IT IS RESOLVED** that:

(a) the Liquidation Proposal be approved;

(b) the Directors recommend to Mark Patrick, being the only Shareholder having the right to receive notice of, attend, speak at and vote at general meetings of the Company, that:

(i) the Company be wound up voluntarily; and

(ii) Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd be appointed as the JVLs of the Company; and

(c) if the Company is wound up voluntarily, each Director execute the Declaration of Solvency.

2. GENERAL AUTHORISATION

2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, any Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively), and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as any Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of any Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, all the Directors prior to such action being taken.

Mark Patrick
Director

Paul Murphy
Director

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CHARITABLE DAF HOLDCO, LTD.
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE VOTING SHAREHOLDER OF THE COMPANY DATED 2 APRIL 2025

Capitalised terms used herein shall have the meaning ascribed to such terms in the Company's Amended and Restated Memorandum and Articles of Association (as adopted by Special Resolution dated 20 February 2025) (the "**Articles**"), unless the context otherwise requires.

The undersigned, being the only Shareholder of the Company having the right to receive notice of, attend, speak at and vote at general meetings and having considered the written resolutions of the Directors dated 2 April 2025 which state that the Directors recommend that the Company be wound up voluntarily and that Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY1-1204, Cayman Islands be appointed as the joint voluntary liquidators of the Company (the "**JVLs**"), hereby consents to the following actions and adopts the resolutions set out below.

1. VOLUNTARY LIQUIDATION

1.1 **IT IS RESOLVED BY SPECIAL RESOLUTION** that:

(a) the Company be wound up voluntarily; and

(b) Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd be appointed as the JVLs of the Company.

1.2 **IT IS RESOLVED BY ORDINARY RESOLUTION** that:

(a) the JVLs be authorised, in accordance with Article 123 of the Articles, to divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for that purpose, set such value as they deem fair upon any property to be divided as aforesaid and may determine how such division will be carried out as between the Participating Shareholders or different Classes; and

(b) the JVLs shall have the power to retain the Company's administrator, manager or such other person as determined by the JVLs to assist them in discharging any registration and notification obligations and any obligation to complete the Company's final filings and retain records pursuant to the US Foreign Account Tax Compliance Act and/or Common Reporting Standard and/or Economic Substance Reporting.



Mark Patrick

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THE COMPANIES ACT (AS AMENDED)

DECLARATION OF SOLVENCY

CHARITABLE DAF HOLDCO, LTD. (IN VOLUNTARY LIQUIDATION) (THE "COMPANY")

REGISTRATION NO: 263805

We, Mark Patrick and Paul Murphy, being the Directors of the Company do solemnly and sincerely declare that we have made a full inquiry into the affairs of the Company and that, having done so, we believe that the Company will be able to pay its debts in full, together with interest at the prescribed rate within a period of twelve (12) months from the commencement of the winding up.

Mark Patrick

6716 Glenhurst Drive, Dallas, Texas, TX 75254, United States

Date of signature: 4/2/2025

Date of appointment as Director: 25 March 2021

Paul Murphy

Windsor Village, Unit 24, South Sound, Grand Cayman, Cayman Islands

Date of signature: 2nd April 2025

Date of appointment as Director: 22 April 2021

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Contacts for enquiries:
Bryce Doran or Zhouming Kang
Telephones: (345) 949 7576 or +852 2583 1167
Emails: BDoran@RHRestructuring.com
or zhouming.kang@acclime.com

GATN FINANCE LIMITED
Notice of Voluntary Winding Up (O.13, r.2)
(In Voluntary Liquidation)
The Companies Act (As Amended)

TAKE NOTICE that the above-named Company was put into liquidation on 2 April 2025 by a special resolution passed at an extraordinary meeting of the Company held on 2 April 2025.

AND FURTHER TAKE NOTICE that Westport Services Ltd., of PO Box 1111, Century Yard, Cricket Square, Grand Cayman, KY1-1102 Cayman Islands, has been appointed Voluntary Liquidator of the Company.

Creditors of the company are to prove their debts or claims on or before 7 May 2025and to establish any title they may have under The Companies Act (as amended), or be excluded from the benefit of any distribution made before such debts are proved or from objecting to the distribution.

Date of liquidation: 2 April 2025

WESTPORT SERVICES LTD.
Voluntary Liquidator

Officer for enquiries:
Name: Colin Eastburn-Mallory
Telephone: (345) 949 5122
c/o Paget-Brown Financial Services Limited
P.O. Box 1111
Century Yard, Cricket Square
Grand Cayman KY1-1102
Cayman Islands
Tel: 345 949 5122

AMP FUNDING LIMITED
(In Voluntary Liquidation)
The Companies Act (As Amended)
Notice of Voluntary Winding Up (O.13, r.2)

TAKE NOTICE that the above-named Company was put into liquidation on 2 April 2025 by a special resolution passed at an extraordinary meeting of the Company held on 2 April 2025.

AND FURTHER TAKE NOTICE that Westport Services Ltd., of PO Box 1111, Century Yard, Cricket Square, Grand Cayman KY1-1102, Cayman Islands, has been appointed Voluntary Liquidator of the Company.

Creditors of the company are to prove their debts or claims on or before 7 May 2025and to establish any title they may have under The Companies Act (as amended), or be excluded from the benefit of any distribution made before such debts are proved or from objecting to the distribution.

Date of liquidation: 2 April 2025

WESTPORT SERVICES LTD.
Voluntary Liquidator

Officer for enquiries:
Name: Colin Eastburn-Mallory
Telephone: (345) 949 5122
c/o Paget-Brown Financial Services Limited
P.O. Box 1111
Century Yard, Cricket Square
Grand Cayman KY1-1102
Cayman Islands
Tel: 345 949 5122

CHARITABLE DAF HOLDCO, LTD.
(In Voluntary Liquidation)
("The Company")
The Companies Act (As Amended)
Notice Of Voluntary Winding Up
Registration No: 263805

TAKE NOTICE that the Company was put into liquidation on 2 April 2025 by a special resolution passed by written resolution of the sole voting shareholder of the Company, executed on 2 April 2025.

AND FURTHER TAKE NOTICE that Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY1-1204, Cayman Islands, have been appointed as joint voluntary liquidators of the Company.

AND NOTICE IS HEREBY GIVEN that creditors of the Company are to prove their debts or claims within 21 days of the publication of this notice and to establish any title they may have under the Companies Act (as amended) by sending their names, addresses and the particulars of their debts or claims to the undersigned, or in default thereof they will be excluded from the benefit of

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any distribution made before such debts and/or claims are proved or from objecting to the distribution.

Dated this 14th day of April 2025

MITCHELL MANSFIELD AND WILLIAM CLARKE
Joint Voluntary Liquidators

Contact for enquiries:
William Clarke
Strathvale House, 3rd Floor
90 North Church Street
George Town
Grand Cayman KY1-1204
Cayman Islands
E: will.clarke@kroll.com
T: +1 345 623 9905

Address for service:
Kroll (Cayman) Ltd
Strathvale House, 3rd Floor
90 North Church Street
George Town
Grand Cayman, KY1-1204
Cayman Islands

AARO DIRECTIONAL CRYPTO MULTIFUND LIMITED
(In Voluntary Liquidation)
(the Company)
Notice Of Voluntary Winding Up
Registration No: 390083

TAKE NOTICE that the Company was placed into voluntary liquidation on 28 March 2025 by a special resolution passed by written resolution of the voting shareholder of the Company.

AND FURTHER TAKE NOTICE that R&H Restructuring VL Services Ltd. of Windward 1, Regatta Office Park, PO Box 897, Grand Cayman KY1-1103, Cayman Islands has been appointed voluntary liquidator of the Company.

AND NOTICE IS HEREBY GIVEN that creditors of the Company are to prove their debts or claims within 21 days of the publication of this notice to establish any title they may have under the Companies Act (as revised) by sending their names, addresses and the particulars of their debts or claims to the undersigned, or in default thereof they will be excluded from the benefit of any distribution made before such debts and/or claims are proved or from objecting to the distribution.

Dated: 03 April 2025

OWEN WALKER
Authorised signatory for and on behalf of
R&H Restructuring VL Services, Ltd.
Voluntary Liquidator

MARTIN TROTT
Authorised signatory for and on behalf of
R&H Restructuring VL Services, Ltd.
Voluntary Liquidator

Contact for Enquiries:
Robert Knight
Telephone: +1 (345) 949 7576
Email: RKnight@RHRestructuring.com

XP PHALANX CT FUND
(In Voluntary Liquidation)
(the "Company")
The Companies Act (as amended)
Notice of Voluntary Winding Up
Registration No: 391110

TAKE NOTICE that the above-named Company was put into liquidation on 26 March 2025 by a Special Resolution passed by the sole voting shareholder by way of a written resolution in lieu of a meeting.

AND FURTHER TAKE NOTICE that FFP Limited of 2nd Floor Harbour Centre, 159 Mary Street, George Town, Grand Cayman, Cayman Islands has been appointed Voluntary Liquidator of the Company.

CREDITORS OF THE COMPANY are to prove their debts or claims within 21 days of the publication of this notice, and to establish any title they may have under the Companies Act (as amended) or are to be excluded from the benefit of any distribution made before the debts are proved or from objecting to the distribution.

Dated this 3rd day of April 2025

FFP LIMITED
Voluntary Liquidator

Contact for enquiries:
James Allen
FFP Limited
2nd Floor Harbour Centre
159 Mary Street
George Town, Grand Cayman
Cayman Islands

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CHARITABLE DAF HOLDCO, LTD

THE COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM AND ARTICLES OF ASSOCIATION

(ADOPTED BY SPECIAL RESOLUTION DATED 20 FEBRUARY 2025)

Campbells

Floor 4, Willow House, Cricket Square
Grand Cayman KY1-9010
Cayman Islands

campbellslegal.com

(14133-42760)

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CHARITABLE DAF HOLDCO, LTD

THE COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM OF ASSOCIATION

(ADOPTED BY SPECIAL RESOLUTION DATED 20 FEBRUARY 2025)

---

1. The name of the Company is Charitable DAF HoldCo, Ltd.

2. The registered office of the Company will be situated at the offices of Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are:

   (a) to benefit community-focused non-profit foundations established or located anywhere in the world or for the purposes recognised as charitable, as the Directors may from time to time determine, in furtherance of the following mission statement: "Charitable DAF makes investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference"; and

   (b) to do all such things in the opinion of the Directors are or may be incidental or conducive to the above objects or any part of them.

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Companies Act (as amended) of the Cayman Islands (the "**Act**").

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is US$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US$0.01 each 100 Management Shares of a nominal or par value of US$0.01 each provided always that subject to the Act and the Articles of Association the Company shall have power

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to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Act to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

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CHARITABLE DAF HOLDCO, LTD

THE COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

ARTICLES OF ASSOCIATION

(ADOPTED BY SPECIAL RESOLUTION DATED 20 FEBRUARY 2025)

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Act shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Act**" means the Companies Act (as amended) of the Cayman Islands.

"**AEOI**" means:

(i) sections 1471 to 1474 of the Code and any associated legislation, regulations or guidance, and any other similar legislation, regulations or guidance enacted in any other jurisdiction which seeks to implement similar financial account information reporting and/or withholding tax regimes;

(ii) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters - the Common Reporting Standard and any associated guidance;

(iii) any intergovernmental agreement, treaty, regulation, guidance, standard or other agreement between the Cayman Islands (or any Cayman Islands government body) and any other jurisdiction (including any government bodies in such jurisdiction), entered into in

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order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in sub-paragraphs (i) and (ii); and

(iv) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding sub-paragraphs.

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Code**" means the US Internal Revenue Code of 1986, as amended.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Electronic Record**" has the same meaning as in the Electronic Transactions Act.

"**Electronic Transactions Act**" means the Electronic Transactions Act (as amended) of the Cayman Islands.

"**Gross Negligence**" has the meaning ascribed under the laws of the State of Delaware in the United States.

"**Management Director**" means a director of the Company holding a Management Share (as defined below).

"**Management Share**" means a voting non-participating share in the capital of the Company of $0.01 nominal or par value, that shall be non-redeemable at the option of the holder but redeemable by the Company in accordance with these Articles, and issued subject to and in accordance with the provisions of the Act and these Articles and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Shares.

"**Material Transaction**" means any transaction (or series of connected transactions), including an acquisition, distribution, investment or divestiture by the Company, for the aggregate amount in excess of $250,000;

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.

"**Office**" means the registered office of the Company as required by the Act.

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a

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poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Participating Share**" means a non-voting, participating, non-redeemable share in the capital of the Company of $0.01 nominal or par value issued subject to and in accordance with the provisions of the Act and these Articles, and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Share. All references to "Participating Shares" herein shall be deemed to be Participating Shares of any or all Classes or Series as the context may require. For the avoidance of doubt, in these Articles the expression "Participating Share" shall include a fraction of a Participating Share.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Act and these Articles, means the Register maintained by the Company pursuant to the Act and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Act and includes any Branch Register(s) established by the Company in accordance with the Act.

"**Restricted Person**" means any Person holding Participating Shares:

(a) in breach of the law or requirements of any country or governmental authority;

(b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the Code or an entity or organisation all of whose beneficiaries are exempt under Section 501(c)(3) of the Code; or

(c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered.

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"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a Management Share or Participating Share or both as the context so requires.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber.

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Act.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Act, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

"**United States**" and "**US**" means the United States of America (including the District of Columbia), its states, territories and possessions.

In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

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(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re- enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case;

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another;

(h) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Act; and

(i) sections 8 and 19(3) of the Electronic Transactions Act shall not apply.

2. Subject to the preceding Articles, any words defined in the Act shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

3. The business of the Company may be commenced at any time after incorporation.

4. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

5. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Participating Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

6. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Act and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may

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keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Act, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Act.

SHARES

7. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

(a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine;

(b) and grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

8. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Participating Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

9. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

10. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MANAGEMENT SHARES

11. The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganisation or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.

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PARTICIPATING SHARES

12. Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but may be entitled to vote at a separate class meeting in relation to a modification of rights pursuant to the immediately following Article. The Participating Shares shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

MODIFICATION OF RIGHTS

13. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Participating Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that the variation or abrogation of the rights attached to such Classes proposed for consideration is the same variation or abrogation for all such relevant Classes, but in any other case shall treat them as separate Classes.

14. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company.

CERTIFICATES

15. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

16. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

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TRANSFER OF SHARES

17. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

18. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor including any purported transfer that does not comply with applicable securities or tax laws.

19. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

20. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

21. If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles.

TRANSMISSION OF SHARES

22. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.

23. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the

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Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

24. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

25. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

26. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

27. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

28. Subject to the Act, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;

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(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Act; and

(d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.

29. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

30. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.

31. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

32. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Act. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.

33. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.

34. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:

(a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;

(b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Act, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.

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35. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

36. The Directors may, whenever they think fit, convene a general meeting of the Company.

37. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.

38. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

39. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

40. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

41. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

42. No business shall be transacted at any general meeting unless a quorum of Shareholders Is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles,

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one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

43. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

44. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

45. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

46. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

47. The chairman may adjourn a meeting from time to time and from place to place either:

(a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting): or

(b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:

(i) secure the orderly conduct or proceedings of the meeting; or

(ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

48. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded

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by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

49. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

50. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

51. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

52. On a show of hands every holder of Management Shares present in person and every Person representing such a Shareholder by proxy shall have one vote, and on a poll every holder of Management Shares present in person and every Person representing such Shareholder by proxy shall be entitled to one vote in respect of each of the Management Shares held by them.

53. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

54. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

55. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

56. On a poll votes may be given either personally or by proxy.

57. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

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58. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

59. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

60. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

61. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at genera! meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

62. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

63. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

64. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

65. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

66. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

67. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

68. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

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69. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

70. The Management Director shall be entitled to cast ten (10) votes on all matters and each other Director shall be entitled to cast one (1) vote. Such voting powers shall apply to voting in any committee or subcommittee of the Board. Every reference in these Articles to a majority or other proportion of the Directors, including for purposes of determining a quorum, shall refer to a majority or other proportion of the votes of the Directors then in office.

POWERS AND DUTIES OF DIRECTORS

71. Subject to the Act, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

72. The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or

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by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

73. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

74. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

75. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

76. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.

77. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

78. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and

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may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

79. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

80. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

81. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

82. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

83. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

84. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

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(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by ail of his co-Directors (not being less than two in number); or

(f) is removed from office pursuant to any other provision of these Articles, including without limitation, in the circumstance set out in Article 13.

PROCEEDINGS OF DIRECTORS

85. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

86. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

87. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two which must include the Management Director, and if there be one Director the quorum shall be one.

88. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

89. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director

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shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

90. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

91. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

92. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

93. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be, shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors. Notwithstanding anything to the contrary herein, a resolution in writing signed by all the Directors in respect of a Material Transaction must be duly notarized by a notary public.

94. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

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95. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

96. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

97. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

98. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

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DIVIDENDS

99. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Act and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

100. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

101. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

102. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

103. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

104. Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.

105. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

106. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

107. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

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108. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

109. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

110. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

111. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Act and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

112. Subject to the Act and these Articles, the Directors may:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Participating Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Participating Shares held by them respectively; or

(ii) paying up in full unissued Participating Shares or debentures of a nominal amount equal to that sum,

and allot the Participating Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Participating Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Participating Shares or

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debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of ail the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Participating Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Participating Shares, and any such agreement made under this authority being effective and binding on all those Shareholders; and

(iii) generally do all acts and things required to give effect to any of the actions contemplated by this Article.

SHARE PREMIUM ACCOUNT

113. The Directors shall in accordance with the Act establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.

114. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Act, out of capital.

NOTICES

115. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

116. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

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117. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

118. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

119. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

NON-RECOGNITION OF TRUSTS

120. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial

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interest in any Share or (except only as otherwise provided by these Articles or as the Act requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

121. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

122. Subject to any rights and restrictions for the time being attributed to any Class or Series, the assets available for distribution among the Shareholders shall then be applied in the following priority:

(a) first, in the payment to the holders of Participating Shares and Management Shares, *pari passu*, of a sum equal to the par value of the Participating Shares or Management Shares held by them; and

(b) second, in the payment of any balance to holders of Participating Shares, such payment being made in proportion to the number Participating Shares of the relevant Class and Series held.

123. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Participating Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Participating Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

124. Subject to the Act and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

125. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of,

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attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

126. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

127. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BYWAY OF CONTINUATION

128. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

129. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Act.

DISCLOSURE

130. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares or any Class or Series may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

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INDEMNITY

131. To the fullest extent permitted by law, no Director, Secretary, Assistant Secretary, committee member or other officer for the time being and from time to time of the Company (each, a "Covered Person" and collectively, "**Covered Persons**") shall be liable to the Company or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes wilful misconduct or Gross Negligence by such Covered Person (as determined by a non-appeaiable judgment of a court of competent jurisdiction).

132. Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

133. To the fullest extent permitted by law, the Company shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Company, any investment made, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Company, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or Gross Negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or Gross Negligence.

134. Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

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135. The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

DISPUTE RESOLUTION

136. Subject to the prior written consent of all parties involved in the Dispute (as defined below) to such dispute resolution procedures, the following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with these Articles or otherwise involving the Company, a trustee appointed to represent the Company on claims derivative of the Company, its Shareholders and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation:

(i) subject to the prior written consent of all parties involved in the Dispute, any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect;

(ii) the mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute;

(iii) the mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings; and

(iv) each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties,

(b) Arbitration:

Subject to the prior written consent of all parties involved in the Dispute to such dispute resolution procedure, if a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. The arbitration will be administered by JAMS/Endispute pursuant to JAMS' Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. ("**Arbitration Rules**"). In the event of a conflict, the provisions of these Articles will control:

(i) the arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue

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concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the United States Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, provided, however, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a State arbitration act of the United States preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures;

(ii) the arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrators) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law;

(iii) the party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive;

(iv) no discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty- five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non- parties, shall not be permitted;

(v) all aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable

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opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term; and

(vi) the result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

(c) Notwithstanding anything to the contrary herein, for greater certainty, in accordance with the terms herein, if all parties involved in the Dispute do not provide written consent to following the mediation and/or arbitration provisions herein, a party shall maintain its right to pursue his/her/its Dispute in court.

AEOI

137. Notwithstanding any other Article, in order to comply with AEOI, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by AEOI, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.

138. In order to comply with AEOI and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to AEOI or incur any costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) (together, "**costs**") associated with AEOI, the Directors may cause the Company to undertake any of the following actions:

(a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to AEOI; or (ii) where there has otherwise been non-compliance by the Company with AEOI whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;

(b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:

(i) comply with any applicable requirement to apply and collect withholding tax pursuant to AEOI;

(ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with AEOI;

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(iii) ensure that any AEOI related costs are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs.

139. In order to give effect to the requirements imposed upon the Company by AEOI, as well as any of the actions contemplated by Articles 138(a) and 139(b), the Directors may undertake any of the following actions:

(a) create separate classes and/or series of Shares ("**AEOI Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of AEOI Shares as the Directors determine;

(b) may re-name any number of Shares (whether issued or unissued) as AEOI Shares, create a Separate Account with respect to such AEOI Shares and apply any AEOI related costs or withholding taxes to such Separate Account;

(c) allocate any AEOI costs or withholding tax among Separate Accounts on a basis determined solely by the Directors; and

(d) adjust the Net Asset Value per Share of any relevant Shares (including any AEOI Share).

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Annexure

Fiscal Year

The fiscal year of the Company ends on the 31st day of December in each year, unless the Directors prescribe some other period therefor.

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Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Share Class: Management

Authorised Capital of USD 1.00 divided into 100.00 Management shares of par value USD 0.01 each

Entry No.	Name and Address of Shareholder	Date of Entry	Cert. Nr	Shares Acquired	Issue Price	Amount Paid	Nature of Acquisition	Date Shares Disposed	Shares Disposed	Remarks	Balance Shares	Transaction Details
1	**WNL Limited** 190 Elgin Avenue George Town Grand Cayman KY1-9001 Cayman Islands	7-Nov-2011		1.00	0.01	In Full	7-Nov-2011 : Allotment of 1.00 Management share(s)	7-Nov-2011	1.00		0.00	7-Nov-2011 : Repurchase of 1.00 Management share(s)
2	**Grant James Scott** Highland Capital Managment, L.P. 13455 Noel Road, Suite 800 Dallas, TX 75240 USA	7-Nov-2011		100.00	1.00	In Full	7-Nov-2011 : Allotment of 100.00 Management share(s)	25-Mar-2021	100.00		0.00	25-Mar-2021 : Transfer of 100.00 Management share(s) to Mark E. Patrick
3	**Mark E. Patrick** 6716 Glenhurst Dr Dallas, TX 75254 USA	25-Mar-2021		100.00	1.00	In Full	25-Mar-2021 : Transfer of 100.00 Management share(s) to Mark E. Patrick		0.00		100.00	

Notes

1 *Where there is only one class of shares in issue, all issued shares carry equal (and unconditional) voting rights. Unless shares are described as "Non-Voting" they carry voting rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). Where shares are described as "Non-Voting" this designates that they do not carry rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). All shares carry unconditional voting rights, save where shares are described as "conditional" which designates that they only carry rights to vote at general meetings in certain circumstances.*

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Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Summary

Name	Number and Class of Shares Held
Mark E. Patrick	100.00 Management
Total Management Shares outstanding: 100.00	
Total Management Shares remaining unissued: 0.00	

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Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Share Class: Participating

Authorised Capital of USD 49,999.00 divided into 4,999,900.00 Participating shares of par value USD 0.01 each

Entry No.	Name and Address of Shareholder	Date of Entry	Cert. Nr	Shares Acquired	Issue Price	Amount Paid	Nature of Acquisition	Date Shares Disposed	Shares Disposed	Remarks	Balance Shares	Transaction Details
1	**The Highland Capital Management Partners CharitableTrust #2** Highland Capital Management, L.P 13455 Noel Rd, Suite 800 TX 75240 Dallas Texas USA	7-Nov-2011		300.00	3.00	In Full	7-Nov-2011 : Allotment of 300.00 Participating share(s)	30-Nov-2011	300.00		0.00	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Kansas City Foundation, Inc 30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Dallas Foundation, Inc 30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Santa Barbara Foundation, Inc
2	**Highland Kansas City Foundation, Inc** -	30-Nov-2011		100.00	1.00	In Full	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Kansas City Foundation, Inc		0.00		100.00	
3	**Highland Dallas Foundation, Inc** -	30-Nov-2011		100.00	1.00	In Full	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Dallas Foundation, Inc		0.00		100.00	
4	**Highland Santa Barbara Foundation, Inc** -	30-Nov-2011		100.00	1.00	In Full	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Santa Barbara Foundation, Inc		0.00		100.00	

CONFIDENTIAL
Printed on 25 April 2025

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Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Entry No.	Name and Address of Shareholder	Date of Entry	Cert. Nr	Shares Acquired	Issue Price	Amount Paid	Nature of Acquisition	Date Shares Disposed	Shares Disposed	Remarks	Balance Shares	Transaction Details
5	**Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT** 306 W. 7th St., Suite 1045 Forth Worth TX 76102 USA	13-Aug-2015		5.00	0.05	In Full	13-Aug-2015 : Allotment of 5.00 Participating share(s)		0.00		5.00	
6	**DFW Charitable Foundation** The Corporation Trust Company 1209 Orange Street Wilmington, DE 19801 United States	7-Feb-2025		318.00	3.18	In Full	7-Feb-2025 : Allotment of 318.00 Participating share(s)		0.00		318.00	

Notes

1 *Where there is only one class of shares in issue, all issued shares carry equal (and unconditional) voting rights. Unless shares are described as "Non-Voting" they carry voting rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). Where shares are described as "Non-Voting" this designates that they do not carry rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). All shares carry unconditional voting rights, save where shares are described as "conditional" which designates that they only carry rights to vote at general meetings in certain circumstances.*

Summary

Name	Number and Class of Shares Held	
Highland Kansas City Foundation, Inc	100.00	Participating
Highland Dallas Foundation, Inc	100.00	Participating
Highland Santa Barbara Foundation, Inc	100.00	Participating
Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT	5.00	Participating
DFW Charitable Foundation	318.00	Participating
Total Participating Shares outstanding: 623.00		
Total Participating Shares remaining unissued: 4,999,277.00		

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Geoffrey Sykes

From: Andrew Johnstone <aj@j-law.ky>
Sent: 24 April 2025 11:46 AM
To: Geoffrey Sykes; Barnaby Gowrie
Cc: Rhiannon Zanetic; Philip Aubry; Nicholas Geldard; Chris Beck
Subject: Re: Charitable DAF HoldCo, Ltd [WALKERS-AMER_DOCS.FID2294181]

[this message is from an external sender]

Hi Geoff

Given your failure to respond yesterday, we are in the course of serving on Charitable DAF HoldCo Ltd at its registered office.

Best

AJ

Andrew Johnstone
Founder | Partner

+1 (345) 929-3000
www.j-law.ky | **LinkedIn**
Johnstone Law, 10 Market Street, PO Box 926
Grand Cayman, KY1-9006, Cayman Islands

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From: Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com>
Sent: 24 April 2025 11:35
To: Andrew Johnstone <aj@j-law.ky>; Barnaby Gowrie <Barnaby.Gowrie@walkersglobal.com>
Cc: Rhiannon Zanetic <rz@j-law.ky>; Philip Aubry <Philip.Aubry@walkersglobal.com>; Nicholas Geldard <ng@j-law.ky>; Chris Beck <Chris.Beck@walkersglobal.com>
Subject: RE: Charitable DAF HoldCo, Ltd [WALKERS-AMER_DOCS.FID2294181]

Dear Mr Johnstone

Please could you confirm the nature of the proceeding to be served.

Best regards,

Geoffrey Sykes
Associate
Walkers (Cayman) LLP

T +1 345 814 6834 | **M** +1 345 814 6834
www.walkersglobal.com

Bermuda | British Virgin Islands | Cayman Islands | Dubai | Guernsey | Hong Kong | Ireland | Jersey | London | Singapore

From: Andrew Johnstone <aj@j-law.ky>
Sent: 23 April 2025 13:42
To: Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com>; Barnaby Gowrie <Barnaby.Gowrie@walkersglobal.com>
Cc: Rhiannon Zanetic <rz@j-law.ky>; Philip Aubry <Philip.Aubry@walkersglobal.com>; Nicholas Geldard <ng@j-law.ky>
Subject: Charitable DAF HoldCo, Ltd

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[this message is from an external sender]

Dear Colleagues

We act for the Participating Shareholders of Charitable DAF HoldCo, Ltd (the ***Company***).

Please can you confirm whether you are instructed to act for and accept service on behalf of the Company.

Best

AJ

Andrew Johnstone
Founder | Partner

+1 (345) 929-3000
www.j-law.ky | **LinkedIn**
Johnstone Law, 10 Market Street, PO Box 926
Grand Cayman, KY1-9006, Cayman Islands

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Geoffrey Sykes

From: Brandon R. Schaller <bschaller@shieldsle al.co >
Sent: 24 April 2025 4:52 PM
To: Barnaby Gowrie; Philip Aubry; Geoffrey Sykes; Chris Beck
Cc: patrick@dafholdco.co ; Paul Murphy; sra er@dafholdco.co ; Bart Hi ins
Subject: FW: Charitable DAF HoldCo, Ltd. [IMAN-IMANCORP.FID4882 2]
tt c ments: 2025 24 04 - Charitable DAF HoldCo Ltd. ip

m ort nce: Hi h

[this message is from an external sender]

FYI

| 469.726.3055
| bschaller@shieldslegal.com
___ | _____ | _____

From: Matheo Vinciullo | Campbells <MVinciullo@campbellslegal.com>
Sent: Thursday, April 24, 2025 4:45 PM
To: Michelle Richie | Campbells <MRichie@campbellslegal.com>; Brandon R. Schaller <bschaller@shieldslegal.com>
Cc: mpatrick@dafholdco.com; Paul Murphy <paul@gkmanagement.com.ky>; sraver@dafholdco.com; Bart Higgins <bhiggins@shieldslegal.com>; Mark Goodman | Campbells <MGoodman@campbellslegal.com>; Amanda Atkins | Campbells <AAtkins@campbellslegal.com>; Aliana Dodds | Campbells <ADodds@campbellslegal.com>; Chris Smith | Campbells <CSmith@campbellslegal.com>; Amanda Atkins | Campbells <AAtkins@campbellslegal.com>
Subject: RE: Charitable DAF HoldCo, Ltd. [IMAN-IMANCORP.FID488232]
Importance: High

CAUTION: This email originated from outside of the organization.

All

Johnstone law, who are acting for the participating shareholders of Charitable DAF HoldCo Ltd, served the following documents this afternoon (via Campbells, as we remain Charitable DAF's registered office):

- A Petition seeking orders that Charitable DAF be wound up and that joint official liquidators be appointed.
- A Summons seeking an order appointing joint provisional liquidators over Charitable DAF.
- Supporting affirmations of Julie Diaz (of The Dallas Foundation) and James Dondero.
- Consent to acts as a liquidator from Margot MacInnis and Sandipan Bhowmik, both of Grant Thornton.

The Summons seeking the appointment of joint provisional liquidators over Charitable DAF has been listed for hearing before Justice Asif at 2pm on **Monday, 28 April 2025**.

We will forward copies of the attached materials to Kroll, as the voluntary liquidators of Charitable DAF. Our understanding is that Kroll will be taking point on next steps as the voluntary liquidators, but we will review and are available to assist. We will also forward these materials onto Walkers, who have requested a copy.

Kind regards

Copy from re:SearchTX

Matheo Vinciullo
Associate

E mvinciullo@campbellslegal.com
T +1 345 949 2648 D +1 345 914 6931 C +1 345 327 6931

Campbells LLP
Floor 4, Willow House, Cricket Square
Grand Cayman KY1-9010, Cayman Islands
campbellslegal.com | LinkedIn

CAYMAN | BVI | HONG KONG

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From: Michelle Richie | Campbells <MRichie@campbellslegal.com>
Sent: Thursday, April 24, 2025 1:00 PM
To: Brandon R. Schaller <bschaller@shieldslegal.com>; Amanda Atkins | Campbells <AAtkins@campbellslegal.com>; Aliana Dodds | Campbells <ADodds@campbellslegal.com>; Chris Smith | Campbells <CSmith@campbellslegal.com>; Amanda Atkins | Campbells <AAtkins@campbellslegal.com>
Cc: mpatrick@dafholdco.com; Paul Murphy <paul@gkmanagement.com.ky>; sraver@dafholdco.com; Bart Higgins <bhiggins@shieldslegal.com>; Matheo Vinciullo | Campbells <MVinciullo@campbellslegal.com>; Mark Goodman | Campbells <MGoodman@campbellslegal.com>
Subject: RE: Charitable DAF HoldCo, Ltd. [IMAN-IMANCORP.FID488232]

Brandon

We have not received anything as yet but will provide copies when we do. We have received a similar request from Walkers attached. Do we have authorisation to provide the same to them?

Michelle Richie
Partner

E mrichie@campbellslegal.com
T +1 345 949 2648 D +1 345 914 6933 C +1 345 525 6933

Campbells LLP
Floor 4, Willow House, Cricket Square
Grand Cayman KY1-9010, Cayman Islands
campbellslegal.com | LinkedIn

CAYMAN | BVI | HONG KONG

From: Brandon R. Schaller <bschaller@shieldslegal.com>
Sent: Thursday, April 24, 2025 12:48 PM
To: Amanda Atkins | Campbells <AAtkins@campbellslegal.com>; Aliana Dodds | Campbells <ADodds@campbellslegal.com>; Chris Smith | Campbells <CSmith@campbellslegal.com>; Amanda Atkins | Campbells <AAtkins@campbellslegal.com>; Michelle Richie | Campbells <MRichie@campbellslegal.com>
Cc: mpatrick@dafholdco.com; Paul Murphy <paul@gkmanagement.com.ky>; sraver@dafholdco.com; Bart Higgins <bhiggins@shieldslegal.com>
Subject: Charitable DAF HoldCo, Ltd.

EXTERNAL EMAIL: This email originated from outside of Campbells.

Campbells team,

Copy from re:SearchTX

We heard that Johnstone law is attempting service on Charitable DAF HoldCo, Ltd. as its registered office. Can you please advise if you have received anything, and if not, provide us a copy when you do?

Thanks,
Brandon

16400 Dallas Parkway, Suite 300
Dallas, TX 75248

| 469.726.3055
| bschaller@shieldslegal.com
___ | _____ | _____

This e-mail message is confidential and is being sent by or on behalf of Shields Legal Group, P.C. The information contained in this e-mail may be protected from disclosure by one or more privileges, including without limitation, the attorney-client communication privilege. If you are not the intended recipient, please notify the sender immediately at 469.726.3055 and/or by reply e-mail, and immediately destroy this message. You should not copy it or disclose its contents to any other person. Please note that internet communications are not secure; are subject to possible data corruption, either accidentally or on purpose; and may contain viruses. This e-mail message does not contain or constitute legal advice and/or federal tax advice. The contents of this e-mail message are not intended to be used and cannot be used to avoid penalties under the Internal Revenue Code, or to promote, market, or recommend to any person any transaction or matter addressed herein.

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Geoffrey Sykes

From: Mark Patrick < patrick@dafholdco.co >
Sent: 2 April 2025 12:51 AM
To: Mansfield, Mitchell
Cc: Paul Murphy
Subject: oluntary Li uidators

[this message is from an external sender]

Dear Voluntary Liquidators

I write to you in my capacity as the management shareholder and director of the company. My fellow director, Paul Murphy, is copied to this email and agrees with its contents.

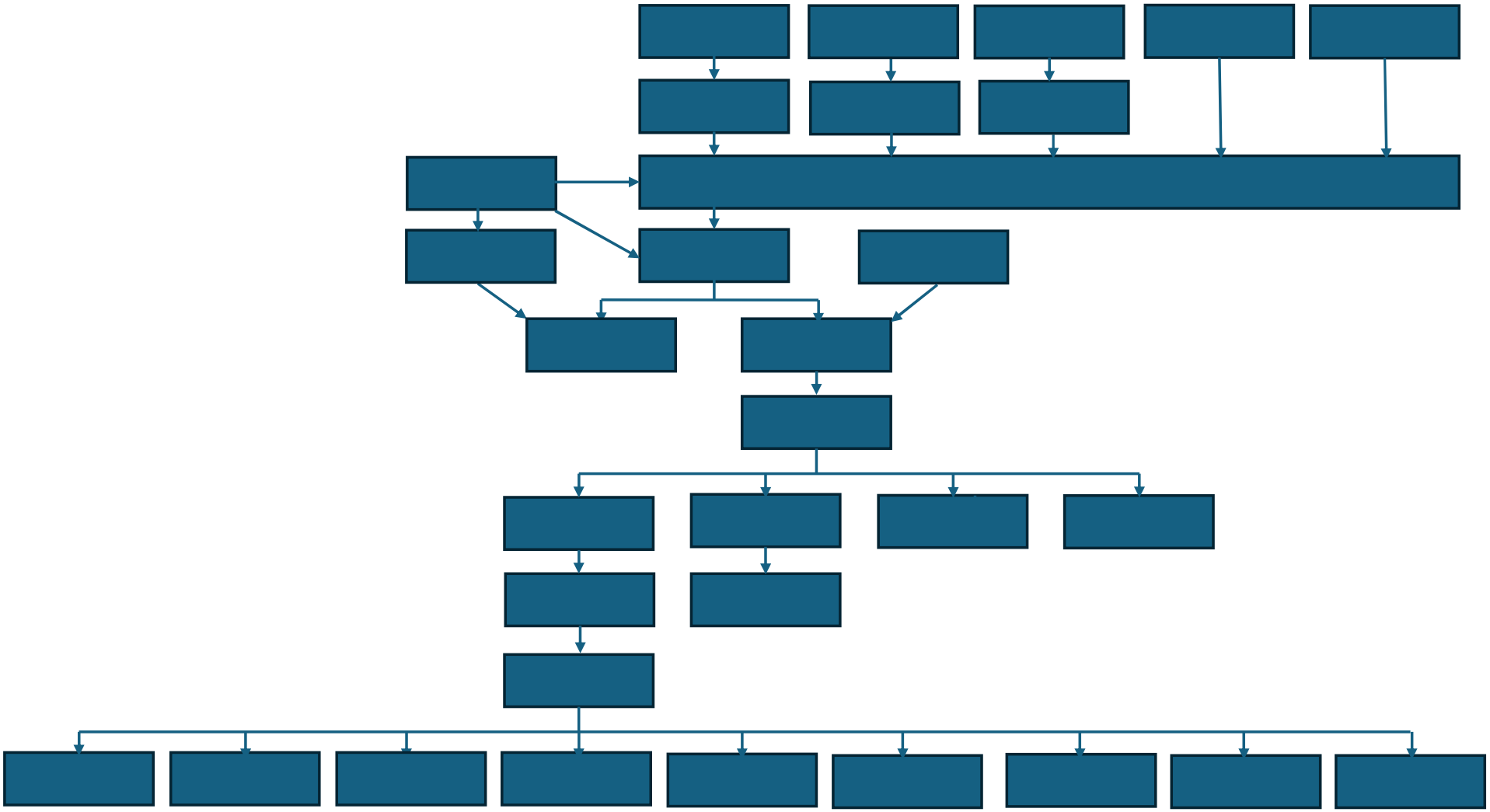
Please note the following:

The management shareholder of the company and its directors intend in providing cooperation to the voluntary liquidators in accordance with Cayman law.
The management shareholder has no intention of taking any steps to remove the voluntary liquidators from office.
Assuming the voluntary liquidators consider it appropriate having consulted with relevant stakeholders of the company, the management shareholder and the directors have no objections to the voluntary liquidators making the necessary court application to have the voluntary liquidation brought under the supervision of the Cayman Court.
If you have any questions, please do not hesitate to contact me.

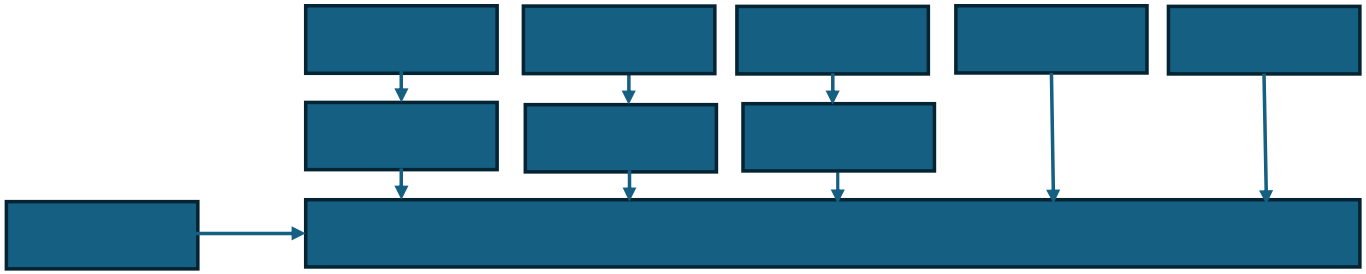
Kind regards.

Mark Patrick
Management Shareholder

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1. Defendant
2. Geoffrey Sykes
3. First Affidavit
4. Exhibit "GS-1"
5. 27 April 2025

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 99 OF 2025 (JAJ)

IN THE MATTER OF: **SECTION 92 OF THE COMPANIES ACT (2025 REVISION)**

AND IN THE MATTER OF: **CHARITABLE DAF HOLDCO, LTD (IN VOLUNATRY LIQUIDATION)**

BETWEEN

(1) THE HIGHLAND DALLAS FOUNDATION, INC.
(2) THE HIGHLAND KANSAS CITY FOUNDATION, INC.
(3) THE HIGHLAND SANTA BARBARA FOUNDATION, INC.
(4) THE HCMLP CHARITABLE FUND

PLAINTIFFS

and

CHARITABLE DAF HOLDCO, LTD (IN VOLUNTARY LIQUIDATION)

DEFENDANT

FIRST AFFIDAVIT OF GEOFFREY SYKES

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I, **GEOFFREY SYKES**, of 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands being duly sworn **MAKE OATH and SAY** as follows:

Preliminary

1. I am an Attorney-at-Law and Associate in the Insolvency and Dispute Resolution Group at Walkers (Cayman) LLP ("**Walkers**"), and I act for Charitable DAF HoldCo, Ltd (in Voluntary Liquidation) (the "**Company**").

2. I make this Affidavit in response to the winding up petition by which Cause No. FSD 99 of 2025 was commenced, and the summons listed in that proceeding seeking, among other things, "*An order appointing joint provisional liquidators over Charitable DAF HoldCo*…".

3. There is now shown to me a bundle of documents marked Exhibit "**GS-1**" and references to page numbers herein are to pages of that Exhibit. For the avoidance of doubt, no privilege is waived by the inclusion of the information set out herein.

4. Save where the contrary is stated to be the case, the facts and matters to which I depose are within my own knowledge and are true. Where the facts and matters are not within my own knowledge, they derive from my instructions by the company, acting either through its directors or the Joint Voluntary Liquidators (defined below) as the case may be at the relevant time, or I identify the source of my knowledge and confirm that those facts and matters are true to the best of my knowledge and belief.

Recent events and documents

5. On 24 April 2025, Johnstone Law served on the Company at its registered office a bundle of documents including the winding up petition and the summons referred to above. A copy of the cover letter to this bundle of documents is at

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page 1 (noting that the remainder of the documents will already be before the Court).

6. On 25 April 2025, Walkers sent to Johnstone Law a letter enclosing the following documents:

(a) A consent to act as joint voluntary liquidators of the Company by Mitchell Mansfield and William Clarke of Kroll Cayman Ltd (the "**Joint Voluntary Liquidators**"), dated 29 March 2025;

(b) Written resolutions of the directors of the Company including to recommend to the management shareholder that the Company be wound up voluntarily and the Joint Voluntary Liquidators be appointed, dated 2 April 2025;

(c) Special resolutions of the management shareholder of the Company that the Company be wound up voluntarily and the Joint Voluntary Liquidators be appointed, dated 2 April 2025;

(d) A declaration of solvency by the directors of the Company, dated 2 April 2025;

(e) An extract from Gazette Issue No. 8/2025, which includes notice that on 2 April 2025 the Company was placed into Voluntary Liquidation and the Joint Voluntary Liquidators were appointed, dated 14 April 2025;

(f) The current Memorandum and Articles of the Company, dated 20 February 2025;

(g) The current Register of Members of the Company, dated 25 April 2025; and

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(h) An email chain between Walkers and Johnstone law, dated 23-24 April 2025.

7. That letter and its enclosures are at **pages 2 – 53**.

8. On 24 April 2025, emails were exchanged between Campbells LLP as the registered office of the Company, and Shields Legal (acting for the directors of the Company), in respect of the bundle of documents served by Johnstone Law. A copy of that email chain is at **pages 54 – 56**.

9. On 27 April 2025, Mark Patrick (in his capacity as the management shareholder and a director of the Company) sent an email to the Joint Voluntary Liquidators in respect of the joint voluntary liquidation. A copy of that email is at **page 57**.

10. A copy of the structure chart of the Company prior to 27 March 2025 is at **page 58**. A copy of the current structure chart Company as of 27 March 2025 is at **page 59**.

SWORN at George Town,)
)
Grand Cayman)
)
on the 27th day of April 2025)
before me)
)
)
)
)

GEOFFREY SYKES

NOTARY PUBLIC

Fiona MacAdam
Notary Public in and for the Cayman Islands
My commission expires January 31, 2026
Date: 27th April 2025

This **AFFIDAVIT** is filed by Walkers (Cayman) LLP, Attorneys-at-Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands, for the Applicant whose address for service is care of said Attorneys-at-Law.

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1. Defendant
2. Geoffrey Sykes
3. First Affidavit
4. Exhibit "GS-1"
5. 27 April 2025

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 99 OF 2025 (JAJ)

IN THE MATTER OF: **SECTION 92 OF THE COMPANIES ACT (2025 REVISION)**

AND IN THE MATTER OF: **CHARITABLE DAF HOLDCO, LTD (IN VOLUNATRY LIQUIDATION)**

BETWEEN

(1) THE HIGHLAND DALLAS FOUNDATION, INC.
(2) THE HIGHLAND KANSAS CITY FOUNDATION, INC.
(3) THE HIGHLAND SANTA BARBARA FOUNDATION, INC.
(4) THE HCMLP CHARITABLE FUND

PLAINTIFFS

and

CHARITABLE DAF HOLDCO, LTD (IN VOLUNTARY LIQUIDATION)

DEFENDANT

THIS IS EXHIBIT "**GS-1**" TO THE AFFIDAVIT OF

GEOFFREY SYKES

SWORN BEFORE ME THIS 27TH DAY OF APRIL 2025

Fiona MacAdam
Notary Public in and for the Cayman Islands
My commission expires January 31, 2026
Date: 27 April 2025.

NOTARY PUBLIC

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EXHIBIT
4-A

November 11, 2024

From: Highland Dallas Foundation, Inc.
Highland Kansas City Foundation, Inc.
Highland Santa Barbara Foundation, Inc.

To: Mr. Paul Murphy
Director of Charitable DAF HoldCo, Ltd.
and Charitable DAF Holdings Corp.
paul@gkmanagement.com.ky

Dear Mr. Murphy:

We write to you collectively on behalf of the following organizations:

1. Highland Dallas Foundation, Inc., a participation shareholder in Charitable DAF HoldCo, Ltd., of which you are a director along with Mark Patrick. As you know, Mr. Patrick also is the managing member of the Charitable DAF GP, LLC, which governs the related Charitable DAF Fund, LP.

2. Highland Kansas City Foundation, Inc., also a participation shareholder in Charitable DAF HoldCo, Ltd.

3. Highland Santa Barbara Foundation, Inc., also a participation shareholder in Charitable DAF Holdco, Ltd.

Highland Dallas Foundation, Inc is a supporting organization of The Dallas Foundation. Highland Kansas City Foundation, Inc. is a supporting organization of Greater Kansas City Community Foundation. Highland Santa Barbara Foundation, Inc. is a supporting organization of Santa Barbara Foundation. The Dallas Foundation, Greater Kansas City Community Foundation and Santa Barbara Foundation (collectively the "Foundations") have worked closely with their respective supporting organizations named above to award grants and funding to a wide range of charitable causes that have made tangible, lasting impacts on the communities they serve. Our primary commitment has been, and always will be, our concern for the community, respect for donors, thoughtful giving, and careful investing—core values that have guided each of us throughout our existence.

With these core values and with the well-being of these Foundations in mind, we write you to voice that we no longer have confidence that the governance structures of, including but not limited to Charitable DAF-GP, LLC, Charitable DAF HoldCo, Ltd., Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (collectively the "DAF-related entities"), can function appropriately. We believe a reorganization must occur or the DAF-related entities should be equitably wound up because the governance structure has become unworkable. Recently, various competing constituencies provided the Foundations with conflicting information related to the operations and financial inner

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Docusign Envelope ID: 11CD8132-6630-49A0-A1FE-D8548E9451F8

workings of the DAF-related entities. This conflicting information raises significant concerns about how the corpus of these funds is administered and spent. The Foundations have no real pathway to verify the information as the current governance structures prevent them from receiving such information, and indeed, efforts to secure additional information have been rebuffed. As a result, these recent submissions demonstrate that the current governance structure is ill-equipped to address such allegations and provide sufficient protection to the economic funds that support so many charitable efforts.

Further, because we have substantial concerns, out of an abundance of caution, and until an accounting can be conducted, we believe it is inappropriate for anyone to authorize the depletion of further assets of DAF-related entities. We urge you to take our accounting and governance concerns seriously because depletion of assets in the DAF-related entities has a direct impact on our mission and the charitable good works in our communities.

Thank you for your attention to this matter. Our counsel with the law firm of Holland & Knight LLP is copied on this letter should you have any questions.

Sincerely yours,

HIGHLAND DALLAS FOUNDATION, INC.

Signed by:
By: _____
8C324EA989434F3...
Julie Diaz
Vice President

HIGHLAND KANSAS CITY FOUNDATION, INC.

DocuSigned by:
By: Deborah L Wilkerson
71ED433BB136439...
Debbie Wilkerson
Vice President

HIGHLAND SANTA BARBARA FOUNDATION, INC.

DocuSigned by:
By: Jackie Carrera
66D737ACD1A1461...
Jacqueline M. Carrera
Secretary and Treasurer

cc: David M. Rosenberg
(via email at david.rosenberg@hklaw.com)

Michael Stockham
(via email at michael.stockham@hklaw.com)

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EXHIBIT 4-B

nnon net c

Subject: [E ERNAL]-RE: DAFHoldCo infor ation re uest

From: Michael.Stockham@hklaw.com
Date: February 7, 2025 at 12:43:56 PM CST
To: Paul Murphy <paul@gkmanagement.com.ky>, Julie Diaz <jdiaz@dallasfoundation.org>, mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>, Jackie Carrera <jcarrera@sbfoundation.org>, David.Rosenberg@hklaw.com, DMancino@seyfarth.com
Subject: [EXTERNAL]-RE: DAFHoldCo information request

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Paul-

I appreciate your email, and your willingness to find a framework to resolve the concerns, but am flummoxed by your, "struggle" to understand our growing frustration.

I do not believe it should be difficult to comprehend the request for transparency around $270 million dollars you control as a fiduciary for the benefit of charities in Dallas, Kansas City, and Santa Barbara. Indeed, these odd legal and rhetorical machinations of yours and Mr. Patrick miss the point. These monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed, and—among other things—creating a lasting impact on young minds by fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees. If I'm wrong, please educate me.

Your failure to be forthcoming about the underlying assets, the investment philosophy of the fund, and the "revised" governance, have caused me to start digging. I am not only a lawyer but also a Certified Fraud Examiner and a Certified Compliance & Ethics

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Professional, and what I have found is nothing short of alarming.

> As I mentioned, director fees for 2024 appeared to be on track to exceed $5 million, which was an over 12,000 percent increase—up from zero. It is hard to fathom what you and Mr. Patrick have changed or contributed to the funds to warrant such a drastic change in director fees. I could be wrong, but if so, then tell me why. What is the dramatic value add?
>
> As I understand it, the annualized expenses of the funds were on pace to outstrip the actual return on the investments. So I am at a loss as to how you can justify running the fund at a loss while apparently paying the directors handsomely and freezing Supporting Organizations (the shareholders) out of basic information.

On November 6, 2024, we had an introductory video call with Doug Mancino, who announced himself as Compliance Counsel. But no details of the assets or financial condition of the funds were communicated.

On November 20, 2024, we had another video call with folks from your side, including ValueScope, and it was informative; however, the thrust of the presentation was why you refused proposed investments from NexPoint. It had nothing to do with the underlying assets and financial conditions of the fund. This was perplexing as ValueScope has been the valuation firm for the fund for years; yet they were silent about the condition of the fund.

On December 11, 2024, we had a video call with you, Doug Mancino, and your Cayman counsel. The thrust of that discussion was your vision of running the fund more as an institutional investment vehicle and a promise to provide financial information in the future. But the presentation again lacked any information on the underlying assets and financial conditions of the fund. It did, however, include a discussion that the Supporting Orgs had no right to information under the structure of the funds.

Shortly after the December 11 call, we received your first demand to withdraw our concerns about the governance of the funds, and it also advanced that if the Supporting Organizations wanted more

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transparency they must sign a non-disclosure agreement with a liquidated damages clause. Which is, quite frankly, ridiculous.

In sum, and as I understand the thread running through the communications, your continuing posture is the following. The Supporting Orgs have no right to information. And, if the Supporting Organizations want more information, they must both recant their governance concerns and then sign the NDA. Those are both coercive non-starters. Again, if I'm wrong please tell me how.

Finally, and this I find perhaps the most egregious, I just discovered through my own research that Mark Patrick cancelled the Delaware charter of Charitable DAF GP, LLC on October 30, 2024 and rechartered it in Cayman. I can find no legitimate reason to recharter the general partner, and instead believe it to be a move to further insulate Mr. Patrick's and your actions by retreating from jurisdiction in the United States and offshore the entity in its entirety. If I've misunderstood, please let me know in detail how, but I remain skeptical. Further, in the calls listed above, not one representative from your side spoke up to explain, or even mention, the rechartering of the general partner. That is a striking repeated omission.

So the change of tone should not provide any struggle to puzzle through. Over the last three months, you have not provided any information about the assets and financial health of the fund. You have demanded that information only flows under an NDA with liquidated damages. You continually issue a veiled threat that information is a privilege not a right under the agreements. Expenses have gone through the roof, and the governance has been changed to further insulate it in a foreign jurisdiction. To say the least, I see red flags all over this situation, but have not received any facts, yet, that tell me they are unwarranted.

If I'm wrong, fine. It won't be the first time. But this also isn't my first rodeo, and the way to diffuse this is through immediate full transparency and facts. So if I've misunderstood, and your intent is to provide a fully transparent briefing to the Supporting Organizations without coercive caveats, then we stand ready to have that conversation after receiving the basic financial information requested by Julie Diaz in her January 23, 2025 email.

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Michael Stockham, JD, CFE, CCEP | **M**

Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, Texas 75201
Phone 214.969.2515 | Fax 214.969.1751 | Mobile 214.542.6435
michael.stockham@hklaw.com | www.hklaw.com

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*Licensed to practice law in Texas, Kansas, and New York
CFE - Certified Fraud Examiner - Association of Certified Fraud Examiners www.acfe.com
CCEP - Certified Compliance and Ethics Professional - Society of Corporate Compliance and Ethics Professionals www.corporatecompliance.org

From: Paul Murphy <paul@gkmanagement.com.ky>
Sent: Tuesday, February 4, 2025 9:31 AM
To: Stockham, Michael W (DAL - X62515) <Michael.Stockham@hklaw.com>; Julie Diaz <jdiaz@dallasfoundation.org>; mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; Rosenberg, David M (DAL - X61508) <David.Rosenberg@hklaw.com>; DMancino@seyfarth.com
Subject: RE: DAFHoldCo information request

[External email]

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From: Michael.Stockham@hklaw.com <Michael.Stockham@hklaw.com>
Sent: Friday, January 31, 2025 3:32 PM
To: Paul Murphy <paul@gkmanagement.com.ky>; Julie Diaz <jdiaz@dallasfoundation.org>; mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; David.Rosenberg@hklaw.com; DMancino@seyfarth.com
Subject: RE: DAFHoldCo information request

Paul-

I have added Doug Mancino to this email chain, as you are represented by counsel, I believe it appropriate to loop him in for this communication. I also told you that I had a tendency toward the blunt.

I am appalled by your response. As fiduciaries, you and Mr. Patrick manage $270 million in assets for the benefit of charities that support the most vulnerable in their communities. Whatever your side's obvious antagonism to Mr. Dondero, the fact remains that the underlying assets are ultimately for these charitable missions. And your focus and mission should be not only to ensure the success of the investments, but transparency to the ultimate beneficiaries. The assets are for their benefit, not Mr. Dondero, not Mr. Patrick, and not you.

The Supporting Organizations have legitimate concerns. The last information they received from SEI in July of 2024 — before Mr. Patrick shut down that line of communication and information — showed legal expenses had increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022. If annualized, and at that pace, legal expenses appeared to be on path to exceed $12 million for 2024. That's a 300% increase. Director fees skyrocketed from $40 thousand in 2022 to $2.25 million in the first six months of 2024. Again, annualized, these fees are on a path to exceed $5 million in 2024. That is a 12,400% increase. Yet, no information has been provided by you

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and Mr. Patrick, no clarity given. It appears that total expenses for 2024, if annualized, were on pace to exceed $36 million. Even if you earned a return of 10 percent on the $270 million invested, the fund would be at $11 million of negative revenue for 2024. If the information we received is wrong, then please explain why, and provide the detailed information to disabuse us of these concerns. But telling us we have no legal right to the answers is not workable.

Upon Mr. Patrick taking control, you and he should have immediately engaged with the Supporting Organizations to explain the transition, your plans, and how the assets are being managed. I would have thought that a fiduciary would have engaged in a campaign of maximum transparency and disclosure. Instead, as to the actual financial condition of the assets, you have been opaque at best and purposefully elusive at worse, and your email below retreats into statements about having no legal obligation to disclose the activities of the funds. And it seems to condition further transparency on the Supporting Organizations recanting their earlier expressed concerns. I think you should reconsider such an entrenchment.

The Supporting Organizations have no interest in the animosity or dysfunction between Mr. Patrick and Mr. Dondero. What they do have an interest in, is an active campaign by you and Mr. Patrick to continue to manage the assets in a shroud of mystery, dripping out details and information whenever you deem it appropriate. To do so simply proves our concerns that the governance structure of these entities is broken.

Yes, it is true that we have been in discussions for months about transparency, and you provided some information. However, what has been ignored are the repeated requests for a simple set of financials. But how hard is it to create a short PowerPoint on the current state of financial statements, a simple diagram of the alleged new governance structure (who are the advisory board members?), your visions for the funds, and then provide a one-hour briefing to the Supporting Organizations? If you are truly managing the funds to the institutional-investor standards represented in our call, these details should be at your fingertips. Yet somehow this has all devolved into delays and posturing related to the dust up between Messrs. Dondero and Patrick.

That type of myopic thinking is not appropriate in this situation. The Supporting Organizations deserve

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answers, and the transparency needs to happen sooner rather than later. And, the answer you provided, which essentially said that you can tell the organizations to pound sand and they should be grateful for the information you do provide, is not acceptable.

Michael Stockham, JD, CFE, CCEP | **M**

Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, Texas 75201
Phone 214.969.2515 | Fax 214.969.1751 | Mobile 214.542.6435
michael.stockham@hklaw.com | www.hklaw.com

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*Licensed to practice law in Texas, Kansas, and New York
CFE - Certified Fraud Examiner - Association of Certified Fraud Examiners www.acfe.com
CCEP - Certified Compliance and Ethics Professional - Society of Corporate Compliance and Ethics Professionals www.corporatecompliance.org

---

From: Paul Murphy <paul@gkmanagement.com.ky>
Sent: Thursday, January 30, 2025 12:13 PM
To: Julie Diaz <jdiaz@dallasfoundation.org>; mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; Stockham, Michael W (DAL - X62515) <Michael.Stockham@hklaw.com>; Rosenberg, David M (DAL - X61508) <David.Rosenberg@hklaw.com>
Subject: RE: DAFHoldCo information request

[External email]

28 January Email

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11 November Letter

,

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Paul Murphy
G.K. Management Limited
P.O. Box 10729
Suite 1, Artemis House
67 Fort Street
Grand Cayman KY1-1007
Cayman Islands
Phone: +1 345 946 3459
Mobile: +1 345 324 1121
Fax: +1 345 946 3493
E-mail : paul@gkmanagement.com.ky

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From: Julie Diaz <jdiaz@dallasfoundation.org>
Sent: Tuesday, January 28, 2025 9:14 PM
To: Mark Patrick <MPatrick@CharitableDAF.com>; Paul Murphy <paul@gkmanagement.com.ky>
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; Michael.Stockham@hklaw.com; Rosenberg, David M (DFW - X61508) <David.Rosenberg@hklaw.com>
Subject: RE: DAFHoldCo information request

Mark and Paul-

We have great concern that our reasonable requests below have not been acknowledged. This failure to provide the courtesy of a response continues a pattern of a lack of communication and transparency as to assets and financials of DAF HoldCo under your stewardship. These failures exacerbate the concerns we previously communicated in our letter to Paul in November 2024 (copy attached), which highlighted our concerns that the governance of the DAF HoldCo has failed in its current structure. The situation as it now stands is untenable. The lack of engagement on the true financial condition of the DAF HoldCo and the underlying assets leads us to believe that you have rejected our request to revise the governance of the DAF HoldCo and related structure. As such we are requesting that DAF HoldCo and the related entities be wound up and the underlying assets be distributed in kind to the Supporting Organizations so they can manage those assets for the benefit of the charities and the communities they serve. As previously requested, until these issues are resolved, we are insisting that you do not dissipate the assets further.

From: Julie Diaz
Sent: Thursday, January 23, 2025 9:45 AM
To: MPatrick@CharitableDAF.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>
Subject: DAFHoldCo information request

Hi Mark –

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Since we spoke last fall, the three CEOs from Santa Barbara, Kansas City, and Dallas community foundations (copied here) were discussing our plans for 2025 and wanted to reach out to you to check in on the DAFHoldCo. We have been discussing the need for a better understanding of the assets and thought it would be helpful if you could provide us with several detailed reports now that the new structure is in place.

Specifically, could you send:

- **Income Statements for the last for years**: A complete set of income statements (or profit and loss statements) for the last four fiscal years (2021-2024), including any supplemental notes or breakdowns that provide insight into revenue streams and expenses
- **Listing of Underlying Assets**: A detailed listing of the underlying assets held by DAF HoldCo, including both tangible and intangible assets. This should include any real estate, investments, intellectual property, or other significant assets that contribute to the company's operations or value.
- **Audited Financial Statements**: The most recent audited financial statements for DAFHoldCo, including the balance sheet, statement of cash flows, and any related auditor's reports. Please include any supplementary schedules or disclosures that are typically associated with these statements.
- **Current Structure of DAFHoldCo Operations:** An up-to-date organizational chart or structural overview detailing the key divisions, subsidiaries, and any relevant operational or financial entities that comprise the DAFHoldCo structure, including any significant changes that may have occurred over the last few years.

As you can appreciate, our job as leaders of our respective community foundations is to ensure proper stewardship of the charitable assets that are owned by our organizations. We are grateful for the decade plus of charitable investments that we have been able to make from the proceeds of the DAFHoldCo and would like to have confidence that this vehicle will continue to grow and make

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additional meaningful contributions to our respective communities.

Please let us know your ability to get this information to us by Feb. 10, 2025.

Thank you and happy New Year.



Julie Diaz
President & CEO

P 2146942506
C 2143173784
E jdiaz@dallasfoundation.org
L /julie-h-diaz
W dallasfoundation.org







The Dallas Foundation
Pegasus Park
3000 Pegasus Park Drive, Suite 930
Dallas, Texas 75247

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Julie Diaz
President & CEO

P 2146942506
C 2143173784
E jdiaz@dallasfoundation.org
L /julie-h-diaz
W dallasfoundation.org

The Dallas Foundation
Pegasus Park
3000 Pegasus Park Drive, Suite 930
Dallas, Texas 75247



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EXHIBIT
4-C

February 27, 2025

Via Email: dmancino@seyfarth.com

Douglas M. Mancino, Esq.
Seyfarth Shaw LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021

Re: Charitable DAF Holdco, Ltd. ("Charitable DAF")

Doug-

I received your letter dated February 14, 2025. I apologize if you believe my previous emails to be "over the top." However, what you perceive as "hostility" is nothing more than frustration at the circuitous dialogue and veiled threats we receive in response to simple and repeated requests for transparency as to the finances and governance of Charitable DAF. So far, our specific concerns have been met with denials but no real data on the particular issues raised. In a world where Messrs. Dondero and Patrick appear to be feuding, the Supporting Organizations can, at best, adopt a position of "trust but verify." They will, therefore, continue to push for transparency.

Further, the frustration you perceive arises from comments in many of the communications we have received from you and your clients attempting to position the Supporting Organizations as being manipulated by Mr. Dondero. The Supporting Organizations are nobody's patsy, proxy, or puppet. To suggest otherwise insults the intellect and professionalism of the executive leadership at each of the Supporting Organizations.

Paul Murphy continues to assert that he is ready to present to the Supporting Organizations and clear up all the misunderstandings. You know our concerns; let us get to it. Please propose dates in the next two weeks on which Paul is ready to present to, and answer questions from, the Supporting Organizations.

Sincerely yours,

Michael W. Stockham

cc: David Rosenberg

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nnon net c

From: Da id.Rosenber @hklaw.co
Sent: 18 March 2025 09:2
To: Mancino, Dou las; Michael.Stockha @hklaw.co
Cc: Paul Murphy
Subject: RE: Can you et e a couple of dates for Paul Murphy to ake a presentation to your three clients We would like to do this as soon as practicable. hanks for your attention to this.

Doug, we are available on:

Wednesday March 26, after 4:00 p.m. U.S. Central Daylight Time.

Monday, March 31, until 12:00 p.m. U.S. Central Daylight Time.

Thursday, April 3 until 12:00 p.m. U.S. Central Daylight Time.

David Rosenberg | Holland & Knight
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, Texas 75201
Phone 214.969.1508 | Fax 214.964.9501
david.rosenberg@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Mancino, Douglas
Sent: Monday, March 17, 2025 1:00 PM
To: Rosenberg, David M (DAL - X61508) ; Stockham, Michael W (DAL - X62515)
Cc: Paul Murphy
Subject: Can you get me a couple of dates for Paul Murphy to make a presentation to your three clients? We would like to do this as soon as practicable. Thanks for your attention to this.

Doug

Douglas Mancino (he/him/his) | Partner | Seyfarth Shaw LLP
2029 Century Park East | Suite 3500 | Los Angeles, California 90067-3021
Direct: +1-310-201-5241 | Fax: +1-310-551-8326
DMancino@seyfarth.com | www.seyfarth.com

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From: Da id.Rosenber @hklaw.co
Sent: 0 April 2025 09:51
To: Mancino, Dou las
Cc: Michael.Stockha @hklaw.co ; Paul Murphy
Subject: RE: Zoo call with Paul Murphy

Doug, no such call is on our calendar, so I am not sure of the source of the confusion. We will circle back with our clients and provide some windows starting on April 16.

I wish your wife the best of health with her back. Thanks.

David Rosenberg | Holland & Knight
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas Texas 75201 Phone 214.969.1508 | Fax 214.964.9501
david.rosenberg@hklaw.com | https://urldefense.proofpoint.com/v2/url?u=http-3A__www.hklaw.com&d=DwIFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=RjdPX5h2cOpgbX1KbC0WsA&m=rtNqaByRU1S_SGisTolK5eacT1e3ojm6eK4M4xkty0lq4Kq7A8kNpSNaOg8_Sk5D&s=dUaYK7RyBQ-__Uvhuz_UbZY9LLgA8fqgfSQfMU9IREk&e=

-----Original Message-----
From: Mancino, Douglas <DMancino@seyfarth.com>
Sent: Thursday, April 3, 2025 9:47 AM
To: Rosenberg, David M (DAL - X61508) <https://urldefense.proofpoint.com/v2/url?u=http-3A__David.Rosenberg-40hklaw.com&d=DwIFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=RjdPX5h2cOpgbX1KbC0WsA&m=rtNqaByRU1S_SGisTolK5eacT1e3ojm6eK4M4xkty0lq4Kq7A8kNpSNaOg8_Sk5D&s=dK186X1LRwbLe82XNr4DiwVprLY83NgIEL5KUk2L9wM&e=>
Cc: Stockham, Michael W (DAL - X62515) <https://urldefense.proofpoint.com/v2/url?u=http-3A__Michael.Stockham-40hklaw.com&d=DwIFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=RjdPX5h2cOpgbX1KbC0WsA&m=rtNqaByRU1S_SGisTolK5eacT1e3ojm6eK4M4xkty0lq4Kq7A8kNpSNaOg8_Sk5D&s=H8AOyc2PQyRIKod6ljjomBwRDxne7__BsTh9i-RGFDY&e=>; Paul Murphy <paul@gkmanagement.com.ky>
Subject: Zoom call with Paul Murphy

Good morning. I just learned there is a call scheduled with Paul Murphy tomorrow that I do not have on my calendar. Did I miss an evite? If so I apologize.
I need to be on any such call. I am unavailable tomorrow as I am in Miami for a wedding. I am in New Zealand next week leaving on April 7th and returning on April 14th. I have to take my wife for CT scans of her back on the 15th so the zoom meeting can be rescheduled on the 16th or thereafter but I need to be on the zoom call.
Let me know what dates work for your clients.
Sorry for any inconvenience
Doug

Sent from my iPhone

Douglas Mancino (he/him/his) | Partner | Seyfarth Shaw LLP
2029 Century Park East | Suite 3500 | Los Angeles, California 90067-3021
Direct: +1-310-201-5241 | Fax: +1-310-551-8326 DMancino@seyfarth.com |

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Rosenberg, David M (DAL - X61508)

From: Rosenberg, David M (DAL - X61508)
Sent: Wednesday, April 9, 2025 11:40 AM
To: Mancino, Douglas
Cc: Stockham, Michael W (DAL - X62515)
Subject: RE: Zoom call with Paul Murphy

Doug, here is our availability beginning April 16 and for the next week:

April 16 - available after 2:30 p.m.

April 17 - available between 10:00 a.m. and noon and after 1:30 p.m.

April 21 - generally available after 1:30 p.m.

April 22 - available after 2:00 p.m.

April 23 - generally available except between 11:00 a.m. and 12:30 p.m.

All times are CDT. Thanks.

David Rosenberg | Holland & Knight
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas Texas 75201 Phone 214.969.1508 | Fax 214.964.9501
david.rosenberg@hklaw.com | www.hklaw.com

-----Original Message-----
From: Mancino, Douglas <DMancino@seyfarth.com>
Sent: Thursday, April 3, 2025 9:47 AM
To: Rosenberg, David M (DAL - X61508) <David.Rosenberg@hklaw.com>
Cc: Stockham, Michael W (DAL - X62515) <Michael.Stockham@hklaw.com>; Paul Murphy <paul@gkmanagement.com.ky>
Subject: Zoom call with Paul Murphy

Good morning. I just learned there is a call scheduled with Paul Murphy tomorrow that I do not have on my calendar. Did I miss an evite? If so I apologize.
I need to be on any such call. I am unavailable tomorrow as I am in Miami for a wedding. I am in New Zealand next week leaving on April 7th and returning on April 14th. I have to take my wife for CT scans of her back on the 15th so the zoom meeting can be rescheduled on the 16th or thereafter but I need to be on the zoom call.
Let me know what dates work for your clients.
Sorry for any inconvenience
Doug

Sent from my iPhone

Douglas Mancino (he/him/his) | Partner | Seyfarth Shaw LLP
2029 Century Park East | Suite 3500 | Los Angeles, California 90067-3021
Direct: +1-310-201-5241 | Fax: +1-310-551-8326 DMancino@seyfarth.com |

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EXHIBIT 5

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	June 25, 2025
	9:30 a.m. Docket
Reorganized Debtor.	
	- MOTION TO EXTEND DURATION OF TRUSTS (4213)
	- MOTION TO APPROVE SETTLEMENT (4216)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Highland Capital Management Claimant Trust:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7760
For the Highland Capital Management Claimant Trust:	Hayley R. Winograd Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 1700 Broadway, 36th Floor New York, NY 10019 (212) 561-7732
For the Highland Capital Management Claimant Trust:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For Marc S. Kirschner, Litigation Trustee:	Robert Scott Loigman QUINN EMANUEL URQUHART & SULLIVAN, LLP 295 5th Avenue New York, NY 10016 (212) 849-7000

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APPEARANCES, cont'd.:

For the Hunter Mountain Entities:	Louis M. Phillips Amelia L. Hurt KELLY HART & PITRE 301 Main Street, Suite 1600 Baton Rouge, LA 70801 (225) 381-9643
For the Dugaboy Investment Trust:	Deborah Rose Deitsch-Perez STINSON, LLP 2200 Ross Avenue, Suite 2900 Dallas, TX 75201 (214) 560-2201
For the Dugaboy Investment Trust:	Michael Justin Lang CRAWFORD WISHNEW & LANG, PLLC 1700 Pacific Avenue, Suite 2390 Dallas, TX 75201 (214) 817-4500
For Crown Global Life Insurance, Ltd. and The Dallas Foundation:	David L. Curry, Jr. OKIN ADAMS, LLP 1113 Vine Street, Suite 240 Houston, TX 77002 (713) 228-4100
For Patrick Daugherty:	Andrew K. York Drake Rayshell Joshua Smeltzer GRAY REED & MCGRAW, LLP 1601 Elm Street, Suite 4600 Dallas, TX 75201 (214) 954-4135
For the U.S. Trustee:	Erin Marie Schmidt OFFICE OF THE UNITED STATES TRUSTEE 1100 Commerce Street, Room 976 Dallas, TX 75242-1496 (214) 767-1075
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

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Transcribed by: Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

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THE WITNESS: My bad.

THE COURT: -- call my attention to it when you find it.

THE WITNESS: All right.

(The witness steps down.)

THE COURT: All right. Your next witness?

MR. YORK: I believe we're calling Mark Patrick.

THE COURT: All right, Mr. Patrick. All right. Please raise your right hand.

MARK PATRICK, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

THE COURT: All right. Please be seated.

And, Courtney, you're going to start the clock going. I show 2:12. I don't know if my clock's right.

You may proceed.

MR. LANG: And, Your Honor, may I hand the witness -- this is from Mr. Morris' opening. May I use this as Exhibit 3?

THE COURT: Oh, okay. You're talking about the back page of his PowerPoint?

MR. LANG: Yes. Org chart.

THE COURT: Yes. I've got it in front of me. And for the record, I'm going to put this PowerPoint, even though it's not an exhibit *per se*, as a demonstrative aid in the file for this matter. And so it's the last item of the Highland PowerPoint. All right.

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MR. LANG: Yes.

DIRECT EXAMINATION

BY MR. LANG:

Q Mr. Patrick, does this Hunter Mountain Investment Trust org chart that I just handed you accurately reflect the structure of the Hunter Mountain Investment Trust ownership today?

A Just give me a few moments to review.

Q Sure.

MR. LEWIS: Your Honor, I had mentioned early on that we object to this whole line of questioning because it's outside the scope of the objection of Dugaboy. And I don't want to interrupt, but I want to make sure that my objection is continuing, because this has nothing to do with the objection presented by Dugaboy.

THE COURT: All right.

MR. PHILLIPS: So we object to the question.

THE COURT: Okay. So the record will reflect basically a running objection from Hunter Mountain?

MR. PHILLIPS: We would appreciate that, Your Honor.

THE COURT: Okay. In light of the failure of Dugaboy to disclose Mark Patrick as a witness, as well as the failure to challenge in a written objection his authority. Okay. So I recognized that this was quite a persuasive objection, but given the magnitude, I would say, of what is going on here,

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potentially a settlement that could come very close to ending this long-running plan implementation process, I'm erring, if it's an error, I'm erring on the side of allowing this. All right. But you have a running objection that the record will reflect if one day there is an appeal.

MR. MORRIS: And, Your Honor, the Highland Claimant Trust and the Highland Litigation Subtrust and Highland Capital Management, LP join Mr. Phillips' objection.

THE COURT: Okay. Understood.

MR. PHILLIPS: Thank you very much, Your Honor.

THE COURT: All right.

BY MR. LANG:

Q Mr. Patrick, have you had time to study this Hunter Mountain Investment Trust org chart?

A Yes, I have.

Q And does this accurately show the ownership structure for Hunter Mountain Investment Trust today?

A I'm not sure, without reviewing the underlying corporate documents on some of these entities that you have listed here.

Q Did you help prepare this chart?

A No.

Q No? Okay. So Hunter Mountain Investment Trust is owned by Beacon Mountain, LLC, correct?

A Yes.

Q And Beacon Mountain, LLC is owned by CLO Holdco, LLC,

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correct?

A Correct.

Q And CLO Holdco, LLC is owned by CLO Holdco, Limited?

A That's correct.

Q And CLO Holdco, Limited is owned by Charitable DAF Fund, LP?

A Correct.

Q And Charitable DAF Fund 1, LP is owned by CDMC FAD, LLC?

A The ultimate beneficial owner is DFW Charitable Foundation. To my -- to the best of my recollection, I would say that appears accurate. I'm just not a hundred percent.

Q Okay. And --

A But I am a hundred percent that DFW Charitable Foundation is the ultimate beneficial owner. And I'm a hundred percent that Dugaboy Investment Trust has no interest in it. And I'm also a hundred percent that The Dallas Foundation or any --

MR. LANG: Judge, I haven't asked --

THE WITNESS: -- or any other nonprofit has any --

MR. LANG: -- any of these questions.

THE COURT: Okay. There's an objection, nonresponsive. I sustain.

BY MR. LANG:

Q Mr. Patrick, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, correct?

A (Pause.) I'm just waiting for a relevancy. I don't

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understand how that's relevant to my authority --

THE COURT: Okay. You're not allowed to make a relevancy objection. Okay.

MR. PHILLIPS: Your Honor, I think the problem is that, if I could, we have made an objection. And our objection, our running objection is founded on relevancy and founded on improper process. So I would like to just tell the Court, and so my client representative can hear it, that the fact that I'm not standing up every time there's a problematic question, --

THE COURT: Okay.

MR. PHILLIPS: -- because every question is problematic, my objection is being maintained to every question that's being asked.

THE COURT: Okay. You understand that, right?

THE WITNESS: I --

THE COURT: There's a running relevancy objection. You're the witness. You can't make the objection. But it's on the record for whatever use it might have down the road.

MR. PHILLIPS: I have objected to every question that's coming in connection with this line of questioning on the basis of relevance.

THE COURT: I got it. I think we all have it.

MR. PHILLIPS: I'm just --

MR. LANG: Understood.

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THE COURT: Yes. And you're thinking he's eating into your 30 minutes?

MR. LANG: Yes.

THE COURT: Okay. We've got it.

THE CLERK: I stopped the time.

MR. LANG: So -- thank you.

THE COURT: Did you stop the time for a minute?

THE CLERK: Yes, I did.

MR. LANG: Thank you.

THE COURT: Okay.

BY MR. LANG:

Q So, to my question, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, correct? Charitable DAF Holdco, Limited?

A And where is that on the chart?

Q I'm asking, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, Limited.

A Can you show me a corporate document so I know the precise corporation you're referring to?

Q You're the -- you are the manager of -- or the control person of CDHGP Limited, correct?

A Again, I'd have to refresh my recollection, but I am the control person over CDMC.

Q Okay. And CDMC --

A As well as Charitable DAF Fund. I'll represent that to

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you.

Q Okay. Was there a transaction in December of 2024 where Charitable DAF Holdco, Limited sold its interest or transferred its interest in Charitable DAF Fund, LP to CDMC FAD, LLC?

A I know you're trying to help other litigation and --

MR. PHILLIPS: Mark.

THE COURT: Okay. Nonresponsive.

THE WITNESS: Your Honor, he's using your time to fish for other litigation to support that --

THE COURT: Okay. Okay. We have a running objection to relevance. I'm going to say that one more time. Okay. Just answer the question as best you can.

THE WITNESS: I'd have to review the corporate documents to refresh my recollection for that time period.

BY MR. LANG:

Q Up until December of 2024, Charitable DAF Fund, LP was owned 100 percent by Charitable DAF Holdco, Limited, wasn't it?

A I don't know what entity you're referring to without a refreshment of corporate documents of that entity. There could be a lot of entities called that.

Q You're aware that there is a proceeding in the Caymans investigating the December 2024 transaction that sold -- where Charitable DAF Holdco, Limited sold its interest in -- and or

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transferred its interest in Charitable DAF Fund, LP to CDMC FAD, LLC?

A There are several parts to that question. So the answer is no.

Q Are you aware of a proceeding pending in the Caymans involving Charitable DAF Holdco, Limited?

A Again, I don't know what entity you're referring to. Show me a -- show me a corporate document.

MR. LANG: Your Honor, this was on the Foundation's exhibit list. We cross-designated any document designated as an exhibit by any other party in this case. And I'd like to hand this to the witness.

MR. MORRIS: Which exhibit is it?

THE COURT: Which is -- yes.

MR. LANG: It was on the -- it was on the DAF -- or, the Foundation's exhibit list.

MR. MORRIS: They haven't been admitted into evidence and they've withdrawn their objection. We object, Your Honor.

THE COURT: Yes, they've not been admitted.

MR. LANG: Okay. Well, can I --

MR. PHILLIPS: We object to that, Your Honor. We object to any witness --

MR. LANG: We cross-designated every --

THE COURT: I already discussed at the beginning what we were admitting and that was not disclosed.

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MR. LANG: Okay.

THE COURT: As I recall, I said you've only designated the plan and settlement agreement, and the answer was yes.

MR. LANG: Okay.

BY MR. LANG:

Q And we're aware that the Joint Official -- are you aware that there is a Joint Official Liquidator appointed over a Charitable DAF entity in the Cayman Islands?

MR. PHILLIPS: Objection to form.

THE WITNESS: Again, without more specific --

THE COURT: Overruled. Yes.

THE WITNESS: -- specificity, there could be a thousand different actions that you're referring to, in my mind.

BY MR. LANG:

Q Are you aware that the Joint Official Liquidators in the Caymans are investigating transactions involving Charitable DAF Fund, LP and Charitable DAF Holdco, Limited?

A Again, again, I don't specifically know what you're referring to.

MR. PHILLIPS: Your Honor, may I -- excuse me. I don't know that my running objection includes an objection to form for each of the questions. This objection is to form of the questions about, quote, --

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THE COURT: What's wrong with the form?

MR. PHILLIPS: -- investigation.

THE COURT: What is wrong with the form of that question? I'm not clear.

MR. PHILLIPS: My objection to form is that the question is an open-ended question with an undefined term, investigation.

THE COURT: Overruled. I don't think that's a vague term. So you may answer.

THE WITNESS: If you show me some document, some complaint or something, I'll be very happy to verify whatever questions related to that. But just giving me verbal words of entities and names and actions, I don't know precisely what you are talking about.

BY MR. LANG:

Q Mr. Patrick, who set up the entities in the Hunter Mountain Investment Trust org chart that is sitting in front of you?

A I'm sorry. Repeat the question?

Q Who set up the various entities that are in the org chart that is on your -- on the stand?

MR. PHILLIPS: Objection to form. Set up. What does that mean?

THE WITNESS: It -- yeah, it's very --

THE COURT: I think we know what it means. Creating,

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perhaps.

BY MR. LANG:

Q Created?

A Who? Are you asking if I created it?

Q Did you participate in creating them?

A Did I participate? In which ones?

Q CDMC FAD, LLC.

A What do you mean by participate?

Q Were you involved in creating -- did you initiate the creation of CDMC FAD, LLC?

A Lawyers were.

Q Did you engage in any capacity on behalf of any entity? Were you involved in engaging the lawyers to set up CDMC FAD, LLC?

A Yes, I engaged lawyers to set up entities.

MR. LANG: Objection. Nonresponsive.

THE COURT: Sustained.

MR. LANG: Did you --

THE COURT: He asked about this one particular entity, I think.

BY MR. LANG:

Q Did you --

A Which entity, again, did you ask?

Q CDMC FAD, LLC.

A Yes, I believe I hired a lawyer.

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Q And when did CDMC FAD, LLC become a hundred percent owner of Charitable DAF Fund, LP?

A Around the end of March of 2025. I believe.

Q And were you involved in the transaction between -- in which CDMC FAD, LLC obtained a hundred percent interest in Charitable DAF Fund, LP?

A What do you mean by involved? How?

THE COURT: Okay. I can see what's happening here or I have an impression of what's happening here. I feel like you're slowing down this process where I've given 30 minutes to this lawyer. Okay? And I feel like you're feigning confusion. I don't mean to be insulting, but that's how it comes across. Okay? So I need you to speed up your answers and not be confused about things you shouldn't be confused about. Okay?

THE WITNESS: Okay.

THE COURT: I feel like it's late 1980s *Dondi*. Does anyone know what I mean by that? Okay. We've been there, done that, in the federal courts, and we don't like the looking at -- you're not looking up at the ceiling. That's what they did in *Dondi*. Confusion. Delay. Okay?

So I don't mean to chastise you. I'm just telling you that you're going to make us be here a lot longer, and nobody wants that, because I will give him extra time for this. Okay?

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THE WITNESS: Understood.

THE COURT: Thank you.

BY MR. LANG:

Q Okay. So you were involved in the transaction in which CDMC FAD, LLC acquired 100 percent ownership interest in Charitable DAF Fund, LP in or around March of 2025, correct?

A Correct.

Q Who did CDMC FAD, LLC obtain its interests in Charitable DAF Fund, LP from in March of 2025?

A From an -- from an entity called Charitable DAF Holdco, Ltd.

Q Charitable DAF Holdco, Ltd., the entity that I asked about earlier, correct?

A Of the same name.

Q Yes. And Charitable DAF Holdco, Ltd. has had Joint Liquidated -- Liquidators, Joint Official Liquidators appointed over it in the Cayman Islands, correct?

A Yes.

Q And those Joint Official Liquidators were appointed over Charitable DAF Holdco, Limited in or around May 6th, 2025?

A In May is what I recall.

MR. LANG: Your Honor, we'll pass the witness.

THE COURT: All right. Do we have any questions?

MR. YORK: No questions, Your Honor.

THE COURT: Okay. Any cross?

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MR. MORRIS: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Patrick, do you know who initiated the proceedings to get the appointment of the Joint Official Liquidators in the Cayman Islands?

A The director and myself, we initially filed for a voluntary joint liquidation in May.

Q And did there come a time when the Cayman court appointed the Joint Official Liquidators?

A Yes.

Q Do you know who asked the court to appoint the Joint Official Liquidators?

A We did, as well as other -- it was an agreement with the participation holders of that entity.

Q And who are the participation holders of that entity?

A It was the DFW Charitable Foundation as a 51 percent holder as well as the Highland Dallas Foundation, Highland Santa Barbara Foundation, and the Highland Kansas City Foundation.

Q And those three foundations that you just mentioned, do you know who controls them?

A Jim Dondero.

Q Is it your understanding that Mr. Dondero was funding the litigation in the Cayman Islands?

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A Yes.
Q The Joint Official Liquidators, are you aware of any statement that they've ever made that you are not authorized to act on behalf of any of the HMIT entities?
A Yeah, they've never made a statement that I'm not authorized to act under any of those entities.
Q Okay. Did you receive a letter last night that was purportedly authored by the Joint Official Liquidators?
A Yes.
Q Did you review that letter?
A Yes.
Q Did that letter refer to today's hearing?
A Yes.
Q Are you aware of the Joint Official Liquidators making any appearance in this proceeding?
A No, I'm not aware they made any appearance in this proceeding.
Q Based on your recollection of the contents of that letter, did the Joint Official Liquidators challenge your authority to enter into the settlement agreement on behalf of the HMIT entities?
A No, they did not, because there's no ownership interest.
Q Okay. And what do you mean by that?
A The entity in liquidation owns nothing. And the DFW Charitable Foundation is the ultimate beneficial owner.

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Q Are you aware that The Dallas Foundation filed an objection to the settlement agreement on behalf of Empower Dallas Foundation, the Okada Family Foundation, and Crown Global?

A Yes.

Q Are you aware that that objection was withdrawn?

A Yes.

Q Was the withdrawal of that objection the product of negotiations that your counsel had with lawyers for The Dallas Foundation and Crown Global?

A Yes, it was.

Q Did The Dallas Foundation or Crown Global require you to surrender your control position of the HMIT entities as a condition to the withdrawal of their objection?

A To give up my control? No.

Q They didn't ask you to do that, did they?

A No. No.

Q You are the control person for each of the HMIT entities that are party to the settlement agreement, correct?

A That is correct.

Q Are you aware of any requirement in any of the governance documents --

MR. CURRY: Your Honor, I'm not questioning, but I'm going to object to the line of questioning here about what was asked and what was not received into negotiations, because,

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frankly, you're getting an imperfect picture there. And I don't think it should be misrepresented. The communications didn't happen with Mr. Patrick.

THE COURT: Okay. I don't know if that objection was a confidential settlement communications.

MR. CURRY: It's a combination of foundation and that he's going into confidential settlement discussions.

MR. MORRIS: Your Honor, it's a very simple question. I'll ask it again.

THE COURT: Okay. We'll let --

BY MR. MORRIS:

Q To the best of best of your knowledge, Mr. Patrick, did The Dallas Foundation or any of the entities on whose behalf it filed its objection require you to surrender your position as the control person of the HMIT entities in exchange for the withdrawal of their objection?

A No, they did not.

Q Thank you. Are you aware -- are you familiar with the governance documents for the HMIT entities?

A Yes, I am.

Q Are you aware of any restriction on your ability to act on behalf of those HMIT entities with respect to -- withdrawn. Are you required to obtain the consent of anyone in order to enter into the settlement agreement on behalf of the HMIT entities?

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A No, I am not. I'm the sole authority and control person for that entity.

Q And do you believe that you're entering into the settlement agreement on behalf of the HMIT entities in good faith?

A Yes, I do.

Q Have you received legal counsel before entering into the agreement?

A Yes, I have.

Q Do you believe that you've negotiated the best terms that you could get on behalf of the HMIT entities?

A Yes, I do.

Q Do you believe that you received the information that you believed you required in order to make an informed decision before you entered into the settlement agreement on behalf of the HMIT entities?

A Yes, I did.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Mr. Phillips, anything from you?

MR. PHILLIPS: No questions.

THE COURT: Okay. Any redirect?

MR. LANG: Briefly.

THE COURT: Uh-huh.

MR. LANG: Your Honor, because they mentioned the

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letter of last night from Grant Thornton, the Liquidators, I'm going to offer that into evidence as the letter that we talked about this morning. But Mr. Morris directly asked him if he reviewed it and asked him questions about it.

THE COURT: Response?

MR. MORRIS: No objection, Your Honor. Go right ahead.

THE COURT: I'll admit it.

MR. LANG: This is --

THE COURT: Do I have it in my notebook?

MR. LANG: -- Dugaboy --

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. LANG:

Q Mr. Patrick, I've handed you --

THE COURT: We're going to call this Dugaboy 3?

MR. LANG: Dugaboy 3.

THE COURT: Okay.

(Dugaboy Investment Trust's Exhibit 3 is admitted into evidence.)

BY MR. LANG:

Q Mr. Patrick, I've handed you a letter. It's from Grant Thornton dated June 24th, 2025. Do you see that?

A Yes.

Q And is this a true and correct copy of the letter that you

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received or that you reviewed from the Joint Liquidators that you referred to in your answers to Mr. Morris' questions?

A Well, it's a PDF. I mean, I'm assuming it's from the Official Liquidators.

Q But this is the letter you were referring to in your testimony a few minutes ago?

A Yes.

Q And do you see on the second paragraph it says that, on May 6th, 2025, the Grand Court of Cayman Islands Financial Services Division appointed Margot MacInnis and Sandipan Bhowmik, each of Grant Thornton Special Services (Cayman) Limited, as the Joint Official Liquidators of the company. Do you see that?

A Yes.

Q And do you see on the second page, it says: Since our appointment, we have been diligently investigating these transactions, including a corporate transaction that occurred in or around December 2024 where the company transferred a hundred percent of its interest in the Fund to CDMC FAD, LLC, which resulted in the company being the sole member of CDM and subsequent redemptions of the company's interests in CDM.

Do you see that?

A Yes.

Q Is that your understanding of what is happening in the Caymans right now, is investigating these transactions?

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A Correct.

MR. LANG: Pass the witness.

MR. MORRIS: May I just have that letter, please?

THE COURT: Any recross?

MR. MORRIS: Yeah, just real brief.

RECROSS-EXAMINATION

BY MR. MORRIS:

Q None of the transactions that you were just asked about has anything to do with any of the HMIT entities, correct?

A That's absolutely correct.

Q Okay. And now that we have the letter in the record, if you could look at the third paragraph. Do you see --

A Yeah.

Q Do you see it refers to the Highland Dallas Foundation, Highland Santa Barbara Foundation, and Highland Kansas City Foundation?

A Yes.

Q Are those the three entities that you referred to earlier that are, to the best of your understanding, controlled by Mr. Dondero?

A Yes.

Q Okay. And this is the letter that you said you reviewed and concluded that the Joint Official Liquidators weren't challenging your authority to enter into the agreement on behalf of the HMIT entities; do I have that right?

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A Yes. Yes, you do.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: Okay. I have a question or two.

EXAMINATION BY THE COURT

THE COURT: And again, I apologize if I sounded harsh earlier. I recognize different people present different ways when they testify. It just appeared to me that maybe we were slowing things down unnecessarily. All right?

THE WITNESS: I apologize, too. I'm just a little emotionally upset they're using this proceeding for a benefit someplace else.

THE COURT: Okay. My question, very general question: Do you think this settlement is fair and equitable as far as HMIT is concerned?

THE WITNESS: Absolutely.

THE COURT: And could you tell me why?

THE WITNESS: Yeah. There was no obvious pathway for HMIT to, in my mind, to receive the residual interest of the bankruptcy estate without a settlement with the Debtor. Otherwise, it just seemed to me that it would go on forever. And then I balanced that against the existing litigation and the probability of the outcome weighted against the costs, and determined that it made sense from HMIT's perspective to enter into the settlement agreement.

THE COURT: Okay. And you understand that, as part

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of this, you're giving up some litigation claims that have been waged now for a couple of years or more?

THE WITNESS: That is correct, but I'm also receiving the Kirschner Litigation, which I did negotiate to receive.

THE COURT: Okay. And there was a note that the estate -- I've heard it called at some point the $57 million note that HMIT owed Highland, a December 2015 note -- that basically gets credited against the capital account. You understand that?

THE WITNESS: Yes, I do.

THE COURT: Okay. And then you understand that if I approve this deal, I'm not sure why there's going to be $500,000 to HMIT and then also another $10 million to HMIT, but subsequent payments could get held up if there are litigation threats to the Highland Claimant Trust. You understand that, correct?

THE WITNESS: Yes, I do.

THE COURT: Okay. I just, I have to ask. I'm confused about what's going on here. I thought that -- well, let me just ask this: Would you consider yourself crossways with Mr. Dondero now?

THE WITNESS: No, but I'll answer the question. Upon advice of counsel, I quit Skyview Group. And upon advice of counsel, I terminated the back office services that Skyview Group was providing to the DAF.

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THE COURT: Okay. Well, you said you're getting maybe a little emotional because of other litigation. I'm just trying -- I don't understand what all that other --

THE WITNESS: Unrelated -- well, unrelated to that. They're clearly trying to use this forum to benefit their Cayman actions. They hired U.S. counsel called Reed Smith, and they've been begging for an organization chart to issue a variety of frivolous lawsuits against the operating DAF entities. So I do apologize, but that's a little upsetting to me because I know we're going to -- that I've just fed them a list of targets in another unrelated matter.

THE COURT: Okay. Reed Smith. Here we go again with -- they've made an appearance for Mr. Seery in this litigation.

MR. MORRIS: Exactly. And we have raised that issue.

THE COURT: Okay.

MR. MORRIS: And I'm surprised to hear that they think they still have the ability to do this. But we will pursue that later.

THE COURT: Okay. All right. I had nothing further. Thank you, Mr. Patrick.

(The witness steps down.)

THE COURT: All right. So where are we now? I said that, again, just trying to balance the playing field, if Dugaboy was given the ability to question Mr. Patrick, then I

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EXHIBIT
6

CAUSE NO. _____

THE HIGHLAND DALLAS FOUNDATION, INC., et al., *Plaintiffs*, **v.** **MARK PATRICK, et al.,** *Defendants.*	**IN THE TEXAS BUSINESS COURT** **1ST DIVISION** **DALLAS, TEXAS**

DECLARATION OF JAMES DAVID DONDERO

I, **JAMES DAVID DONDERO**, of 300 Crescent Court, Suite 700, Dallas, Texas, United States, 75201, DECLARE under penalty of perjury:

1. I am the President of NexPoint Advisors, L.P. (***NexPoint***), an investment advisor registered with the U.S. Securities and Exchange Commission (***SEC***). I am a Certified Public Accountant and Chartered Financial Analyst with over forty years of investment advisory experience managing billions of dollars of investments across various assets classes.

2. I make this declaration from matters within my own personal knowledge and believe the information contained herein to be true and accurate in all respects.

3. I founded NexPoint in 2012. NexPoint is an alternative investment firm, with a particular focus on investment in the real estate sector. NexPoint has assets under management exceeding $16 billion in value. I was formerly the President of Highland Capital Management, L.P. (***Highland***), also an SEC registered investment advisor which I founded in 1993. From that time until 2015, Highland was majority owned by me and/or

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my affiliates. In December 2015, I divested my majority stake of Highland (***2015 Transaction***).

THE FUND

4. In addition to my business interests, I am a regular donor to philanthropic and charitable causes. The Fund is one of the vehicles I utilize to donate such funds to charitable organizations.

5. In 2010, the finance, accounting, and tax staff of Highland identified certain assets to be donated to a charitable foundation. In 2011, I requested the Donor Advised Fund (or DAF) to be formed and structured in a way that allowed these donations to be receipted and distributed to certain charitable foundations, as the ultimate beneficial owners of the Fund's economic interest. The structure proposed by the tax and legal advisors to effect this was for the Fund to have one limited partner (i.e. the LP) which would issue 'participation shares' to be held by certain charitable supporting organizations (together, the ***Supporting Organizations***) and in turn each of those entities would provide funding directly to certain charitable foundations in the U.S. (together, the ***Charities***).

6. The Amended and Restated Limited Partnership Agreement of the Fund dated 7 November 2011 (***ARLPA***), and the Amended and Restated Memorandum and Articles of Association of the LP dated 19 January 2015 (***Articles***), govern the Fund and its partners.

7. The LP held 100% of the economic interest in the Fund. The Fund's general partner, Charitable DAF GP, LLC (the ***GP***), a Delaware company incorporated on 25 October 2011, held management shares.

8. The LP issued 100 management shares (the ***Management Shares***) with the only voting rights for any and all shareholders in the LP. In essence, the Articles and ARLPA therefore grant complete control of the Fund structure to the holder of the Management Shares in

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the LP and the entirety of the issued share capital of the GP. Those shares have at all material times been held by a single individual, who as a result has substantial control over the entire Fund structure (the ***Control Position***).

9. The ARLPA provides that the Fund was formed to make investments, directly or indirectly, on behalf of certain entities "*for the economic benefit of the Limited Partner and its Indirect Charitable Owners*" and contemplates the engagement of investment (and other service) advisors to effect this. In this context, the Control Position is responsible for the governance and management functions of the Fund as required in order for the Fund to carry out its sole purpose of benefiting the Supporting Organizations and the Charities they support.

10. The governing documents of the Fund plainly state in multiple places that all of the powers of the Control Position exist solely for the purpose of benefitting the Supporting Organizations and their Charities. This ubiquitous language was created for an express purpose. The expectation by the founders of the Fund (myself included) at the time it was formed was that the governing documents would ensure that the Control Position would be bound through his or her fiduciary obligations to safeguard and advance the interests of the charitable organizations that held actual beneficial ownership of the Fund.

GRANT SCOTT

11. I initially selected Grant Scott for the Control Position, a person I have known for years who also has great integrity.

12. From 2010 until the 2015 Transaction, the Fund operated as a non-discretionary advised account of Highland, meaning Highland provided back-and-middle-office staff to the Fund and also provided recommendations regarding potential investments to Mr. Scott as the Control Person. However, Mr. Scott had complete discretion in adopting or rejecting the

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investment recommendations provided to the Fund by Highland. He also had final discretion over payments made by the Fund to third parties. In his position as the Control Person, Mr. Scott was paid $60,000 per annum.

13. After the 2015 Transaction, my affiliates and I no longer owned a majority stake in Highland. Subsequently, I was advised that, as a result of the change of ownership, the Fund was permitted to enter into a paying Investment Advisory Agreement with Highland. This form of investment advisory agreement was in place from January 2017 until it was terminated effective March 2021.

MARK PATRICK

14. Mark Patrick was hired as Tax Counsel at Highland in 2008. His job duties included maximizing tax saving to Highland's limited partners, including me and my affiliates. In that role, Mr. Patrick directly represented me as my personal tax counsel. He represented me in tax efficiency planning and tax- deductible charitable giving, among other things. He provided the same services for various trusts and companies affiliated with me. Mr. Patrick served that role at Highland from 2008 until his departure in February 2021.

15. In March 2021, Mr. Patrick was hired by Skyview as Tax Counsel and continued to perform substantially similar tax counsel duties for me. At Mr. Patrick's request, his job title was changed to "Managing Director, Tax" in September 2021, although his role with respect to me and my affiliates remained substantially the same.

16. The legal structure of the Fund (including as regards its partners and ultimate beneficiaries as discussed above) was created in 2011 on the advice of Mr. Patrick working with outside counsel. Mr. Patrick advised me that, to avoid potential negative findings by the U.S. Internal Revenue Service, as the donor/grantor of assets to the Fund, I could not have any control over the Fund or its entities. I followed his advice as my tax counsel.

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17. In March 2021, Mr. Scott informed me that he wanted to resign from the Control Position. The Fund had become engaged in certain disputes arising from the bankruptcy of Highland filed in 2019, and he did not believe he was equipped to handle those disputes. Mr. Patrick suggested to Mr. Scott and me that he was prepared to take on the Control Position and, in that role, to handle the litigation related to the Highland Bankruptcy as it affected the Fund. At the time, Mr. Patrick was my attorney and Mr. Scott was my trusted friend, and I was happy for Mr. Scott to pass the Control Position to Mr. Patrick.

18. On 25 March 2021, Mr. Scott: (i) resigned as director of the LP, (ii) appointed Mr. Patrick as director of the LP, and (iii) transferred to Mr. Patrick the Management Shares for nominal consideration. Mr. Patrick therefore assumed the Control Position from that date.

19. At some point, I understand that a person named Paul Murphy based in the Cayman Islands also was appointed as director to the LP and a portion of the Fund's subsidiaries, giving those entities two directors. However, I understand that in the event of a dissenting vote by Mr. Murphy, Mr. Patrick's vote counts as the tiebreaker for corporate voting.

MR. PATRICK'S CONTROL OF THE FUND

20. In the initial period following Mr. Patrick's assumption of the Control Position, there was no noticeable change in the management of the Fund. NexPoint provided, without charge, investment ideas to the Fund, as Highland previously had done, and Mr. Patrick was free (as Mr. Scott had been) to decide whether or not the Fund wished to follow NexPoint's recommendations. This approach was similar to the non-discretionary advised account status of the Fund prior to 2017.

21. Subsequently, however, communications between Mr. Patrick, Skyview, and me began to become less frequent, and over time I came to suspect that Mr. Patrick was utilizing the Control Position not for the benefit of the Supporting Organizations, the Charities or the

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Fund, but rather for his own personal enrichment.

22. On 28 June 2023, Mr. Patrick sent an email to Lauren Short, an employee of NexPoint, requesting that the Highland Dallas Foundation (i.e. the Supporting Organization that supports the Dallas Foundation) "*direct $10,000*" to Creative HEARTS TX, a non-profit entity formed on 13 June 2023. Following due diligence, Ms. Short learned that the directors of the entity were Mr. Patrick, Darees Patrick and Alyse Patrick (his daughter and wife). Mr. Patrick had made the grant request without disclosing his and/or his family's involvement.

23. Ms. Short discussed the matter with Mr. Patrick, who did not provide many details, but said the non-profit was formed to facilitate paying for trainers or speakers on self-defense training for teenage girls. Ms. Short understood that Patrick's expectation was that this would be an annual donation to a "club" at his daughter's school. While Ms. Short inquired, there was no detail forthcoming as to whether or not Creative Hearts would be a pass-through donating the monies to other charities or would directly do any work with the trainers or speakers itself. There also was not clarity if Creative Hearts' members intended to take a salary from the grant. The grant payment was authorized on September 5, 2023, but Mr. Patrick was informed that further payments were unlikely. I was informed of this process by Ms. Short and her supervisor. Contemporaneously with the grant approval, my team also informed the Dallas Foundation of the situation.

24. As another example, in or around September 2023, I was contacted by Kevin Cronin of Fortaris Capital Advisors (***Fortaris***). Fortaris provides litigation support services including due diligence, internal investigations, fraud detection, asset verification and in-depth background checks. Mr. Cronin is a former police sergeant and Special Agent with the Department of Homeland Security.

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25. Fortaris was at the time engaged by the Fund in respect of an unrelated matter and Mr. Cronin was known to me personally. In September 2023, Mr. Cronin and I met, and he informed me that he had been approached by Mr. Patrick with a proposition whereby Mr. Patrick (on behalf of the Fund) would engage an entity controlled by Mr. Cronin (other than Fortaris) at a monthly fee of between $25,000 and $50,000, and that this fee would be split between Fortaris and Mr. Patrick as a supplement to Mr. Patrick's compensation. Mr. Cronin informed me that he had asked Mr. Patrick if this arrangement would amount to fraud, and that Mr. Patrick's response had been: "*you can't steal from yourself*."

26. Mr. Cronin informed me that he understood from this statement that Mr. Patrick believed he owned the Fund and could use the funds controlled by it however he pleased. Mr. Cronin further informed me that he was uncomfortable about Mr. Patrick's proposal and that he subsequently communicated this to Mr. Patrick, whereupon Mr. Patrick cut off all further communications between them.

27. Mr. Cronin's allegations that Mr. Patrick was seeking to make a secret, undisclosed personal profit from the Fund were extremely concerning. I have subsequently been informed by my attorneys in the United States that, had Mr. Cronin agreed with this proposal, it would have likely constituted U.S. federal wire fraud, and/or violations of the Texas Penal Code's prohibitions on bribery and misapplication of fiduciary property. Shortly after Mr. Cronin contacted me, I met with Mr. Patrick and confronted him about the allegations, which he admitted to me were true. I informed the Supporting Organizations about the matter and Mr. Patrick's admission. However, at the time, both the Supporting Organizations and I were concerned that under the Articles, the Supporting Organizations did not have the power (in their capacity as Participating Shareholders) to limit Mr. Patrick's powers or remove him from his position.

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28. Given the situations described above, and the lack of communication about the Fund, I became increasingly concerned about Mr. Patrick's management of the Fund, including the potential misuse and/or misappropriation of its assets. In June 2024 therefore I requested that my team at NexPoint analyze the financial information of the Fund that I had in my possession, covering the calendar years ending 2018 to 2023 and the first half of 2024. My team produced an annual expense summary of that information (the ***Expense Summary***) which indicated substantial increases in expenditures during Mr. Patrick's tenure, particularly during early 2023 and mid-2024, as follows:

(a) Directors' fees increased from around $40,000 in 2022 to almost $600,000 in 2023 – and increased even further to around $2.25 million in the first half of 2024 alone.

(b) Expenses overall for the first half of 2024 were around $18.3 million – roughly the same amount spent over the entire course of 2023 (i.e. $18.6 million).

29. The Expense Summary reinforced my concern that Mr. Patrick is using the Control Position for his own enrichment rather than to benefit the Supporting Organizations and the causes they support. I therefore directed my employees at NexPoint to provide the Expense Summary to the Supporting Organizations, and which they promptly did.

30. In August 2024, I became aware of yet another issue concerning Mr. Patrick. NexPoint and its affiliates, through their investment activities, regularly obtain material non-public information (***MNPI***) related to those investments. As a service provider to NexPoint and its affiliates, Skyview employees also obtain the same MNPI. Trading on the basis of MNPI amounts to 'insider trading' which is prohibited under U.S. securities laws. As a result, NexPoint and its affiliates, and Skyview, all have the same robust regulatory compliance program to prevent, among other things, insider trading (***Compliance Policy***). NexPoint and its affiliates, and Skyview, require their employees to abide by the

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Compliance Policy at all times and employees are required to confirm in writing on a quarterly basis that they will not use MNPI while trading. Mr. Patrick completed the annual 2023, Q4 2023, Q1 2024, and Q2 2024 certifications, among others.

31. I was informed that my director of charitable giving had been contacted by Ms. Diaz, the CEO of the Highland Dallas Foundation, Inc. (***Dallas Foundation***), one of the Charities. Ms. Diaz stated that on August 28, 2024, Mr. Patrick contacted the Dallas Foundation's attorney to provide information about an asset held by the Dallas Foundation, which was held directly and separately from the Fund. This information was obtained by Mr. Patrick through his employment at Skyview and constituted MNPI, which is prohibited by U.S. securities laws from being disclosed and/or acted upon. On the basis of this MNPI, Mr. Patrick advised the Dallas Foundation to exercise a put option it held in a NexPoint affiliated asset. The Dallas Foundation did not act on the information or recommendation provided by Mr. Patrick, but in the event it had exercised the put option, both the Dallas Foundation and Mr. Patrick would have committed violations of the U.S. securities laws that prohibit insider trading.

32. Upon receipt of the allegations against Mr. Patrick, Skyview's compliance department commenced an internal investigation which, due to the serious nature of the allegations, was conducted without Mr. Patrick's knowledge, so as to avoid potentially tipping off Mr. Patrick about the investigation. By the end of September 2024, the investigation was substantially complete, and the conclusion had been reached that Mr. Patrick's actions constituted a serious breach of his compliance and employee obligations. On October 1, 2024, as part of the finalization of the investigation report, Skyview's chief compliance officer interviewed Ms. Diaz about the allegations against Mr. Patrick, which I understand confirmed Skyview's conclusions. The final investigation report was issued on October 11,

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2024 and concluded that Mr. Patrick had attempted a serious breach of U.S. securities laws.

33. On October 2, 2024, Mr. Patrick abruptly resigned his position from Skyview and thereafter became openly hostile towards the Charities, my affiliated companies, and me. Although neither I nor anyone at Skyview has direct evidence of Mr. Patrick having been tipped off about the investigation, the timing of his resignation causes me to conclude that Mr. Patrick became aware of the investigation into his behavior and resigned before the report was published.

34. On the same day that Mr. Patrick resigned his position at Skyview, he also terminated Skyview's service agreement with the Fund, and as a result all legal, compliance, back office and other services provided to the Fund. Mr. Patrick and Mr. Murphy have stated that that they intend to take on the role of investment advisors for the Fund. I am not aware of Mr. Murphy's qualifications for this role, nor am I aware of any third-party investment advisor that has been retained by the Fund to fill this role. Based on my knowledge and expertise in investment management, and my sixteen years working with Mr. Patrick as my counsel, I believe that Mr. Patrick is a well-qualified tax counsel, but does not have the experience, training, or expertise to be an investment professional.

FUNDING OF PROCEEDINGS

35. As stated above, I do not hold a controlling interest in any of the Charities or the Supporting Organizations. However, I sit on the boards of the Supporting Organizations for the purpose of understanding how the Charities are deploying the Fund's assets for charitable purposes, and the impact of those donations in the community. I am only one of three votes, and the other two votes on each board are held by the respective Charity. Historically, the boards have had no hesitation in exercising their powers to chart

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independent courses even if those decisions differ from my preferences.

36. The Supporting Organizations approached me about the costs associated with legal action and their reticence to use funds that should and otherwise would be used for charitable purposes, and asked whether I would be prepared to fund the action personally. I agreed to do so. I have not and will not at any time receive a benefit, nor do I have control of the proceedings, because of this funding arrangement. The Supporting Organizations have decision making authority in relation to these proceedings. My concern is solely to ensure that the Fund, and the funds that I have donated over time that are held in the Fund, are used only to benefit the Charities and the causes they support.

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My name is James David Dondero, my date of birth is June 29, 1962, and my address is 300 Crecent Court, Dallas, Texas 75201. I declare under penalty of perjury that the foregoing is true and correct. Executed in Dallas County, State of Texas, on the 1st day of July 2025.

JAMES DAVID DONDERO

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EXHIBIT 7

CAUSE NO. _____

THE HIGHLAND DALLAS FOUNDATION, INC., THE HIGHLAND KANSAS CITY FOUNDATION, INC., and THE HIGHLAND SANTA BARBARA FOUNDATION, INC., *Plaintiffs*, **v.** **MARK PATRICK and DFW CHARITABLE FOUNDATION,CDMCFAD, LLC, CDH GP, Ltd., and CHARITABLE DAF FUND, LP** *Defendants.*	**IN THE TEXAS BUSINESS COURT** **1ST DIVISION** **DALLAS, TEXAS**

DECLARATION OF JULIE DIAZ

I, **JULIE DIAZ**, of 3000 Pegasus Park Dr, Suite 930, Dallas, Texas 75247, declare under penalty of perjury as follows:

1. I am the President and Chief Executive Officer of The Dallas Foundation, an exempt charitable organization based in Dallas, Texas which partners with donors and works with the community to support various philanthropic causes in Greater Dallas.
2. I am also a Director of the Highland Dallas Foundation Inc., an exempt charitable entity incorporated in Delaware as a supporting organization to provide funding directly to The Dallas Foundation.
3. I make this declaration from matters within my own personal knowledge and believe the information contained herein to be true and accurate in all respects.

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4. This Declaration is presented in support of Plaintiffs' Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Request for Appointment of Receiver in the above-captioned case. I verify that, to the best of my knowledge, information, and belief, the statements in it are true.

PROFESSIONAL EXPERIENCE

5. I hold a Bachelor's Degree in Arts Management from Salem College, and a Masters Degree in Business Administration from Boston University.

6. I joined The Dallas Foundation in 2019 as Vice President, Philanthropic Partnerships. I was appointed as President and CEO in 2024.

7. I have extensive nonprofit experience in strategy, governance, and revenue growth, having led resource development teams at the Perot Museum, Greenhill School and Southern Methodist University, and having held leadership roles at the Philadelphia Orchestra, the Boston Symphony Orchestra, and GBH Public Television and Radio in Boston.

8. I am an active member of The Dallas Assembly and Charter 100, organizations which champion collaboration in community development and philanthropy.

9. I also served in 2018 as an adjunct professor at SMU Meadows School for the Arts.

THE FUND

10. The Fund is a Cayman Islands limited partnership formed on 28 October 2011 (registration number 53083) whose registered office is Walkers Corporate Services Ltd, Walker House, 87 Mary St, George Town, Grand Cayman, KY1-9005, Cayman Islands.

11. The Fund is governed by the Amended and Restated Limited Partnership Agreement dated 7 November 2011 (the ***ARLPA***).

12. From approximately its inception until approximately March 2025, the sole limited partner of the Fund (the LP) was a Cayman Islands exempt company incorporated on 27 October 2011

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(registration number 263805) called Charitable DAF Holdco, Ltd.

13. The LP is governed by the Amended and Restated Memorandum and Articles of Association of the LP dated 19 January 2015 (the ***Articles*****).**

14. The general partner of the Fund is (or at least was at the time of the Fund's formation and pursuant to the ARLPA) Charitable DAF GP, LLC (the ***GP***), a Delaware company incorporated on 25 October 2011.

Ownership and Management

15. The Fund was formed to "*make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code (the **Code**) … for the economic benefit of the Limited Partner and its Indirect Charitable Owners*" (ARLPA, Recitals).

16. From my experience in nonprofit entities, I understand that exempt entities under section 501(c)(3) of the Code, commonly referred to as charitable organizations, must be operated exclusively for charitable purposes and not for the benefit of private interests. 'Supporting organizations' under section 509(a)(3) of the Code must carry out such exempt purposes by supporting *other* charities. The relationship between a supporting organization and its supported charity is sometimes described as similar to that of a parent and subsidiary.

17. In this context:

    (a) The LP holds or held all of the economic interest in the Fund. The GP held control shares, but had no economic interest.

    (b) The LP issued 305 participation shares (the ***Participation Shares***), 300 of which are held by three Delaware corporate entities (together, the ***Supporting Organizations*** and/or ***Petitioners***). Each Supporting Organization provides funding to its respective U.S.-charitable foundation (together, the ***Charities***) which are the ultimate beneficial

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owners of the Fund's entire economic interest. These Supporting Organizations are the Plaintiffs in the above-captioned litigation.

(c) The LP also issued 100 management shares (the ***Management Shares***) which attach the only voting rights for all shareholders of the LP. The terms of the ARLPA and the Articles together grant complete management control of the Fund to the holder of the Management Shares, and the entire issued share capital in the GP (the ***Membership Interest***).

18. The Management Shares and Membership Interest have at all material times been held by a single individual who as a result has substantial control of the Fund structure (the ***Control Position***). In this regard, the relevant terms of the ARLPA and Articles are as follows.

(a) **The ARLPA**

Clause 1.12

(a) The term "**General Partner**" shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

(b) The term "**Indirect Charitable Owner**" shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.

Clause 1.6

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have

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full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; *provided, however the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.*

(b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

(b) **The Articles**

Article 11

The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganization or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. *Management Shares confer no other right to participate*

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in the profits or assets of the Company.

Article 19

Participating Shares … shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

SUPPORTING ORGANIZATIONS

19. The Supporting Organizations provide funding directly to the Charities as follows:

(a) Prior to the events at issue in this Action, The Highland Dallas Foundation, Inc. (***HDF***) held 32.87% of the Participating Shares. HDF provides funding to The Dallas Foundation, a charitable entity established in Texas in 1929, which has awarded over $1.2 billion in charitable grants that support a broad range of public needs and manages over $650 million in assets.

(b) Prior to the events at issue in this Action, The Highland Kansas City Foundation, Inc. (***HKCF***) held 32.87% of the Participating Shares. HKCF provides funding to the Greater Kansas City Community Foundation, a charitable entity established in Kansas in 1978 which has awarded over $7 billion in grants that support a broad range of public needs and currently manages over $5 billion in assets.

(c) Prior to the events at issue in this Action, The Highland Santa Barbara Foundation, Inc. (***HSBF***) held 32.787% of the Participating Shares. HSBF provides funding to the Santa Barbara Foundation, a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million.

(d) Prior to the events at issue in this Action, HCMLP Charitable Fund (***HCMLP***) held 1.639% of the Participating Shares. HCMLP provides funding to the North Texas Community Foundation, which manages assets totaling $513 million that support a broad

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range of public needs and donated $38.9 million to local nonprofits in 2023.

20. Since the Fund's inception in 2011, the Supporting Organizations have granted over $42 million to charitable foundations and have funded $32 million in total commitments, including donations to 275 organisations, with average annual grant payments of $3.7 million.

BACKGROUND

21. As stated in paragraph 6 above, I joined The Dallas Foundation in 2019 and do not therefore have direct personal knowledge of any factual matters, including regarding the formation of the Fund and/or the Fund's operations, prior to that time. I understand these matters are covered in the declaration of James Dondero.

22. A summary of those matters that I understand to be most relevant to this application are accurately summarized as follows:

(a) **Control Position**. From the Fund's formation until March 2021, the Control Position was held by Grant Scott. On 25 March 2021, Mr. Scott: (i) resigned as director of the Fund and LP (ii) appointed Mark Patrick as director of the Fund and LP; and (iii) transferred to Mr. Patrick the Management Shares in the LP and Management Interest in the GP for nominal consideration. Mr. Patrick therefore assumed the Control Position from that date.

(b) **Mark Patrick**. From 2008 to 2021, Mr. Patrick was employed as tax counsel by Highland Capital Management, LP (***Highland***), an investment advisor founded by Mr. Dondero. From March 2021 to October 2024, Mr. Patrick was employed as tax counsel at Skyview Group (***Skyview***). In both positions, Mr. Patrick acted as an advisor to Mr. Dondero. Mr. Patrick played a significant role in developing the overall Charitable DAF Fund structure.

CONCERNS ABOUT MR. PATRICK'S CONDUCT

23. I became aware that in June 2023, Mr. Patrick made a grant request to the Highland Dallas Foundation in relation to 'Creative HEARTS TX', an entity of which Mr. Patrick and his family

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were directors, without disclosing this information. I became aware of this situation contemporaneously with its occurrence and it caused me concern regarding Mr. Patrick.

24. I understand from the Dondero Declaration (not my personal knowledge) that in September 2023, Mr. Patrick approached Kevin Cronin of Fortaris with a proposition whereby Mr. Patrick (on behalf of the Fund) would engage an entity controlled by Mr. Cronin at a monthly fee of between $25,000 and $50,000, and that this fee would be split between Fortaris and Mr. Patrick. I became aware of this situation shortly after its occurrence and it caused me concern regarding Mr. Patrick.

25. In August 2024, I personally became aware of the potential disclosure of material non-public information (***MNPI***) to the Highland Dallas Foundation (***HDF***). On 28 August 2024, I was informed by David Rosenberg of Holland & Knight (***H&K***), the Charities' US-attorneys, that Mr. Douglas Mancino, an attorney with Seyfarth Shaw LLP (***Seyfarth***) in Los Angeles, California, had called Mr. Rosenberg, identified himself as Mr. Patrick's "*outside compliance counsel*" and recommended that Mr. Rosenberg advise HDF to exercise put-options over units it holds in the NexPoint Hospitality Trust (***NHT***). Mr. Rosenberg reported this to me. I was very concerned by this information and therefore immediately contacted Lucy Bannon, an employee of NexPoint and someone I have known in a professional capacity for many years, to inform her of the situation.

26. I have since become aware through my position at The Dallas Foundation and role as a board member of HDF, that the information Mr. Mancino provided to H&K could have constituted MNPI. This matter is discussed in more detail in paragraphs 33-35 of Dondero 1.

FINANCIAL IRREGULARITIES

27. In or around August 2024, NexPoint provided the Charities with a financial analysis of the Fund's annual expenses (the ***Expense Summary***) which appeared to indicate substantial

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increases in expenditures in recent years.

28. As stated in paragraph 31 of Dondero 1, the Expense Summary indicated as follows:

(a) Directors' fees increased from US$40,000 in 2022 to almost US$600,000 in 2023, and in the first half of 2024 alone, directors' fees increased further to around US$2.25 million.

(b) Expenses overall for the first half of 2024 were around US$18.3 million – roughly the same amount had been spent in2023 (i.e. US$18.6 million). I was not aware of any basis for this extraordinary legal expenditure in a period of just 18 months.

29. The Charities were concerned by the Expense Summary and considered it was necessary to seek to verify and/or understand the apparent increases in expenditure. Accordingly, in October 2024, the Charities made a reasonable request to Mr. Patrick for financial information about the Fund, which Mr. Patrick failed to provide at that time, or any time thereafter.

30. On 11 November 2024, the Charities' US-attorneys, Holland & Knight (***H&K***), conveyed a letter to Mr. Murphy from the Charities (the ***No Confidence Letter***) advising that the Charities no longer have confidence in the governance of the Fund and consider a reorganization is required:

> "Recently, various competing constituencies provided the Foundations with conflicting information related to the operations and financial inner workings of the DAF-related entities. This conflicting information raises significant concerns about how the corpus of these funds is administered and spent. **The Foundations have no real pathway to verify the information as the current governance structures prevent them from receiving such information, and indeed, efforts to secure additional information have been rebuffed**. **As a result, these recent submissions demonstrate that the current governance structure is ill-equipped to address such allegations and provide sufficient protection to the economic funds that support so many charitable efforts**.

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Further, because we have substantial concerns, out of an abundance of caution, and until an accounting can be conducted, we believe it is inappropriate for anyone to authorize the depletion of further assets of DAF-related entities. We urge you to take our accounting and governance concerns seriously because depletion of assets in the DAF-related entities has a direct impact on our mission and the charitable good works in our communities."

31. The Charities did not receive a response to the No Confidence Letter. Accordingly, on 23 January 2025, I sent an email to Mr. Murphy (a director that Mr. Patrick appointed in the Cayman Islands) stating that the Charities wished to better understand the Fund's asset position and requesting that the Fund provide certain information by 10 February 2025, including: (i) income statements for the past four years, (ii) listing of underlying assets, (iii) audited financial statements, and (iv) the current structure of the LP's operations.

32. On 28 January 2025, I sent a further email to Mr. Patrick and Mr. Murphy expressing serious concern that the Charities' requests continued to be disregarded, reflecting an ongoing lack of transparency about the Fund:

"...These failures exacerbate the concerns we previously communicated in our letter to Paul in November 2024 (copy attached), which highlighted our concerns that the governance of the DAF HoldCo has failed in its current structure. The situation as it now stands is untenable. The lack of engagement on the true financial condition of the DAF HoldCo and the underlying assets leads us to believe that you have rejected our request to revise the governance of the DAF HoldCo and related structure. As such we are requesting that DAF HoldCo and the related entities be wound up and the underlying assets be distributed in kind to the Supporting Organizations so they can manage those assets for the benefit of the charities and the communities they serve. As previously requested, until these issues are resolved, we are insisting that you do not dissipate the

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assets further".

33. On 30 January 2025, I received a response from Mr. Murphy stating that neither he nor Mr. Patrick received my 23 January 2025 email, and that he understood the next step was that he and Mr. Patrick would "present directly to the foundations/supporting organizations" to address some of the concerns in the No Confidence Letter:

> "…**we have some growing concern around the content and circumstances your email of 23 January 2025, specifically that it might be interpreted as a premise to attempt to inappropriately exercise control over DAF HoldCo and/or its assets.** As a reminder, when the participating shares in DAF HoldCo were issued to the supporting organizations, there was no conveyance of voting rights or control, and it has always been well understood that such shares did not convey voting rights or control … any attempt to exert control of DAF HoldCo or its assets by James Dondero would be both inappropriate, unlawful and inconsistent with DAF HoldCo's charitable mission. We are deeply concerned that this outreach, which began following Mark's resignation from Skyview in October 2024, may be the supporting organizations acting as proxy for Mr. Dondero …
>
> …**We note that your communications to date contain several misstatements of fact and we reject all of your allegations**. DAF HoldCo holds itself to the highest standards in achieving its goal of maximizing returns in risk-adjusted assets to achieve its charitable objectives. It is important to underline that we have policies and procedures in place to preserve DAF HoldCo's independence and are advised by best-in-class, independent experts.
>
> **Whilst we are cooperating with the foundations/supporting organizations to provide additional information we have no legal obligation to do so** (which is not disputed).

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In no way should our cooperation be construed as an implicit acknowledgment of any duty to continue providing information to you or as a waiver of any DAF HoldCo's rights and remedies."

34. I understand (and as stated in paragraph 12 of Dondero 1) the Control Position to be responsible for governance and management functions to enable the Fund to carry out its sole purpose of benefiting its ultimate beneficial owners (i.e. the Charities). In this context, the Charities were very surprised and concerned by Mr. Patrick and Mr. Murphy's responses to requests for information and the lack of transparency regarding the Fund's financial position. It remains unclear to the Charities the basis upon which access to such information was (and continues to be) restricted.

35. On 31 January 2025, H&K responded to Mr. Murphy's email as follows:

"As fiduciaries, you and Mr. Patrick manage $270 million in assets for the benefit of charities that support the most vulnerable in their communities. Whatever your side's obvious antagonism to Mr. Dondero, the fact remains that the underlying assets are ultimately for these charitable missions

...

The Supporting Organizations have legitimate concerns. The last information they received from SEI in July of 2024, before Mr. Patrick shut down [communication] **showed legal expenses had increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022.** If annualized, and at that pace, legal expenses appeared to be on path to exceed $12 million for 2024. That's a 300% increase. **Director fees skyrocketed from $40 thousand in 2022 to $2.25 million in the first six months of 2024.** Again, annualized, these fees are on a path to exceed $5 million in 2024. That is a 12,400% increase. **Yet, no information has been provided by you and Mr. Patrick,**

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no clarity given. It appears that total expenses for 2024, if annualized, were on pace to exceed $36 million. Even if you earned a return of 10% on the $270 million invested, the fund would be at $11 million of negative revenue for 2024. **If the information we received is wrong, then please explain why, and provide the detailed information to disabuse us of these concerns**…

36. On 4 February 2025, Mr. Murphy responded that while open to resolving the concerns, they were struggling to understand the Charities' change in position.

37. On 7 February 2025, H&K responded as follows:

> "I do not believe it should be difficult to comprehend the request for transparency around $270 million dollars you control as a fiduciary for the benefit of charities in Dallas, Kansas City, and Santa Barbara. Indeed, these odd legal and rhetorical machinations of yours and Mr. Patrick miss the point. These monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed, and—among other things—creating a lasting impact on young minds by fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees.
>
> …
>
> Over the last three months, you have not provided any information about the assets and financial health of the fund. You have demanded that information only flows under an NDA with liquidated damages. You continually issue a veiled threat that information is a privilege not a right under the agreements. Expenses have gone through the roof, and the governance has been changed to further insulate it in a foreign jurisdiction. To say the least, I see red flags all over this situation, but have not received any facts, yet, that tell me they are unwarranted."

38. On 14 February 2025, H&K received a fax from Seyfarth which rejected the reported increases

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in legal and directors' fees and sent a further email on 18 February 2025 which attached a valuation of the Fund from 2020 in support of his suggestion that similar information was provided to the Charities when Mr. Scott was in the Control Position. Copies are at **Tabs 15** and **16**, respectively.

39. On 27 February 2025, H&K responded to Seyfarth that the Charities were becoming frustrated by the ongoing lack of transparency and refusal to respond to simple inquiries about the financial position and governance of the Fund.

40. On 17 March 2025, Seyfarth sent an email to H&K requesting available dates for Mr. Murphy to make a presentation to the Charities. The next day, H&K suggested three potential dates/times for such a call between 26 March and 3 April 2025, but did not receive any response. On 3 April 2025, Seyfarth replied, stating they had just learned of a call arranged for the following day, and seeking to reschedule. H&K responded that they had no knowledge of the purported call and would revert with available dates from 16 April 2025. On 9 April 2025, HK responded with its availability.

41. At the date of this declaration, none of the financial information requested by the Charities has been provided by Mr. Patrick or Mr. Murphy.

MR. PATRICK DILUTES THE SUPPORTING ORGANIZATION'S INTERESTS IN THE CHARITABLE DAF FUND.

42. I am aware that between December 2024 and the present, Mr. Patrick executed a series of moves to dilute the Supporting Organization's interests in the Charitable DAF Fund and then to entirely alienate those assets. Mr. Patrick's acted to eliminate the Supporting Organization's ownership of the Charitable DAF Fund assets, while awarding ownership to at least one purported charitable entity that he personally controls.

43. I have come to know now that Mr. Patrick held the controlling general partner shares in the

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Charitable DAF Fund via the Delaware GP. Without any prior notice or even disclosure to the Supporting Organizations, in February 2024, Mr. Patrick incorporated CDH GP, Ltd in the Cayman Islands, with Mr. Patrick as the sole director. He used this newly created Cayman Islands entity to replace and redomicile Delaware GP. CDH GP became the general partner holding all the controlling shares in the DAF Fund. The Supporting Organizations only found out about the replacement and redomicile of the Delaware GP in February 2025, through independent investigation.

44. On December 9, 2024, Mr. Patrick created Defendant DFWCF (also referred to herein as the "**Sham Charity**"), a Delaware nonprofit corporation. Mr. Patrick was named the Sham Charity's sole member and sole director; its registered address is Mr. Patrick's home address. The apparent purpose and the clear effect of forming DFWCF was to create a facsimile of the Charitable DAF Fund beneficiaries—the nonprofit charities and their Supporting Organizations—but in the form of a "charitable" entity controlled by Mr. Patrick.

45. I learned that Mr. Patrick later incorporated CDMCFAD, LLC, a Delaware limited liability company.

46. Without notice to the Supporting Organizations or to me, on December 18, 2024, Charitable DAF HoldCo transferred to CDMCFAD, LLC 100% of its interest in Charitable DAF Fund, and Charitable DAF HoldCo acquired 100% of the interest in CDMCFAD, LLC. The Supporting Organizations' technical interest was in Charitable DAF Holdco. As a result, CDMCFAD effectively was inserted as a company in between Charitable DAF HoldCo, owned by the Supporting Organizations, and the Charitable DAF Fund itself (where the assets resided). Suddenly, the Supporting Organizations no longer held a 100 beneficial interest in the entity that held the assets in Charitable DAF Fund. Instead, a different and new entity (CDMCFAD) held the assets in Charitable DAF Fund; the Supporting Organizations only held shares in an

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entity (Charitable DAF Holdco) that notionally held that new entity.

47. On February 7, 2025, again without notice to the Supporting Organizations or to me, DAF HoldCo allotted 318 participating shares to DFWCF, the Sham Charity controlled by Mr. Patrick himself. This dilution reduced the Supporting Organizations' cumulative holding in Charitable DAF Holdco from 100% of the participation shares to 48.9%. Following the new issuance: (i) HDFI's interest was diluted from 32.787% to 16.05%; (ii) HKCF's interest was diluted from 32.787% to 16.05%; and (iii) HSBFI's interest was diluted from 32.787% to 16.05%.

48. I now know that in February 2025, the Sham Charity acquired IRS 501(c)(3) tax exempt status. The By-Laws of the Charitable DAF Fund required that its limited partnership interests be owned by an entity with such tax-exempt status. Therefore, obtaining 501(c)(3) status for the Sham Charity was a necessary step to effectuate Mr. Patrick's complete control of the assets of DAF Fund.

49. And I now know that on March 27, 2025, Mr. Patrick caused CDMCFAD to issue shares to the Sham Charity, and only to the Sham Charity. None of the Supporting Organizations were issued shares in CDMDFAD. Now, the sham charity controlled by Mr. Patrick held a direct economic interest in the entity that Mr. Patrick had newly inserted between Charitable DAF Holdco and the assets in Charitable DAF Fund. Meanwhile, the two direct beneficial owners of CDMCFAD were (1) Charitable DAF Holdco—in which the Supporting Organizations still held a minority beneficial interest; and (2) Mr. Patrick's new sham charity, which he controlled.

50. On April 2, 2025, Mr. Patrick caused Charitable DAF HoldCo to redeem its interests in CDMCFAD for a total payment of $1.6 million, after which Charitable DAF Holdco purportedly had no assets and no remaining interest in Charitable DAF Fund at all. Needless to say, a one-time $1.6 Million payment for the release of the beneficial ownership of more than

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$270 Million in the Fund—held entirely for the benefit of the Supporting Organizations as late as December 2024—is not an exchange that I or any other person with fiduciary loyalty to the Supporting Organizations would ever have approved, had we known it was happening at the time. As a result, Mr. Patrick's Sham Charity, Defendant DFWCF, was the sole remaining limited partner and beneficial owner of Charitable DAF Fund, through its 100% ownership of the fund by CDMCFAD. The effect of this final step was to consummate the complete severance of the Supporting Organizations and their nonprofit charities from the assets of the Charitable DAF Fund.

51. Before the start of these self-dealing transactions, in October 2024, the Supporting Organizations owned more than 98% of the Participation Shares representing the economic ownership of $270 million in assets. As of April 2025, the Supporting Organizations owned Participation Shares worth zero. While Mr. Patrick purportedly caused $1.6 million to be distributed to the Supporting Organizations receipt of those funds have yet to be verified.

REPLACEMENT OF GP

52. For the first time, in February 2025, I learned that Mr. Patrick had redomiciled and replaced the general partner of the Fund, without notice to the Charities, almost one year prior. This information was, I understand, obtained via background checks into the various parties.

53. I understand that on 27 February 2024, CDH GP, Ltd (the ***New GP***) was incorporated in the Cayman Islands (registration number 407515) with its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

54. I also understand that Mr. Patrick is the sole director of the New GP.

55. It is unclear to the Charities on what basis Mr. Patrick and/or Mr. Murphy removed and redomiciled the general partner of the Fund, nor the reason the Charities were not notified of

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this change.

PURPOSE OF APPLICATION

56. It is clear the Fund's assets are being diminished for the benefit of Mr. Patrick and Mr. Murphy; and in any case, the Defendants in this Action are engaged in a series of secretive transactions intended to completely alienate from the Supporting Organizations more than $270 Million that was held for their benefit, and upon which their charitable activities depend. These are the sole motivations of the Charities in bringing this application.

57. Unless enjoined, Mr. Patrick and the other Defendants will cause and continue to cause irreparable harm to the Charities including, without limitation, the dispersal, expenditure, transfer, and further alienation of more than $250 Million that can never be replaced because the Defendants lack the means. In addition to the permanent loss of funds in the future, the immediate continuation of key programs at the Charities is imperiled by the conduct at issue here and the reality that the Charities, as of this moment, are cut off from the funds intended for their support. Moreover, the conduct of the Defendants to date creates a pattern suggesting that further creative transfers, alienation, spending, and dissipation of the monies in the fund are likely to be imminent. If this happens, it is likely they will never be recovered.

58. The harm to the Charities is imminent if the Defendants are not enjoined. Enjoining the Defendants will merely require them to refrain from doing anything with the Funds for two weeks. If the Defendants are not acting adversely to the Charities, the Funds will still be available to them for their use in future. The Charities suffer a greater burden as they stand to lose everything.

59. Enjoining the Defendants will not disserve the public interest as without the injunction, there is significant potential for irreparable harm to the Charities and the Defendants will not be harmed

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if enjoined. Freezing the funds to ensure that Mr. Patrick's scheme is not hurting charitable interests vital to key communities serves the public interest.

ARGUMENTS THAT MAY BE MADE BY THE RESPONDENT

60. I draw attention to the following matters which the Defendants may raise by way of attempted defense against the application.

61. The Defendants may assert (as they have repeatedly suggested in correspondence) that the Charities are acting on the instructions of Mr. Dondero and that we are being used as a proxy for his own disputes with Mr. Patrick. Any suggestion of that nature is entirely rejected. On the contrary, the Charities have at all times taken steps to independently verify information provided to them by Mr. Dondero and entities associated with him, have taken advice solely from their own attorneys in the US and Cayman, and have required Mr. Dondero to recuse himself from board meetings of the Supporting Organisations at which decisions as to whether to bring these proceedings were discussed. The Charities have no interest in any dispute there may be between Mr. Patrick and Mr. Dondero.

62. The Defendants also may assert that the Charities are not entitled to any information regarding the Fund, and that the structure was designed specifically to exclude the Charities from information or control rights. Whether that is true or not, the Charities are the sole economic beneficiaries of the Fund's activities, and Defendants owed and owe them fiduciary duties of care, loyalty, and candor. If the Fund is being used for a purpose other than that for which it was established, that cannot be allowed to continue to the detriment of the charitable causes and in violation of those duties. The Fund would otherwise be an unsupervised vehicle susceptible to being used for the wishes and benefit of the individual holding the Control Position, to the detriment of the Charities and the express purposes of the governing documents.

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63. The Defendants may deny that the expenditures are as significant as that appearing from the documents. If that is the case, the Defendants have had ample opportunity to correct this, but have chosen not to do so.

64. I am not aware of any other points that the Defendants have made or alluded to in correspondence which could materially affect this application.

THE CAYMAN ISLANDS PROCEEDINGS

65. Given Patrick's pattern of malfeasance the Supporting Organizations filed an involuntary Petition for Winding Up in the Grand Court of the Cayman Islands (the "**Grand Court**"), Financial Services Division, Cause No. FSD 99 OF 2025 (JAJ), styled *In the Matter of Section 92 of the Companies Act (2025 Revision) and In the Matter of Charitable DAF HoldCo, Ltd.*

66. Cayman Islands counsel for the Supporting Organizations alleged essentially the same facts as recounted in this Petition before the Grand Court. However, DFWCF as a Delaware entity was not expressly named in the Grand Court proceedings.

67. The Grand Court, after lengthy hearing and in consideration of written submissions and evidentiary exhibits, ordered among other things:

> 5. The joint official liquidators are authorized to exercise the following powers in Part I of Third Schedule 3 to the Companies Act, without requiring further sanction by the Court:
>
> a) the power to commence legal proceedings in the name and on behalf of the Company to obtain the provision of information and/or documents and/or the examination of individuals in the Cayman Islands or the United States; and
>
> b) the power to apply in the Cayman Islands or the United States for the preservation, freezing or attachment of assets to which the Company is or may arguably be entitled.
>
> 6. The joint official liquidators are in addition authorized to exercise the following powers and to take the following steps without further sanction by the Court:

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a) the power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;

b) the power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised; and

c) the power to seek registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the exercise of the powers specified in paragraphs 5(a) or 5(b) of this Order.

68. While the Cayman Islands appointed official liquidators now conduct their investigation of the assets and other matters pertaining to the Cayman Islands' proceedings, Defendants Patrick and DFWCF (all sited in the United States, and more specifically Dallas County) remain in actual control and beneficial ownership of all assets that were held by the DAF Fund and DAF HoldCo. In the meantime, the Supporting Organizations, are without the benefit of the considerable assets formerly held by the DAF Fund and without any insight into the current status and security of the assets. This not only damages the Supporting Organizations, but the charitable causes in their communities that relief on funding from the DAF Fund.

69. Further, while Defendants Patrick and DFWCF wrongfully remain in control of the participation shares that rightfully belong to the Supporting Organizations, the Defendants wrongfully hold a seat on the liquidators' committee.

ORDERS SOUGHT

70. Given the refusal of the Defendants to answer legitimate questions raised by the Charities and the weight of evidence that suggests that the Defendants are dealing with or spending the assets of the Fund in a manner that is not in the best interest of the Charities, the Charities respectfully seek orders placing the Fund, its Limited Partner, and its General Partner under the control of an independent Receiver who can investigate the affairs of the Fund and the decisions taken by management, and manage those affairs for the benefit of the intended beneficiaries, under the supervision of the Court. The Charities have no confidence in the current management to provide this information themselves without independent oversight.

71. Until such time as a Receiver may be appointed, the Charities further seek a temporary

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restraining order and temporary injunction to prevent the Defendants from the use, transfer, dispersal, and/or alienation of any interests or assets, regardless of where they are presently held. If not enjoined, Defendants' actions pose an immediate threat of irreparable harm and injury to Plaintiffs for which there is no adequate remedy at law because the harm cannot be undone by a damages award, as once the assets are spent or dispersed, Defendants will be unable to pay a judgment.

My name is Julie Diaz, my date of birth is 3/23/64, and my address is 5711 Prestwick Lane Dallas, TX 75252. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Barnstable County, State of MA,

on the 1 day of July, 2025.

/s/ Julie Diaz
JULIE DIAZ

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EXHIBIT 8

FSD NO. 116 OF 2025 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD

BEFORE THE HONOURABLE JUSTICE JALIL ASIF KC
IN CHAMBERS

6 MAY 2025

SUPERVISION ORDER

UPON the petition filed on 2 May 2025 by (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund for an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd continue under the supervision of the Court pursuant to s.131 Companies Act (2025 Revision)

AND UPON hearing counsel for the Petitioners and counsel for DFW Charitable Foundation

AND UPON reading the petition herein, the affidavit of Julie Diaz and exhibit JD-2 sworn on 29 April 2025 and the affirmation of Rhiannon Zanetic and exhibit RMZ-1 signed (but not affirmed) on 29 April 2025

AND UPON reading the following documents filed in Cause FSD 2025-0099 (JAJ): the winding up petition filed on 10 April 2025, the first affidavit of Julie Diaz and exhibit JD-1 sworn on 10 April 2025, the affidavit of James Dondero and exhibit JDD-1 sworn on 9 April 2025 and the affidavit of Geoffrey Sykes and exhibit GS-1 sworn on 27 April 2025

AND UPON reading the affidavit of Margot Macinnis and exhibit MM-1 sworn on 28 April 2025 and the affidavit of Sandipan Bhowmik and exhibit SB-1 sworn on 28 April 2025 providing their consents to act as official liquidators of Charitable DAF HoldCo, Ltd

IT IS HEREBY ORDERED that:

1. The voluntary liquidation of Charitable DAF HoldCo, Ltd ("the Company") be continued under the supervision of the Court pursuant to s.131 of the Act and O.15, r.8 of the Companies Winding Up Rules (2023 Consolidation).

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2. The following persons are appointed as joint official liquidators of the Company:

Name	Address	Contact Details
Margot MacInnis	Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, Century Yard, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands	+1 345 949 8588 margot.macinnis@uk.gt.com
Sandipan Bhowmik		+1 345 949 8588 sandipan.bhowmik@uk.gt.com

3. The joint official liquidators may act jointly and severally.

4. The joint official liquidators are not required to give security for their appointment.

5. The joint official liquidators are authorised to exercise the following powers in Part I of Third Schedule 3 to the Companies Act, without requiring further sanction by the Court:

   a) the power to commence legal proceedings in the name and on behalf of the Company to obtain the provision of information and/or documents and/or the examination of individuals in the Cayman Islands or the United States; and

   b) the power to apply in the Cayman Islands or the United States for the preservation, freezing or attachment of assets to which the Company is or may arguably be entitled.

6. The joint official liquidators are in addition authorised to exercise the following powers and to take the following steps without further sanction by the Court:

   a) the power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;

   b) the power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised; and

   c) the power to seek registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the exercise of the powers specified in paragraphs 5(a) or 5(b) of this Order.

7. The Court dispenses with the requirement for the summons herein and the hearing of the summons to be advertised pursuant to CWR O.15.

8. The joint official liquidators' reasonable remuneration and expenses be paid out of the assets of the Company in accordance with s.109 of the Act, Part III of the Insolvency Practitioners Regulations and CWR O.20.

9. The joint voluntary liquidators shall prepare a final report and accounts for the period from the commencement of the voluntary liquidation until the date of this Order and shall deliver such report to the joint official liquidators within 28 days of this Order.

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10. The costs of this summons shall be paid out of the assets of the Company as an expense in the liquidation, such costs to be taxed on the indemnity basis if not agreed with the joint official liquidators.

Dated 6 May 2025
Filed 6 May 2025

_____
THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

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Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 102670163
Filing Code Description: Petition
Filing Description: PLAINTIFFS ORIGINAL PETITION, APPLICATION FOR TRO AND TEMPORARY INJUNCTION, AND EMERGENCY REQUEST FOR APPOINTMENT OF RECEIVER
Status as of 7/2/2025 8:08 AM CST

Associated Case Party: The Highland Dallas Foundation, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Dylan JAnderson		DJAnderson@duanemorris.com	7/1/2025 9:35:25 PM	SENT
James Billingsley		JBillingsley@duanemorris.com	7/1/2025 9:35:25 PM	SENT
Jason E.Boatright		JEBoatright@duanemorris.com	7/1/2025 9:35:25 PM	SENT
Joseph MCox		JMCox@duanemorris.com	7/1/2025 9:35:25 PM	SENT
Katherine Ramos		KRamos@duanemorris.com	7/1/2025 9:35:25 PM	SENT
Craig M.Warner		CMWarner@duanemorris.com	7/1/2025 9:35:25 PM	SENT
Benjamin Warden		BWarden@duanemorris.com	7/1/2025 9:35:25 PM	SENT
Darren McCarty	24007631	darren@mccartylawpllc.com	7/1/2025 9:35:25 PM	SENT

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EXHIBIT 63

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

WRIT OF SUMMONS

TO: (1) **MARK ERIC PATRICK** of 6716 Glenhurst Drive, Dallas, Texas, 72554, United States of America

THIS WRIT was issued by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83527361)

(2) **PAUL MURPHY** of Windsor Village #24, South Church Street, Grand Cayman, Cayman Islands

(3) **CDMCFAD, LLC** of c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 1980, United States of America

(4) **DFW CHARITABLE FOUNDATION** of c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 1980, United States of America

(5) **CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER** of c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands

(6) **CLO HOLDCO, LTD.** of c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, or, if you are served out of the jurisdiction, within such other period of time as the Court may order, you must either satisfy the claim or return to the Registrar of the Financial Services Division, Court Office, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 15th day of July 2025

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

STATEMENT OF CLAIM

INTRODUCTION

1 The Plaintiff, Charitable DAF HoldCo, Ltd (in Official Liquidation) (the "**Company**"), is a Cayman Islands exempted company, incorporated on 27 October 2011, having its registered office at HSM Corporate Services Ltd, 68 Fort Street, George Town, PO Box 31726, Grand

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

Cayman KY1-1207. The authorised and issued share capital of the Company is divided into Participating Shares and Management Shares.

2 The Company was placed into court supervised liquidation and Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Limited were appointed as joint official liquidators (the "**JOLs**") pursuant to an order of this Honourable Court dated 6 May 2025.

3 The Company was, between November 2011 and 18 December 2024, the sole limited partner of Charitable DAF Fund, LP (the "**Fund**"). At all relevant times, the net asset value of the Fund's assets was c. US$270million.

4 The Fund is a Cayman Islands exempted limited partnership formed to invest and manage assets for the benefit or ultimate benefit of certain registered charitable organisations in the U.S. namely The Dallas Foundation; the Greater Kansas City Community Foundation; the Santa Barbara Foundation and The Community Foundation of North Texas (the "**Charities**"). These charities are the owners or the ultimate beneficial owners of Participating Shares in the Company.

5 In March 2021, Mark Patrick (the "**First Defendant**") was appointed the sole director and registered as the sole Management Shareholder of the Company. In April 2021, Paul Murphy (the "**Second Defendant**") was appointed by the First Defendant as a second director of Holdco.

6 By virtue of a series of transactions or purported transactions between March 2024 and March 2025, unbeknownst to the holders of the Participating Shares (the "**Participating Shareholders**") of the Company, Mr Patrick caused:

6.1 the Company, with the agreement and concurrence of Mr Murphy, to assign its interest in the Fund to the Third Defendant, a Delaware limited liability company, formed in

December 2024 and controlled by Mr Patrick, in exchange for a membership interest in that entity;

6.2 the Company, with the agreement and concurrence of Mr Murphy, to issue and allot further Participating Shares (representing a majority of the issued participating share capital) to the Fourth Defendant, a Delaware company, incorporated in December 2024 and controlled by Mr Patrick;

6.3 the Third Defendant to redeem the Company's membership interest in the Third Defendant for a consideration of c. US$1.6 million, representing approximately 0.59% of the total net asset value of the assets held by the Fund; and

6.4 the Company, with the agreement and concurrence of Mr Murphy, to be placed into voluntary liquidation after having made a final distribution to all Original Participating Shareholders (defined below) in the Company of the proceeds of redemption,

collectively the "**Impugned Transactions**".

7 The First and Second Defendants effected the Impugned Transactions in breach of their fiduciary and other duties to the Company in order to bring ownership of the Fund and its assets, with a net value of c. US$270 million (as assessed at 30 September 2024), under Mr Patrick's effective control to the exclusion of the interests of the Charities. The Charities, as the original, and rightful, ultimate beneficiaries of the Fund, have been left with nothing.

8 Further, during the period March 2021 to June 2024, the First and Second Defendants, in breach of fiduciary duty, caused the Company to pay excessive fees and expenses to Mr Patrick.

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

THE PARTIES

The Company

9 The Company is a Cayman Islands exempted company, incorporated on 27 October 2011, having its registered office at HSM Corporate Services Limited, Ltd, 68 Fort Street, George Town, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands.

10 The directors of the Company are Mr Patrick (appointed on 25 March 2021) and Mr Murphy (appointed by Mr Patrick on 22 April 2021).

11 The Company has been governed by the following memorandum and articles of association from time to time:

11.1 The memorandum and articles of association dated 27 October 2011; and

11.2 The amended and restated memoranda and articles of association dated 19 January 2015; 24 January 2024; and 20 February 2025 respectively.

The Company remains governed by the memorandum and articles of association as amended and restated on 20 February 2025 (the "**Articles**") save that the Company reserves the right to challenge the validity of the Articles.

12 Save as set out above, the Company will rely on the Articles and all previous iterations for their applicable full terms and effect.

13 Pursuant to the Articles and at all relevant times, the authorised share capital of the Company was US$50,000 divided into 100 Management Shares of US$0.01 par value each and 4,999,900 Participating Shares of US$0.01 par value each.

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

14 The Articles (with reference to the defined term of 'Restricted Person') require that the Participating Shareholders must at all times qualify as a tax-exempt organisation pursuant to section 501(c)(3) of the United States Internal Revenue Code of 1986 ("**IRC**").

15 The Participating Shares do not have voting rights but confer the right to participate in the profits or assets of the Company including by way of the receipt of dividends (Article 12).

16 The Management Shares have voting rights but confer no other right to participate in the profits or assets of the Company (Article 11).

17 The Participating Shareholders therefore have the entirety of the economic interest in the Company, whereas the Management Shareholders have the control rights.

18 On 7 November 2011, the Company issued:

18.1 300 Participating Shares to The Highland Capital Management Partners Charitable Trust #2 ("**Trust #2**"); and

18.2 100 Management Shares to Grant Scott.

19 On 30 November 2011, Trust #2 transferred its 300 Participating Shares equally amongst:

19.1 Highland Kansas City Foundation, Inc.;

19.2 Highland Dallas Foundation, Inc.[1]; and

19.3 Highland Santa Barbara Foundation, Inc.,

collectively, the "**Supporting Organisations**".

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[1]Since June 2024, Highland Dallas Foundation, Inc. has also done business as 'NexPoint Philanthropies Dallas, Inc.', per an Assumed Name Certificate filed with the Secretary of State of Texas.

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20 On 12 August 2015, the Company issued 5 Participating Shares to the Community Foundation of North Texas, ("**CFNT**", and together with the Supporting Organisations the "**Original Participating Shareholders**") for Highland Capital Management, L.P. Charitable Fund at CFNT.

21 On 25 March 2021, the Management Shares were transferred to Mr Patrick and he continues to hold these shares.

22 The Participating Shares held by the Original Participating Shareholders represented the entire issued Participating Share capital of the Company until 7 February 2025. On that date, Mr Patrick, with the agreement and concurrence of Mr Murphy, caused the Company to issue 318 Participating Shares to the Fourth Defendant, DFW Charitable Foundation ("**DFW**"), significantly diluting the shareholdings of the Original Participating Shareholders and the indirect economic interest of the Charities.

23 Until 18 December 2024, the sole asset of the Company was its limited partnership interest in the Fund (the "**Partnership Interest**").

24 As a result of the Impugned Transactions, the Company now has no material assets.

DFW

25 DFW (the Fourth Defendant) is a non-profit non-stock corporation incorporated in Delaware on 9 December 2024, which is organised under the General Corporation Law of the State of Delaware exclusively for charitable purposes.

26 DFW is the majority Participating Shareholder of the Company by virtue of the purported share issuance on 7 February 2025, and Mr Patrick is its registered director, president and sole member.

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The Fund

27 The Fund is a Cayman Islands exempted limited partnership formed on 28 October 2011 (registration no. 53083), having its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

28 The Fund is governed by the Second Amended and Restated Exempted Limited Partnership Agreement dated 11 March 2024 (the "**LPA**"). The initial exempted limited partnership agreement of the Fund was dated 25 October 2011, was amended and restated on 7 November 2011 and further amended on 26 July 2022 (with effect from 24 March 2021). The Company will rely on the LPA for its applicable full terms and effect.

29 Mr Patrick was instrumental in the establishment of the Company, the Fund and the Fund structure.

30 Until 18 December 2024, the Company was the sole limited partner of the Fund.

31 On 18 December 2024, Mr Patrick, with the agreement and concurrence of Mr Murphy, caused the Company to transfer its limited partnership interest to CDMCFAD, LLC ("**CDM**") (the Third Defendant) in exchange for a membership interest in CDM.

32 The original general partner of the Fund was Charitable DAF GP, LLC (the "**Original GP**"), a Delaware limited liability company registered as a foreign company in the Cayman Islands. The Original GP was the general partner from the Fund's formation until 7 March 2024.

33 On 7 March 2024, the Original GP was replaced by CDH GP, Ltd. (the "**New GP**") (the Fifth Defendant).

34 The sole asset of the Fund is its 100% shareholding in CLO HoldCo, Ltd. ("**CLO HoldCo**") (the Sixth Defendant), a Cayman Islands exempted company incorporated with limited liability,

having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

35 The assets of the Fund were valued at c. $270 million in September 2024.

The New GP

36 The New GP (the Fifth Defendant) is a Cayman Islands exempted company incorporated on 27 February 2024, having its registered office located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

37 Mr Patrick is the New GP's sole director and sole shareholder.

38 The New GP is a defendant to these proceedings in two capacities: (i) in its capacity as General Partner; and (ii) for and on behalf of the Fund in order to join the Fund as a defendant to these proceedings.

CDM

39 CDM (the Third Defendant) is a limited liability company incorporated in Delaware on 12 December 2024, having its registered address c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

40 CDM is governed by the terms of a Limited Liability Company Agreement dated 18 December 2024.

41 Since 18 December 2024, the primary asset of CDM has been the limited partnership interest in the Fund.

42 The sole manager of CDM is Mark Patrick.

43 From 18 December 2024 to 27 March 2025, the sole member of CDM was the Company.

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44 On 27 March 2025, Mr Patrick caused CDM to redeem the Company and admit DFW as the sole participating member.

CLO HoldCo

45 CLO HoldCo (the Sixth Defendant) is a Cayman Islands exempted company incorporated on 13 December 2010, having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands, and which is the Fund's main subsidiary.

46 The directors of CLO Holdco are Messrs Patrick and Murphy.

47 The sole shareholder of CLO Holdco is the Fund.

The Directors

Mark Patrick

48 Mr Patrick (the First Defendant) is a U.S. resident who is:

48.1 a director, holds the offices of (i) President, (ii) General Counsel, and (iii) Chief Investment Officer and is the current Management Shareholder of the Company;

48.2 the Manager of CDM (the Third Defendant);

48.3 the sole director and the sole member of DFW (the Fourth Defendant);

48.4 the sole director and sole shareholder of the New GP (the Fifth Defendant); and

48.5 a director of CLO HoldCo (the Sixth Defendant).

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49 Mr Patrick was employed as tax counsel by Highland Capital Management, L.P. ("**Highland**") from 2008 to 2021 and as tax counsel by Highgate Consulting Group, Inc. d/b/a Skyview Group from March 2021 to October 2024.

Paul Murphy

50 Mr Murphy (the Second Defendant) is a Cayman Islands resident who is:

50.1 a director of the Company;

50.2 a director of CLO HoldCo (the Fifth Defendant); and

50.3 a director of various other entities in the Charitable DAF structure.[2]

51 Mr Patrick and Mr Murphy are referred to herein as the "**Directors**".

THE CHARITABLE PURPOSE OF THE FUND

52 The Fund was formed on 28 October 2011 at the instigation of Mr James Dondero, a U.S. resident and the founder of Highland to enable certain assets, held through the shares in CLO Holdco, to be donated to a charitable foundation.

53 Upon the formation of the Fund, the Company was admitted as a limited partner and, by way of capital contribution, contributed all of the outstanding equity interests in CLO HoldCo to the Fund.

54 The purpose of the Fund was to make investments for the ultimate benefit of the Original Participating Shareholders and the Charities:

[2]Mr Murphy was appointed to the board of directors of the following entities on 22 April 2021; Liberty CLO Holdco, Ltd., Liberty Sub, Ltd., HCT Holdco 2, Ltd. and MGM Studios Holdco, Ltd. at the same time as Charitable DAF HoldCo, Ltd and CLO HoldCo, Ltd.

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54.1 The recitals to the LPA of the Fund provide that the purpose of the Fund was to "*make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code … for the economic benefit of the Limited Partner and its Indirect Charitable Owners…*".

54.2 Clause 1.3 of the LPA provides that "*… the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners*".

54.3 Clause 1.6(a) of the LPA provides that "*the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner*".

54.4 "Indirect Charitable Owners" is defined in the LPA as "*the indirect equity owners of the Limited Partners which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.*" i.e., the Company's Participating Shareholders or the Charities.

54.5 Clause 4.2(a) of the LPA provides that "*Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses…*".

54.6 The LPA does not modify the statutory duty of the General Partner to act in good faith and in the interests of the Fund.

55 The Charities are the following four US charitable or non-profit foundations:

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55.1 *The Dallas Foundation*: a charitable entity established in Texas in 1929 which has awarded over $1 billion in grants and manages over $500 million in assets.

55.2 *Greater Kansas City Community Foundation*: a charitable entity established in Missouri in 1978 which has awarded over $7 billion in grants and manages over $6 billion held in charitable funds.

55.3 *Santa Barbara Foundation*: a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million.

55.4 *North Texas Community Foundation*: which manages assets totalling $513 million and donated $38.9 million to local non-profits in 2023.

56 The Dallas Foundation, Greater Kansas City Community Foundation and Santa Barbara Foundation (the "**Supported Organisations**") hold their interests in the Company through their respective Supporting Organisation namely Highland Dallas Foundation, Inc. as the Supporting Organisation for The Dallas Foundation; Highland Kansas City Foundation, Inc. as the Supporting Organisation for the Greater Kansas City Community Foundation; Highland Santa Barbara Foundation, Inc as the Supporting Organisation for the Santa Barbara Foundation.

57 CFNT holds its Participating Shares in the Company directly.

THE TAX STRUCTURE

58 As a matter of U.S. tax law, in order for the Supported Organisations to benefit from distributions from the Fund in a tax efficient manner, it was necessary for them to hold their interests through an offshore corporate blocker entity, namely the Company:

58.1 S501(c)(3) of the IRC provides that charitable organisations which meet certain criteria are exempt from state and federal taxes except to the extent that it receives income classified as unrelated business taxable income ("**UBTI**"); and

58.2 the Supported Organisations and their Supporting Organisations meet the criteria of s501(c)(3). They are therefore generally exempt from U.S. state and federal taxes, with a few exceptions, including to the extent that they receive UBTI.

59 As a matter of U.S. tax law, at least a portion of income received directly from the Fund by the Supported Organisations would likely be considered UBTI.

60 In order to insulate the Supported Organisations from UBTI, instead of holding their interest in the Fund directly, they held through an offshore corporate blocker structure, namely the Company.

THE SUPPORTED ORGANISATIONS CONTROL THE SUPPORTING ORGANISATIONS

61 The Supporting Organisations were incorporated in Delaware by Mr Dondero on or about 22 November 2011 for the purpose of making charitable donations to their respective charity from the proceeds of dividends received by the Supporting Organisations from the Company.

62 Supporting organisations under the IRC are tax exempt charitable organisations that provide financial or operational support to one or more public charitable organisations (called “supported organisations”). Because of the link with the supported public charities, supporting organisations are classified as public charities themselves, as opposed to private foundations, despite the fact that a supporting organisation's sources of funding may be limited to a single individual, which would otherwise cause the entity to be classified as a private foundation.

63 Contributions to supporting organisations, as public charities, qualify for the highest tax deductibility thresholds under the IRC (up to 50% of the taxpayer’s adjusted gross income, or

60%, in the case of cash gifts) instead of the substantially lower threshold for contributions to private foundations (30% of adjusted gross income, regardless of the character of the contribution).

64 The Supporting Organisations are "Type I" tax exempt organisations under the IRC which means they must be organised and operated exclusively to support and benefit their relevant charity and controlled by that charity:

64.1 S509(a)(3) of the IRC contains the qualifications for a "supporting organisation". Under that section, a supporting organisation is a tax-exempt entity that must be organised and then operate exclusively for either (i) the benefit of, (ii) to perform the functions of, or (iii) to carry out the purposes of one or more supported organisations. The supported organisations must also be s501(c)(3) entities;

64.2 There are three types of supporting organisations, known as “Type I”, “Type II” and “Type III”. S509(a)(3)(B)(i), (ii) and (iii) sets out the requirements for each “Type”, respectively;

64.3 S509(a)(3)(B)(i) provides that a Type I supporting organisation must be operated, supervised or controlled by the supported organisation; and

64.4 S509(a)(3)(C) provides that the supporting organisation may not be controlled by a disqualified person, other than the foundation managers and the supported organisation.

65 The Supporting Organisations are so controlled by the respective Supported Organisations.

66 The Supporting Organisations are governed by the terms of their respective Certificate of Incorporation and by-laws (the "**Bylaws**").

67 The Certificates of Incorporation provide (amongst other things) that:

67.1 the Supporting Organisation:

(a) is organised and shall be operated exclusively for charitable, educational and scientific purposes;

(b) is organised and operated exclusively to support and benefit the particular charity that controls it; and

(c) is a non-profit non-stock corporation and cannot issue any capital stock;

67.2 no part of the net earnings of the Supporting Organisation shall be distributable to the directors and officers of the Supporting Organisation or other private persons save that the Supporting Organisation can pay reasonable compensation for services rendered; and

67.3 net earnings can be used to make grants, loans and similar payments for charitable, educational and scientific purposes to benefit the relevant Supported Organisation.

68 The Bylaws provide that (amongst other things):

68.1 There are two classes of members of the Supporting Organisations with one member in each such class:

(a) the institutional member (the "**Institutional Member**") which shall be the Supported Organisation; and

(b) the individual member (the "**Individual Member**") which shall be Mr Dondero or an individual designated as the Individual Member in the Bylaws.

68.2 In terms of voting on a matter submitted to a vote of the members (except as otherwise provided in the Bylaws):

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(a) the Institutional Member is entitled to two votes; and

(b) the Individual Member is entitled to one vote.

68.3 Institutional membership is not transferable or assignable.

68.4 Individual membership is transferable or assignable only upon approval of the Institutional Member.

68.5 Both the Institutional Member and the Individual Member must be present in person or by represented proxy to constitute a quorum at all meetings of members.

68.6 There shall be three directors of the board of the Supporting Organisation. Two directors shall be elected annually by the Institutional Member and one director shall be elected annually by the Individual Member.

69 The relationship between the Supporting Organisations and their respective Supported Organisation are governed by separate operating/legal relationship agreements (collectively "**Operating Agreements**"). These agreements provide, among other things, that:

69.1 the Supported Organisation will provide certain services to the Supporting Organisation;

69.2 the Supported Organisation will appoint two of the three directors of the Supporting Organisation as required by Bylaws; and

69.3 in consideration for the services provided by the Supported Organisation to the Supporting Organisation, the Supporting Organisation shall pay a fee to the Supported Organisation.

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70 Mr Dondero sits on the board of each of the Supporting Organisations with two other directors from each of the Supported Organisations respectively.

71 The relationships, rights and obligations created by and between the Supported Organisations and the Supporting Organisations pursuant to the agreements entered into between them were at all material times in summary that:

71.1 the Supported Organisations control the Supporting Organisations through their majority voting interest and their ability to elect a majority of the directors of the Supporting Organisations;

71.2 the Supporting Organisations support the Supported Organisations by way of making grants to them from time to time from their assets, including any dividends received from the Company;

71.3 the Supporting Organisations have no ability to pay dividends to any private person or make payments to their directors (save reasonable reimbursement for reasonable out-of-pocket expenses) and can only make grants to the relevant Charity in furtherance of their charitable purposes; and

71.4 while Mr Dondero sits on the board of the Supporting Organisations, he does not control them, as a supermajority of the votes are always held by the respective Charity.

72 The Company will rely on the Certificates of Incorporation, Bylaws, Operating Agreements and terms of the IRC for their applicable full terms and effect.

THE CONTROL POSITION OF MR PATRICK OVER THE COMPANY AND THE FUND

73 The terms of the LPA grant sole control over the management and distribution of the Fund's assets to the General Partner. The terms of the Articles grant sole control over the management and distribution of the Company's assets to the Management Shareholder.

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The LPA

73.1 Clause 1.12

(i) The term "**General Partner**" shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

73.2 Clause 1.6

(i) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(ii) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners

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hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

The Articles

73.3 Article 11

The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganization or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.

73.4 Article 12

Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

73.5 Article 13

…the rights attached to any such Class may… only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes case at such a meeting.

73.6 Article 84 (d)

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The office of Director shall be vacated if the Director…is removed from office by Ordinary Resolution.

The definition of Ordinary Resolution is a vote of the Management Shares.

73.7 Article 99

Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Act and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

73.8 Article 104

Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.

74 The Management Shares in the Company and the General Partner in the Fund have at all material times been held and/or controlled by a single individual who, as a result, has sole control of the Fund structure (the "**Control Position**"):

74.1 In or around November 2011:

(a) Grant Scott was appointed as the sole director and allotted the 100 Management Shares of the Company; and

(b) Grant Scott became the holder of the membership interest in the Original GP and was appointed the Manager thereof,

thereby assuming the Control Position from that date.

74.2 In or around 24 March 2021, Mr Scott:

(a) assigned 100% of the membership interest in the Original GP to Mr Patrick pursuant to an Assignment and Assumption of Membership Interests Agreement, which membership interest gave Mr Patrick the sole right to manage the Original GP;

(b) transferred to Mr Patrick the 100 Management Shares in the Company; and

(c) resigned as a director of the Company and resolved to appoint Mr Patrick as the sole director in his place.

74.3 On 25 March 2021, Mr Patrick was entered into the Company's Register of Members as the holder of the Management Shares.

74.4 Mr Patrick therefore assumed the Control Position from that date.

74.5 On 22 April 2021, Mr Patrick resolved to appoint Mr Murphy as a second director of the Company.

74.6 On 7 March 2024, by way of a Deed of Assignment and Assumption, Mr Patrick, as managing member of the Original GP, caused the Original GP to transfer its general partnership interest in the Fund to the New GP.

74.7 Mr Patrick is the sole shareholder and director of the New GP.

74.8 Mr Patrick therefore remains in the Control Position and was in such position at all relevant times since 25 March 2021.

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75 Further, the sole asset of the Fund is its shares in CLO Holdco (the Sixth Defendant). Mr Patrick and Mr Murphy are the directors of CLO Holdco and were appointed on 2 April 2021 and 22 April 2021 respectively.

76 The Control Position was not and is not a term of art but was nevertheless a legal and factual position:

76.1 where a single individual was the sole Management, and therefore voting, Shareholder of the Company;

76.2 where the same individual was a director of the Company;

76.3 where the same individual was the sole shareholder or controller of the General Partner;

76.4 where the same individual was a director of the General Partner;

76.5 where the same individual was in complete and effective control of at least the Company, of the General Partner, of the Fund and of CLO Holdco;

76.6 where the same individual was in effective sole control of all assets of the Fund;

76.7 where the same individual had no economic, residual, beneficial or winding up interest in assets of the Company;

76.8 where the same individual had no economic, residual, beneficial or winding up interest in assets of the General Partner;

76.9 where the same individual had no economic, residual, beneficial or winding up interest in assets of the Fund;

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76.10 where the same individual was, irrespective of his or her formal positions, functions or duties, including as a director, acting as a trustee, fiduciary or in a trustee-like or fiduciary-like position with respect to the assets held by the Fund;

76.11 where the same individual was at all times acting solely for the benefit or the ultimate benefit of the Original Participating Shareholders and/or through them the Supported Organisations and/or through them the Charities; and

76.12 in the alternative to the plea directly above, where the duties otherwise owed by the same individual as a matter of law, including as a director, were affected and/or altered by the existence of the structure as pleaded above, including the facts and matters relating to the Control Position and including the fact that the structure as pleaded above was designed and intended to be solely for the benefit or the ultimate benefit of the Original Participating Shareholders, and/or through them the Charities.

EVENTS RESULTING IN THE COMPANY HAVING NO MATERIAL ASSETS AND THE DILUTION OF THE SUPPORTING ORGANISATIONS' INTERESTS

Plan to defeat the interests of the Original Participating Shareholders

77 On 9 November 2023, Shields Legal Group ("**Shields Legal**") (the U.S. attorneys for the Company) sent to Campbells LLP ("**Campbells**") (then Cayman Islands attorneys for the Company) a work plan (the "**Work Plan**") relevant to the Company, the Fund and CLO HoldCo.

78 It can be inferred, and is averred, that the purpose of the Work Plan and the subsequent advice and steps taken as detailed below was to seek to entrench Mr Patrick's Control Position and defeat the interests of the Original Participating Shareholders.

79 The Work Plan stated that (amongst other things):

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79.1 the advice required related to "*…potential disputes and corporate reviews and best practices for each, including proactive corporate actions, solidifying defenses, etc...*"; and

79.2 "*…we may need to rely on opinions and memoranda in potential future disputes...*"

80 The Work Plan set out the issues on which the Directors sought advice, including among other things the following questions:

80.1 'Can the controlling person dilute shares, e.g., the Participation Shares?'

80.2 'Can the controlling person redeem shares, e.g., the Participation Shares?'

80.3 'Is there any Cayman law requirement that the Company distribute money upwards to the next level of entities (Highland Dallas Foundation, Inc. and others)?'

80.4 'Could the Company liquidate, distribute all its assets elsewhere, or otherwise make the Participation Shares worthless?'

80.5 'What can be done at this point to make [the share transfers in the Company from Mr Scott to Mr Patrick] bullet proof?'

81 The Directors were advised that any steps taken in relation to the proposed issuance of new Participating Shares and withholding dividends must be in compliance with their fiduciary duties and taken in the best interest of the Company:

81.1 On 8 January 2024, Walkers (Cayman) LLP ("**Walkers**") (also then Cayman Islands counsel for the Company) provided advice on issues set out in the Work Plan to the effect that (amongst other things):

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(a) the Directors have power under the Articles to issue new Participating Shares that dilute the current Participating Shareholders, but must consider their fiduciary duties (including the duty to act in the best interests of the Company) when issuing such shares;

(b) the Participating Shares are non-redeemable;

(c) while payment of a dividend or other distribution is at the discretion of the Directors, if the Company were to have distributable reserves available, there may be a question of whether the Directors would be acting in its best interests to not pay some dividend or distribution; and

(d) the Directors have fiduciary duties to the Company which are paramount when considering (i) making a distribution and (ii) the distributable reserves available from which to make payments; they must have regard to what is in the Company's best interests, its future cash requirements, and its present and future solvency.

82 In February 2024, without telling the Supporting Organisations or the Charities, Mr Patrick sought to form a new entity to replace the Original GP. On 5 February 2024, Walkers emailed Mr Patrick to ask whether that entity should be a Cayman LLC or an exempted company, to which he responded later that day: "*Doesn't matter to me. Whatever from a strategic point of view - hard to find or track, or trace. Or find owners etc. Generic name. Strong litigation protection*."

83 On 27 February 2024, without telling the Supporting Organisations or the Charities, the New GP (the Fifth Defendant) was incorporated in the Cayman Islands.

84 On 7 March 2024, Mr Patrick, in his capacity as Managing Member of the Original GP, and without telling the Supporting Organisations or the Charities, executed a written consent for the

transfer of the GP Interest to the New GP, thereby replacing the Fund's General Partner. The Supporting Organisations subsequently discovered this change only by chance in February 2025.

85 In or around August 2024, the Supporting Organisations were provided with a financial analysis (prepared by NexPoint Advisors LP) of the Fund's annual expenses which showed or appeared to show increases in expenditure, particularly as follows (and without prejudice to any further relevant facts and matters relating to Directors' fees or expenses):

85.1 directors' fees increased from around US$40,000 in 2022 to almost US$600,000 in 2023 – and increased further to around US$2.25 million in the first half of 2024; and

85.2 expenses overall for the first half of 2024 were around US$18.3 million – almost the same amount spent over the entire course of 2023 (i.e. US$18.6 million).

86 On 13 September 2024, without telling the Supporting Organisations or the Charities, the Directors resolved (amongst other things) with respect to Mr Patrick's compensation:

86.1 to increase Mr Patrick's salary to US$850,000 per annum;

86.2 include a long-term incentive ("**LTI**") tied to the Fund's returns, being 7.5% of annualised net fund returns in excess of 10% (capped at 25% annualised return); and

86.3 the Company should assess legal expenses attributable to investment which impacted the LTI compensation and then determine whether the LTI compensation should be increased.

87 On 1 October 2024, without telling the Supporting Organisations or the Charities:

87.1 the Directors resolved (amongst other things) that Mr Patrick would receive:

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(a) an LTI payment of US$975,000; and

(b) an 'annual discretionary bonus' for 2023 at an amount of 2.5 times his base salary.

87.2 Previously, in or around October 2021, Mr Patrick had signed an 'employment agreement' for his position at the Company, for the period commencing 24 March 2021, which provides that Mr Patrick:

(a) shall receive a base salary of US$850,000;

(b) shall receive an LTI payment for the period 24 March 2021 to 24 March 2024 in the amount of US$4,759,000; and

(c) is eligible for both annual and discretionary bonuses as determined at the 'sole and absolute discretion of the Directors'.

88 Comparatively, Mr Scott's salary during his tenure in the Control Position was approximately US$60,000 per annum. Notwithstanding the above, the Supporting Organisations were not informed of these increases to the Directors' fees, remuneration and/or benefits.

89 In late October 2024, as a result of concerns arising from this additional expenditure, the Supporting Organisations requested that Mr Patrick provide relevant financial information for the Company and the Fund. Mr Patrick did not do so.

90 On 11 November 2024, Holland and Knight ("**H&K**"), U.S. attorneys for the Supporting Organisations, issued a letter to Mr Murphy advising that the Supporting Organisations no longer had confidence in the governance of the Company and/or the Fund and considered that a reorganisation of the governance structures was required to protect the charitable efforts of the Supporting Organisations (the "**No Confidence Letter**").

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91 On 26 November 2024, Mr Patrick sought advice from Walkers as to whether the Company could issue further Participating Shares to a new non-profit organisation to dilute the Supporting Organisations so as to weaken any winding-up petition brought by the Supporting Organisations on just and equitable grounds. Mr Murphy wrote that:

> "*Issuance of new participation shares, where the existing foundations represent a smaller % of the issued and outstanding shares, would weaken any petition based on just and equitable grounds but we must be careful they don't point to this as ground to wind up i.e. the existing foundations say we're artificially trying to weaken their position by diluting them therefore the company should be wound up or an order made for change of management /revocation of the share issuances. It's a very difficult situation to get right without gifting them a potential ground…*"

92 On 27 November 2024, Walkers responded to the Directors confirming that, if other shareholders were to oppose an equitable winding up, such opposition will be taken into consideration and would likely help.

93 On 9 December 2024, DFW was incorporated as a non-profit non-stock company in Delaware, by or with the assistance of Mr Douglas Mancino, partner of U.S. firm, Seyfarth Shaw LLP ("**Seyfarth**"), who, worked alongside Mr Patrick in the establishment of the Company and the Fund structure. The sole member of DFW was and is Mr Patrick.

94 On 7 February 2025, 318 Participating Shares were issued to DFW.

95 On 20 February 2025, Mr Patrick as the Management Shareholder of the Company resolved to adopt the Amended and Restated Memorandum and Articles of Association dated 20 February 2025 which, among other things:

95.1 Amended the Memorandum at paragraph 3 to give the Company charitable objects;

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95.2 Amended article 70 to introduce the concept of a Management Director (being a director holding the Management Share) and to weight the voting such that on all matters the Management Director had 10 votes and any other directors had 1 vote;

95.3 Deleted the previous articles 70 and 71 giving the right to appoint alternate directors and proxies. By email dated 27 February 2025, Walkers confirmed that the purpose of this deletion was to "*avoid the risk of 'outsiders' being brought into the fold*".

96 The Company reserves its position in respect of the validity of these amendments.

The purported restructuring: Mr Patrick causes the assignment of the Partnership Interest to CDM

97 On 12 December 2024, CDM was incorporated as a limited liability company in Delaware.

98 On 18 December 2024, without telling the Supporting Organisations or the Charities, the Directors of the Company resolved (the "**Transfer Resolutions**") to approve the transfer of the entirety of the Company's limited partnership interest in the Fund to CDM, in consideration for the contribution by the sole member of CDM of 100% of the membership interest in CDM. The Transfer Resolutions provide (amongst other things) that, based apparently on U.S. tax advice, the transfer of the limited partnership interest to CDM:

98.1 "*…would help insulate the DAF from exposure to [Dondero] and his entities who may be at risk of causing the [IRS] to revoke the tax-exempt status of one or more of the Participating Shareholders/supporting organizations which could imperil the assets of the Company*";

98.2 "*The IRS would look favorably upon any and all attempts for DAF to maintain its influence from what seems to be persistent attempts by Dondero and the entities controlled by him to use DAF for his private benefit and private inurement*";

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98.3 As a Delaware limited liability company (CDM): "…*as permitted under the LLC Act, the terms of the LLC Agreement eliminate the fiduciary duties of the manager of the Transferee*".

99 On 18 December 2024, without telling the Supporting Organisations or the Charities, the Company, CDM and the New GP entered into a Deed of Assignment and Assumption (the "**Deed**") which was executed by Mr Patrick on behalf of each of (i) the Company in his capacity as Director; (ii) CDM in his capacity as Manager; and (iii) the New GP in his capacity as Director. Pursuant to the terms of the Deed:

99.1 The Company assigned its entire limited partnership interest in the Fund to CDM (the "**CDM Assignment**").

99.2 The New GP provided its written consent to the CDM Assignment and the admission of CDM as the new limited partner, in accordance with clause 1.11(a) of the LPA.

99.3 CDM agreed to exercise its reasonable best endeavours to ensure that 100% of the membership interest in CDM held by Mr Patrick would be transferred to the Company (the "**CDM Membership Interest**").

100 On 18 December 2024, the Company (as member) and Mr Patrick (as manager) entered into a Delaware law governed Limited Liability Company Agreement in respect of CDM (the "**LLC Agreement**").

101 The LLC Agreement, materially provides (amongst other things) that:

"Fair Market Value shall have the meaning set forth in Section 6.9(b).

…

The initial Manager shall be Mark Patrick.

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30

…

6.5 No Duties to the Company. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that the Manager shall owe no fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing.

…

6.9 Valuation of Company Assets.

(a) General. The Manager shall make a good faith determination of the value of the Company's assets in connection with any distribution pursuant to Section 8.1(b), as required under Section 4.3(c), upon the dissolution of the Company, and whenever otherwise required by this Agreement or determined by the Manager.

(b) Binding Effect. The value of any Company asset or Interest determined pursuant to this Section 6.9 shall be binding upon the Company and the Members and shall establish the "Fair Market Value" of such asset or Interest for all purposes under this Agreement.

…

7.3 Redemption. The Manager, in its sole discretion, may cause any Member's Interest to be redeemed by the Company for any reason. Any Interest of a Member to be redeemed by the Company shall be redeemed for the Fair Market Value of such Interest, as determined by the Manager in its sole discretion. Such payment to the

Member shall either be made in cash or pursuant to a promissory note. Such promissory note shall: (i) provide for interest at the lowest rate necessary to avoid the imputation of additional interest under the Code; and (ii) have a stated principal amount of the Fair Market Value of such Member's Interest being redeemed, as determined by *the Manager in its sole discretion."*

102 The Company will rely on the terms of the LLC Agreement for their applicable full terms and effect.

103 The effect of these transactions was that:

103.1 CDM was inserted into the corporate structure below and as a subsidiary of the Company and would hold the entirety of the limited partnership interest in the Fund previously held by the Company; and

103.2 The Company would hold the entire membership interest in CDM, with the result that the Company's sole asset, having previously been its limited partnership interest in the Fund, was exchanged for the CDM Membership Interest

(the "**Restructuring**")

104 The Restructuring was at an undervalue and not in the interests of the Company (in that the CDM Membership Interest was less valuable than the limited partnership interest that the Company assigned to CDM) because (amongst other things):

104.1 The General Partner owed fiduciary duties to the Company in the Fund, but the Manager (Mr Patrick) did not owe any fiduciary duties to CDM; and

104.2 The CDM Membership Interests were susceptible to being redeemed by Mr Patrick (as Manager) in his sole discretion and for any reason, for "fair market value" as defined by Article 6.9, i.e. a "good faith determination of the value".

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105 On 3 April 2025, the Company obtained retrospective advice from Leading Counsel on the steps taken by the Company in December 2024 to effect the Restructuring and whether the transfer is "*open to challenge by the Participating Shareholders*", which advice:

105.1 refers to the justifications for the decisions taken as set out in the Restructuring Resolutions, and considers that, if called upon to justify the purpose of those decisions, the Directors would need to explain:

(a) how the penalisation or loss of tax-exempt status any of the current Participating Shareholders could have "*imperil[ed]*" the *"assets"* of the Company;

(b) the detrimental issues the Company was facing that the Directors believed would be mitigated by the interposition of CDM into the Fund structure; and

(c) how and/or why the Restructuring would (i) benefit the Company and (ii) reduce the influence of Mr Dondero; and

105.2 considers that a shareholder reviewing the reasons listed in the Restructuring Resolutions "*might suggest that the contents of the resolution are self-serving and do not tell the full story, but rather seek to obscure the true motivations of the board*".

Persistent and continual lack of information for the Supporting Organisations

106 On 23 January 2025, having received no response from Mr Murphy to the No-Confidence Letter, Julie Diaz, the CEO of The Dallas Foundation, sent Mr Patrick an email advising that the Supporting Organisations needed to better understand the Company's/Fund's asset position, and requesting certain information be provided by 10 February 2025.

107 Having received no response, on 28 January 2025, Ms Diaz sent a further email to the Directors expressing serious concern (i) that the Supporting Organisations' requests for information

continued to be disregarded, and (ii) about the ongoing lack of transparency on the part of the Directors.

108 On 30 January 2025, Mr Murphy replied to Ms Diaz stating that the Directors:

108.1 had not received the 23 January email – but understood the next step was for the Directors to "*present directly*" to the Supporting Organisations to address the No-Confidence Letter; and

108.2 are cooperating with the Supporting Organisations to provide additional information – but "*have no legal obligation to do so*" and such cooperation "*should not be construed as an implicit acknowledgement of any duty to continue providing information to you*".

109 On 31 January 2025, Mr Michael Stockham of H&K responded to Mr Murphy noting that he and Mr Patrick were fiduciaries, managing US$270 million in assets for the benefit of charities that support the most vulnerable (i.e. the Charities) and: *"[w]hatever your side's obvious antagonism to Mr Dondero, the fact remains that the underlying assets are ultimately for these charitable missions.*"

110 On 4 February 2025, Mr Murphy responded that while open to resolving the concerns, they (i.e. the Directors) were struggling to understand the Supporting Organisations' change in position.

111 On 7 February 2025, H&K responded that the Directors were fiduciaries in control of US$270 million for the benefit of charities: "*these monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed and … fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees*".

112 On 14 February 2025, H&K received a letter from Mr Mancino which rejected the accuracy of the reported increases in expenditure. On 27 February 2025, H&K responded that his clients

were frustrated by the lack of transparency and refusal to answer simple queries about the financial position. In response, Seyfarth sought available dates for Mr Murphy to make the promised presentation to the Supporting Organisations. H&K responded the next day with three potential dates/times for the proposed call between 26 March and 3 April 2025. Mr Mancino did not respond.

113 On 20 March 2025, Mr Mancino sent a letter purportedly on behalf of the Company to the IRS about alleged undue influence and control exercised over the Supporting Organisations by Mr Dondero. The letter makes serious and unsubstantiated allegations about the Supporting Organisations, absent evidential support, including that they each (i.e. all of them): "*operates for Mr Dondero's private benefit when he uses his influence or control over them to cause them to use or attempt to use their influence as Participating Shareholders of DAF Holdco to wrest control of DAF Holdco and its assets…*".

114 On 3 April 2025, Mr Mancino sent an email to H&K stating that he had just learned there was a call scheduled for the following day and seeking to reschedule. H&K responded that no such call had been arranged and queried the apparent source of confusion.

115 Mr Mancino, and Mr Patrick and Mr Murphy (each in part through Mr Mancino as an instructed attorney) acted in bad faith by maintaining a pretence of actual or potential cooperation with the Supporting Organisations when this was not the case, and by sending or causing to be sent the email of 20 March 2025 in secret:

115.1 four (4) months after the Directors and/or the Company transferred away the Company's interest in the Fund without telling the Supporting Organisations or the Charities;

115.2 two (2) months after the Directors and/or the Company diluted the existing Participating Shareholders without telling the Supporting Organisations or the Charities (see below);

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115.3 one (1) week after the Directors and/or the Company redeemed the Company's interest in CDM without telling the Supporting Organisations or the Charities (see below);

115.4 one (1) day after the Directors placed the Company in voluntary liquidation, without telling the Supporting Organisations or the Charities.

Purported Share Issuance and allotment to DFW

116 In November 2024, without telling the Supporting Organisations or the Charities, the Directors began seeking advice from Walkers on whether the Company could issue new Participating Shares that would have the effect of diluting the existing Participating Shareholders - "*in light of a possible just and equitable winding up petition*" being filed by one of the Supporting Organisations.

117 On 7 February 2025, Walkers advised that, while there must be a corporate benefit to the exercise of the power, the Articles grant the Directors power to issue new shares that dilute the Participating Shareholders, and recommended the shares be issued sooner than later, and before any winding up petition was presented, since any alteration to the Company's membership made after the presentation of the petition would be void.

118 On 7 February 2025, without telling the Supporting Organisations or the Charities, the Directors resolved to issue 318 Participating Shares to DFW (the "**Share Issue Resolutions**"), resulting in DFW owning 51.04% of the Participating Shareholding and the dilution of the Supporting Organisations from an aggregate shareholding of 100% to 48.96% (the "**Share Issuance**"). The Share Issue Resolutions provided that:

118.1 Participating Shareholders had requested information and made false and misleading claims about the Company and its finances which the Directors believe were directed by Mr Dondero.

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118.2 Based apparently on U.S. tax advice:

(a) There was a heightened risk the IRS could revoke the tax-exempt status of the Participating Shareholders which could imperil the status and assets of the Company.

(b) Increasing the number of Participating Shareholders would mitigate the undue influence and private inurement of Mr Dondero.

(c) The IRS would look favourably upon attempts by the Fund to maintain its independence from his (i.e. Mr Dondero's) attempts to use the Fund for his private benefit.

118.3 The Directors believed the Share Issuance to DFW would protect the Company and the Participating Shareholders and resolved that the Share Issuance to DFW be approved.

119 On 5 March 2025, Leading Counsel (Mr Tony Beswetherick KC) issued draft retrospective (but final) advice to the Company on the Share Issuance in which he opined (amongst other things) as follows:

119.1 where Articles confer a power on directors to issues shares, that power is a fiduciary one and must only be exercised for proper purposes; an issue of shares "…*deliberately aimed at altering the balance of power between*" is problematic; the power should not be exercised with a view to altering an existing balance of power, irrespective of whether the directors consider that doing so is in the interests of the company;

119.2 the effect of the Share Issuance was that, if there were to be a company meeting or proposal to approve a modification that affects the Participating Shareholders' rights,

the ability of the prior Participating Shareholders to vote down such a change was negatively affected (DFW now having over 50% of the total Participating Shares);

119.3 it is not immediately clear from the Share Issue Resolutions whether the justifications stated were actually relevant to the Directors' decision. If they were relevant, it is not explained why the issue of shares to DFW would prevent false claims being made by Mr Dondero; it may be that those matters are part of the context, rather than part of the reason for the decision; and

119.4 the Participating Shareholders might suggest the Share Issue Resolutions are self-serving and do not tell the full story, but rather seek to obscure the true motivations of the board.

Plan to redeem the Original Participating Shareholders

120 In January and February 2025, the Directors, in connection with a plan to try to redeem the Participating Shareholders and/or the CDM Membership Interest held by the Company, and without telling the Supporting Organisations or the Charities, sought to obtain an analysis of the fair market value of the Participation Shares, and the discount that should be applied to such valuation, given the limited rights conferred upon Participating Share under the Articles.

Historic ValueScope Valuations

121 At the request of the Company, ValueScope, Inc. ("**ValueScope**") conducted a series of valuation analyses of 100 Participation Shares on a net asset value ("**NAV**") basis between December 2020 and September 2024 to determine their fair market value ("**FMV**"). These valuations were apparently prepared for internal reporting purposes and apparently applied consistent methodologies throughout the period. The results of these valuations are summarised below:

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Valuation date	NAV	NAV Per Share	Combined Discounts	FMV Per Share	FMV (100 shares)
31 December 2020	$176.96M	$580,193	17.0%	$481,468	$48,146,754
31 December 2021	$243.19M	$797,343	11.6%	$705,210	$70,521,019
31 December 2022	$276.24M	$905,711	15.4%	$766,549	$76,654,941
31 December 2023	$277.57M	$910,076	14.0%	$782,847	$78,284,712
30 September 2024	$269.05M	$882,140	13.9%	$759,614	$75,961,370

122 The final NAV-based valuation prepared by ValueScope prior to the Restructuring was dated 7 January 2025, and gave a valuation of 100 Participating Shares as at 30 September 2024 (the "**September 2024 Valuation**").

PwC and FTI

123 On 14 January 2025, Walkers inquired with PwC about a valuation of "*the shares of Charitable DAF Holdco*". In that email, Walkers, presumably on instructions from the Directors, listed the Supporting Organisations as "*potential adverse parties*".

124 On 7 February 2025, Walkers informed PwC that CDM had been inserted into the structure and requested that a second valuation be prepared of all the CDM Membership Interest, which valuation Walkers said was also to rely on the NAV as previously advised (rather than leaving

PwC to determine their own valuation methodology). PwC responded that their initial view is "*there is no meaningful difference*" between the two valuations requested - "*i.e. the economic interest in the underlying NAV still fully accrues to the participating shareholders*" - but that voting power/control remains with Mr Patrick (or with entities he controls). PwC asked for further information about what Mr Patrick was trying to achieve by the Restructuring to help them understand the valuation implications.

125 On 10 February 2025, PwC suggested a call with Walkers to discuss the second valuation, which call took place on 11 February 2025, and was also attended by Mr Patrick's '*onshore and Delaware counsel*'. Following that call, PwC declined to take on the instructions:

> *"... our view is that the new Delaware entity (CDMCFAD) effectively has full economic interest and control over the Fund, so we don't really see a basis for applying any discounts to the underlying Fund NAV for that entity. As it relates to the participating shareholders' interest in Charitable DAF Holdco, Ltd., we don't think we can reliably estimate the value/discount given the current fact pattern. While we could make hypothetical assumptions about how the articles may be interpreted, and/or how future cash flows may or may not be distributed, the impact on value is so substantial that we don't think it would be a meaningful exercise (i.e. we'd end up with the discount being 100% in one scenario, but 0% in another). On that basis, I don't think there is a fee / scope that can work for us currently."*

The FTI Memo

126 On 13 February 2025, without telling the Supporting Organisations or the Charities, the Company engaged FTI Consulting in London ("**FTI**") to advise on (i) the discount applicable (if any) to a valuation considering how the rights attached to Participation Shares differed from those typically associated with ordinary shares, and (ii) the impact of the existence of an additional share class (being the Management Shares held by Mr Patrick). FTI's engagement

letter also stated that "*The Memo will also include a valuation of the ordinary shares of CDMCFAD, LLC, the immediate subsidiary of Charitable DAF HoldCo*".

127 On 2 March 2025, FTI provided a draft memorandum to Walkers/the Company.

128 On 27 March 2025, FTI issued its final memorandum (the "**FTI Memo**"), which stated (amongst other things) that the rights of Participating Shares were extremely limited, and the potential distribution of cash was highly dependent on a member's alignment with the Fund's mission. The FTI Memo concluded that a "limited discount" for lack of control and marketability should be applied where a member is aligned with the Fund's mission (said to be close to the range concluded by ValueScope in its 7 January ValueScope Report, i.e. a discount of 13.9%), and a "high discount" of 95% where a member is not.

Legal advice sought

129 On 25 February 2025, without telling the Supporting Organisations or the Charities, the Directors sought advice from Walkers and Shields Legal on any powers under the Articles to enable the removal of the Supporting Organisations, including by (i) redemption of the Participating Shares (Art 14 and 28), (ii) a forced transfer of Participating Shares held by a Restricted Person (Art 21) (iii) or an alternative course whereby DFW repurchased the shares, which could then be cancelled, and new shares issued which are redeemable by the Company. Walkers advised that both redemption and forced transfers were not permitted but agreed with the alternative course involving DFW.

130 On 5 March 2025, as stated above, Leading Counsel provided retrospective advice to the Company regarding the Share Issuance, which also considered whether the Directors had power under the Articles to redeem the Participating Shares. Leading Counsel opined that they did not, on the basis that the Participating Shares were not issued as redeemable shares, and could not be redeemed unless there were a prior variation of the rights ascribed to them. That said, any proposal to vary the rights attached to the shares to make them redeemable would

support an argument "*that the [DFW Share Issue] was itself procured with a view, ultimately, to disenfranchising the pre-existing Participating Shareholders*".

131 On 17 March 2025, Mr Patrick wrote to Walkers in the following terms:

> *"Agree we need to finalise the [FTI valuation] reports …We should request any limits on use removed.*
>
> *We are seeking U.S. tax counsel to send emails to Paul and I that the non profits are Restricted Persons and/or best interests of the Company to have non dondero holders of its interests. After that, an alternative approach is to give them what they want – liquidate Holdco Ltd after its only investment is redeemed by the US. LLC pursuant to U.S. counsel advice above, that it's in the best interests of the Company to redeem all non-profits affiliated with Dondero. US LLC has same valuation conducted on its shares as the participation shares. so we would redeem the LLC interest, then distribute the proceeds out of Holdco Ltd., and file articles of Dissolution for Charitable daf Holdco Ltd before a wind up petition is filled. That would put us on the "high ground" to fight (rather the way this is currently heading in a defensive posture). they would have to scrap their wond up petition and fight for reinstatement, gripe about the valuations, and file fiduciary breach actions …*
>
> *We will stage this in light of the Doug letter, new advice of two separate U.S Tax counsel, and seeing how successful (or not) our outreach to the Texas attorney general office is.*
>
> *Note US LLC would make DFW its sole owner."*

132 The email of 19 March 2025 makes plain that the Directors, or at least Mr Patrick, intended to liquidate the Company without notice to the Supporting Organisations and to otherwise obstruct

the Supporting Organisations' ability to exercise any right to petition to wind up the Company on just and equitable grounds.

133 On 20 March 2025, Walkers provided comments on the FTI draft valuation, and FTI responded. These comments include, amongst other things:

> "Walkers: *It is stated at [3.2(2)] that "there is no overriding duty of DAF's Directors to act in the shareholders' interest. The Directors will act according to the best interest of the company, that is, to achieve the charitable causes that are aligned with DAF's mission". However, as a matter of Cayman law, directors owe duties to the company, and must act in its best interests [which are] generally regarded as the interests of the members as a whole, and in certain circumstances the objects of the company may be taken into account when determining what is in its best interests.*
>
> FTI: *Can you explain how it was in the interests of the company to materially dilute the existing shareholders*?
>
> …
>
> Walkers: *It is stated at [3.10] that "the Participating Shareholders do not have any rights to cause a liquidation/winding up of the company". However, the Participating Shareholders do have the right to seek a winding up of the company, as conferred upon them by the Companies Act (rather than the Articles).*
>
> FTI: *Why won't they just do this immediately and seek distributions? Isn't the ability to trigger a liquidation contradictory with point 1 which states "Shareholders do not have any right to exert influence on whether/how the funds of DAF are used or distributed*".
>
> …

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Walkers: *As per our comments, please could you delete references to our advice so as to avoid any potential arguments about waiver of privilege.*

FTI: *Your advice is important in us arriving at our conclusions. I understand from our legal team that we either (i) keep the reference to your advice or (ii) address the memo to you. Are you expecting there to be litigation in relation to the proposed transaction?*

…

Walkers: *Our client now seeks a valuation report which may, in connection with a proposed redemption of the membership interests in CDM, be disclosed to third parties and relied on to establish fair market value of both the membership interests in CDM, and in turn HoldCo.*

FTI: *This is a material change in the purpose and access rights of the report. Please provide more detail of the transaction. Is it the case that Mark will make CDM redeem the shares owned in by DAF? And who would you like to share the report with? And on what basis (e.g. non-reliance)? We also note our memo is not a valuation – it is a quantification of discounts given the rights of the participating shares. To do a valuation, we would need to do a more detailed exercise, including valuing the underlying assets."*

134 On 21 to 24 March 2025, FTI and Walkers had an exchange (amongst other things) as follows:

"FTI: *If the firm was wound down, would it result in distributions to the existing participating shareholders? Or would Mark still be able to shareholder structure to ensure the existing participating shareholders got nothing? Given they haven't received dividends since 2019, why haven't the participating shareholders triggered a wind down? If they can trigger a wind down and then in short order receive $300m of distributions, it does change things re discount.*

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Walkers: *if HoldCo was wound up, the Participating Shareholders would receive distributions which would be made pari passu, and Mark (if he was the liquidator) would not be able to ensure the existing Participating Shareholders get nothing. Whilst the Participating Shareholders have the right to seek to wind up under the Companies Act, they need a proper basis to do so… We can only assume [they] have not commenced proceedings seeking to wind the company up because they do not have a proper basis on which to do so …*

…

FTI: *Would an absence of distributions be sufficient grounds to make an application to wind the company up? If the participating shareholders did make the application, would Mark be able to issue a vast number of shares to another party before the distributions were made thereby ensuring the existing shareholders received very little?*

Walkers: *A Participating Shareholder may consider an absence of distributions sufficient grounds for a winding up order on the just and equitable basis… But it is difficult for us to say whether that petition would be successful. If (a) a Participating Shareholder presented a petition; (b) new shares were purportedly issued; and (c) the Court then made a winding up order, the issue of the new shares would be void and not impact the amounts the Participating Shareholders would receive.*"

135 On 26 and 27 March 2025, FTI and Walkers had an exchange (amongst other things) as follows*:*

"Walkers: *We have discussed with our client and onshore counsel and set out some amendments in the attached. In addition, we note (1) we have not received any material addressing reliance on the memo by CDM; and (2) the "Limitations and restrictions" section still provides that the memo "should not be used to support a transaction". For*

the memo to be useful in the circumstances, CDM [and HoldCo] need to be able to rely on it or a separate memo would need to be addressed to CDM on which it may rely. Further, both entities need to be able to rely on the memo(s) to support the proposed transaction.

FTI: *What is the intention of adding that directors should act in the interests of future members? I am struggling to understand how a director could act in a manner which is beneficial for future shareholders which is not also helpful for existing shareholders.*

The limitations in our note will remain. To do a valuation to support a transaction, we will need to do significantly more detailed work. This is an unusual/complicated situation. We are open to doing a fairness opinion on the transaction. But this will require approval from our risk committee and more information on the transaction and situation. We are happy for CDM to have our memo on a non-reliance basis. But this memo should not be used to support a transaction."

March 2025 ValueScope Valuation

136 Following the Restructuring, ValueScope was requested by Shields Legal, without telling the Supporting Organisations or the Charities, to prepare two valuation analyses:

136.1 100% Membership Interest in CDM; and

136.2 Certain Participating Shares of the Company as at 25 March 2025 (the "**March 2025 Valuation**").

137 The March 2025 Valuation had the same instructions, definition of value and scope of work as the September 2024 Valuation. Like the September 2024 Valuation, the March 2025 Valuation also referenced a 30 September 2024 balance sheet (and did not refer to any later analysis of

assets and liabilities). As shown below, the September 2024 Valuation and March 2025 Valuation produced very different results.

138 A comparative summary of the September 2024 and March 2025 Valuations is set out below:

Valuation Date	DLOC*	DLOM**	Valuation Basis	FMV (100 Shares)
30 September 2024	8.1%	6.3%	NAV	$75,961,370
25 March 2025	99.2%	20.00%	DCF***	$536,784
Difference	**+91.1%**	**+13.7%**		**-$75,424,586**

*DLOC – Discounted for Lack of Control

**DLOM – Discounted for Lack of Marketability

***DCF – Discounted Cash Flow

139 The March 2025 Valuation stated: "*for the valuation of non-controlling assets in holding companies such as DAF, the asset-based approach is most commonly used [as Valuescope had always done previously]. When applied to such companies, the approach consists of measuring the underlying net asset value of an entity (the fair market value of the entity's assets less the fair market value of its liabilities). The NAV is then discounted as appropriate to determine the fair market value of the fractional interest in the entity. However, in the case of the participation shares under consideration, the asset-based approach is not applicable. These shares do not confer control and only have a claim in respect of the underlying assets in a winding up.*"

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140 ValueScope does not appear to have considered whether winding up was a possibility, and therefore, whether value could have been realised that way and by reference to NAV.

141 For reasons which are unclear to the Company, the March 2025 Valuation expressly rejected the asset-based (NAV) approach on the basis that the economic benefits of the Participating Shares in the Company were contingent on discretionary distributions by its manager. The report states.

> *'Unlike equity interests that derive value from an allocable portion of the entity's net assets, the economic benefits of these shares are contingent upon discretionary distributions by the director. As such, their value is not directly tied to the entity's NAV, and an alternative valuation approach is required to appropriately reflect their characteristics and economic reality*'.

142 Accordingly, the methodology applied in the March 2025 Valuation was markedly different from the methodology applied in the September 2024 Valuation. Instead of relying on discounted net assets, the March 2025 Valuation:

142.1 applied a discounted cash flow ("**DCF**") methodology to estimate the present value of expected future distributions, rather than an asset-based approach, as had been applied in at least the past five annual valuations by ValueScope;

142.2 determined the FMV of 100 Participating Shares to be US$536,784;

142.3 applied a discount of 99.2% for DLOC; and

142.4 applied a discount of 20.00% for DLOM.

143 The DCF model is based on the present value of future distributions to the Company. ValueScope's report shows that these were estimated based on historic distributions themselves controlled by Mr Patrick.

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144 Based on the valuations above, between 30 September 2024 and 25 March 2025, the FMV of 100 Participating Shares in the Company apparently declined from US$75,961,370 to US$536,784, representing a reduction in value of 99.29% in less than a six month period, in which the Restructuring occurred, attributable to a change in valuation basis (amongst other things) from NAV to DCF.

145 Furthermore, ValueScope does not appear to have sense-tested their valuation. Although they identified "total equity" of c. US$270 million and concluded that all of the Participation Shares had a value of only c. US$1.6 million, they did not address themselves to who benefitted from the residual value of c. US$268 million.

Admission and Redemption

146 On 27 March 2025, Mr Patrick, as manager of CDM, executed a written consent (the "**Manager Consent**") to (a) cause CDM to admit DFW as an additional member of CDM pursuant to the terms of an Admission and Amendment No.1 Agreement (the "**Admission Agreement**") and (b) redeem the CDM Membership Interest held by the Company pursuant to the terms of a Redemption and Amendment No. 2 Agreement (the "**Redemption Agreement**" and together with the Admission Agreement, the "**Restructure Agreements**"):

146.1 The recitals to the Manager Consent stated that the redemption of the Company's membership interest was justified by reason of alleged attempts by the Supporting Organisations to exert control, and the potential loss of their (i.e. the Supporting Organisations') non-profit and tax-exempt status:

> *"… the Manager has formed the view that the Current Member, by virtue of being a member of the Company and having as Participating Shareholders the Highland Foundations, poses a material risk to the Company, its assets, and the Mission Statement of DAF due to, among other things, (i) officers and directors of the Highland Foundations seeking to assert dominion and control*

over the assets of DAF (through the Current Member), despite no legal ability to do so under the Current Member's organizational documents and despite the potential illegality (as demonstrated by tax counsel to DAF—see Exhibits C and D) of doing so, (ii) the potential loss of the non-profit status of the Highland Foundations due to their actions, among others, described in clause (i), and (iii) the potential loss of the tax-exempt status which the Highland Foundations currently enjoy and which is central to the mission of DAF, as a result of the factors including those described in clauses (i) and (ii)"

146.2 The Manager Consent further stated:

"*WHEREAS, in connection with the Restructure Agreements and the transactions contemplated thereby, the Manager (on behalf of the Company) obtained a valuation report of the membership interests of the Company from ValueScope and FTI Consulting, copies of which are attached hereto as Exhibit E, which valuation reports have informed the Manager the fair market value of the membership interests*"

146.3 Exhibits C and D to the Manager Consent are documents purportedly containing information regarding various alleged U.S. tax issues relating to the Company.

146.4 Exhibit C is the letter from Mr Mancino to the IRS dated 20 March 2025, in which Mr Mancino (amongst other things) stated:

(a) there has been "deterioration" of the Company's relationship with Highland Dallas Foundation, Inc. ("**HDF**") due to the undue influence and control exercised over HDF by Mr Dondero.

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(b) the information in the letter will demonstrate clearly that Mr Dondero's influence and control is an inappropriate donor relationship with representatives of the HDF who serve on the Board of Directors of and as officers of HDF.

(c) such undue influence and control potentially jeopardises the tax-exempt status of HDF as an organisation described in s.501(c)(3) and, at a minimum, causes it to fail to remain a supporting organisation described in s. 509(a)(3).

146.5 Exhibit D is an advice produced by Carrington Coleman (U.S. law firm) dated 25 March 2025 (the "**Carrington Advice**") which amongst other things:

(a) asserts that Mr Dondero has been attempting "*through his control of the Highland SOs, to exert dominion and control over the cash and property he previously donated to DAF and for which he claimed charitable deductions, all for his personal benefit.*"

(b) suggests that Mr Dondero was using the Company as his personal "*piggy bank*", and that it may be perceived by the IRS that the Fund has been or is his financial alter ego.

(c) concludes that "*the IRS will look favourably upon any and all attempts for DAF to maintain its independence from what seems to be persistent attempts by Dondero, and the entities controlled by him to use DAF for his private benefit and inurement.*"

146.6 Exhibit E contained two valuation reports:

(a) The first was a ValueScope valuation.

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(b) The second is the FTI Memo referred to above, in which FTI expressly stated that the analysis in the FTI Memo should not be used in support of a transaction, but which Mr Patrick, in any event:

(i) expressly relied upon in the Manager Consent to determine the fair market value of the CDM Membership Interest and the basis for the redemption of the Company's interests; and

(ii) permitted Carrington Coleman to refer to and rely on in the FTI Memo (indeed, having provided the 27 March 2025 copy which was a draft copy only).

146.7 On 27 March 2025, without telling the Supporting Organisations or the Charities, Mr Patrick executed the:

(a) Admission Agreement between CDM and DFW under which DFW was admitted as a member of CDM, in consideration for a capital contribution of US$1,637,192; and

(b) Redemption Agreement under which CDM redeemed the Company's membership interest in CDM for the same sum of US$1,637,192 (the "**Redemption Sum**").

147 On 27 March 2025, without telling the Supporting Organisations or the Charities, the Company entered into a letter agreement with CDM (the "**Letter Agreement**"), pursuant to which the Company assigned to CDM various contracts and agreements to which the Company was a party, listed in Schedule A to the Letter Agreement and CDM agreed to assume the liabilities and obligations in respect of those contracts.

148 On 2 April 2025, the Directors of the Company, by way of written resolution:

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148.1 Noted the redemption of the Company's membership interest in CDM for the Redemption Sum (the "**Redemption**").

148.2 Resolved to pay a dividend to the Original Participating Shareholders of US$1,612,192.01 in the amount of (i) US$528,587.54 with respect to each of HDF, Highland Kansas City Foundation, Inc. and Highland Santa Barbara Foundation, Inc.; and (ii) US$26,429.39 with respect to CFNT.

149 The substantive financial effect of the Redemption, under which DFW did or was committed to make a capital contribution equivalent to the Redemption Sum to CDM, and the CDM Membership Interest held by the Company were redeemed for the Redemption Sum, was that the Company's membership interest in CDM was purchased by or otherwise transferred to DFW for the Redemption Sum.

150 The substantive effect of the overall transaction or series of transactions pleaded above, including the Impugned Transactions already pleaded, was that:

150.1 The Company realised its interest in the Fund, which had a NAV of c. US$270 million, for c. US$1.6 million.

150.2 The Company made a distribution to the Original Participating Shareholders (c. US$1.6 million).

150.3 The Supporting Organisations and the Charities were actually or effectively divested of their indirect interest in the Fund, and the assets underlying the Fund; and

150.4 The Original Participating Shareholders were diluted from 100% of the economic interests in the Company to less than 50%.

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Voluntary Liquidation and Supervision Order

151 On 2 April 2025, the Directors resolved, without telling the Supporting Organisations or the Charities, to place the Company into voluntary liquidation and appoint Mitchell Mansfield and William Clarke (the JVLs) of Kroll (Cayman) Ltd as voluntary liquidators.

152 However, unaware of the voluntary liquidation, on 10 April 2025, the Supporting Organisations presented a petition seeking the winding up of the Company on a just and equitable basis, under section 92(e) of the Companies Act (2025 Revision) (the "**J&E Petition**").

153 On 25 April 2025, Walkers and Shields Legal held a call to discuss the J&E Petition. Following that call, Mr Patrick wrote in an email that the "*message ideas*" "*for Monday*" were to "*poison the well*", by which he meant to create a negative impression of Mr Dondero in the eyes of the Court.

154 On 6 May 2025, Justice Jalil Asif KC made a supervision order, under which voluntary liquidation of the Company was to be continued under the supervision of the Court pursuant to s.131 of the Companies Act (As Revised), and the JOLs were appointed.

OBLIGATIONS OWED BY THE DIRECTORS

155 At all material times, the Directors, as directors, owed the following duties individually to the Company:

155.1 A fiduciary duty to act *bona fide* in what he considers to be the best interests of the Company (the "**Best Interests Duty**").

155.2 A fiduciary duty to exercise his powers for a proper purpose, and for the purposes for which they were conferred (the "**Proper Purpose Rule**").

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155.3 A fiduciary duty not to place himself in a position where his personal interest actually or potentially conflicted with his duty of loyalty to the Company (the "**First No-Conflicts Duty**").

155.4 A fiduciary duty not to place himself in a position where his duty to another actually or potentially conflicted with his duty of loyalty to the Company (the "**Second No-Conflicts Duty**").

155.5 A fiduciary duty to not make an unauthorised profit from or by reason of his fiduciary position (the "**No Profit Duty**").

155.6 A fiduciary duty not to accrue or take a benefit or commercial opportunity from the Company without the full and informed consent of the Company (the "**No Self-Dealing Rule**").

155.7 A duty to exercise reasonable skill, care, and diligence in the performance of his role and function as director (the "**Reasonable Care Duty**").

156 With respect at least to Mr Patrick, his duties above and the standard to which he was obliged to comply with such duties are affected by being in the Control Position and the trustee or trustee-like position he occupied. Paragraph 76 above is also relied upon.

157 The Company reserves its position as to whether Mr Patrick, by reason of being in the Control Position and the trustee or trustee-like position he occupied, was an express or other trustee of the assets of the Fund for the Original Participating Shareholders and, through or in addition to them, the Charities.

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ATTRIBUTION OF KNOWLEDGE AND INTENTION

158 As a matter of Cayman Islands law, Mr Patrick's intention and knowledge of facts and matters for all such purposes relevant to this claim is to be attributed to each of DFW, CDM, and the New GP on the basis of at least the following facts:

158.1 As regards DFW, Mr Patrick is listed under DFW's certificate of incorporation, dated 9 December 2024, as "the member of the corporation", and the Admission Agreement showed he served as its "President". Mr Patrick is also the registered director of DFW. Mr Patrick the agent of DFW, in which capacity Mr Patrick executed the Admission Agreement.

158.2 As regards CDM, Mr Patrick is described under the LLC Agreement as the "Manager" of CDM, in which role Mr Patrick was CDM's agent, and in which capacity he (i) executed the Deed of Assignment and Assumption on behalf of CDM, and (ii) executed a written 'Manager Consent' (the **"Manager Consent"**) approving the Redemption and Admission Agreements; and executed the Redemption and Admission Agreements.

158.3 As regards the New GP, Mr Patrick was and remains its director, and therefore its agent (in which capacity, Mr Patrick executed the Deed of Assignment and Assumption on the New GP's behalf). Further, Mr Patrick is the sole shareholder of the New GP.

159 Further, if applicable, as a matter of the laws of the State of Delaware, Mr Patrick's knowledge and intention is to be attributed to DFW, CDM, and the New GP on a like basis.

CLAIMS AGAINST THE DEFENDANTS

<u>Breaches of fiduciary and other duty</u>

160 The First and Second Defendants, and each of them, in their capacity as a Director of the Company, acted in breach of their fiduciary and other duties to the Company as follows.

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Restructuring, including the CDM Assignment

161 The Directors (and each of them), in procuring, directing or effecting the Restructuring as set out above, acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring, directing or effecting the Restructuring as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

161.1 The Plaintiff relies on paragraphs 77 to 105 above.

161.2 With the assistance of Mr Mancino, Mr Patrick took steps to form CDM and appoint himself as Manager of CDM.

161.3 Mr Patrick designed and/or negotiated and/or directed and/or effected the Restructuring in his capacity as Director of the Company, Director of the New GP, and Manager of CDM, being each of the parties to the Deed, and signed the Deed on behalf of each party.

161.4 The Directors (and each of them) approved the transfer of the Company's entire limited partnership interest in the Fund (having net assets worth c. US$270 million) to CDM, a Delaware entity whose LLC Agreement excluded any fiduciary obligations owed by its Manager (i.e. Mr Patrick) to CDM itself or to its members; in exchange for membership interest in CDM, which interest was capable of being extinguished, by redemption, and for a "fair value", determined at the discretion of the Manager (i.e. Mr Patrick).

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161.5 The Restructuring was of no benefit to the Company and not in its best interests, and Mr Patrick was subject to conflicts of interest (First and Second No-Conflicts Duties) and committed acts of self-dealing.

161.6 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known that the Company was proposing to exchange the Partnership Interest for a membership interest in CDM that was subject to redemption entirely at Mr Patrick's discretion, and for a "*fair value*" determined, in good faith, in his discretion.

(b) knew or ought to have known that the Company was therefore proposing to trade its Partnership Interest, which was not in practical terms defeasible, for an interest that could be extinguished: (i) at a time over which it had no control, (ii) for a price over which it had very limited control and (iii) for a potential valuation basis which excluded a net asset valuation of the assets held in the Fund.

(c) knew or ought to have known that the CDM Membership Interest was to be in a Delaware-incorporated company whose LLC Agreement excluded any fiduciary obligations owed by its Manager either to CDM itself or to its members and was therefore less valuable than the Partnership Interest.

(d) knew or ought to have known that the CDM Assignment was therefore a transaction at an undervalue.

161.7 It can be inferred, and is averred, that Mr Patrick was drawing fees or remuneration or emoluments or benefits from CDM without the full authorisation or full and informed consent of the Company.

161.8 Further, and in any event, the Directors (and each of them) acted when each of them:

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(a) knew or ought to have known that the CDM Assignment was the first step in a series of connected future transactions, including those pursuant to the CDM Assignment, the Share Issuance, the Admission Agreement, the Redemption Agreement and the Redemption, under which the Directors were able to and ultimately did procure the redemption of the Company's CDM Membership Interest, thus extinguishing the Company's interest in the Fund, for an undervalue.

(b) knew or ought to have known that:

(i) the full terms and effect of the CDM Assignment was not a proper or proportionate response to any genuinely perceived risk about U.S. tax concerns.

(ii) the full terms and effect the CDM Assignment was not a proper or proportionate response to any genuinely perceived risk to the Company, which was not itself a Donor Advised Fund and/or did not enjoy or require tax-exempt status under s.501(c)(3) of the U.S. Internal Revenue Code.

(iii) other approaches to address concerns with respect to the tax-exempt status of the HDF short of undertaking the Restructuring (and entering into the CDM Assignment) included notifying the HDF of the conflict and/or concerns and requesting it to remedy it or them.

(iv) even if the facts and matters alleged in relation to the HDF were correct, there was more than a possibility, after an extended passage of time and at least two levels of appeal, that a U.S. tax audit would result in an adverse determination with respect to the tax-exempt status of the HDF.

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(v) the tax-exempt status of the HDF was of no concern or no reasonable concern to the Company.

(c) knew or ought to have known that they were keeping the Restructuring, the CDM Assignment, CDM itself and all the surrounding circumstances secret from the Participating Shareholders.

162 By reason of the foregoing breaches of duty or any of them:

162.1 The CDM Assignment is void, alternatively voidable and hereby avoided.

162.2 CDM holds the Partnership Interest on trust or constructive trust for the Company.

162.3 CDM is required to re-transfer the Partnership Interest to the Company and account for any profits on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

Share Issuance

163 The Directors (and each of them), in procuring, directing or effecting the Share Issuance as set out above, acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring, directing or effecting the Share Issuance as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

163.1 The Plaintiff relies on paragraphs 77 to 84, 91 to 96 and 106 to 119 above.

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163.2 The Directors (and each of them) designed and/or engineered the Share Issuance, having sought legal advice in relation to the powers conferred on them as Directors of the Company, for the improper purpose of:

(a) diluting without any proper reason or corporate purpose the existing Participating Shareholders and/or depriving the ability of the Supporting Organisations to continue to comprise a majority of the Participating Shareholders.

(b) inserting DFW as a new Participating Shareholder, an entity under the sole control of Mr Patrick, to obstruct and/or prejudice and/or adversely affect the exercise of a Participating Shareholders' right to petition for the just and equitable winding-up of the Company.

163.3 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known the issue and allotment of shares at par to DFW was of no benefit to the Company.

(b) knew or ought to have known that the exercise of the power to issue shares and allot them to DFW was for the improper purpose of diluting the interest of the Original Participating Shareholders.

(c) knew or ought to have known that the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW was a response to the prospect that the Supporting Organisations might present a petition for the winding-up of the Company on a just and equitable basis, as indeed they did on 10 April 2025 in ignorance of the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW.

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(d) knew or ought to have known that the sole or primary purpose of the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW was to insert a new majority Participating Shareholder (under their or at least Mr Patrick's control) into the Company's share capital structure to (if they or at least Mr Patrick deemed fit) to oppose the actions of the Supporting Organisations and/or the Original Participating Shareholders, both in relation to any potential contributories' winding-up petition and otherwise, and/or to obstruct and/or prejudice and/or adversely affect the exercise at any time of any rights of the Supporting Organisations as Participating Shareholders.

163.4 Mr Patrick designed and/or directed and/or effected the Share Issuance in his capacity as Director of the Company, even though he was 'President' of DFW and the sole member and the sole director of DFW.

163.5 It can be inferred, and is averred, that Mr Patrick was drawing fees or remuneration or emoluments or benefits from DFW (if not also from CDM) without the full authorisation or full and informed consent of the Company.

164 By reason of the foregoing breaches of duty or any of them:

164.1 the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW is void, alternatively voidable and hereby avoided.

164.2 DFW holds its shares on trust or constructive trust for the Company.

164.3 DFW is required to concur in the rescission of the allotment and to re-transfer its shares to the Company on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

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164.4 The Company's register of shareholders shall be rectified accordingly.

Admission and Redemption

165 The Directors (and each of them), in procuring or entering into the Admission Agreement and the Redemption Agreement, and/or in procuring, directing or effecting the Redemption acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring or entering into the Admission Agreement and the Redemption Agreement, or in procuring, directing or effecting the Redemption as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

165.1 The Plaintiff relies on paragraphs 120 to 150 above.

165.2 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known that:

(i) proceeding on the basis of the Seyfarth/Mancino letter to the IRS dated 20 March 2025 was flawed or unreasonable.

(ii) proceeding was not a proper or proportionate response to any genuinely perceived risk about U.S. tax concerns.

(iii) the tax-exempt status of the HDF was of no concern or no reasonable concern to the Company.

(iv) proceeding on the basis of the March 2025 Valuation and the FTI Report was flawed in that: (i) the 99.2% discount in value proposed by the

ValueScope Report was a manifestly excessive discount, and resulted in the Company parting with its indirect ownership of 99% of the economic interest in the Fund (which had net assets worth c. US$270 million) for a mere US$1,637,192; and (ii) as pleaded above, the FTI Report expressly stated that *"this memo should not be used to support a transaction."*

(v) the Admission Agreement and the Redemption Agreement were steps in a series of connected transactions, including those pursuant to the CDM Assignment, the Share Issuance, under which the Directors were able to and ultimately did procure the extinguishment of the Company's interest in the Fund, through the redemption of the Company's membership interest in CDM, for an undervalue.

(b) knew or ought to have known that the sole or primary purpose of the Admission Agreement, the Redemption Agreement and the Redemption was to ensure that the Company was fully and finally deprived of an asset (its interest in the Fund) at an undervalue; and to enable a third party, DFW, controlled by Mr Patrick, to procure ownership of an interest in the Fund in complete replacement of the Company.

165.3 Mr Patrick designed and/or negotiated and/or directed and/or effected the Admission Agreement, the Redemption Agreement and the Redemption as Director of the Company, even though he was Manager of CDM and 'President' of DFW, sole member of CDM and sole member and sole director of DFW.

166 By reason of the foregoing breaches of duty or any of them:

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166.1 DFW holds the CDM Membership Interest on trust or constructive trust for the Company.

166.2 DFW is required to concur in the transfer of the CDM Membership Interest to the Company or as the Company directs on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

Further claims against Mr Murphy

167 In respect of any breach of duty as set out above for which Mr Patrick alone is liable:

167.1 At all material times, Mr Murphy worked in close concert with Mr Patrick, including at his direction.

167.2 Mr Murphy knew or ought to have known all the facts and matters pleaded above as known or ought to have been known by Mr Patrick.

167.3 Mr Murphy knew or ought to have known of all the facts and matters pertaining to such breach or breaches by Mr Patrick.

167.4 Mr Murphy took no steps to stop Mr Patrick or to prevent or report the breach or breaches of duty by Mr Patrick.

167.5 Mr Murphy accepted and acquiesced in all steps and actions suggested, promoted or effected by Mr Patrick.

167.6 Mr Murphy accepted and acquiesced in the breach or breaches of duty by Mr Patrick.

167.7 As a consequence, Mr Murphy has acted in breach of his duties to the Company, including the Best Interests Duty and the Reasonable Care Duty.

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Directors' Fees, Remuneration and Expenses

168 The Company is still unclear as to what precise fees or remuneration or emoluments or benefits were afforded to the Directors and from what source, and as to the proper expenses of the Company, in the period after March 2021 and thus reserves its position.

169 As is pleaded above in paragraphs 85 to 89, the Directors approved large increases for Mr Patrick's remuneration, benefits or emoluments: by around 1 October 2024, Mr Patrick's remuneration comprised a base salary of US$850,000, a bonus of 2.5 times that base salary, an LTI incentive payment of US$975,000; for the period March 2021 to March 2024, Mr Patrick was entitled to an aggregate LTI payment of US$4,759,000; and eligibility for discretionary and annual bonuses in addition, to be determined at the sole and absolute discretion of the Directors. By contrast, Mr Scott's annual salary and entire benefits during his tenure in the Control Position was US$60,000.

170 Insofar as the Directors (or each of them) approved of or procured any payment or benefit to or for Mr Patrick or Mr Murphy more than the sum of US$60,000 per annum each in respect of fees or remuneration or emoluments or benefits, such sum was excessive and conferred in breach of duty to the Company, including the Best Interests Duty, the Proper Purpose Rule, the first No-Conflicts Duty, the No Self-Dealing Rule and the Reasonable Care Duty.

171 Further, as is pleaded above, the Directors (or each of them) approved or caused the payment of considerable sums by way of expenses, amounting for example to US$18.3 million for the first half of 2024, and US$18.6 million spent over 2023. Such expenses may include the expenses incurred in effecting the transactions which are the subject matter of these proceedings. The reasonableness or *bona fides* of these expenses is not accepted by the Company.

172 The Company claims:

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172.1 Full information, documents and discovery as to the fees or remuneration or emoluments or benefits or expenses paid or claimed by Mr Patrick and Mr Murphy and each of them since March 2021.

172.2 Full information, documents and discovery as to expenses incurred by the Company or the Fund or any of the Fund's subsidiaries or investments since March 2021.

172.3 Repayment to the Company of all fees or remuneration or emoluments or benefits paid or claimed by Mr Patrick or Mr Murphy and each of them in excess of US$60,000 per annum; together with all improperly paid expenses caused or procured by Mr Patrick or Mr Murphy (or damages or equitable compensation in relation thereto).

Unlawful Means Conspiracy

173 The facts and matters pleaded above amount to an unlawful means conspiracy as follows:

173.1 It is unclear when the conspiracy began but it appears to have started by around the start of 2024.

173.2 The original conspirators were Mr Patrick and Mr Murphy. The Company is unaware of the circumstances in which Mr Patrick and Mr Murphy agreed or combined and is unable to plead further pending further information or discovery.

173.3 As they were incorporated and participated in the facts and matters pleaded above, the New GP, CDM and DFW joined the conspiracy but remain liable in damages for all losses, including prior to joining the conspiracy.

173.4 The conspiracy was a conspiracy to injure the Company.

173.5 The overt acts of the conspiracy were all the facts and matters pleaded above, including as breaches by Mr Patrick or Mr Murphy.

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173.6 The unlawful means of the conspiracy were all the facts and matters pleaded above as breaches of duty by Mr Patrick or Mr Murphy.

173.7 Each of the conspirators intended to injure the Company. This averment is an inference from all the facts and matters pleaded above.

173.8 As a consequence, the Company has suffered loss and damage, as a result of the Restructuring, the CDM Assignment, and the Admission and Redemption, and the combined effect thereof, as set out above.

Proprietary claim and/or unconscionable receipt

174 The facts and matters pleaded above give rise to claims by the Company for unconscionable receipt as follows:

174.1 CDM received the Company's Partnership Interest in the Fund under the CDM Assignment.

174.2 The knowledge of CDM was and is that of Mr Patrick.

174.3 The breaches of duty in relation to the CDM Assignment above are relied upon.

174.4 CDM knew that the CDM Assignment was at an undervalue and that causing or procuring the Company to enter into the CDM Assignment was a breach of fiduciary duty by Mr Patrick and/or Mr Murphy.

174.5 By reason of the foregoing, it is unconscionable for CDM to retain the Partnership Interest in the Fund and CDM is liable to account to the Company in equity, by restoring Partnership Interest in the Fund to the Company and/or accounting for any profits or otherwise accounting to the Company in equity.

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Unjust Enrichment

175 In receiving the Company's Partnership Interest in the Fund, CDM was unjustly enriched at the Company's expense and is liable to the Company in restitution:

175.1 The Partnership Interest was transferred on the basis that there was a valid assignment agreement effecting that transfer.

175.2 That basis has totally failed, the CDM Assignment being either void, or avoided hereby.

Alter Ego and Lifting the Corporate Veil

176 In order to obtain the return to it of the Partnership Interest in the Fund, together with an Account of Profits, the Company does not need as a matter of law to make any allegation of "alter ego" or to lift the corporate veil in relation to CDM or DFW.

177 If, contrary to the paragraph above, the Company does so need, it makes the following allegations for the purposes of all relevant claims or causes of action set out above.

177.1 CDM is the "alter ego" of Mr Patrick.

177.2 DFW is the "alter ego" of Mr Patrick.

177.3 In relation to the receipt of any property by CDM directly or indirectly from the Company or the accrual of any profits or benefits by reason of such receipt, the corporate veil should be lifted, with the consequence that such receipt and such profits or benefits should be treated as those of Mr Patrick personally.

177.4 In relation to the receipt of any property by DFW directly or indirectly from the Company or the accrual of any profits or benefits by reason of such receipt, the corporate veil should be lifted, with the consequence that such receipt and such profits or benefits should be treated as those of Mr Patrick personally.

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PARTICULARS

(a) In relation to CDM:

(i) Mr Patrick was and is the Manager. There are no other officers or managers.

(ii) Mr Patrick was and is the managing member.

(iii) CDM was incorporated at Mr Patrick's instigation in order to enter into the CDM Assignment or a transaction of like nature.

(iv) CDM's sole or primary purpose was to play a part in a scheme whereby Mr Patrick would obtain control of the Company's Partnership Interest in the Fund free of the Company, the Company's obligations towards the Supporting Organisations and (if the scheme succeeded) free of Mr Patrick's duties to the Company.

(v) CDM exists and operates in order to conceal the identity of the true or real actor, namely Mr Patrick.

(b) In relation to DFW:

(i) Mr Patrick was and is the 'President'. There are no other officers or managers.

(ii) Mr Patrick was and is the sole member.

(iii) Mr Patrick was and is the sole registered director.

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(iv) DFW was incorporated at Mr Patrick's instigation in order to enter into a transaction whereby it would in effect take over the Company's interest in CDM pursuant to the CDM Assignment.

(v) DFW's sole or primary purpose was (i) to play a part in a scheme whereby Mr Patrick would obtain control of the Company's Partnership Interest in the Fund free of the Company, the Company's obligations towards the Supporting Organisations and (if the scheme succeeded) free of Mr Patrick's duties to the Company, (ii) to be the ultimate vehicle by which Mr Patrick would so control of the Company's Partnership Interest in the Fund and (iii) to be a newly-inserted majority Participating Shareholder (under at least Mr Patrick's control) in the Company's share capital structure to oppose the actions of the Supporting Organisations, both in relation to any potential contributories' winding-up petition and otherwise, and/or to obstruct and/or prejudice and/or adversely affect the exercise at any time of any rights of the Supporting Organisations as Participating Shareholders.

(vi) DFW exists and operates in order to conceal the identity of the true or real actor, namely Mr Patrick.

Loss and Damage

178 As a consequence of the above, the Company has suffered loss and damage, including but not limited to:

178.1 Its Partnership Interest in the Fund.

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178.2 The costs and expenses incurred in relation to the CDM Assignment, the Share Issuance, the Letter Agreement and the Redemption (including all legal or other advice taken in relation thereto).

178.3 Excessive Directors' fees or remuneration or emoluments or benefits.

178.4 Improper expenses (if any).

178.5 The lost opportunity cost of the Fund and its subsidiaries deploying such funds (as set out in (1), (2) and (3) above) elsewhere, and the consequent fall in value of the Company's interest in the Fund.

178.6 The legal and liquidation costs of investigating the conspiracy, and the costs of these proceedings.

RESERVATION OF POSITION

179 The Company and the JOLs (who direct the Company in bringing these proceedings) fully reserve their position to apply to amend this claim in any way or to bring fresh or further proceedings against any of the Defendants (whether in the Cayman Islands or elsewhere) in the name of the Company or in the name of the JOLs.

OTHER

180 CLO Holdco is joined as a party to these proceedings in order that, as the main subsidiary of the Fund, it may abide by any Order that the Court may make.

INTEREST

181 The Company claims interest pursuant to section 34 of the *Judicature Act (2021 Revision)* and the *Judgment Debts (Rates of Interest) Rules (2021 Revision)*, alternatively pursuant to the

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Court's equitable jurisdiction, compounded in equity at quarterly rests, alternately at common law, for such period and at such rate as the Court thinks just.

PRAYER FOR RELIEF

In the premises, the Company claims:

(1) Damages or equitable compensation.

(2) Orders for restitution or disgorgement.

(3) Orders for the restoration of property to the Company.

(4) Interlocutory or final injunctions as may be necessary or appropriate.

(5) Orders for the appointment of a Receiver or Receivers, as may be necessary or appropriate.

(6) Orders for the provision of documents or information at an early interlocutory stage.

(7) Orders for the cancellation of the Share Issuance, as appropriate.

(8) Rectification of the register of the Company, as appropriate.

(9) Orders pursuant to s.99 of the Companies Act (as revised), as appropriate.

(10) An Account of the fees or remuneration or emoluments or benefits or expenses paid or claimed by Mr Patrick and Mr Murphy and each of them since March 2021.

(11) An Account of all expenses incurred by the Company or the Fund or any of the Fund's subsidiaries or investments since March 2021.

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(12) All other Accounts, including an Account of Profits, or Inquiries as may be necessary or appropriate; and further Orders to give effect to the outcome of such Accounts or Inquiries, including Orders for payment of sums to the Company.

(13) All such declarations as may be necessary or appropriate, including to give effect to the continuing interest of the Company in the Fund on the basis of a proprietary interest, trust, constructive trust or otherwise.

(14) All such other relief relating to the Impugned Transactions as may be necessary or appropriate.

(15) Interest as above.

(16) Further or other relief.

(17) Costs.

DATED this 15th day of July 2025

Maples and Calder (Cayman) LLP

Maples and Calder (Cayman) LLP

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DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

182 The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

183 A Defendant who states in the Defendant's Acknowledgment of Service that the Defendant intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiffs may enter judgment against the Defendant without further notice.

184 A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings

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states, in answer to Question 3 in the Acknowledgment of Service, that the Defendant intends to apply for a stay, execution will be stayed for 14 days after that Defendant's Acknowledgment, but the Defendant must, within that time, issue a Summons for a stay of execution, supported by an affidavit of the Defendant's means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See overleaf for Notes for Guidance

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Notes for Guidance

1 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2 For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to the Defendant.

3 Where the Defendant is sued in a name different from the Defendant's own, the form must be completed by the Defendant with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after that Partner's name.

5 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN THAT PERSON'S OWN, the form must be completed by the Defendant with the addition in paragraph 1 of the description "trading as (.....)" after that Defendant's name.

6 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.

7 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.

8 A Defendant acting in person may obtain help in completing the form at the Courts Office.

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give that Attorney this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

☐ yes	☐ no

3. If the claim against the Defendant is for a debt or liquidated demand, AND the Defendant does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

☐yes ☐ no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, the Defendant must give the Defendant's post office box number and the physical address of the Defendant's residence or, if the Defendant does not reside in the Cayman Islands, the Defendant must give an address in Grand Cayman where communications for the Defendant should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of that Plaintiff's name, address and reference, if any, in the box below.

Maples and Calder (Cayman) LLP
PO Box 309 Ugland House
Grand Cayman KY1-1104

Cayman Islands: CJM/JRN/LRA/TQR/858403-01

Indorsement by defendant's Attorney (or by defendant if suing in person) of that defendant's name, address and reference, if any, in the box below.

EXHIBIT 64

Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
Alexandra Ohlinger
Texas State Bar No. 24091423
aohlinger@cwl.law
Crawford, Wishnew & Lang PLLC
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Johnny Sutton
Ashcroft Sutton
919 Congress Avenue, Suite 1325
Austin, Texas 78701
(512) 370-1800 (phone)
(703) 247-5446 (fax)

jsutton@ashcroftlawfirm.com

Counsel for The Dugaboy Investment Trust

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

In re	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.[1]	§	

THE DUGABOY INVESTMENT TRUST'S MOTION TO STAY 9019 ORDER

The Dugaboy Investment Trust ("Dugaboy") hereby files this Motion to Stay 9019 Order and would respectfully show the court the following:

[1] The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. 1808] ("*Plan*"), filed by Highland Capital Management, L.P. ("*HCMLP*") became effective on August 11, 2021 (the "*Effective Date*").

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I. SUMMARY OF MOTION

1. On June 30, 2025, the Court signed its Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith ("9019 Order") [Dkt. No. 4297]. Dugaboy files this motion seeking a 90-day stay of the 9019 Order so that it and other parties can investigate the allegations made in the recently filed request for a stay of all Highland bankruptcy proceedings made by the Texas Attorney General, and the complaint (the "JOL Petition") the Joint Official Liquidators ("JOL") of Charitable DAF HoldCo LTD ("Holdco")filed on July 15, 2025, by. That Petition, annexed hereto as Exhibit A, outlines a massive fraudulent scheme.

2. According to the JOL Petition, Mark Patrick manipulated the ownership of the HMIT entities to convert $270 million of assets and pay himself and co-conspiring professionals millions that were supposed to be used for the benefit of the long-established charities, including assets Dugaboy and its beneficiary, James Dondero, contributed to the Charitable DAF for the benefit of the charities supported by Dugaboy. The Dallas Foundation, The Greater Kansas City Foundation, The Santa Barbara Foundation, and the Community Foundation of North Texas (the "Charities" or the "Participating Shareholders") were left with nothing in favor of a new entity with no track record or professional staff run out of Mr. Patrick's house.[2] This Court should stay any transfers of assets to the control of Mr. Patrick, given that his express instructions to create a web of new entities that were: "*Whatever from a strategic point of view - hard to find or track, or trace. Or find owners etc. Generic name. Strong litigation protection."* JOL Petition ¶ 82. A clearer indication of an intention to abscond with assets could hardly be found.

[2] The interests of the charities are affected through supporting organizations who for ease of reference are included in the definition of "Charities" and "Participating Shareholders" for the purposes of this Motion.

3. The relief sought in this Motion is necessary to provide all stakeholders with time to investigate a motion under Rule 60 to vacate the 9019 Order (and all resulting orders, such as the dismissals effected as a result of the 9019 Order) in light of evidence suggesting that the settlement approved by this Court was a key element of the alleged fraudulent scheme. Transfers of assets to companies controlled by Mr. Patrick must be halted, lest those assets are moved to companies "hard to find or track."

II. ARGUMENT

A. The Court Enters the 9019 Order Over the Objection of Dugaboy

4. On May 19, 2025, a Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith [Docket No. 4216] (the "Motion") was filed by Highland Capital Management, L.P.'s ("Debtor" or "Highland"), the Highland Claimant Trust (the "Claimant Trust"), and the Highland Litigation Sub-Trust (the "Litigation Sub-Trust").

5. Over the objection of several parties, including Dugaboy, on June 30, 2025, the Court signed its Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith ("9019 Order") [Dkt. No. 4297].

6. At the hearing Dugaboy presented the Court with the letter request of the JOLs to stay the proceeding for 45 days pending their investigation, but the Court entered the 9019 Order. Transcript of Hearing on June 25, 2025 on 9019 Motion ("9019 Tr.") at 189:22-191:1.

B. The JOL Files a Complaint Alleging Illegal Acts by Mr. Patrick

7. The JOL Petition makes serious allegations against Mr. Patrick.

8. Specifically, the Complaint alleges that Mr. Patrick, a director and sole Management Shareholder of HoldCo, unbeknownst to the Charities (holders of the Participating Shares of HoldCo)

: (1) caused HoldCo to assign its interest in certain assets to a Delaware limited liability company formed and controlled by Mr. Patrick; (2) caused HoldCo to issue Participating Shares to a Delaware company incorporated and controlled by Mr. Patrick; (3) caused the Delaware limited liability company to redeem HoldCo's membership interest; and (4) caused HoldCo to be placed into voluntary liquidation after making a final distribution to the Participating Shareholders in HoldCo. JOL Petition at ¶¶ 6-6.4. These machinations are referred to in the JOL Petition and herein as the "restructuring."

9. As the Complaint states, the restructuring was undertaken specifically to bring ownership of these assets, with a net value of $270 million (as of September 30, 2024), under Mr. Patrick's effective control, with the express purpose of leaving the Charities, as the original, and rightful, ultimate beneficiaries of the fund, with nothing. JOL Petition at ¶ 7. Mr. Patrick testified that the "entity in liquidation [Holdco] owns nothing," confirming the conversion at the hearing on the 9019 Motion. 9019 Tr. 185:18-24) (Dkt. No. 4296).

10. In short, the JOL Petition details how Mr. Patrick caused HoldCo, originally the sole limited partner of Charitable DAF Fund, LP (the "Fund"), to sell off the Fund, with its $270 million in assets for $1.6 million, using manipulated and fraudulent valuations. JOL Petition ¶¶ 136-150.

11. Showing just how difficult it was to achieve his false valuation, Mr. Patrick initially sought to have PwC, which had historically conducted valuations of the HoldCo's assets and which had as recently as late 2024 confirmed the $270 million valuation, conduct a post "restructuring" valuation that would discount the value of the assets sufficiently to justify the sale of the Fund for $1.6 million. JOL Petition ¶¶ 123-125. PwC refused, saying it did not see a basis for the proposed discount. JOL Petition ¶125.

12. Undeterred, Mr. Patrick and the professionals assisting him sought a valuation from FTI Consulting in London ("FTI"). Using the fact that the charities could not force distributions, FTI

authored a memo presuming one could assert a very small discount on the value of the Fund if the Charities were aligned with the Fund's mission, but a 95% discount if they were not. JOL Petition ¶¶ 126-128. Thus, if Mr. Patrick could arbitrarily say that the Funds were no longer aligned with the charities' missions (notwithstanding the fact that nothing had changed in the charities' missions) he could apparently say devalue the Fund. *Id.*

13. Indeed, the question Mr. Patrick's counsel posed to FTI was "would Mark still be able to shareholder structure to ensure the existing participating shareholders [the charities] got nothing?" JOL Petition ¶134. Ultimately, recognizing Mr. Patrick's clearly improper machinations, FTI refused to lift limits it had placed on use of its memo, cautioning Walkers, that its memo was "not a valuation" and could "not be used to support a transaction." JOL Petition ¶¶ 133, 135.

14. Thwarted by FTI, one of Mr. Patrick's United States counsel, Shields Legal, then asked a Dallas-based firm, Valuscope, to value the Fund, using a discounted cash flow ("DCF") analysis with a 99.2% discount for lack of control and an additional 20% discount for lack of marketability, with no justification for the use of a DCF analysis or either, let alone both, discounts. JOL Petition ¶¶ 139-45. This resulted in an astonishing purported 99.29% drop in the value of the assets in just a six-month period. On its face, this manipulation is fraudulent, but this is what was used to justify selling the Fund to an entity controlled by Mr. Patrick and owned by a new charity he owned and controlled for $1.6 million. That $1.6 million was distributed to the Charities, and then Mr. Patrick attempted to cover his tracks with an expedited voluntary liquidation process, controlled by Mr. Patrick's counsel with Kroll as the proposed liquidator, to sweep all of the wrongdoing under the rug. JOL Petition ¶ 151.

15. This effort was halted only because the Charities, not knowing of the pending liquidation effort, brought their own official liquidation proceeding in the Cayman Court. That

proceeding resulted in the JOL being appointed and Kroll and Walkers resigning as proposed liquidators and counsel. JOL Petition ¶ 152-54.

16. The JOL's investigation revealed that Mr. Patrick:

a. increased the Directors' fees from $40,000 per annum in 2022 to $600,000 in 2023 and to $2.25 million for just the first half of 2024. JOL Petition ¶ 85;

b. added a salary for himself of $850,000 a year in September 2024; and

c. added a provision for a "long term incentive" ("LTI") tied to the Funds returns (when he is not a registered investment advisor, or any sort of financial advisor, for that matter, but simply a tax lawyer). JOL Petition ¶ 86. The LTI was 7.5% of the Funds returns over 10%, with a provision allowing for a greater bonus the more he spent on legal fees. JOL Petition ¶ 86.3.

What's troubling is that the LTI created an incentive to increase legal spending through the proliferation of lawyers and lawsuits, thereby increasing legal expenses and Mr. Patrick's personal bonuses.

17. Less than a month later, Mr. Patrick also gave himself an LTI payment of $975,000 and an annual discretionary bonus for 2023 of 2.5 times his annual salary. JOL Petition ¶¶ 87.1-87.2. He also gave himself a retroactive LTI payment for the period March 2023 to March 2024 of $4.8 million and authorized additional annual and discretionary bonuses at his sole and absolute discretion. *Id*. By contrast, the prior the prior controlling shareholder and director of Holdco and the Fund, Grant Scott, during his entire tenure was paid $60,000 a year. JOL Petition ¶ 88.

18. As a result, the JOL Petition alleges that Mr. Patrick's acts constitute breaches of fiduciary duty and seek to have a receiver appointed. JOL Petition ¶¶ 160-81.

C. The 9019 Order Should Be Reevaluated in Light of the Allegations in the JOL Complaint

19. These allegations are essential to evaluating or re-evaluating the 9019 Order for three primary reasons. *First*, a change in control of HoldCo will affect not just HoldCo, but all the

companies owned and controlled by HoldCo, including Hunter Mountain and the entities that entered into the settlement agreement that is the subject of the 9019 Order.

20. The JOL, if they are able to rescind all of the restructuring, and on these facts it certainly appears that they will be able to do so, will be able to appoint new controlling persons in all the former subsidiaries. Then, under honest management, seeking the best for the Charities, the subsidiaries will determine what transactions to ratify and which to rescind or reform. This Court should stay the effectiveness of the 9019 Order to minimize what must be reformed or rescinded.

21. *Second*, the allegations in the JOL Petition set forth a pattern of behavior by Mr. Patrick with respect to these entities and his self-dealing that unquestionably leads to the conclusion that the same illegal behavior could well have taken place with respect to the 9019 Order and the related settlement agreement. The newly discovered communications detailed throughout the JOL Petition show the steps that Mr. Patrick engaged in to effectuate his scheme. The HMIT Settlement occurred over the same time period, making it a part of that scheme.

22. *Third*, showing a real danger of manufactured evidence being used to justify the ends desired, Mr. Patrick purported to justify his actions by contending that Mr. Dondero was imperiling the charities' 501(c)(3) status (JOL Petition ¶ 146.1), using an opinion of counsel that post-dated all of the planning for the restructuring (JOL Petition ¶ 146.5). Creating an echo chamber of evidence, he himself made false reports to the IRS to attempt to imperil the charities' tax-exempt status. JOL Petition ¶¶ 113, 146.4. These acts demonstrate that Mr. Patrick's actions and testimony with respect to the 9019 Order must be examined and evaluated.

D. The Highland Entities Allowed These Illegal Acts to Proceed Uninvestigated

23. It is also important to note the Highland Entities' role in allowing their 9019 Motion to proceed and the 9019 Order to be entered in light of the above. While the Highland Entities claim they performed due diligence with respect to the transactions at issue in the 9019 Order, including the

authority of Mr. Patrick, to agree to the settlement agreement (9019 Tr. 97:12-17) (Dkt. No. 4296), they did not know of the alleged improprieties raised above. Instead, they elected to look only at the organizational documents (9019 Tr. 98:6-23) and ignored the Cayman proceeding, Mr. Seery was "hesitant" to even say he was "generally" aware of the Cayman proceeding (9019 Tr. 98:24-99:1). Moreover, with respect to Mr. Dondero's complaints about what Mr. Patrick was doing to the Charities, counsel for the Highland Entities stated: "Mr. Patrick, I don't know what happened between him and Mr. Dondero. I don't care. I have no knowledge of that." (9019 61:25-62:1) (Dkt. No. 4296). The transcript evidences that the HCMLP entities ignored the Cayman proceeding to rush through the 9019 Settlement before evidence of the fraud could be presented to this Court.

E. The Texas Attorney General Requests Additional Time to Investigate These Allegations

24. On July 9, 2009, the Office of the Texas Attorney General wrote a letter to the Court asking the Court to enter a stay of this bankruptcy proceeding because it was investigating conduct allegedly taken by persons or entities in this bankruptcy proceeding. Dkt. No. 4308. Upon information and belief, Mr. Patrick and the entities he controls, as well as the 9019 Order, are the subject of this investigation. This request of the Texas Attorney General is consistent with what Dugaboy seeks by way of this motion and therefore Dugaboy urges the Court to follow this recommendation so that the Texas Attorney General will have an adequate opportunity to address the illegal and inequitable conduct by Mr. Patrick and his entities that are being investigated by the JOL.

25. These allegations rise to the level of a basis for a Federal Rule of Civil Procedure 60 motion seeking reconsideration of the 9019 Order based on newly discovered evidence. *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 638 (5th Cir. 2005) ("Rule 60(b)(2) provides that a court may relieve a party from a final judgment based on 'newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b). Rule 60(b)(3) provides for relief based on 'fraud . . . misrepresentation, or other misconduct of an adverse party,' and Rule

60(b)(6) further provides for relief based on 'any other reason justifying relief from the operation of the judgment.' The purpose of Rule 60(b) is to balance the principle of finality of a judgment with the interest of the court in seeing that justice is done in light of the facts."). Entering a stay will preserve the status quo so that interested parties may conduct a sufficient investigation.

F. The Court Has the Power to Stay the 9019 Order for 90 Days.

26. Pursuant to Bankruptcy Code § 105(a), the Court "may issue any order . . . that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Moreover, the Supreme Court has held: [T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936).

27. This Court possesses broad discretion to grant stays, particularly where doing so is unlikely to cause harm to any other party. *See, e.g., Fishman Jackson PLLC v. Israely*, 180 F. Supp. 3d 476, 483 (N.D. Tex. 2016) ("Courts have 'broad' discretion to grant stay[s] . . . especially when there is not a 'fair possibility' that the stay 'will work damage to someone else.'"); *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990) ("The stay of a pending matter is ordinarily within the trial court's wide discretion to control the course of litigation . . . . This authority has been held to provide the court the 'general discretionary power to stay proceedings before it in control of its docket and in the interests of justice.'" (internal citations omitted)).

28. While stays should "not be immoderate or of an indefinite duration," *Fishman*, 180 F. Supp. 3d at 483, courts routinely grant stays of six months where doing so promotes judicial efficiency. *See, e.g.*, *14th St. Props., LLC v. S. Fid. Ins. Co.*, No. CV 22-1593, 2023 WL 416317, at *1 (E.D. La. Jan. 26, 2023) (granting stay and administratively closing matter for six months due to

state insolvency proceedings); *Integrated Claims Sys., LLC v. Old Glory Ins. Co.*, No. 2:15CV-00412-JRG, 2020 WL 1027771, at *1 (E.D. Tex. Mar. 3, 2020) (granting motion to stay for six months); *Cleveland Air Serv., Inc. v. Pratt & Whitney Canada*, No. 4:13-CV-161-DMB-DAS, 2016 WL 4179987, at *2 n.3 (N.D. Miss. Aug. 5, 2016) (staying discovery for six months); *Maples v. Donzinger*, No. CIV.A. 13-223, 2014 WL 688965, at *2 (E.D. La. Feb. 21, 2014) (granting a six month stay).

29. Courts have also granted stays which may only be lifted by the parties after a determined time. *See, e.g., Scarborough v. Integricert, LLC*, No. 6-12-CV-00396, 2014 WL 12662272, at *3 (W.D. La. Apr. 4, 2014) ("Lastly, this Court's intention is not to stay the case for an indefinite period. To the contrary, the Court will issue a stay for a period of one-hundred and twenty days, at the end of which, either party may move to lift the stay upon a showing of good cause. Thus, the stay will not last for an 'indefinite' period such as Scarborough fears.").

30. Consistent with these authorities, the implementation of the 9019 Order should be stayed for 90 days in the interests of judicial economy and efficiency in order to allow Dugaboy and other interested parties sufficient time to investigate the allegations in the JOL Petition. A grant of the requested stay will enable the Court to fairly evaluate the putative settlement between the Highland Entities and the HMIT Entities.

31. Additionally, a stay will benefit the Highland Entities, the HMIT Entities, and estate stakeholders, not harm them. All parties undoubtedly want certainty regarding the legitimacy and future enforceability of their actions and bargains. For example, if the Cayman Proceeding determines that Mr. Patrick may retain his control position in the DAF and its subsidiaries, then such a decision would likely remove any additional obstacles to the HMIT settlement. By contrast, if the Cayman Proceeding subsequently determines that Mr. Patrick engaged in ultra vires acts or acted without

appropriate authority, that decision could throw the settlement, and all subsequent actions taken in furtherance of the settlement, into question.

32. In sum, the Court has broad discretion to enter a stay of not more than six months (and the requested 90 days is half of what other courts have allowed) - which is neither "immoderate" nor "of an indefinite duration.." *Fishman*, 180 F. Supp. 3d at 483; *see also McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982) (vacating indefinite stay that could last for seven years or longer where trial court "gave no reason for such a protracted stay"). The requested stay serves the interests of judicial economy, ensures efficient management of this bankruptcy proceeding, and is in the best interests of the parties to the putative settlement and all remaining stakeholders.

33. Therefore, Dugaboy requests that the Court adhere to the request by the Texas Attorney General and stay the 9019 Order for 90 days so that these newly discovered allegations can be investigated by Dugaboy and other stakeholders and a determination can be made as to whether a FRCP 60 motion is necessary.

III. CONCLUSION

For the foregoing reasons, Dugaboy requests that the Court stay the 9019 Order for 90 days.

Respectfully submitted,

By: */s/Michael J. Lang*___
Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
Alexandra Ohlinger
Texas State Bar No. 24091423
aohlinger@cwl.law
Crawford, Wishnew & Lang PLLC
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Johnny Sutton
Ashcroft Sutton
919 Congress Avenue, Suite 1325
Austin, Texas 78701
(512) 370-1800 (phone)
(703) 247-5446 (fax)
jsutton@ashcroftlawfirm.com

Counsel for The Dugaboy Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 17, 2025, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Michael J. Lang
Michael J. Lang

EXHIBIT A

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

WRIT OF SUMMONS

TO: (1) **MARK ERIC PATRICK** of 6716 Glenhurst Drive, Dallas, Texas, 72554, United States of America

THIS WRIT was issued by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83527361)

(2) **PAUL MURPHY** of Windsor Village #24, South Church Street, Grand Cayman, Cayman Islands

(3) **CDMCFAD, LLC** of c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 1980, United States of America

(4) **DFW CHARITABLE FOUNDATION** of c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 1980, United States of America

(5) **CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER** of c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands

(6) **CLO HOLDCO, LTD.** of c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, or, if you are served out of the jurisdiction, within such other period of time as the Court may order, you must either satisfy the claim or return to the Registrar of the Financial Services Division, Court Office, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 15th day of July 2025

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

STATEMENT OF CLAIM

INTRODUCTION

1 The Plaintiff, Charitable DAF HoldCo, Ltd (in Official Liquidation) (the "**Company**"), is a Cayman Islands exempted company, incorporated on 27 October 2011, having its registered office at HSM Corporate Services Ltd, 68 Fort Street, George Town, PO Box 31726, Grand

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Cayman KY1-1207. The authorised and issued share capital of the Company is divided into Participating Shares and Management Shares.

2 The Company was placed into court supervised liquidation and Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Limited were appointed as joint official liquidators (the "**JOLs**") pursuant to an order of this Honourable Court dated 6 May 2025.

3 The Company was, between November 2011 and 18 December 2024, the sole limited partner of Charitable DAF Fund, LP (the "**Fund**"). At all relevant times, the net asset value of the Fund's assets was c. US$270million.

4 The Fund is a Cayman Islands exempted limited partnership formed to invest and manage assets for the benefit or ultimate benefit of certain registered charitable organisations in the U.S. namely The Dallas Foundation; the Greater Kansas City Community Foundation; the Santa Barbara Foundation and The Community Foundation of North Texas (the "**Charities**"). These charities are the owners or the ultimate beneficial owners of Participating Shares in the Company.

5 In March 2021, Mark Patrick (the "**First Defendant**") was appointed the sole director and registered as the sole Management Shareholder of the Company. In April 2021, Paul Murphy (the "**Second Defendant**") was appointed by the First Defendant as a second director of Holdco.

6 By virtue of a series of transactions or purported transactions between March 2024 and March 2025, unbeknownst to the holders of the Participating Shares (the "**Participating Shareholders**") of the Company, Mr Patrick caused:

6.1 the Company, with the agreement and concurrence of Mr Murphy, to assign its interest in the Fund to the Third Defendant, a Delaware limited liability company, formed in

December 2024 and controlled by Mr Patrick, in exchange for a membership interest in that entity;

6.2 the Company, with the agreement and concurrence of Mr Murphy, to issue and allot further Participating Shares (representing a majority of the issued participating share capital) to the Fourth Defendant, a Delaware company, incorporated in December 2024 and controlled by Mr Patrick;

6.3 the Third Defendant to redeem the Company's membership interest in the Third Defendant for a consideration of c. US$1.6 million, representing approximately 0.59% of the total net asset value of the assets held by the Fund; and

6.4 the Company, with the agreement and concurrence of Mr Murphy, to be placed into voluntary liquidation after having made a final distribution to all Original Participating Shareholders (defined below) in the Company of the proceeds of redemption,

collectively the "**Impugned Transactions**".

7 The First and Second Defendants effected the Impugned Transactions in breach of their fiduciary and other duties to the Company in order to bring ownership of the Fund and its assets, with a net value of c. US$270 million (as assessed at 30 September 2024), under Mr Patrick's effective control to the exclusion of the interests of the Charities. The Charities, as the original, and rightful, ultimate beneficiaries of the Fund, have been left with nothing.

8 Further, during the period March 2021 to June 2024, the First and Second Defendants, in breach of fiduciary duty, caused the Company to pay excessive fees and expenses to Mr Patrick.

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THE PARTIES

The Company

9 The Company is a Cayman Islands exempted company, incorporated on 27 October 2011, having its registered office at HSM Corporate Services Limited, Ltd, 68 Fort Street, George Town, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands.

10 The directors of the Company are Mr Patrick (appointed on 25 March 2021) and Mr Murphy (appointed by Mr Patrick on 22 April 2021).

11 The Company has been governed by the following memorandum and articles of association from time to time:

11.1 The memorandum and articles of association dated 27 October 2011; and

11.2 The amended and restated memoranda and articles of association dated 19 January 2015; 24 January 2024; and 20 February 2025 respectively.

The Company remains governed by the memorandum and articles of association as amended and restated on 20 February 2025 (the "**Articles**") save that the Company reserves the right to challenge the validity of the Articles.

12 Save as set out above, the Company will rely on the Articles and all previous iterations for their applicable full terms and effect.

13 Pursuant to the Articles and at all relevant times, the authorised share capital of the Company was US$50,000 divided into 100 Management Shares of US$0.01 par value each and 4,999,900 Participating Shares of US$0.01 par value each.

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14 The Articles (with reference to the defined term of 'Restricted Person') require that the Participating Shareholders must at all times qualify as a tax-exempt organisation pursuant to section 501(c)(3) of the United States Internal Revenue Code of 1986 ("**IRC**").

15 The Participating Shares do not have voting rights but confer the right to participate in the profits or assets of the Company including by way of the receipt of dividends (Article 12).

16 The Management Shares have voting rights but confer no other right to participate in the profits or assets of the Company (Article 11).

17 The Participating Shareholders therefore have the entirety of the economic interest in the Company, whereas the Management Shareholders have the control rights.

18 On 7 November 2011, the Company issued:

18.1 300 Participating Shares to The Highland Capital Management Partners Charitable Trust #2 ("**Trust #2**"); and

18.2 100 Management Shares to Grant Scott.

19 On 30 November 2011, Trust #2 transferred its 300 Participating Shares equally amongst:

19.1 Highland Kansas City Foundation, Inc.;

19.2 Highland Dallas Foundation, Inc.[1]; and

19.3 Highland Santa Barbara Foundation, Inc.,

collectively, the "**Supporting Organisations**".

[1]Since June 2024, Highland Dallas Foundation, Inc. has also done business as 'NexPoint Philanthropies Dallas, Inc.', per an Assumed Name Certificate filed with the Secretary of State of Texas.

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20 On 12 August 2015, the Company issued 5 Participating Shares to the Community Foundation of North Texas, ("**CFNT**", and together with the Supporting Organisations the "**Original Participating Shareholders**") for Highland Capital Management, L.P. Charitable Fund at CFNT.

21 On 25 March 2021, the Management Shares were transferred to Mr Patrick and he continues to hold these shares.

22 The Participating Shares held by the Original Participating Shareholders represented the entire issued Participating Share capital of the Company until 7 February 2025. On that date, Mr Patrick, with the agreement and concurrence of Mr Murphy, caused the Company to issue 318 Participating Shares to the Fourth Defendant, DFW Charitable Foundation ("**DFW**"), significantly diluting the shareholdings of the Original Participating Shareholders and the indirect economic interest of the Charities.

23 Until 18 December 2024, the sole asset of the Company was its limited partnership interest in the Fund (the "**Partnership Interest**").

24 As a result of the Impugned Transactions, the Company now has no material assets.

DFW

25 DFW (the Fourth Defendant) is a non-profit non-stock corporation incorporated in Delaware on 9 December 2024, which is organised under the General Corporation Law of the State of Delaware exclusively for charitable purposes.

26 DFW is the majority Participating Shareholder of the Company by virtue of the purported share issuance on 7 February 2025, and Mr Patrick is its registered director, president and sole member.

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The Fund

27 The Fund is a Cayman Islands exempted limited partnership formed on 28 October 2011 (registration no. 53083), having its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

28 The Fund is governed by the Second Amended and Restated Exempted Limited Partnership Agreement dated 11 March 2024 (the "**LPA**"). The initial exempted limited partnership agreement of the Fund was dated 25 October 2011, was amended and restated on 7 November 2011 and further amended on 26 July 2022 (with effect from 24 March 2021). The Company will rely on the LPA for its applicable full terms and effect.

29 Mr Patrick was instrumental in the establishment of the Company, the Fund and the Fund structure.

30 Until 18 December 2024, the Company was the sole limited partner of the Fund.

31 On 18 December 2024, Mr Patrick, with the agreement and concurrence of Mr Murphy, caused the Company to transfer its limited partnership interest to CDMCFAD, LLC ("**CDM**") (the Third Defendant) in exchange for a membership interest in CDM.

32 The original general partner of the Fund was Charitable DAF GP, LLC (the "**Original GP**"), a Delaware limited liability company registered as a foreign company in the Cayman Islands. The Original GP was the general partner from the Fund's formation until 7 March 2024.

33 On 7 March 2024, the Original GP was replaced by CDH GP, Ltd. (the "**New GP**") (the Fifth Defendant).

34 The sole asset of the Fund is its 100% shareholding in CLO HoldCo, Ltd. ("**CLO HoldCo**") (the Sixth Defendant), a Cayman Islands exempted company incorporated with limited liability,

having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

35 The assets of the Fund were valued at c. $270 million in September 2024.

The New GP

36 The New GP (the Fifth Defendant) is a Cayman Islands exempted company incorporated on 27 February 2024, having its registered office located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

37 Mr Patrick is the New GP's sole director and sole shareholder.

38 The New GP is a defendant to these proceedings in two capacities: (i) in its capacity as General Partner; and (ii) for and on behalf of the Fund in order to join the Fund as a defendant to these proceedings.

CDM

39 CDM (the Third Defendant) is a limited liability company incorporated in Delaware on 12 December 2024, having its registered address c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

40 CDM is governed by the terms of a Limited Liability Company Agreement dated 18 December 2024.

41 Since 18 December 2024, the primary asset of CDM has been the limited partnership interest in the Fund.

42 The sole manager of CDM is Mark Patrick.

43 From 18 December 2024 to 27 March 2025, the sole member of CDM was the Company.

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44 On 27 March 2025, Mr Patrick caused CDM to redeem the Company and admit DFW as the sole participating member.

CLO HoldCo

45 CLO HoldCo (the Sixth Defendant) is a Cayman Islands exempted company incorporated on 13 December 2010, having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands, and which is the Fund's main subsidiary.

46 The directors of CLO Holdco are Messrs Patrick and Murphy.

47 The sole shareholder of CLO Holdco is the Fund.

The Directors

Mark Patrick

48 Mr Patrick (the First Defendant) is a U.S. resident who is:

48.1 a director, holds the offices of (i) President, (ii) General Counsel, and (iii) Chief Investment Officer and is the current Management Shareholder of the Company;

48.2 the Manager of CDM (the Third Defendant);

48.3 the sole director and the sole member of DFW (the Fourth Defendant);

48.4 the sole director and sole shareholder of the New GP (the Fifth Defendant); and

48.5 a director of CLO HoldCo (the Sixth Defendant).

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49 Mr Patrick was employed as tax counsel by Highland Capital Management, L.P. ("**Highland**") from 2008 to 2021 and as tax counsel by Highgate Consulting Group, Inc. d/b/a Skyview Group from March 2021 to October 2024.

Paul Murphy

50 Mr Murphy (the Second Defendant) is a Cayman Islands resident who is:

50.1 a director of the Company;

50.2 a director of CLO HoldCo (the Fifth Defendant); and

50.3 a director of various other entities in the Charitable DAF structure.[2]

51 Mr Patrick and Mr Murphy are referred to herein as the "**Directors**".

THE CHARITABLE PURPOSE OF THE FUND

52 The Fund was formed on 28 October 2011 at the instigation of Mr James Dondero, a U.S. resident and the founder of Highland to enable certain assets, held through the shares in CLO Holdco, to be donated to a charitable foundation.

53 Upon the formation of the Fund, the Company was admitted as a limited partner and, by way of capital contribution, contributed all of the outstanding equity interests in CLO HoldCo to the Fund.

54 The purpose of the Fund was to make investments for the ultimate benefit of the Original Participating Shareholders and the Charities:

[2]Mr Murphy was appointed to the board of directors of the following entities on 22 April 2021; Liberty CLO Holdco, Ltd., Liberty Sub, Ltd., HCT Holdco 2, Ltd. and MGM Studios Holdco, Ltd. at the same time as Charitable DAF HoldCo, Ltd and CLO HoldCo, Ltd.

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54.1 The recitals to the LPA of the Fund provide that the purpose of the Fund was to "*make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code … for the economic benefit of the Limited Partner and its Indirect Charitable Owners*…".

54.2 Clause 1.3 of the LPA provides that "… *the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners*".

54.3 Clause 1.6(a) of the LPA provides that "*the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner*".

54.4 "Indirect Charitable Owners" is defined in the LPA as "*the indirect equity owners of the Limited Partners which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.*" i.e., the Company's Participating Shareholders or the Charities.

54.5 Clause 4.2(a) of the LPA provides that "*Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses*…".

54.6 The LPA does not modify the statutory duty of the General Partner to act in good faith and in the interests of the Fund.

55 The Charities are the following four US charitable or non-profit foundations:

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55.1 *The Dallas Foundation*: a charitable entity established in Texas in 1929 which has awarded over $1 billion in grants and manages over $500 million in assets.

55.2 *Greater Kansas City Community Foundation*: a charitable entity established in Missouri in 1978 which has awarded over $7 billion in grants and manages over $6 billion held in charitable funds.

55.3 *Santa Barbara Foundation*: a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million.

55.4 *North Texas Community Foundation*: which manages assets totalling $513 million and donated $38.9 million to local non-profits in 2023.

56 The Dallas Foundation, Greater Kansas City Community Foundation and Santa Barbara Foundation (the "**Supported Organisations**") hold their interests in the Company through their respective Supporting Organisation namely Highland Dallas Foundation, Inc. as the Supporting Organisation for The Dallas Foundation; Highland Kansas City Foundation, Inc. as the Supporting Organisation for the Greater Kansas City Community Foundation; Highland Santa Barbara Foundation, Inc as the Supporting Organisation for the Santa Barbara Foundation.

57 CFNT holds its Participating Shares in the Company directly.

THE TAX STRUCTURE

58 As a matter of U.S. tax law, in order for the Supported Organisations to benefit from distributions from the Fund in a tax efficient manner, it was necessary for them to hold their interests through an offshore corporate blocker entity, namely the Company:

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60%, in the case of cash gifts) instead of the substantially lower threshold for contributions to private foundations (30% of adjusted gross income, regardless of the character of the contribution).

64 The Supporting Organisations are "Type I" tax exempt organisations under the IRC which means they must be organised and operated exclusively to support and benefit their relevant charity and controlled by that charity:

64.1 S509(a)(3) of the IRC contains the qualifications for a "supporting organisation". Under that section, a supporting organisation is a tax-exempt entity that must be organised and then operate exclusively for either (i) the benefit of, (ii) to perform the functions of, or (iii) to carry out the purposes of one or more supported organisations. The supported organisations must also be s501(c)(3) entities;

64.2 There are three types of supporting organisations, known as “Type I”, “Type II” and “Type III”. S509(a)(3)(B)(i), (ii) and (iii) sets out the requirements for each “Type”, respectively;

64.3 S509(a)(3)(B)(i) provides that a Type I supporting organisation must be operated, supervised or controlled by the supported organisation; and

64.4 S509(a)(3)(C) provides that the supporting organisation may not be controlled by a disqualified person, other than the foundation managers and the supported organisation.

65 The Supporting Organisations are so controlled by the respective Supported Organisations.

66 The Supporting Organisations are governed by the terms of their respective Certificate of Incorporation and by-laws (the "**Bylaws**").

67 The Certificates of Incorporation provide (amongst other things) that:

67.1 the Supporting Organisation:

(a) is organised and shall be operated exclusively for charitable, educational and scientific purposes;

(b) is organised and operated exclusively to support and benefit the particular charity that controls it; and

(c) is a non-profit non-stock corporation and cannot issue any capital stock;

67.2 no part of the net earnings of the Supporting Organisation shall be distributable to the directors and officers of the Supporting Organisation or other private persons save that the Supporting Organisation can pay reasonable compensation for services rendered; and

67.3 net earnings can be used to make grants, loans and similar payments for charitable, educational and scientific purposes to benefit the relevant Supported Organisation.

68 The Bylaws provide that (amongst other things):

68.1 There are two classes of members of the Supporting Organisations with one member in each such class:

(a) the institutional member (the "**Institutional Member**") which shall be the Supported Organisation; and

(b) the individual member (the "**Individual Member**") which shall be Mr Dondero or an individual designated as the Individual Member in the Bylaws.

68.2 In terms of voting on a matter submitted to a vote of the members (except as otherwise provided in the Bylaws):

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(a) the Institutional Member is entitled to two votes; and

(b) the Individual Member is entitled to one vote.

68.3 Institutional membership is not transferable or assignable.

68.4 Individual membership is transferable or assignable only upon approval of the Institutional Member.

68.5 Both the Institutional Member and the Individual Member must be present in person or by represented proxy to constitute a quorum at all meetings of members.

68.6 There shall be three directors of the board of the Supporting Organisation. Two directors shall be elected annually by the Institutional Member and one director shall be elected annually by the Individual Member.

69 The relationship between the Supporting Organisations and their respective Supported Organisation are governed by separate operating/legal relationship agreements (collectively "**Operating Agreements**"). These agreements provide, among other things, that:

69.1 the Supported Organisation will provide certain services to the Supporting Organisation;

69.2 the Supported Organisation will appoint two of the three directors of the Supporting Organisation as required by Bylaws; and

69.3 in consideration for the services provided by the Supported Organisation to the Supporting Organisation, the Supporting Organisation shall pay a fee to the Supported Organisation.

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70 Mr Dondero sits on the board of each of the Supporting Organisations with two other directors from each of the Supported Organisations respectively.

71 The relationships, rights and obligations created by and between the Supported Organisations and the Supporting Organisations pursuant to the agreements entered into between them were at all material times in summary that:

71.1 the Supported Organisations control the Supporting Organisations through their majority voting interest and their ability to elect a majority of the directors of the Supporting Organisations;

71.2 the Supporting Organisations support the Supported Organisations by way of making grants to them from time to time from their assets, including any dividends received from the Company;

71.3 the Supporting Organisations have no ability to pay dividends to any private person or make payments to their directors (save reasonable reimbursement for reasonable out-of-pocket expenses) and can only make grants to the relevant Charity in furtherance of their charitable purposes; and

71.4 while Mr Dondero sits on the board of the Supporting Organisations, he does not control them, as a supermajority of the votes are always held by the respective Charity.

72 The Company will rely on the Certificates of Incorporation, Bylaws, Operating Agreements and terms of the IRC for their applicable full terms and effect.

THE CONTROL POSITION OF MR PATRICK OVER THE COMPANY AND THE FUND

73 The terms of the LPA grant sole control over the management and distribution of the Fund's assets to the General Partner. The terms of the Articles grant sole control over the management and distribution of the Company's assets to the Management Shareholder.

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The LPA

73.1 Clause 1.12

(i) The term "**General Partner**" shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

73.2 Clause 1.6

(i) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(ii) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners

hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

The Articles

73.3 Article 11

The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganization or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.

73.4 Article 12

Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

73.5 Article 13

…the rights attached to any such Class may… only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes case at such a meeting.

73.6 Article 84 (d)

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thereby assuming the Control Position from that date.

74.2 In or around 24 March 2021, Mr Scott:

(a) assigned 100% of the membership interest in the Original GP to Mr Patrick pursuant to an Assignment and Assumption of Membership Interests Agreement, which membership interest gave Mr Patrick the sole right to manage the Original GP;

(b) transferred to Mr Patrick the 100 Management Shares in the Company; and

(c) resigned as a director of the Company and resolved to appoint Mr Patrick as the sole director in his place.

74.3 On 25 March 2021, Mr Patrick was entered into the Company's Register of Members as the holder of the Management Shares.

74.4 Mr Patrick therefore assumed the Control Position from that date.

74.5 On 22 April 2021, Mr Patrick resolved to appoint Mr Murphy as a second director of the Company.

74.6 On 7 March 2024, by way of a Deed of Assignment and Assumption, Mr Patrick, as managing member of the Original GP, caused the Original GP to transfer its general partnership interest in the Fund to the New GP.

74.7 Mr Patrick is the sole shareholder and director of the New GP.

74.8 Mr Patrick therefore remains in the Control Position and was in such position at all relevant times since 25 March 2021.

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75 Further, the sole asset of the Fund is its shares in CLO Holdco (the Sixth Defendant). Mr Patrick and Mr Murphy are the directors of CLO Holdco and were appointed on 2 April 2021 and 22 April 2021 respectively.

76 The Control Position was not and is not a term of art but was nevertheless a legal and factual position:

76.1 where a single individual was the sole Management, and therefore voting, Shareholder of the Company;

76.2 where the same individual was a director of the Company;

76.3 where the same individual was the sole shareholder or controller of the General Partner;

76.4 where the same individual was a director of the General Partner;

76.5 where the same individual was in complete and effective control of at least the Company, of the General Partner, of the Fund and of CLO Holdco;

76.6 where the same individual was in effective sole control of all assets of the Fund;

76.7 where the same individual had no economic, residual, beneficial or winding up interest in assets of the Company;

76.8 where the same individual had no economic, residual, beneficial or winding up interest in assets of the General Partner;

76.9 where the same individual had no economic, residual, beneficial or winding up interest in assets of the Fund;

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(a) the Directors have power under the Articles to issue new Participating Shares that dilute the current Participating Shareholders, but must consider their fiduciary duties (including the duty to act in the best interests of the Company) when issuing such shares;

(b) the Participating Shares are non-redeemable;

(c) while payment of a dividend or other distribution is at the discretion of the Directors, if the Company were to have distributable reserves available, there may be a question of whether the Directors would be acting in its best interests to not pay some dividend or distribution; and

(d) the Directors have fiduciary duties to the Company which are paramount when considering (i) making a distribution and (ii) the distributable reserves available from which to make payments; they must have regard to what is in the Company's best interests, its future cash requirements, and its present and future solvency.

82 In February 2024, without telling the Supporting Organisations or the Charities, Mr Patrick sought to form a new entity to replace the Original GP. On 5 February 2024, Walkers emailed Mr Patrick to ask whether that entity should be a Cayman LLC or an exempted company, to which he responded later that day: "*Doesn't matter to me. Whatever from a strategic point of view - hard to find or track, or trace. Or find owners etc. Generic name. Strong litigation protection*."

83 On 27 February 2024, without telling the Supporting Organisations or the Charities, the New GP (the Fifth Defendant) was incorporated in the Cayman Islands.

84 On 7 March 2024, Mr Patrick, in his capacity as Managing Member of the Original GP, and without telling the Supporting Organisations or the Charities, executed a written consent for the

transfer of the GP Interest to the New GP, thereby replacing the Fund's General Partner. The Supporting Organisations subsequently discovered this change only by chance in February 2025.

85 In or around August 2024, the Supporting Organisations were provided with a financial analysis (prepared by NexPoint Advisors LP) of the Fund's annual expenses which showed or appeared to show increases in expenditure, particularly as follows (and without prejudice to any further relevant facts and matters relating to Directors' fees or expenses):

85.1 directors' fees increased from around US$40,000 in 2022 to almost US$600,000 in 2023 – and increased further to around US$2.25 million in the first half of 2024; and

85.2 expenses overall for the first half of 2024 were around US$18.3 million – almost the same amount spent over the entire course of 2023 (i.e. US$18.6 million).

86 On 13 September 2024, without telling the Supporting Organisations or the Charities, the Directors resolved (amongst other things) with respect to Mr Patrick's compensation:

86.1 to increase Mr Patrick's salary to US$850,000 per annum;

86.2 include a long-term incentive ("**LTI**") tied to the Fund's returns, being 7.5% of annualised net fund returns in excess of 10% (capped at 25% annualised return); and

86.3 the Company should assess legal expenses attributable to investment which impacted the LTI compensation and then determine whether the LTI compensation should be increased.

87 On 1 October 2024, without telling the Supporting Organisations or the Charities:

87.1 the Directors resolved (amongst other things) that Mr Patrick would receive:

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(a) an LTI payment of US$975,000; and

(b) an 'annual discretionary bonus' for 2023 at an amount of 2.5 times his base salary.

87.2 Previously, in or around October 2021, Mr Patrick had signed an 'employment agreement' for his position at the Company, for the period commencing 24 March 2021, which provides that Mr Patrick:

(a) shall receive a base salary of US$850,000;

(b) shall receive an LTI payment for the period 24 March 2021 to 24 March 2024 in the amount of US$4,759,000; and

(c) is eligible for both annual and discretionary bonuses as determined at the 'sole and absolute discretion of the Directors'.

88 Comparatively, Mr Scott's salary during his tenure in the Control Position was approximately US$60,000 per annum. Notwithstanding the above, the Supporting Organisations were not informed of these increases to the Directors' fees, remuneration and/or benefits.

89 In late October 2024, as a result of concerns arising from this additional expenditure, the Supporting Organisations requested that Mr Patrick provide relevant financial information for the Company and the Fund. Mr Patrick did not do so.

90 On 11 November 2024, Holland and Knight ("**H&K**"), U.S. attorneys for the Supporting Organisations, issued a letter to Mr Murphy advising that the Supporting Organisations no longer had confidence in the governance of the Company and/or the Fund and considered that a reorganisation of the governance structures was required to protect the charitable efforts of the Supporting Organisations (the "**No Confidence Letter**").

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91 On 26 November 2024, Mr Patrick sought advice from Walkers as to whether the Company could issue further Participating Shares to a new non-profit organisation to dilute the Supporting Organisations so as to weaken any winding-up petition brought by the Supporting Organisations on just and equitable grounds. Mr Murphy wrote that:

> "*Issuance of new participation shares, where the existing foundations represent a smaller % of the issued and outstanding shares, would weaken any petition based on just and equitable grounds but we must be careful they don't point to this as ground to wind up i.e. the existing foundations say we're artificially trying to weaken their position by diluting them therefore the company should be wound up or an order made for change of management /revocation of the share issuances. It's a very difficult situation to get right without gifting them a potential ground…*"

92 On 27 November 2024, Walkers responded to the Directors confirming that, if other shareholders were to oppose an equitable winding up, such opposition will be taken into consideration and would likely help.

93 On 9 December 2024, DFW was incorporated as a non-profit non-stock company in Delaware, by or with the assistance of Mr Douglas Mancino, partner of U.S. firm, Seyfarth Shaw LLP ("**Seyfarth**"), who, worked alongside Mr Patrick in the establishment of the Company and the Fund structure. The sole member of DFW was and is Mr Patrick.

94 On 7 February 2025, 318 Participating Shares were issued to DFW.

95 On 20 February 2025, Mr Patrick as the Management Shareholder of the Company resolved to adopt the Amended and Restated Memorandum and Articles of Association dated 20 February 2025 which, among other things:

95.1 Amended the Memorandum at paragraph 3 to give the Company charitable objects;

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95.2 Amended article 70 to introduce the concept of a Management Director (being a director holding the Management Share) and to weight the voting such that on all matters the Management Director had 10 votes and any other directors had 1 vote;

95.3 Deleted the previous articles 70 and 71 giving the right to appoint alternate directors and proxies. By email dated 27 February 2025, Walkers confirmed that the purpose of this deletion was to "*avoid the risk of 'outsiders' being brought into the fold*".

96 The Company reserves its position in respect of the validity of these amendments.

The purported restructuring: Mr Patrick causes the assignment of the Partnership Interest to CDM

97 On 12 December 2024, CDM was incorporated as a limited liability company in Delaware.

98 On 18 December 2024, without telling the Supporting Organisations or the Charities, the Directors of the Company resolved (the "**Transfer Resolutions**") to approve the transfer of the entirety of the Company's limited partnership interest in the Fund to CDM, in consideration for the contribution by the sole member of CDM of 100% of the membership interest in CDM. The Transfer Resolutions provide (amongst other things) that, based apparently on U.S. tax advice, the transfer of the limited partnership interest to CDM:

98.1 *"…would help insulate the DAF from exposure to [Dondero] and his entities who may be at risk of causing the [IRS] to revoke the tax-exempt status of one or more of the Participating Shareholders/supporting organizations which could imperil the assets of the Company*";

98.2 "*The IRS would look favorably upon any and all attempts for DAF to maintain its influence from what seems to be persistent attempts by Dondero and the entities controlled by him to use DAF for his private benefit and private inurement*";

98.3 As a Delaware limited liability company (CDM): "…*as permitted under the LLC Act, the terms of the LLC Agreement eliminate the fiduciary duties of the manager of the Transferee*".

99 On 18 December 2024, without telling the Supporting Organisations or the Charities, the Company, CDM and the New GP entered into a Deed of Assignment and Assumption (the "**Deed**") which was executed by Mr Patrick on behalf of each of (i) the Company in his capacity as Director; (ii) CDM in his capacity as Manager; and (iii) the New GP in his capacity as Director. Pursuant to the terms of the Deed:

99.1 The Company assigned its entire limited partnership interest in the Fund to CDM (the "**CDM Assignment**").

99.2 The New GP provided its written consent to the CDM Assignment and the admission of CDM as the new limited partner, in accordance with clause 1.11(a) of the LPA.

99.3 CDM agreed to exercise its reasonable best endeavours to ensure that 100% of the membership interest in CDM held by Mr Patrick would be transferred to the Company (the "**CDM Membership Interest**").

100 On 18 December 2024, the Company (as member) and Mr Patrick (as manager) entered into a Delaware law governed Limited Liability Company Agreement in respect of CDM (the "**LLC Agreement**").

101 The LLC Agreement, materially provides (amongst other things) that:

"Fair Market Value shall have the meaning set forth in Section 6.9(b).

…

The initial Manager shall be Mark Patrick.

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30

…

6.5 No Duties to the Company. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that the Manager shall owe no fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing.

…

6.9 Valuation of Company Assets.

(a) General. The Manager shall make a good faith determination of the value of the Company's assets in connection with any distribution pursuant to Section 8.1(b), as required under Section 4.3(c), upon the dissolution of the Company, and whenever otherwise required by this Agreement or determined by the Manager.

(b) Binding Effect. The value of any Company asset or Interest determined pursuant to this Section 6.9 shall be binding upon the Company and the Members and shall establish the "Fair Market Value" of such asset or Interest for all purposes under this Agreement.

…

7.3 Redemption. The Manager, in its sole discretion, may cause any Member's Interest to be redeemed by the Company for any reason. Any Interest of a Member to be redeemed by the Company shall be redeemed for the Fair Market Value of such Interest, as determined by the Manager in its sole discretion. Such payment to the

Member shall either be made in cash or pursuant to a promissory note. Such promissory note shall: (i) provide for interest at the lowest rate necessary to avoid the imputation of additional interest under the Code; and (ii) have a stated principal amount of the Fair Market Value of such Member's Interest being redeemed, as determined by *the Manager in its sole discretion."*

102 The Company will rely on the terms of the LLC Agreement for their applicable full terms and effect.

103 The effect of these transactions was that:

103.1 CDM was inserted into the corporate structure below and as a subsidiary of the Company and would hold the entirety of the limited partnership interest in the Fund previously held by the Company; and

103.2 The Company would hold the entire membership interest in CDM, with the result that the Company's sole asset, having previously been its limited partnership interest in the Fund, was exchanged for the CDM Membership Interest

(the "**Restructuring**")

104 The Restructuring was at an undervalue and not in the interests of the Company (in that the CDM Membership Interest was less valuable than the limited partnership interest that the Company assigned to CDM) because (amongst other things)*:*

104.1 The General Partner owed fiduciary duties to the Company in the Fund, but the Manager (Mr Patrick) did not owe any fiduciary duties to CDM; and

104.2 The CDM Membership Interests were susceptible to being redeemed by Mr Patrick (as Manager) in his sole discretion and for any reason, for "fair market value" as defined by Article 6.9, i.e. a "good faith determination of the value".

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105 On 3 April 2025, the Company obtained retrospective advice from Leading Counsel on the steps taken by the Company in December 2024 to effect the Restructuring and whether the transfer is "*open to challenge by the Participating Shareholders*", which advice:

105.1 refers to the justifications for the decisions taken as set out in the Restructuring Resolutions, and considers that, if called upon to justify the purpose of those decisions, the Directors would need to explain:

(a) how the penalisation or loss of tax-exempt status any of the current Participating Shareholders could have "*imperil[ed]"* the *"assets"* of the Company;

(b) the detrimental issues the Company was facing that the Directors believed would be mitigated by the interposition of CDM into the Fund structure; and

(c) how and/or why the Restructuring would (i) benefit the Company and (ii) reduce the influence of Mr Dondero; and

105.2 considers that a shareholder reviewing the reasons listed in the Restructuring Resolutions "*might suggest that the contents of the resolution are self-serving and do not tell the full story, but rather seek to obscure the true motivations of the board*".

Persistent and continual lack of information for the Supporting Organisations

106 On 23 January 2025, having received no response from Mr Murphy to the No-Confidence Letter, Julie Diaz, the CEO of The Dallas Foundation, sent Mr Patrick an email advising that the Supporting Organisations needed to better understand the Company's/Fund's asset position, and requesting certain information be provided by 10 February 2025.

107 Having received no response, on 28 January 2025, Ms Diaz sent a further email to the Directors expressing serious concern (i) that the Supporting Organisations' requests for information

continued to be disregarded, and (ii) about the ongoing lack of transparency on the part of the Directors.

108 On 30 January 2025, Mr Murphy replied to Ms Diaz stating that the Directors:

108.1 had not received the 23 January email – but understood the next step was for the Directors to "*present directly*" to the Supporting Organisations to address the No-Confidence Letter; and

108.2 are cooperating with the Supporting Organisations to provide additional information – but "*have no legal obligation to do so*" and such cooperation "*should not be construed as an implicit acknowledgement of any duty to continue providing information to you*".

109 On 31 January 2025, Mr Michael Stockham of H&K responded to Mr Murphy noting that he and Mr Patrick were fiduciaries, managing US$270 million in assets for the benefit of charities that support the most vulnerable (i.e. the Charities) and: *"[w]hatever your side's obvious antagonism to Mr Dondero, the fact remains that the underlying assets are ultimately for these charitable missions.*"

110 On 4 February 2025, Mr Murphy responded that while open to resolving the concerns, they (i.e. the Directors) were struggling to understand the Supporting Organisations' change in position.

111 On 7 February 2025, H&K responded that the Directors were fiduciaries in control of US$270 million for the benefit of charities: "*these monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed and … fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees*".

112 On 14 February 2025, H&K received a letter from Mr Mancino which rejected the accuracy of the reported increases in expenditure. On 27 February 2025, H&K responded that his clients

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115.3 one (1) week after the Directors and/or the Company redeemed the Company's interest in CDM without telling the Supporting Organisations or the Charities (see below);

115.4 one (1) day after the Directors placed the Company in voluntary liquidation, without telling the Supporting Organisations or the Charities.

Purported Share Issuance and allotment to DFW

116 In November 2024, without telling the Supporting Organisations or the Charities, the Directors began seeking advice from Walkers on whether the Company could issue new Participating Shares that would have the effect of diluting the existing Participating Shareholders - "*in light of a possible just and equitable winding up petition*" being filed by one of the Supporting Organisations.

117 On 7 February 2025, Walkers advised that, while there must be a corporate benefit to the exercise of the power, the Articles grant the Directors power to issue new shares that dilute the Participating Shareholders, and recommended the shares be issued sooner than later, and before any winding up petition was presented, since any alteration to the Company's membership made after the presentation of the petition would be void.

118 On 7 February 2025, without telling the Supporting Organisations or the Charities, the Directors resolved to issue 318 Participating Shares to DFW (the "**Share Issue Resolutions**"), resulting in DFW owning 51.04% of the Participating Shareholding and the dilution of the Supporting Organisations from an aggregate shareholding of 100% to 48.96% (the "**Share Issuance**"). The Share Issue Resolutions provided that:

118.1 Participating Shareholders had requested information and made false and misleading claims about the Company and its finances which the Directors believe were directed by Mr Dondero.

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118.2 Based apparently on U.S. tax advice:

(a) There was a heightened risk the IRS could revoke the tax-exempt status of the Participating Shareholders which could imperil the status and assets of the Company.

(b) Increasing the number of Participating Shareholders would mitigate the undue influence and private inurement of Mr Dondero.

(c) The IRS would look favourably upon attempts by the Fund to maintain its independence from his (i.e. Mr Dondero's) attempts to use the Fund for his private benefit.

118.3 The Directors believed the Share Issuance to DFW would protect the Company and the Participating Shareholders and resolved that the Share Issuance to DFW be approved.

119 On 5 March 2025, Leading Counsel (Mr Tony Beswetherick KC) issued draft retrospective (but final) advice to the Company on the Share Issuance in which he opined (amongst other things) as follows:

119.1 where Articles confer a power on directors to issues shares, that power is a fiduciary one and must only be exercised for proper purposes; an issue of shares "…*deliberately aimed at altering the balance of power between*" is problematic; the power should not be exercised with a view to altering an existing balance of power, irrespective of whether the directors consider that doing so is in the interests of the company;

119.2 the effect of the Share Issuance was that, if there were to be a company meeting or proposal to approve a modification that affects the Participating Shareholders' rights,

the ability of the prior Participating Shareholders to vote down such a change was negatively affected (DFW now having over 50% of the total Participating Shares);

119.3 it is not immediately clear from the Share Issue Resolutions whether the justifications stated were actually relevant to the Directors' decision. If they were relevant, it is not explained why the issue of shares to DFW would prevent false claims being made by Mr Dondero; it may be that those matters are part of the context, rather than part of the reason for the decision; and

119.4 the Participating Shareholders might suggest the Share Issue Resolutions are self-serving and do not tell the full story, but rather seek to obscure the true motivations of the board.

Plan to redeem the Original Participating Shareholders

120 In January and February 2025, the Directors, in connection with a plan to try to redeem the Participating Shareholders and/or the CDM Membership Interest held by the Company, and without telling the Supporting Organisations or the Charities, sought to obtain an analysis of the fair market value of the Participation Shares, and the discount that should be applied to such valuation, given the limited rights conferred upon Participating Share under the Articles.

Historic ValueScope Valuations

121 At the request of the Company, ValueScope, Inc. ("**ValueScope**") conducted a series of valuation analyses of 100 Participation Shares on a net asset value ("**NAV**") basis between December 2020 and September 2024 to determine their fair market value ("**FMV**"). These valuations were apparently prepared for internal reporting purposes and apparently applied consistent methodologies throughout the period. The results of these valuations are summarised below:

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Valuation date	NAV	NAV Per Share	Combined Discounts	FMV Per Share	FMV (100 shares)
31 December 2020	$176.96M	$580,193	17.0%	$481,468	$48,146,754
31 December 2021	$243.19M	$797,343	11.6%	$705,210	$70,521,019
31 December 2022	$276.24M	$905,711	15.4%	$766,549	$76,654,941
31 December 2023	$277.57M	$910,076	14.0%	$782,847	$78,284,712
30 September 2024	$269.05M	$882,140	13.9%	$759,614	$75,961,370

122 The final NAV-based valuation prepared by ValueScope prior to the Restructuring was dated 7 January 2025, and gave a valuation of 100 Participating Shares as at 30 September 2024 (the "**September 2024 Valuation**").

PwC and FTI

123 On 14 January 2025, Walkers inquired with PwC about a valuation of "*the shares of Charitable DAF Holdco*". In that email, Walkers, presumably on instructions from the Directors, listed the Supporting Organisations as "*potential adverse parties*".

124 On 7 February 2025, Walkers informed PwC that CDM had been inserted into the structure and requested that a second valuation be prepared of all the CDM Membership Interest, which valuation Walkers said was also to rely on the NAV as previously advised (rather than leaving

PwC to determine their own valuation methodology). PwC responded that their initial view is "*there is no meaningful difference*" between the two valuations requested - "*i.e. the economic interest in the underlying NAV still fully accrues to the participating shareholders*" - but that voting power/control remains with Mr Patrick (or with entities he controls). PwC asked for further information about what Mr Patrick was trying to achieve by the Restructuring to help them understand the valuation implications.

125 On 10 February 2025, PwC suggested a call with Walkers to discuss the second valuation, which call took place on 11 February 2025, and was also attended by Mr Patrick's '*onshore and Delaware counsel*'. Following that call, PwC declined to take on the instructions:

> *"... our view is that the new Delaware entity (CDMCFAD) effectively has full economic interest and control over the Fund, so we don't really see a basis for applying any discounts to the underlying Fund NAV for that entity. As it relates to the participating shareholders' interest in Charitable DAF Holdco, Ltd., we don't think we can reliably estimate the value/discount given the current fact pattern. While we could make hypothetical assumptions about how the articles may be interpreted, and/or how future cash flows may or may not be distributed, the impact on value is so substantial that we don't think it would be a meaningful exercise (i.e. we'd end up with the discount being 100% in one scenario, but 0% in another). On that basis, I don't think there is a fee / scope that can work for us currently."*

The FTI Memo

126 On 13 February 2025, without telling the Supporting Organisations or the Charities, the Company engaged FTI Consulting in London ("**FTI**") to advise on (i) the discount applicable (if any) to a valuation considering how the rights attached to Participation Shares differed from those typically associated with ordinary shares, and (ii) the impact of the existence of an additional share class (being the Management Shares held by Mr Patrick). FTI's engagement

letter also stated that "*The Memo will also include a valuation of the ordinary shares of CDMCFAD, LLC, the immediate subsidiary of Charitable DAF HoldCo*".

127 On 2 March 2025, FTI provided a draft memorandum to Walkers/the Company.

128 On 27 March 2025, FTI issued its final memorandum (the "**FTI Memo**"), which stated (amongst other things) that the rights of Participating Shares were extremely limited, and the potential distribution of cash was highly dependent on a member's alignment with the Fund's mission. The FTI Memo concluded that a "limited discount" for lack of control and marketability should be applied where a member is aligned with the Fund's mission (said to be close to the range concluded by ValueScope in its 7 January ValueScope Report, i.e. a discount of 13.9%), and a "high discount" of 95% where a member is not.

Legal advice sought

129 On 25 February 2025, without telling the Supporting Organisations or the Charities, the Directors sought advice from Walkers and Shields Legal on any powers under the Articles to enable the removal of the Supporting Organisations, including by (i) redemption of the Participating Shares (Art 14 and 28), (ii) a forced transfer of Participating Shares held by a Restricted Person (Art 21) (iii) or an alternative course whereby DFW repurchased the shares, which could then be cancelled, and new shares issued which are redeemable by the Company. Walkers advised that both redemption and forced transfers were not permitted but agreed with the alternative course involving DFW.

130 On 5 March 2025, as stated above, Leading Counsel provided retrospective advice to the Company regarding the Share Issuance, which also considered whether the Directors had power under the Articles to redeem the Participating Shares. Leading Counsel opined that they did not, on the basis that the Participating Shares were not issued as redeemable shares, and could not be redeemed unless there were a prior variation of the rights ascribed to them. That said, any proposal to vary the rights attached to the shares to make them redeemable would

support an argument "*that the [DFW Share Issue] was itself procured with a view, ultimately, to disenfranchising the pre-existing Participating Shareholders*".

131 On 17 March 2025, Mr Patrick wrote to Walkers in the following terms:

> *"Agree we need to finalise the [FTI valuation] reports …We should request any limits on use removed.*
>
> *We are seeking U.S. tax counsel to send emails to Paul and I that the non profits are Restricted Persons and/or best interests of the Company to have non dondero holders of its interests. After that, an alternative approach is to give them what they want – liquidate Holdco Ltd after its only investment is redeemed by the US. LLC pursuant to U.S. counsel advice above, that it's in the best interests of the Company to redeem all non-profits affiliated with Dondero. US LLC has same valuation conducted on its shares as the participation shares. so we would redeem the LLC interest, then distribute the proceeds out of Holdco Ltd., and file articles of Dissolution for Charitable daf Holdco Ltd before a wind up petition is filled. That would put us on the "high ground" to fight (rather the way this is currently heading in a defensive posture). they would have to scrap their wond up petition and fight for reinstatement, gripe about the valuations, and file fiduciary breach actions …*
>
> *We will stage this in light of the Doug letter, new advice of two separate U.S Tax counsel, and seeing how successful (or not) our outreach to the Texas attorney general office is.*
>
> *Note US LLC would make DFW its sole owner."*

132 The email of 19 March 2025 makes plain that the Directors, or at least Mr Patrick, intended to liquidate the Company without notice to the Supporting Organisations and to otherwise obstruct

the Supporting Organisations' ability to exercise any right to petition to wind up the Company on just and equitable grounds.

133 On 20 March 2025, Walkers provided comments on the FTI draft valuation, and FTI responded. These comments include, amongst other things*:*

> "Walkers: *It is stated at [3.2(2)] that "there is no overriding duty of DAF's Directors to act in the shareholders' interest. The Directors will act according to the best interest of the company, that is, to achieve the charitable causes that are aligned with DAF's mission". However, as a matter of Cayman law, directors owe duties to the company, and must act in its best interests [which are] generally regarded as the interests of the members as a whole, and in certain circumstances the objects of the company may be taken into account when determining what is in its best interests.*
>
> FTI: *Can you explain how it was in the interests of the company to materially dilute the existing shareholders*?
>
> …
>
> Walkers: *It is stated at [3.10] that "the Participating Shareholders do not have any rights to cause a liquidation/winding up of the company". However, the Participating Shareholders do have the right to seek a winding up of the company, as conferred upon them by the Companies Act (rather than the Articles).*
>
> FTI: *Why won't they just do this immediately and seek distributions? Isn't the ability to trigger a liquidation contradictory with point 1 which states* "*Shareholders do not have any right to exert influence on whether/how the funds of DAF are used or distributed*".
>
> …

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Walkers: *As per our comments, please could you delete references to our advice so as to avoid any potential arguments about waiver of privilege.*

FTI: *Your advice is important in us arriving at our conclusions. I understand from our legal team that we either (i) keep the reference to your advice or (ii) address the memo to you. Are you expecting there to be litigation in relation to the proposed transaction?*

…

Walkers: *Our client now seeks a valuation report which may, in connection with a proposed redemption of the membership interests in CDM, be disclosed to third parties and relied on to establish fair market value of both the membership interests in CDM, and in turn HoldCo.*

FTI: *This is a material change in the purpose and access rights of the report. Please provide more detail of the transaction. Is it the case that Mark will make CDM redeem the shares owned in by DAF? And who would you like to share the report with? And on what basis (e.g. non-reliance)? We also note our memo is not a valuation – it is a quantification of discounts given the rights of the participating shares. To do a valuation, we would need to do a more detailed exercise, including valuing the underlying assets."*

134 On 21 to 24 March 2025, FTI and Walkers had an exchange (amongst other things) as follows:

"FTI: *If the firm was wound down, would it result in distributions to the existing participating shareholders? Or would Mark still be able to shareholder structure to ensure the existing participating shareholders got nothing? Given they haven't received dividends since 2019, why haven't the participating shareholders triggered a wind down? If they can trigger a wind down and then in short order receive $300m of distributions, it does change things re discount.*

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Walkers: *if HoldCo was wound up, the Participating Shareholders would receive distributions which would be made pari passu, and Mark (if he was the liquidator) would not be able to ensure the existing Participating Shareholders get nothing. Whilst the Participating Shareholders have the right to seek to wind up under the Companies Act, they need a proper basis to do so… We can only assume [they] have not commenced proceedings seeking to wind the company up because they do not have a proper basis on which to do so …*

…

FTI: *Would an absence of distributions be sufficient grounds to make an application to wind the company up? If the participating shareholders did make the application, would Mark be able to issue a vast number of shares to another party before the distributions were made thereby ensuring the existing shareholders received very little?*

Walkers: *A Participating Shareholder may consider an absence of distributions sufficient grounds for a winding up order on the just and equitable basis… But it is difficult for us to say whether that petition would be successful. If (a) a Participating Shareholder presented a petition; (b) new shares were purportedly issued; and (c) the Court then made a winding up order, the issue of the new shares would be void and not impact the amounts the Participating Shareholders would receive.*"

135 On 26 and 27 March 2025, FTI and Walkers had an exchange (amongst other things) as follows*:*

"Walkers: *We have discussed with our client and onshore counsel and set out some amendments in the attached. In addition, we note (1) we have not received any material addressing reliance on the memo by CDM; and (2) the "Limitations and restrictions" section still provides that the memo "should not be used to support a transaction". For*

the memo to be useful in the circumstances, CDM [and HoldCo] need to be able to rely on it or a separate memo would need to be addressed to CDM on which it may rely. Further, both entities need to be able to rely on the memo(s) to support the proposed transaction.

FTI: *What is the intention of adding that directors should act in the interests of future members? I am struggling to understand how a director could act in a manner which is beneficial for future shareholders which is not also helpful for existing shareholders.*

The limitations in our note will remain. To do a valuation to support a transaction, we will need to do significantly more detailed work. This is an unusual/complicated situation. We are open to doing a fairness opinion on the transaction. But this will require approval from our risk committee and more information on the transaction and situation. We are happy for CDM to have our memo on a non-reliance basis. But this memo should not be used to support a transaction."

March 2025 ValueScope Valuation

136 Following the Restructuring, ValueScope was requested by Shields Legal, without telling the Supporting Organisations or the Charities, to prepare two valuation analyses:

136.1 100% Membership Interest in CDM; and

136.2 Certain Participating Shares of the Company as at 25 March 2025 (the "**March 2025 Valuation**").

137 The March 2025 Valuation had the same instructions, definition of value and scope of work as the September 2024 Valuation. Like the September 2024 Valuation, the March 2025 Valuation also referenced a 30 September 2024 balance sheet (and did not refer to any later analysis of

assets and liabilities). As shown below, the September 2024 Valuation and March 2025 Valuation produced very different results.

138 A comparative summary of the September 2024 and March 2025 Valuations is set out below:

Valuation Date	**DLOC***	**DLOM****	**Valuation Basis**	**FMV (100 Shares)**
30 September 2024	8.1%	6.3%	NAV	$75,961,370
25 March 2025	99.2%	20.00%	DCF***	$536,784
Difference	**+91.1%**	**+13.7%**		**-$75,424,586**

*DLOC – Discounted for Lack of Control

**DLOM – Discounted for Lack of Marketability

***DCF – Discounted Cash Flow

139 The March 2025 Valuation stated: "*for the valuation of non-controlling assets in holding companies such as DAF, the asset-based approach is most commonly used [as Valuescope had always done previously]. When applied to such companies, the approach consists of measuring the underlying net asset value of an entity (the fair market value of the entity's assets less the fair market value of its liabilities). The NAV is then discounted as appropriate to determine the fair market value of the fractional interest in the entity. However, in the case of the participation shares under consideration, the asset-based approach is not applicable. These shares do not confer control and only have a claim in respect of the underlying assets in a winding up.*"

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140 ValueScope does not appear to have considered whether winding up was a possibility, and therefore, whether value could have been realised that way and by reference to NAV.

141 For reasons which are unclear to the Company, the March 2025 Valuation expressly rejected the asset-based (NAV) approach on the basis that the economic benefits of the Participating Shares in the Company were contingent on discretionary distributions by its manager. The report states.

> *'Unlike equity interests that derive value from an allocable portion of the entity's net assets, the economic benefits of these shares are contingent upon discretionary distributions by the director. As such, their value is not directly tied to the entity's NAV, and an alternative valuation approach is required to appropriately reflect their characteristics and economic reality*'.

142 Accordingly, the methodology applied in the March 2025 Valuation was markedly different from the methodology applied in the September 2024 Valuation. Instead of relying on discounted net assets, the March 2025 Valuation:

142.1 applied a discounted cash flow ("**DCF**") methodology to estimate the present value of expected future distributions, rather than an asset-based approach, as had been applied in at least the past five annual valuations by ValueScope;

142.2 determined the FMV of 100 Participating Shares to be US$536,784;

142.3 applied a discount of 99.2% for DLOC; and

142.4 applied a discount of 20.00% for DLOM.

143 The DCF model is based on the present value of future distributions to the Company. ValueScope's report shows that these were estimated based on historic distributions themselves controlled by Mr Patrick.

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144 Based on the valuations above, between 30 September 2024 and 25 March 2025, the FMV of 100 Participating Shares in the Company apparently declined from US$75,961,370 to US$536,784, representing a reduction in value of 99.29% in less than a six month period, in which the Restructuring occurred, attributable to a change in valuation basis (amongst other things) from NAV to DCF.

145 Furthermore, ValueScope does not appear to have sense-tested their valuation. Although they identified "total equity" of c. US$270 million and concluded that all of the Participation Shares had a value of only c. US$1.6 million, they did not address themselves to who benefitted from the residual value of c. US$268 million.

Admission and Redemption

146 On 27 March 2025, Mr Patrick, as manager of CDM, executed a written consent (the "**Manager Consent**") to (a) cause CDM to admit DFW as an additional member of CDM pursuant to the terms of an Admission and Amendment No.1 Agreement (the "**Admission Agreement**") and (b) redeem the CDM Membership Interest held by the Company pursuant to the terms of a Redemption and Amendment No. 2 Agreement (the "**Redemption Agreement**" and together with the Admission Agreement, the "**Restructure Agreements**"):

146.1 The recitals to the Manager Consent stated that the redemption of the Company's membership interest was justified by reason of alleged attempts by the Supporting Organisations to exert control, and the potential loss of their (i.e. the Supporting Organisations') non-profit and tax-exempt status:

> *"… the Manager has formed the view that the Current Member, by virtue of being a member of the Company and having as Participating Shareholders the Highland Foundations, poses a material risk to the Company, its assets, and the Mission Statement of DAF due to, among other things, (i) officers and directors of the Highland Foundations seeking to assert dominion and control*

over the assets of DAF (through the Current Member), despite no legal ability to do so under the Current Member's organizational documents and despite the potential illegality (as demonstrated by tax counsel to DAF—see Exhibits C and D) of doing so, (ii) the potential loss of the non-profit status of the Highland Foundations due to their actions, among others, described in clause (i), and (iii) the potential loss of the tax-exempt status which the Highland Foundations currently enjoy and which is central to the mission of DAF, as a result of the factors including those described in clauses (i) and (ii)"

146.2 The Manager Consent further stated:

"*WHEREAS, in connection with the Restructure Agreements and the transactions contemplated thereby, the Manager (on behalf of the Company) obtained a valuation report of the membership interests of the Company from ValueScope and FTI Consulting, copies of which are attached hereto as Exhibit E, which valuation reports have informed the Manager the fair market value of the membership interests*"

146.3 Exhibits C and D to the Manager Consent are documents purportedly containing information regarding various alleged U.S. tax issues relating to the Company.

146.4 Exhibit C is the letter from Mr Mancino to the IRS dated 20 March 2025, in which Mr Mancino (amongst other things) stated:

(a) there has been "deterioration" of the Company's relationship with Highland Dallas Foundation, Inc. ("**HDF**") due to the undue influence and control exercised over HDF by Mr Dondero.

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(b) the information in the letter will demonstrate clearly that Mr Dondero's influence and control is an inappropriate donor relationship with representatives of the HDF who serve on the Board of Directors of and as officers of HDF.

(c) such undue influence and control potentially jeopardises the tax-exempt status of HDF as an organisation described in s.501(c)(3) and, at a minimum, causes it to fail to remain a supporting organisation described in s. 509(a)(3).

146.5 Exhibit D is an advice produced by Carrington Coleman (U.S. law firm) dated 25 March 2025 (the "**Carrington Advice**") which amongst other things:

(a) asserts that Mr Dondero has been attempting "*through his control of the Highland SOs, to exert dominion and control over the cash and property he previously donated to DAF and for which he claimed charitable deductions, all for his personal benefit.*"

(b) suggests that Mr Dondero was using the Company as his personal "*piggy bank*", and that it may be perceived by the IRS that the Fund has been or is his financial alter ego.

(c) concludes that "*the IRS will look favourably upon any and all attempts for DAF to maintain its independence from what seems to be persistent attempts by Dondero, and the entities controlled by him to use DAF for his private benefit and inurement.*"

146.6 Exhibit E contained two valuation reports:

(a) The first was a ValueScope valuation.

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(b) The second is the FTI Memo referred to above, in which FTI expressly stated that the analysis in the FTI Memo should not be used in support of a transaction, but which Mr Patrick, in any event:

(i) expressly relied upon in the Manager Consent to determine the fair market value of the CDM Membership Interest and the basis for the redemption of the Company's interests; and

(ii) permitted Carrington Coleman to refer to and rely on in the FTI Memo (indeed, having provided the 27 March 2025 copy which was a draft copy only).

146.7 On 27 March 2025, without telling the Supporting Organisations or the Charities, Mr Patrick executed the:

(a) Admission Agreement between CDM and DFW under which DFW was admitted as a member of CDM, in consideration for a capital contribution of US$1,637,192; and

(b) Redemption Agreement under which CDM redeemed the Company's membership interest in CDM for the same sum of US$1,637,192 (the "**Redemption Sum**").

147 On 27 March 2025, without telling the Supporting Organisations or the Charities, the Company entered into a letter agreement with CDM (the "**Letter Agreement**"), pursuant to which the Company assigned to CDM various contracts and agreements to which the Company was a party, listed in Schedule A to the Letter Agreement and CDM agreed to assume the liabilities and obligations in respect of those contracts.

148 On 2 April 2025, the Directors of the Company, by way of written resolution:

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148.1 Noted the redemption of the Company's membership interest in CDM for the Redemption Sum (the "**Redemption**").

148.2 Resolved to pay a dividend to the Original Participating Shareholders of US$1,612,192.01 in the amount of (i) US$528,587.54 with respect to each of HDF, Highland Kansas City Foundation, Inc. and Highland Santa Barbara Foundation, Inc.; and (ii) US$26,429.39 with respect to CFNT.

149 The substantive financial effect of the Redemption, under which DFW did or was committed to make a capital contribution equivalent to the Redemption Sum to CDM, and the CDM Membership Interest held by the Company were redeemed for the Redemption Sum, was that the Company's membership interest in CDM was purchased by or otherwise transferred to DFW for the Redemption Sum.

150 The substantive effect of the overall transaction or series of transactions pleaded above, including the Impugned Transactions already pleaded, was that:

150.1 The Company realised its interest in the Fund, which had a NAV of c. US$270 million, for c. US$1.6 million.

150.2 The Company made a distribution to the Original Participating Shareholders (c. US$1.6 million).

150.3 The Supporting Organisations and the Charities were actually or effectively divested of their indirect interest in the Fund, and the assets underlying the Fund; and

150.4 The Original Participating Shareholders were diluted from 100% of the economic interests in the Company to less than 50%.

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Voluntary Liquidation and Supervision Order

151 On 2 April 2025, the Directors resolved, without telling the Supporting Organisations or the Charities, to place the Company into voluntary liquidation and appoint Mitchell Mansfield and William Clarke (the JVLs) of Kroll (Cayman) Ltd as voluntary liquidators.

152 However, unaware of the voluntary liquidation, on 10 April 2025, the Supporting Organisations presented a petition seeking the winding up of the Company on a just and equitable basis, under section 92(e) of the Companies Act (2025 Revision) (the "**J&E Petition**").

153 On 25 April 2025, Walkers and Shields Legal held a call to discuss the J&E Petition. Following that call, Mr Patrick wrote in an email that the "*message ideas*" "*for Monday*" were to "*poison the well*", by which he meant to create a negative impression of Mr Dondero in the eyes of the Court.

154 On 6 May 2025, Justice Jalil Asif KC made a supervision order, under which voluntary liquidation of the Company was to be continued under the supervision of the Court pursuant to s.131 of the Companies Act (As Revised), and the JOLs were appointed.

OBLIGATIONS OWED BY THE DIRECTORS

155 At all material times, the Directors, as directors, owed the following duties individually to the Company:

155.1 A fiduciary duty to act *bona fide* in what he considers to be the best interests of the Company (the "**Best Interests Duty**").

155.2 A fiduciary duty to exercise his powers for a proper purpose, and for the purposes for which they were conferred (the "**Proper Purpose Rule**").

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155.3 A fiduciary duty not to place himself in a position where his personal interest actually or potentially conflicted with his duty of loyalty to the Company (the "**First No-Conflicts Duty**").

155.4 A fiduciary duty not to place himself in a position where his duty to another actually or potentially conflicted with his duty of loyalty to the Company (the "**Second No-Conflicts Duty**").

155.5 A fiduciary duty to not make an unauthorised profit from or by reason of his fiduciary position (the "**No Profit Duty**").

155.6 A fiduciary duty not to accrue or take a benefit or commercial opportunity from the Company without the full and informed consent of the Company (the "**No Self-Dealing Rule**").

155.7 A duty to exercise reasonable skill, care, and diligence in the performance of his role and function as director (the "**Reasonable Care Duty**").

156 With respect at least to Mr Patrick, his duties above and the standard to which he was obliged to comply with such duties are affected by being in the Control Position and the trustee or trustee-like position he occupied. Paragraph 76 above is also relied upon.

157 The Company reserves its position as to whether Mr Patrick, by reason of being in the Control Position and the trustee or trustee-like position he occupied, was an express or other trustee of the assets of the Fund for the Original Participating Shareholders and, through or in addition to them, the Charities.

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ATTRIBUTION OF KNOWLEDGE AND INTENTION

158 As a matter of Cayman Islands law, Mr Patrick's intention and knowledge of facts and matters for all such purposes relevant to this claim is to be attributed to each of DFW, CDM, and the New GP on the basis of at least the following facts:

158.1 As regards DFW, Mr Patrick is listed under DFW's certificate of incorporation, dated 9 December 2024, as "the member of the corporation", and the Admission Agreement showed he served as its "President". Mr Patrick is also the registered director of DFW. Mr Patrick the agent of DFW, in which capacity Mr Patrick executed the Admission Agreement.

158.2 As regards CDM, Mr Patrick is described under the LLC Agreement as the "Manager" of CDM, in which role Mr Patrick was CDM's agent, and in which capacity he (i) executed the Deed of Assignment and Assumption on behalf of CDM, and (ii) executed a written 'Manager Consent' (the "**Manager Consent**") approving the Redemption and Admission Agreements; and executed the Redemption and Admission Agreements.

158.3 As regards the New GP, Mr Patrick was and remains its director, and therefore its agent (in which capacity, Mr Patrick executed the Deed of Assignment and Assumption on the New GP's behalf). Further, Mr Patrick is the sole shareholder of the New GP.

159 Further, if applicable, as a matter of the laws of the State of Delaware, Mr Patrick's knowledge and intention is to be attributed to DFW, CDM, and the New GP on a like basis.

CLAIMS AGAINST THE DEFENDANTS

<u>Breaches of fiduciary and other duty</u>

160 The First and Second Defendants, and each of them, in their capacity as a Director of the Company, acted in breach of their fiduciary and other duties to the Company as follows.

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Restructuring, including the CDM Assignment

161 The Directors (and each of them), in procuring, directing or effecting the Restructuring as set out above, acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring, directing or effecting the Restructuring as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

161.1 The Plaintiff relies on paragraphs 77 to 105 above.

161.2 With the assistance of Mr Mancino, Mr Patrick took steps to form CDM and appoint himself as Manager of CDM.

161.3 Mr Patrick designed and/or negotiated and/or directed and/or effected the Restructuring in his capacity as Director of the Company, Director of the New GP, and Manager of CDM, being each of the parties to the Deed, and signed the Deed on behalf of each party.

161.4 The Directors (and each of them) approved the transfer of the Company's entire limited partnership interest in the Fund (having net assets worth c. US$270 million) to CDM, a Delaware entity whose LLC Agreement excluded any fiduciary obligations owed by its Manager (i.e. Mr Patrick) to CDM itself or to its members; in exchange for membership interest in CDM, which interest was capable of being extinguished, by redemption, and for a "fair value", determined at the discretion of the Manager (i.e. Mr Patrick).

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161.5 The Restructuring was of no benefit to the Company and not in its best interests, and Mr Patrick was subject to conflicts of interest (First and Second No-Conflicts Duties) and committed acts of self-dealing.

161.6 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known that the Company was proposing to exchange the Partnership Interest for a membership interest in CDM that was subject to redemption entirely at Mr Patrick's discretion, and for a "*fair value*" determined, in good faith, in his discretion.

(b) knew or ought to have known that the Company was therefore proposing to trade its Partnership Interest, which was not in practical terms defeasible, for an interest that could be extinguished: (i) at a time over which it had no control, (ii) for a price over which it had very limited control and (iii) for a potential valuation basis which excluded a net asset valuation of the assets held in the Fund.

(c) knew or ought to have known that the CDM Membership Interest was to be in a Delaware-incorporated company whose LLC Agreement excluded any fiduciary obligations owed by its Manager either to CDM itself or to its members and was therefore less valuable than the Partnership Interest.

(d) knew or ought to have known that the CDM Assignment was therefore a transaction at an undervalue.

161.7 It can be inferred, and is averred, that Mr Patrick was drawing fees or remuneration or emoluments or benefits from CDM without the full authorisation or full and informed consent of the Company.

161.8 Further, and in any event, the Directors (and each of them) acted when each of them:

(a) knew or ought to have known that the CDM Assignment was the first step in a series of connected future transactions, including those pursuant to the CDM Assignment, the Share Issuance, the Admission Agreement, the Redemption Agreement and the Redemption, under which the Directors were able to and ultimately did procure the redemption of the Company's CDM Membership Interest, thus extinguishing the Company's interest in the Fund, for an undervalue.

(b) knew or ought to have known that:

(i) the full terms and effect of the CDM Assignment was not a proper or proportionate response to any genuinely perceived risk about U.S. tax concerns.

(ii) the full terms and effect the CDM Assignment was not a proper or proportionate response to any genuinely perceived risk to the Company, which was not itself a Donor Advised Fund and/or did not enjoy or require tax-exempt status under s.501(c)(3) of the U.S. Internal Revenue Code.

(iii) other approaches to address concerns with respect to the tax-exempt status of the HDF short of undertaking the Restructuring (and entering into the CDM Assignment) included notifying the HDF of the conflict and/or concerns and requesting it to remedy it or them.

(iv) even if the facts and matters alleged in relation to the HDF were correct, there was more than a possibility, after an extended passage of time and at least two levels of appeal, that a U.S. tax audit would result in an adverse determination with respect to the tax-exempt status of the HDF.

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(v) the tax-exempt status of the HDF was of no concern or no reasonable concern to the Company.

(c) knew or ought to have known that they were keeping the Restructuring, the CDM Assignment, CDM itself and all the surrounding circumstances secret from the Participating Shareholders.

162 By reason of the foregoing breaches of duty or any of them:

162.1 The CDM Assignment is void, alternatively voidable and hereby avoided.

162.2 CDM holds the Partnership Interest on trust or constructive trust for the Company.

162.3 CDM is required to re-transfer the Partnership Interest to the Company and account for any profits on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

Share Issuance

163 The Directors (and each of them), in procuring, directing or effecting the Share Issuance as set out above, acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring, directing or effecting the Share Issuance as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

163.1 The Plaintiff relies on paragraphs 77 to 84, 91 to 96 and 106 to 119 above.

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163.2 The Directors (and each of them) designed and/or engineered the Share Issuance, having sought legal advice in relation to the powers conferred on them as Directors of the Company, for the improper purpose of:

(a) diluting without any proper reason or corporate purpose the existing Participating Shareholders and/or depriving the ability of the Supporting Organisations to continue to comprise a majority of the Participating Shareholders.

(b) inserting DFW as a new Participating Shareholder, an entity under the sole control of Mr Patrick, to obstruct and/or prejudice and/or adversely affect the exercise of a Participating Shareholders' right to petition for the just and equitable winding-up of the Company.

163.3 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known the issue and allotment of shares at par to DFW was of no benefit to the Company.

(b) knew or ought to have known that the exercise of the power to issue shares and allot them to DFW was for the improper purpose of diluting the interest of the Original Participating Shareholders.

(c) knew or ought to have known that the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW was a response to the prospect that the Supporting Organisations might present a petition for the winding-up of the Company on a just and equitable basis, as indeed they did on 10 April 2025 in ignorance of the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW.

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(d) knew or ought to have known that the sole or primary purpose of the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW was to insert a new majority Participating Shareholder (under their or at least Mr Patrick's control) into the Company's share capital structure to (if they or at least Mr Patrick deemed fit) to oppose the actions of the Supporting Organisations and/or the Original Participating Shareholders, both in relation to any potential contributories' winding-up petition and otherwise, and/or to obstruct and/or prejudice and/or adversely affect the exercise at any time of any rights of the Supporting Organisations as Participating Shareholders.

163.4 Mr Patrick designed and/or directed and/or effected the Share Issuance in his capacity as Director of the Company, even though he was 'President' of DFW and the sole member and the sole director of DFW.

163.5 It can be inferred, and is averred, that Mr Patrick was drawing fees or remuneration or emoluments or benefits from DFW (if not also from CDM) without the full authorisation or full and informed consent of the Company.

164 By reason of the foregoing breaches of duty or any of them:

164.1 the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW is void, alternatively voidable and hereby avoided.

164.2 DFW holds its shares on trust or constructive trust for the Company.

164.3 DFW is required to concur in the rescission of the allotment and to re-transfer its shares to the Company on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

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164.4 The Company's register of shareholders shall be rectified accordingly.

Admission and Redemption

165 The Directors (and each of them), in procuring or entering into the Admission Agreement and the Redemption Agreement, and/or in procuring, directing or effecting the Redemption acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring or entering into the Admission Agreement and the Redemption Agreement, or in procuring, directing or effecting the Redemption as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

165.1 The Plaintiff relies on paragraphs 120 to 150 above.

165.2 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known that:

(i) proceeding on the basis of the Seyfarth/Mancino letter to the IRS dated 20 March 2025 was flawed or unreasonable.

(ii) proceeding was not a proper or proportionate response to any genuinely perceived risk about U.S. tax concerns.

(iii) the tax-exempt status of the HDF was of no concern or no reasonable concern to the Company.

(iv) proceeding on the basis of the March 2025 Valuation and the FTI Report was flawed in that: (i) the 99.2% discount in value proposed by the

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166.1 DFW holds the CDM Membership Interest on trust or constructive trust for the Company.

166.2 DFW is required to concur in the transfer of the CDM Membership Interest to the Company or as the Company directs on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

Further claims against Mr Murphy

167 In respect of any breach of duty as set out above for which Mr Patrick alone is liable:

167.1 At all material times, Mr Murphy worked in close concert with Mr Patrick, including at his direction.

167.2 Mr Murphy knew or ought to have known all the facts and matters pleaded above as known or ought to have been known by Mr Patrick.

167.3 Mr Murphy knew or ought to have known of all the facts and matters pertaining to such breach or breaches by Mr Patrick.

167.4 Mr Murphy took no steps to stop Mr Patrick or to prevent or report the breach or breaches of duty by Mr Patrick.

167.5 Mr Murphy accepted and acquiesced in all steps and actions suggested, promoted or effected by Mr Patrick.

167.6 Mr Murphy accepted and acquiesced in the breach or breaches of duty by Mr Patrick.

167.7 As a consequence, Mr Murphy has acted in breach of his duties to the Company, including the Best Interests Duty and the Reasonable Care Duty.

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

Directors' Fees, Remuneration and Expenses

168 The Company is still unclear as to what precise fees or remuneration or emoluments or benefits were afforded to the Directors and from what source, and as to the proper expenses of the Company, in the period after March 2021 and thus reserves its position.

169 As is pleaded above in paragraphs 85 to 89, the Directors approved large increases for Mr Patrick's remuneration, benefits or emoluments: by around 1 October 2024, Mr Patrick's remuneration comprised a base salary of US$850,000, a bonus of 2.5 times that base salary, an LTI incentive payment of US$975,000; for the period March 2021 to March 2024, Mr Patrick was entitled to an aggregate LTI payment of US$4,759,000; and eligibility for discretionary and annual bonuses in addition, to be determined at the sole and absolute discretion of the Directors. By contrast, Mr Scott's annual salary and entire benefits during his tenure in the Control Position was US$60,000.

170 Insofar as the Directors (or each of them) approved of or procured any payment or benefit to or for Mr Patrick or Mr Murphy more than the sum of US$60,000 per annum each in respect of fees or remuneration or emoluments or benefits, such sum was excessive and conferred in breach of duty to the Company, including the Best Interests Duty, the Proper Purpose Rule, the first No-Conflicts Duty, the No Self-Dealing Rule and the Reasonable Care Duty.

171 Further, as is pleaded above, the Directors (or each of them) approved or caused the payment of considerable sums by way of expenses, amounting for example to US$18.3 million for the first half of 2024, and US$18.6 million spent over 2023. Such expenses may include the expenses incurred in effecting the transactions which are the subject matter of these proceedings. The reasonableness or *bona fides* of these expenses is not accepted by the Company.

172 The Company claims:

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

172.1 Full information, documents and discovery as to the fees or remuneration or emoluments or benefits or expenses paid or claimed by Mr Patrick and Mr Murphy and each of them since March 2021.

172.2 Full information, documents and discovery as to expenses incurred by the Company or the Fund or any of the Fund's subsidiaries or investments since March 2021.

172.3 Repayment to the Company of all fees or remuneration or emoluments or benefits paid or claimed by Mr Patrick or Mr Murphy and each of them in excess of US$60,000 per annum; together with all improperly paid expenses caused or procured by Mr Patrick or Mr Murphy (or damages or equitable compensation in relation thereto).

Unlawful Means Conspiracy

173 The facts and matters pleaded above amount to an unlawful means conspiracy as follows:

173.1 It is unclear when the conspiracy began but it appears to have started by around the start of 2024.

173.2 The original conspirators were Mr Patrick and Mr Murphy. The Company is unaware of the circumstances in which Mr Patrick and Mr Murphy agreed or combined and is unable to plead further pending further information or discovery.

173.3 As they were incorporated and participated in the facts and matters pleaded above, the New GP, CDM and DFW joined the conspiracy but remain liable in damages for all losses, including prior to joining the conspiracy.

173.4 The conspiracy was a conspiracy to injure the Company.

173.5 The overt acts of the conspiracy were all the facts and matters pleaded above, including as breaches by Mr Patrick or Mr Murphy.

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173.6 The unlawful means of the conspiracy were all the facts and matters pleaded above as breaches of duty by Mr Patrick or Mr Murphy.

173.7 Each of the conspirators intended to injure the Company. This averment is an inference from all the facts and matters pleaded above.

173.8 As a consequence, the Company has suffered loss and damage, as a result of the Restructuring, the CDM Assignment, and the Admission and Redemption, and the combined effect thereof, as set out above.

Proprietary claim and/or unconscionable receipt

174 The facts and matters pleaded above give rise to claims by the Company for unconscionable receipt as follows:

174.1 CDM received the Company's Partnership Interest in the Fund under the CDM Assignment.

174.2 The knowledge of CDM was and is that of Mr Patrick.

174.3 The breaches of duty in relation to the CDM Assignment above are relied upon.

174.4 CDM knew that the CDM Assignment was at an undervalue and that causing or procuring the Company to enter into the CDM Assignment was a breach of fiduciary duty by Mr Patrick and/or Mr Murphy.

174.5 By reason of the foregoing, it is unconscionable for CDM to retain the Partnership Interest in the Fund and CDM is liable to account to the Company in equity, by restoring Partnership Interest in the Fund to the Company and/or accounting for any profits or otherwise accounting to the Company in equity.

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Unjust Enrichment

175 In receiving the Company's Partnership Interest in the Fund, CDM was unjustly enriched at the Company's expense and is liable to the Company in restitution:

175.1 The Partnership Interest was transferred on the basis that there was a valid assignment agreement effecting that transfer.

175.2 That basis has totally failed, the CDM Assignment being either void, or avoided hereby.

Alter Ego and Lifting the Corporate Veil

176 In order to obtain the return to it of the Partnership Interest in the Fund, together with an Account of Profits, the Company does not need as a matter of law to make any allegation of "alter ego" or to lift the corporate veil in relation to CDM or DFW.

177 If, contrary to the paragraph above, the Company does so need, it makes the following allegations for the purposes of all relevant claims or causes of action set out above.

177.1 CDM is the "alter ego" of Mr Patrick.

177.2 DFW is the "alter ego" of Mr Patrick.

177.3 In relation to the receipt of any property by CDM directly or indirectly from the Company or the accrual of any profits or benefits by reason of such receipt, the corporate veil should be lifted, with the consequence that such receipt and such profits or benefits should be treated as those of Mr Patrick personally.

177.4 In relation to the receipt of any property by DFW directly or indirectly from the Company or the accrual of any profits or benefits by reason of such receipt, the corporate veil should be lifted, with the consequence that such receipt and such profits or benefits should be treated as those of Mr Patrick personally.

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PARTICULARS

(a) In relation to CDM:

(i) Mr Patrick was and is the Manager. There are no other officers or managers.

(ii) Mr Patrick was and is the managing member.

(iii) CDM was incorporated at Mr Patrick's instigation in order to enter into the CDM Assignment or a transaction of like nature.

(iv) CDM's sole or primary purpose was to play a part in a scheme whereby Mr Patrick would obtain control of the Company's Partnership Interest in the Fund free of the Company, the Company's obligations towards the Supporting Organisations and (if the scheme succeeded) free of Mr Patrick's duties to the Company.

(v) CDM exists and operates in order to conceal the identity of the true or real actor, namely Mr Patrick.

(b) In relation to DFW:

(i) Mr Patrick was and is the 'President'. There are no other officers or managers.

(ii) Mr Patrick was and is the sole member.

(iii) Mr Patrick was and is the sole registered director.

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70

(iv) DFW was incorporated at Mr Patrick's instigation in order to enter into a transaction whereby it would in effect take over the Company's interest in CDM pursuant to the CDM Assignment.

(v) DFW's sole or primary purpose was (i) to play a part in a scheme whereby Mr Patrick would obtain control of the Company's Partnership Interest in the Fund free of the Company, the Company's obligations towards the Supporting Organisations and (if the scheme succeeded) free of Mr Patrick's duties to the Company, (ii) to be the ultimate vehicle by which Mr Patrick would so control of the Company's Partnership Interest in the Fund and (iii) to be a newly-inserted majority Participating Shareholder (under at least Mr Patrick's control) in the Company's share capital structure to oppose the actions of the Supporting Organisations, both in relation to any potential contributories' winding-up petition and otherwise, and/or to obstruct and/or prejudice and/or adversely affect the exercise at any time of any rights of the Supporting Organisations as Participating Shareholders.

(vi) DFW exists and operates in order to conceal the identity of the true or real actor, namely Mr Patrick.

Loss and Damage

178 As a consequence of the above, the Company has suffered loss and damage, including but not limited to:

178.1 Its Partnership Interest in the Fund.

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178.2 The costs and expenses incurred in relation to the CDM Assignment, the Share Issuance, the Letter Agreement and the Redemption (including all legal or other advice taken in relation thereto).

178.3 Excessive Directors' fees or remuneration or emoluments or benefits.

178.4 Improper expenses (if any).

178.5 The lost opportunity cost of the Fund and its subsidiaries deploying such funds (as set out in (1), (2) and (3) above) elsewhere, and the consequent fall in value of the Company's interest in the Fund.

178.6 The legal and liquidation costs of investigating the conspiracy, and the costs of these proceedings.

RESERVATION OF POSITION

179 The Company and the JOLs (who direct the Company in bringing these proceedings) fully reserve their position to apply to amend this claim in any way or to bring fresh or further proceedings against any of the Defendants (whether in the Cayman Islands or elsewhere) in the name of the Company or in the name of the JOLs.

OTHER

180 CLO Holdco is joined as a party to these proceedings in order that, as the main subsidiary of the Fund, it may abide by any Order that the Court may make.

INTEREST

181 The Company claims interest pursuant to section 34 of the *Judicature Act (2021 Revision)* and the *Judgment Debts (Rates of Interest) Rules (2021 Revision)*, alternatively pursuant to the

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Court's equitable jurisdiction, compounded in equity at quarterly rests, alternately at common law, for such period and at such rate as the Court thinks just.

PRAYER FOR RELIEF

In the premises, the Company claims:

(1) Damages or equitable compensation.

(2) Orders for restitution or disgorgement.

(3) Orders for the restoration of property to the Company.

(4) Interlocutory or final injunctions as may be necessary or appropriate.

(5) Orders for the appointment of a Receiver or Receivers, as may be necessary or appropriate.

(6) Orders for the provision of documents or information at an early interlocutory stage.

(7) Orders for the cancellation of the Share Issuance, as appropriate.

(8) Rectification of the register of the Company, as appropriate.

(9) Orders pursuant to s.99 of the Companies Act (as revised), as appropriate.

(10) An Account of the fees or remuneration or emoluments or benefits or expenses paid or claimed by Mr Patrick and Mr Murphy and each of them since March 2021.

(11) An Account of all expenses incurred by the Company or the Fund or any of the Fund's subsidiaries or investments since March 2021.

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(12) All other Accounts, including an Account of Profits, or Inquiries as may be necessary or appropriate; and further Orders to give effect to the outcome of such Accounts or Inquiries, including Orders for payment of sums to the Company.

(13) All such declarations as may be necessary or appropriate, including to give effect to the continuing interest of the Company in the Fund on the basis of a proprietary interest, trust, constructive trust or otherwise.

(14) All such other relief relating to the Impugned Transactions as may be necessary or appropriate.

(15) Interest as above.

(16) Further or other relief.

(17) Costs.

DATED this 15th day of July 2025

Maples and Calder (Cayman) LLP

Maples and Calder (Cayman) LLP

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DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

182 The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

183 A Defendant who states in the Defendant's Acknowledgment of Service that the Defendant intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiffs may enter judgment against the Defendant without further notice.

184 A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings

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states, in answer to Question 3 in the Acknowledgment of Service, that the Defendant intends to apply for a stay, execution will be stayed for 14 days after that Defendant's Acknowledgment, but the Defendant must, within that time, issue a Summons for a stay of execution, supported by an affidavit of the Defendant's means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See overleaf for Notes for Guidance

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Notes for Guidance

1 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2 For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to the Defendant.

3 Where the Defendant is sued in a name different from the Defendant's own, the form must be completed by the Defendant with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after that Partner's name.

5 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN THAT PERSON'S OWN, the form must be completed by the Defendant with the addition in paragraph 1 of the description "trading as (.....)" after that Defendant's name.

6 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.

7 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.

8 A Defendant acting in person may obtain help in completing the form at the Courts Office.

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give that Attorney this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

☐ yes	☐ no

3. If the claim against the Defendant is for a debt or liquidated demand, AND the Defendant does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

☐yes ☐ no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, the Defendant must give the Defendant's post office box number and the physical address of the Defendant's residence or, if the Defendant does not reside in the Cayman Islands, the Defendant must give an address in Grand Cayman where communications for the Defendant should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of that Plaintiff's name, address and reference, if any, in the box below.

Maples and Calder (Cayman) LLP PO Box 309 Ugland House Grand Cayman KY1-1104 Cayman Islands: CJM/JRN/LRA/TQR/858403-01

Indorsement by defendant's Attorney (or by defendant if suing in person) of that defendant's name, address and reference, if any, in the box below.

EXHIBIT 65



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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed July 21, 2025

United States Bankruptcy Judge

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER REGARDING STAY REQUESTS [ADDRESSING DE ## 4326 & 4308]

I. INTRODUCTION

This Order addresses the "Motion to Stay 9019 Order" filed July 17, 2025, by the Dugaboy Investment Trust (the "Dugaboy Stay Motion"). DE # 4326. This Order also addresses a letter sent to this court by Texas Attorney General Ken Paxton, which letter was dated July 9, 2025, and was docketed on July 10, 2025, at DE # 4308 (the "Texas AG Letter"). This court will sometimes refer to the Dugaboy Stay Motion and the Texas AG Letter jointly as the "Stay Requests."



The Dugaboy Stay Motion. The Dugaboy Stay Motion was filed by the Dugaboy Investment Trust ("Dugaboy"). Dugaboy is a trust whose beneficiaries are James Dondero and his children/descendants. Mr. Dondero is a co-founder and former CEO of the above-referenced Reorganized Debtor ("Highland" or Reorganized Debtor"). As later discussed, Dugaboy was a former owner of a *de minimis* equity interest in Highland (less than .5%). The Dugaboy Stay Motion asks the bankruptcy court to stay ***for 90 days*** the court's June 30, 2025 "Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith" (the "Rule 9019 Settlement Order"). DE # 4297. The Rule 9019 Settlement Order approved a settlement ("Settlement Agreement") between the Reorganized Debtor (and certain post-confirmation plan trusts), on the one hand, and Hunter Mountain Investment Trust ("HMIT" or "Hunter Mountain") and certain of its affiliates, on the other. ***Hunter Mountain was the 99.5% equity owner of Highland***. Dugaboy desires a 90-day stay of the Rule 9019 Settlement Order so that Dugaboy and other parties can investigate what it asserts was a fraud committed by an individual named Mark Patrick in connection with a Cayman Islands charitable foundation structure ("Cayman Islands Charitable Foundation Structure") that Mark Patrick manages. There are currently liquidation proceedings ongoing in the Cayman Islands, involving this Cayman Islands Charitable Foundation Structure, where these fraud allegations have been raised and presumably will be litigated. *See* Exh. A to the Dugaboy Stay Motion (which is an 83-page Writ of Summons and Statement of Claim filed on or about July 15, 2025, in the Grand Court of the Cayman Islands (the "Cayman Islands Action").

What on earth does this litigation in the Cayman Islands have to do with the Rule 9019 Settlement Order (and the underlying Settlement Agreement approved therein)? Well, as it turns out, this same Mark Patrick that is being accused of fraud in the Cayman Islands Action signed the

Settlement Agreement (on behalf of the Hunter Mountain entities). ***To be sure, the Hunter Mountain entities are not themselves charitable organizations***. Mark Patrick just happens to be a representative of both Hunter Mountain and the Cayman Islands charitable entities that are the subject of the Cayman Islands Action. Note that Dugaboy appealed this bankruptcy court's Rule 9019 Settlement Order on July 14, 2025. The Dugaboy Stay Motion is not a standard request for a stay pending appeal, pursuant to Fed. R. Bankr. Proc. 8007. Rather, a stay is sought, pursuant to Bankruptcy Code section 105, "to provide all stakeholders with time to investigate a motion under Rule 60 to vacate the [Rule] 9019 [Settlement] Order."[1]

The Texas AG Letter. The Texas AG Letter is not a properly filed motion. *See* Fed. R. Bankr. Proc. 5005. In any event, the court has considered it. It has a similar theme, only it asks for ***a stay of the entire bankruptcy proceedings*** (which are now more than four years post-confirmation). The Texas AG notes in his letter that, as the representative of the public's interest in charity, he is charged under Texas law with the power and duty to protect and enforce the public interest in nonprofit organizations, foundations, and charitable trusts.[2] The Texas AG Letter states that the Texas AG Office is investigating "persons and entities, some of whom are involved in this bankruptcy proceeding, in response to complaints"[3] and that "[o]ne of the complaints under investigation involves conduct allegedly taken by persons or entities during this bankruptcy proceeding."[4] The timing and statements in the Texas AG Letter suggest that the person being investigated is the same Mark Patrick addressed in the Dugaboy Stay Motion.

[1] Dugaboy Stay Motion, ¶ 3.
[2] Texas AG Letter, 1 (citing Tex. Prop. Code § 123.002 (authorizing the Attorney General to intervene in a "proceeding involving a charitable trust.") and *Tex. v. Veterans Support Org.*, 166 F. Supp. 3d 816, 820-21 (W.D. Tex. 2015)).
[3] Texas AG Letter, 1 (citing Tex. Bus. & Com. Code § 17.61).
[4] Texas AG Letter, 1.

Summary of Ruling. For the reasons set forth below, this bankruptcy court will not grant a stay. ***Whatever the misdeeds may or may not be of Mark Patrick, they are not sufficiently intertwined with the Highland bankruptcy estate (or the Settlement Agreement) to justify a stay***. Neither this bankruptcy case, nor the contested matter involving the Settlement Agreement, is a "proceeding involving a charitable trust." As further described herein, there happens to be a "proceeding involving a charitable trust" ongoing in the Cayman Islands. Mark Patrick is apparently accused of misdeeds therein. But, in the bankruptcy case, Mark Patrick is merely a signatory for a counter-party to a settlement agreement with the bankruptcy estate (that counter-party being the former 99.5% equity owner of Highland, namely Hunter Mountain). This court evaluated the Settlement Agreement in the manner that jurisprudence requires[5] (and weighed the evidence presented, including witness testimony from four witnesses). As noted, this court's Rule 9019 Settlement Order is now subject to appeal. This court determined that the Settlement Agreement was fair and equitable, within the range of reasonableness, and in the best interest of the Highland bankruptcy estate being administered under a confirmed plan with disinterested fiduciaries. The Stay Requests do not articulate a bona fide reason to stay the Rule 9019 Settlement Order or, for that matter, a bankruptcy case that is now more than four years past confirmation. Importantly, it would appear that the parties have other avenues to address any malfeasance of Mark Patrick *vis-à-vis* the liquidation proceedings involving the Cayman Islands Charitable Foundation Structure.

[5] *In re Jackson Brewing Co.,* 624 F.2d 599, 603 (5th Cir. 1980); *Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015); *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.),* 119 F.3d 349, 356 (5th Cir. 1997); *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917-18 (5th Cir. 1995); *Gluckstadt Holdings, L.L.C. v. VCR I, L.L.C. (In re VCR I, L.L.C.),* 922 F.3d 323, 327 (5th Cir. 2019) (quoting *Cadle Co. v. Mims (In re Moore),* 608 F.3d 253, 263 (5th Cir. 2010)).

II. THE RULE 9019 SETTLEMENT MOTION

On May 19, 2025, a Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith [DE # 4216] (the "Rule 9019 Motion") was filed by the Reorganized Debtor, the Highland Claimant Trust (the "Claimant Trust"), and the Highland Litigation Sub-Trust (the "Litigation Sub-Trust") (collectively, the "Highland Entities").[6]

The Rule 9019 Motion proposed a broad settlement (the aforementioned Settlement Agreement) that would resolve most of the remaining issues outstanding in the long-running Highland bankruptcy case. The other parties to the Settlement Agreement, besides the Highland Entities, were the so-called "HMIT Entities"—defined in the Settlement Agreement as Hunter Mountain Investment Trust, Beacon Mountain LLC, Rand Advisors, LLC, Rand PE Fund I, LP, Rand PE Fund Management, LLC, Atlas IDF, LP, and Atlas IDF GP, LLC. These HMIT Entities, other than Hunter Mountain itself, are affiliates of Hunter Mountain. As earlier noted, ***Hunter Mountain was the majority equity owner of Highland, prepetition.*** Hunter Mountain owned 100% of Highland's Class B & C limited partnership interests. This represented 99.5% of the overall equity of Highland. Hunter Mountain acquired all of Highland's Class B and Class C limited partnership interests (the "Class B/C Interests") in December 2015, from James Dondero (the aforementioned co-founder and former CEO of Highland—whose family trust Dugaboy is now wanting a stay); Mark Okada (another co-founder of Highland); and certain entities affiliated with them. These Class B/C Interests—again, held entirely by Hunter Mountain at this point—were categorized in Class 10 of Highland's confirmed Chapter 11 plan.

[6] The Claimant Trust and Litigation Sub-Trust are entities created pursuant to the confirmed Highland Chapter 11 plan, to handle various post-confirmation matters.

Among other things, the Settlement Agreement contemplated, in pertinent part: (a) the dismissal with prejudice of all pending litigation between and among the Highland Entities and the HMIT Entities (by way of example, Hunter Mountain had asserted claims for breach of fiduciary duty, conspiracy, and unjust enrichment against Highland and its new CEO, James P. Seery); (b) the disposition of bankruptcy estate claims asserted against certain of the HMIT Entities by the Claimant Trust and/or the Litigation Sub-Trust, and the assignment of the balance of the remaining estate claims to the HMIT Entities (by way of example, Highland had argued that Hunter Mountain owed Highland more than $57 million on a note payable to Highland); (c) the allowance of the Hunter Mountain Class 10 Interest in a fixed amount; (d) cash distributions to Hunter Mountain on account of its Class 10 Interest of about $10.5 Million, plus the assignment of an approximately $24 million note receivable owed to Highland known as the "Dugaboy Note," subject to certain conditions, set forth in the Settlement Agreement; and (e) the exchange of mutual general and broad releases and other protections consistent with the parties' intent to end all current, and avoid all future, litigation between and among them.

As previously mentioned, the current representative of Hunter Mountain is an individual named Mark Patrick. Mark Patrick assumed this role in March 2021, replacing an individual named Grant Scott. Mark Patrick was a long-time Highland employee. Mark Patrick had been employed by Highland as tax counsel since 2008. Mark Patrick had also provided personal tax advice to Mr. Dondero. In February 2021, as part of the Highland bankruptcy case, the employment contracts of many of Highland's employees, including Mark Patrick, were terminated. Mark Patrick, along with many other former back-office employees of Highland, thereafter became employees of a newly formed company called Skyview Group ("Skyview"), that provides middle and back-office services to various clients.

Apparently, Mark Patrick and Mr. Dondero (and/or perhaps others at Skyview) got into disagreements of some sort in mid-2024, and Mark Patrick is no longer employed at Skyview.

III. THE OBJECTIONS TO THE RULE 9019 SETTLEMENT AGREEMENT

There were three objections to the Rule 9019 Settlement Motion/Settlement Agreement filed. Accordingly, the court presided over a contested evidentiary hearing on June 25, 2025 (the "Rule 9019 Settlement Hearing"). The court heard testimony from four witnesses: James Seery, Mark Patrick, James Dondero, and Patrick Daugherty. The court admitted documentary evidence as well.

The Patrick Daugherty Objection. One objection was filed by Patrick Daugherty (a former general counsel of Highland that has been in litigation for more than 15 years in several courts with Highland, Dondero, and others related to Highland) [DE # 4229]. Daugherty has already been paid on a large claim he was allowed in the Highland bankruptcy case but still has an unresolved, contingent, unsecured claim that is categorized in Class 8 of the confirmed Highland plan. Mr. Daugherty argued that the absolute priority rule and the Chapter 11 plan terms were being violated by the Settlement Agreement, since an equity interest (Hunter Mountain's Class 10 Interest) was receiving a distribution before Daugherty's Class 8 general unsecured claim. The court disagreed with these arguments, since Mr. Daugherty's unpaid, contingent Class 8 claim is highly speculative and has been fully reserved for, pending an ultimate hearing on the allowance of this claim. This Objection was overruled at the Rule 9019 Settlement Hearing.

The Dugaboy Objection. Another objection was filed by Dugaboy [DE # 4230]. As earlier noted, Dugaboy owned a very small amount of the equity in Highland—specifically, a .1866% share of the Class A limited partnership interests—and these Class A limited partnership interests, in turn, represented a merely .5% of the overall equity of Highland. Thus, Dugaboy owned well-

under 1% of the equity of Highland. These Class A interests were categorized in Class 11 of the confirmed Highland plan. Note that two other parties besides Dugaboy owned Class A equity interests in Highland: Strand Advisors, Inc. ("Strand") and Mark Okada directly and indirectly (the other co-founder of Highland). The Dugaboy objection essentially argued that the Settlement Agreement violated the confirmed Plan, the Claimant Trust Agreement and the Confirmation Order, without much more detail than this. The Dugaboy objection was surprising to this court, because Hunter Mountain and Dugaboy have seemed to be at all times friendly—seemingly in lockstep—throughout the Highland bankruptcy case. They have shared the same legal positions and the same legal counsel at times. On the day of the Rule 9019 Settlement Hearing, Dugaboy orally made additional arguments, beyond those made in its written objection. Specifically, Dugaboy argued that the existence of the Cayman Islands Action should cause the bankruptcy court to continue the Rule 9019 Settlement Hearing (which Cayman Islands Action is further discussed below). The court declined to continue the Rule 9019 Settlement Hearing, and Dugaboy's Objection was overruled at the hearing.

The Dallas Foundation Objection. Another objection ("Dallas Foundation Objection") to the Settlement was filed by The Dallas Foundation [DE # 4231] (the "Dallas Foundation"), on behalf of Empower Dallas Foundation ("EDF") and The Okada Family Foundation (the "Okada Foundation"), and Crown Global Life Insurance, Ltd. ("Crown,"), not individually, but solely in respect of Segregated Accounts 30218 & 30219 (collectively, for ease of reference, the "Dallas Foundation"). The Dallas Foundation argued that "the Settlement is potentially tainted by the actions of Mark Patrick, the apparent sole manager and director of the HMIT Entities."[7] It further stated that "upon information and belief, Mr. Patrick illicitly restructured ***the ownership*** of the

[7] Dallas Foundation Objection, ¶ 2.

HMIT Entities in a manner that seemed to facilitate the diversion of millions of dollars in assets from ***the charitable entities that are the beneficial owners of the HMIT Entities***."[8]

What did this mean? How exactly does the Dallas Foundation factor into all of this? How was the Dallas Foundation a party-in-interest with standing to object to a settlement in the Highland bankruptcy case at this juncture? ***It did not purport to be a creditor or equity interest holder***. Rather, the Dallas Foundation was referring to itself as ***"a Beneficial Owner of the HMIT Entities."***[9] Since HMIT owns 99.5% of Highland, does the Dallas Foundation also consider itself an indirect beneficial owner of Highland? Suddenly this is mind-numbing.

Not to worry. The Dallas Foundation Objection further explained how it is a "Beneficial Owner" of Hunter Mountain. The explanation involves a complex charitable entity structure that is organized in the Cayman Islands. One has to carefully follow the bouncing ball to make the connection.

IV. THE CAYMAN ISLANDS CHARITABLE FOUNDATION STRUCTURE[10]

DAF Holdco (a "corporate blocker"). First, there is an entity called Charitable DAF HoldCo, Ltd. (the "DAF Holdco"), that is a Cayman Islands exempted company, incorporated on October 27, 2011, having its registered office at HSM Corporate Services Ltd, 68 Fort Street, George Town, PO Box 31726, Grand Cayman KY1-1207, that happens to currently be in liquidation proceedings in the Cayman Islands Action. The shares of DAF Holdco are divided into Participating Shares and Management Shares. DAF Holdco is apparently what's known as a "corporate blocker" in the Cayman Islands Charitable Foundation Structure. Mark Patrick has been the manager of it since March 2021.

[8] Dallas Foundation Objection, ¶ 2 (emphasis added).
[9] Dallas Foundation Objection, 4 (emphasis added).
[10] The following is gleaned from an Exbibit A attachment to the Dugaboy Stay Motion.

The DAF Fund. Second, DAF Holdco has historically been the sole limited partner of another entity called Charitable DAF Fund, LP (the "DAF Fund"). The DAF Fund is a Cayman Islands exempted limited partnership formed to invest and manage assets ***for the ultimate benefit of three or four registered charitable organizations in the U.S., including the Dallas Foundation*** (the "Charitable Entities").[11] The DAF Fund has sometimes been represented in filings (organizational charts) presented to the bankruptcy court as a Cayman Islands hedge fund. The general partner of the DAF Fund was historically Charitable DAF GP, LLC (the "DAF GP"), a Delaware limited liability company registered as a foreign company in the Cayman Islands. Mark Patrick has been the manager of DAF GP since March 2021.

CLO Holdco (another "corporate blocker"). Third, the sole asset of the DAF Fund is its 100% equity ownership in yet another entity called CLO HoldCo, Ltd. ("CLO HoldCo"), which is yet another Cayman Islands exempted company incorporated with limited liability, having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands. CLO HoldCo is another "corporate blocker" entity in the Cayman Islands Charitable Foundation Structure. ***Interestingly, CLO HoldCo owns Hunter Mountain, and, as previously stated, Hunter Mountain was the 99.5% owner of Highland.***

It seems rather interesting that Highland—an alternative investment advisor (sometimes referred to as a hedge fund) that was managing billions of assets—was owned ultimately by an offshore structure designed for charitable purposes. However, this court has no expertise as to

[11] The Charitable Entities of which this court is aware are: The Dallas Foundation, The Greater Kansas City Foundation, The Santa Barbara Foundation, and the Community Foundation of North Texas (the "Charitable Entities" or sometimes the "Participating Shareholders"). The court has every reason to believe that these are respectable organizations dedicated to supporting charitable causes in their communities. The court has never heard anything to the contrary. Nothing herein should be construed as disparaging them in any way.

whether this is an unusual structure or one that is common to facilitate/enhance tax-exempt ownership and charitable giving. The court is simply presenting the information available to it that it thinks explains why a stay is not appropriate here: namely, ***since other litigation exists involving Mark Patrick and the Charitable Entities***.

In any event, structurally, the three or four Charitable Entities (including the Dallas Foundation) are the ultimate beneficial owners of Participating Shares in DAF Holdco (one of the "corporate blockers"). This essentially means that the Charitable Entities are at the top of the whole structure.

The documentation supporting this whole structure apparently requires that the Participating Shareholders (i.e., the Charitable Entities such as the Dallas Foundation) must at all times qualify as a tax-exempt organizations, pursuant to section 501(c)(3) of the United States Internal Revenue Code of 1986 ("IRC"). The Participating Shares do not have voting rights but have the right to participate in the profits or assets of the DAF Holdco. Meanwhile, the Management Shares (which have been held by Mark Patrick) have voting rights but do not have the right to participate in the profits or assets of the DAF Holdco. In other words, the Participating Shareholders have the entirety of the economic interest in DAF Holdco, whereas the sole Management Shareholder has the control rights.

Bottom line, the Dallas Foundation argued that they had reason to believe that Mark Patrick engaged in some illicit actions recently that changed up some of the structure set forth above (i.e., including the insertion of newly created entities into the DAF Fund's structure). ***As a result, the Dallas Foundation feared that a significant portion of the economic interests derived by the HMIT Entities from the Settlement Agreement would flow to Mark Patrick rather than to the Charitable Entities for whose benefit the DAF Fund was established***. The Dallas Foundation

questioned Mark Patrick's requisite corporate authority to cause the HMIT Entities to enter into the Settlement Agreement. The Dallas Foundation asserted that many of Mark Patrick's alleged actions, including the apparent insertion of newly created entities into the DAF Fund's structure, would be subject to claw back or other avoidance actions in the Cayman Islands Action or such other tribunal as has jurisdiction. The Dallas Foundation wanted the bankruptcy court to defer to that process.

Significantly, the Dallas Foundation withdrew its objection the morning of the June 25, 2025 Rule 9019 Settlement Hearing. It made its announcement through counsel on the record at the hearing.

V. THE RULE 9019 SETTLEMENT HEARING

After hearing evidence and argument on June 25, 2025, the court approved the Settlement Agreement. Bankruptcy Rule 9019 provides that "[o]n motion … and after notice and a hearing, the court may approve a compromise or settlement."[12] Settlements are favored in the bankruptcy context to "minimize litigation and expedite the administration of a bankruptcy estate."[13] The approval of a settlement is within the "sound discretion" of the trial court.[14] Pursuant to Bankruptcy Rule 9019(a), the court may approve a settlement if it is fair, reasonable, and in the best interests of the estate.[15] A settlement should be approved unless it falls below the lowest point in the range of reasonableness, based on a comparison between the terms of the settlement and the costs and benefits of further litigation.[16]

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[12] Fed. R. Bankr. Proc. 9019(a).
[13] *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996).
[14] *In re Jackson Brewing Co.*, 624 F.2d 599, 603 (5th Cir. 1980).
[15] *See, e.g., Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015).
[16] *See, e.g., Jackson Brewing Co.,* 624 F.2d at 602 (court must compare the "terms of the compromise with the likely rewards of litigation"); *Cook v. Waldron,* 2006 U.S. Dist. LEXIS 31411, at *10 (S.D. Tex. April 18, 2006) (court should "canvass the issues" to decide if settlement falls "below the lowest point in the range of reasonableness").

In evaluating a proposed settlement, courts consider (i) the "probability of success in the litigation, with due consideration for the uncertainty in fact and law," (ii) the "complexity and likely duration of the litigation and any attendant expense, inconvenience and delay," and (iii) "[a]ll other factors bearing on the wisdom of the compromise."[17] Assessing the first factor—success on the merits—does not require a "mini-trial" on the merits.[18] The "other factors" include "the best interests of the creditors, 'with proper deference to their reasonable views,'" as well as "'the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.'"[19]

A trustee or other estate representative also "is permitted to settle lawsuits pursuant to section 363(b)" of the Bankruptcy Code.[20] Section 363(b) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."[21] A sale involving a transaction outside the ordinary course of business "'must be supported by an articulated business justification, good business judgment, or sound business reasons.'"[22]

The court determined, based on this jurisprudence, that the factors to be considered pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 363(b) weighed in favor of approving the Settlement Agreement in this case. The Highland Entities believed they had strong and meritorious defenses to all of the then-pending HMIT litigation, and history has shown that defending the then-pending HMIT litigation, including the appeals that could result therefrom,

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[17] *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (quoting *Jackson Brewing Co.,* 624 F.2d at 602).
[18] *Cajun Elec. Power Coop*., 119 F.3d at 356.
[19] *Id.* (quoting *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917-18 (5th Cir. 1995)).
[20] *Id.* at 354.
[21] 11 U.S.C. § 363(b)(1).
[22] *Gluckstadt Holdings, L.L.C. v. VCR I, L.L.C. (In re VCR I, L.L.C.)*, 922 F.3d 323, 327 (5th Cir. 2019) (quoting *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)).

would be costly, time-consuming and value-destructive to the estate and creditor recoveries. Further, there was no guarantee that the Highland Entities would continue to be successful in defending the then-pending HMIT litigation—or that the HMIT Entities would not file additional litigation against the Highland Entities and their indemnified parties.

The second factor—complexity, duration, and costs of litigation—also weighed heavily in favor of approval of the Settlement Agreement. The cost of defending against the litigation in this case, including the then-pending HMIT litigation, had been significant. The litigation and its attendant costs have also significantly delayed and reduced distributions to the Reorganized Debtor's constituents. The HMIT litigation began in 2023 and is subject to at least two pending appeals which showed no signs of resolving absent this Settlement Agreement. If the Settlement Agreement was not approved, the Highland Entities would be faced with significant appellate litigation and potentially additional litigation in this court and other courts.

Third, approval of the Settlement Agreement was justified by the paramount interests of Highland's creditors and constituents. The Settlement Agreement resolved the pending HMIT litigation, resolved all disputes in connection with the HMIT Class 10 Interest; would sell, transfer, and assign the Estate Claims asserted in the so-called Kirschner Adversary Proceeding—which has been pending since 2021 (until it was stayed in 2023, at significant cost to the estate)—to the HMIT Entities; and would provide for broad mutual releases and a cessation of the litigation and acrimony that, in significant part, has delayed completion of the Plan and the overall bankruptcy case.

The preponderance of the evidence suggested that the Settlement Agreement was a rational exercise of the Highland Entities' business judgment and was negotiated in good faith and at arm's length.

The court signed the Rule 9019 Settlement Order on June 30, 2025 [DE # 4297].

Then, on July 17, 2025, Dugaboy filed the Dugaboy Stay Motion. This was preceded by the filing of the Texas AG Letter on July 10, 2025. As earlier noted, both of these Stay Requests urge that this court should halt things while they or others investigate matters that should be hashed out in the Cayman Islands Action. The Dugaboy Stay Motion says this

> is necessary to provide all stakeholders with time to investigate a motion under Rule 60 to vacate the 9019 Order (and all resulting orders, such as the dismissals effected as a result of the 9019 Order) in light of evidence suggesting that the settlement approved by this Court was a key element of [Mark Patrick's] alleged fraudulent scheme. Transfers of assets to companies controlled by Mr. Patrick must be halted, lest those assets are moved to companies "hard to find or track."[23]

VI. DENIAL OF STAY REQUESTS

As noted earlier, the Dugaboy Stay Motion and the Texas AG Letter are not motions for stay pending appeal pursuant to Rule 8007 of the Federal Rules of Bankruptcy Procedure. Dugaboy requests some sort of discretionary stay, for 90 days, while proceedings in the Cayman Islands Action go forward and, perhaps, reach a conclusion that improprieties by Mark Patrick occurred with regard to the Cayman Islands Charitable Foundation Structure. To be clear, the request is made by Dugaboy, whose party-in-interest status in the Highland estate is quite *de minimis*. The Texas AG apparently is of the impression (as a result of whomever filed a complaint with him) that this bankruptcy case, or the contested matter involving the Settlement Agreement, is a "proceeding involving a charitable trust." But that simply is not the case. While the assets of Hunter Mountain—remember, the former 99.5% equity owner of Highland—may ultimately be part of a *res* that indirectly benefits (or was intended to benefit) the Charitable Entities such as Dallas Foundation (as a result of the manner in which the Cayman Islands Charitable Foundation

[23] Dugaboy Stay Motion, ¶ 3.

Structure was designed), this does not mean that the Highland bankruptcy case is a proceeding involving a charitable trust. This court believes it applied the correct analysis required for a bankruptcy settlement. Nothing about the bankruptcy court's ruling impacts the Cayman Islands Action or the Texas AG actions it might seek to take on behalf of the Charitable Entities such as the Dallas Foundation. Accordingly,

IT IS ORDERED that the Stay Requests by Dugaboy and the Texas attorney general be, and hereby are, **DENIED.**

END OF MEMORANDUM OPINION AND ORDER

EXHIBIT 66

Grant Thornton Specialist Services (Cayman) Limited
2nd floor Century Yard,
Cricket Square,
PO Box 1044,
Grand Cayman, KY1-1102
Cayman Islands

T +1 (345) 949 8588
F +1 (345) 949 7120

CHARITABLE DAF HOLDCO, LTD.

(THE "COMPANY")

GUIDANCE NOTES FOR MEMBERS OF THE LIQUIDATION COMMITTEE

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GUIDANCE NOTES FOR MEMBERS OF THE LIQUIDATION COMMITTEE

INTRODUCTION

This guide has been produced to provide the Company's Liquidation Committee (the "**Committee**") with information in relation to:

- the duties and functions of the Committee;
- the rights of members of the Committee; and
- the procedural rules relating to Committee business.

The rules governing the procedures in relation to Liquidation Committees in the Cayman Islands is contained within Order 9 of the Companies Winding Up Rules (As Amended) (the "**Rules**").

Liquidation

The term liquidation (also referred to as 'winding up') refers to a formal insolvency procedure whereby the Company's affairs are wound up. This entails realising the Company's assets and distributing such proceeds in a set order of priority. The Committee is kept apprised of the position regarding the realisation of the Company's assets via the Joint Official Liquidators' ("**JOLs**") reports to creditors or via regular written and verbal updates to the Committee.

JOLs

The JOLs are appointed by the Court to administer the winding up and are officers of the Court. The Company's duly appointed JOLs are Margot MacInnis and Sandipan Bhowmik, both of Grant Thornton Specialist Services (Cayman) Ltd, 2nd floor, Century Yard, Cricket Square, PO Box 1044 Grand Cayman, KY1-1102, Cayman Islands.

Liquidation Committee

The Committee in a liquidation is known as the 'Liquidation Committee'.

Prior to the establishment of the Committee, the JOLs will summarily determine whether in their opinion the company should be regarded as insolvent, solvent or of doubtful solvency. Their determination will be certified in the Companies Winding up Rules Form 13 which is filed in Court within 28 days of the date that the winding up Order is made. The Company has been certified as solvent by the JOLs.

The determination made by the JOLs defines how the membership of the Liquidation Committee should be comprised.

Insolvent

Where a company has been determined to be insolvent, the Liquidation Committee shall comprise between 3 and 5 creditors.

Doubtful solvency

Where a company has been determined to be of doubtful solvency, the Liquidation Committee shall comprise between 3 and 6 members, a majority of which shall be creditors and at least 1 of whom shall be a contributory.

Solvent

Where a company has been determined to be solvent, the Liquidation Committee shall comprise between 3 and 5 contributories.

Reconstitution of the Committee

If, during the course of the liquidation, the JOLs change their certification of the Company's solvency or insolvency determination (as the case may be), they shall take the following steps to reconstitute the Committee:

a) If the Company is certified to be solvent, any creditor members of the Committee shall automatically cease to be members and the JOLs shall convene a meeting of contributories for the purpose of electing new members from amongst the Company's contributories.

b) If the Company is certified to be insolvent, any contributory members of the Committee shall automatically cease to be members and the JOLs shall convene a meeting of creditors for the purpose of electing new members from amongst the Company's creditors.

c) If the Company is certified to be of doubtful solvency, any member of the Committee shall automatically cease to be members and the JOLs shall convene a meeting of creditors and contributories for the purpose of electing new members amongst both the Company's creditors and contributories.

Nothing in the Rule shall prevent the JOLs from convening a meeting in anticipation of changing their certification of the Company's insolvency or solvency (as the case may be).

The Committee's responsibilities

A Sounding Board

It should be noted that persons acting on the Committee are generally regarded as acting in the general interests of the class (creditors or contributories) that they are elected from. Their purpose is to act as a 'sounding board' and to give some guidance and direction on behalf of their class interest to the JOLs. The liquidation committee is not a forum for creditors to voice their disputes. As far as possible, members should disassociate themselves from their personal interests and if they believe they have a conflict in any particular decision, they should declare that immediately to the JOLs and any other Committee members. For example, conflicts of interest may occur when liquidation committee members are associated with, or connected to, litigation involving other creditors, the Company or which is commenced by the JOLs.

Views of the Committee

Whilst the JOLs would normally act in line with the decisions of the Committee, the duty to conduct the liquidation is theirs alone and it is possible that in exceptional circumstances, the JOLs may disregard the views of the Committee. A liquidation committee can guide but cannot compel an office holder in relation to the conduct of the insolvency proceeding where it is considered by an office holder not to be in the best interests of the Company to do so.

Remuneration

In addition, it is also the responsibility of the Committee to negotiate with the JOLs and agree the basis upon which the JOLs and their firms will be remunerated. Whilst it is for the Court to ultimately sanction the JOLs' fees, the JOLs may not make an application to the Court for approval of their remuneration without first seeking the Committee's approval of the basis and amount of their remuneration for which they intend to seek the Court's approval. The JOLs intend to send remuneration summaries to

the Committee on a monthly basis beginning from the end of July 2025, and seek approval of their fees at a meeting on a quarterly basis.

ESTABLISHMENT OF THE LIQUIDATION COMMITTEE

The Rules assert that unless the Court directs otherwise, a Liquidation Committee must be established in respect of every company being wound up by the Court (i.e. every Official Liquidation).

Such a Liquidation Committee must be established at the first meeting of creditors (and/or meeting of contributories, as the case may be) and cannot act until the JOLs have issued a certificate of its due constitution. Corporate members must be represented by an individual who is duly authorised in writing.

Any creditor of the company (other than one whose debt is fully secured) is eligible to be a member of the Liquidation Committee, so long as:

- he has lodged a proof of his debt; and
- his proof has neither been wholly disallowed for voting purposes nor wholly rejected for the purposes of distribution or dividend.

No person shall on the same committee:

- be a member as both a creditor and a contributory;
- act at one and the same time as representative of more than one Committee member; or
- act both as member of the committee and representative of another Committee member.

If a corporate member of the Committee is put into liquidation under Cayman Islands' law or made the subject of a bankruptcy or reorganisation proceeding under the law of a foreign country, it shall continue to be a member of the Committee so long as the person appointed to deal with the affairs of that company consents to act as its representative.

The Company's Liquidation Committee

The Company's Liquidation Committee was elected at the first meeting of contributories held on 9 July 2025, and is currently comprised of the following contributory members:

1. Julie Diaz, representing Highland Dallas Foundation, Inc., 3000 Pegasus Park Drive #930, Dallas, TX 75247 (jdiaz@dallasfoundation.org)

2. Deborah Wilkerson, representing Highland Kansas City Foundation, Inc.,1055 Broadway Blvd. #130, Kansas City, MO 64105 (wilkerson@growyourgiving.org)

3. Jacqueline M. Carrera, representing Highland Santa Barbara Foundation, Inc., 1111 Chapala Street, Santa Barbara, CA 93101 (jcarrera@sbfoundation.org)

4. Rose Bradshaw, representing North Texas Community Foundation, 7777 Main Street, Suite 2850, Fort Worth, TX 76102 (rbradshaw@northtexascf.org)

5. Jennier Colegate, representing DFW Charitable Foundation c/o Baker & Partners (Cayman) Limited, P.O. Box, 636, Buckingham Square, 720 West Bay Road, Cayman Islands, KY1-1107 (jennifercolegate@bakerandpartners.com)

The Liquidation Committee came into being and authorized to act from 21 July 2025, the date of the filing of the official liquidator's certificate with the Cayman Court.

THE JOLS' OBLIGATIONS TO THE LIQUIDATION COMMITTEE

Communication

The JOLs shall communicate with the Committee by whatever means is agreed between them. This may be in writing, telephone, fax, email or via a website.

Reporting

The JOLs have a duty to report to the members of the Committee on all such matters as appear to them to be, or such matters as the members have indicated to the JOLs as being, of concern to them with respect to the winding up. Accordingly, the members of the Committee are able to input into all major decisions impacting the liquidation.

The JOLs need not comply with a request for information where it appears that:

- the request is frivolous or unreasonable;
- the cost of providing such information would be excessive with regard to the importance of the information; or
- there are insufficient assets to enable the JOLs to comply.

The JOLs shall provide each member of the Committee with a written report and accounts and convene a first meeting within 3 months of the Committee's establishment.

Confidentiality

As a result of a member's participation in a Committee, the member will receive certain confidential information to assist in the Committee proceedings. Accordingly, members may be required to enter into appropriate non-disclosure agreements restricting the use of information the member receives during the course of the proceedings.

PROCEEDINGS OF THE LIQUIDATION COMMITTEE

Further meetings

After the first meeting has been convened and held, the JOLs shall convene further meetings:

- on such dates or at such intervals as may be resolved by the Committee;
- if so requested in writing by any two members of the Committee; and
- in any event, not less than once every 6 months.

GUIDANCE NOTES FOR MEMBERS OF THE LIQUIDATION COMMITTEE

Form of meetings and notice periods

A meeting may take the form of:

- a physical meeting at the JOLs' office, or such other place as may be resolved upon by the Committee, in which case 10 business days' notice is required (and any member who cannot attend in person must be allowed to participate by telephone); or
- a telephone conference call in which case the JOLs must give at least 5 business days' notice of the meeting.

Attendance/Quorum

One of the JOLs or a duly authorised and suitably experienced representative employed by the JOLs' firm shall attend every meeting of the Committee.

In order to be validly held, the quorum for a meeting shall be one of the JOLs (or theirrepresentative) and at least 2 Committee members.

The chairman of the meeting is normally one of the JOLs (or theirrepresentative), however the members may resolve that one of them should act as chairman.

Agenda

The JOLs shall prepare an agenda for each meeting which shall include:

- all the matters which the JOLs intend to put before the meeting;
- any matter which a Committee member intends to put before the meeting; and
- any resolutions which the JOLs or any Committee member intends to put to a vote.

Voting/approval of resolutions

Each member shall have one vote and a resolution is passed when a majority of members present or represented (either in person or by telephone) have voted in favour of it. If the Committee comprises both creditors and contributories, a resolution is passed only when a majority of the creditor members and a majority of contributory members present or represented (either in person or by telephone) have voted in favour of it.

Whenever the JOLs consider that it would be impractical or unnecessary to convene a meeting of the Committee for the purpose of considering any resolution, they may send a copy of it to each member, inviting them to deal with it as a written resolution, and it shall be treated as passed if every member of the Committee signs it within such period or by such deadline as may be specified by the JOLs.

Minutes of the meeting

The JOLs are responsible for taking minutes of the meeting, a draft of which shall be prepared and circulated to members within 14 days after the meeting.

LEGAL ADVICE AND COUNSEL TO THE LIQUIDATION COMMITTEE

Attorney/Counsel
The Committee may resolve to appoint an attorney to give legal advice to the Committee, either generally or in respect of a specific issue arising in the liquidation.

Legal fees and expenses

The legal fees and expenses in relation to such advice shall be paid out of the assets of the Company as an expense of the liquidation. If the JOLs or a Committee member decides that the amount to be paid is excessive, they may require that such fees and expenses be taxed on an indemnity basis. Conversely, if the amount offered by the JOLs is considered inadequate, the attorney may require that his bill of costs be taxed. The JOLs have no authority to pay any amount in excess of that stated in any costs certificate.

EXPENSES AND COMMITTEE MEMBERS

Committee members are not entitled to remuneration, however, travelling and/or telephone charges reasonably and properly incurred by Committee members or their representatives in attending meetings of the Committee shall be reimbursed by the JOLs out of the assets of the company. Other expenses incurred by members may be reimbursed but only with the prior approval of the JOLs and pursuant to a resolution of the Committee.

RESIGNATION AND TERMINATION OF MEMBERSHIP

Resignation

A Committee member may resign from the Committee by delivering written notice to the JOLs by emailing: CDAF.Core@uk.gt.com.

Termination

A creditor's membership of the Committee is automatically terminated if:

- his proof of debt has been wholly rejected;
- his claim has been paid in full, or;
- he (or his representative) fails to attend 3 successive Committee meetings either in person or by telephone.

A contributory's membership of the Committee is automatically terminated if:

- he ceases to be a registered member of the Company; or
- the custodian or clearing house withdraws the certificate issued; or
- he (or his representative) fails to attend 3 successive Committee meetings either in person or by telephone.

GUIDANCE NOTES FOR MEMBERS OF THE LIQUIDATION COMMITTEE

Removal

The Committee may resolve to remove a member by passing a resolution at a Committee meeting, provided that the member in question has been given at least 14 days prior notice. Either the JOLs or a Committee member may propose a removal resolution. It is not necessary to give any reasons for proposing a removal resolution, nor shall the Committee or the JOLs be required to give the former member any reasons for passing a removal resolution.

Note: The above is a summary of the provisions for Liquidation Committees in Order 9 Companies Winding Up Rules (As Amended) in Cayman law, and is intended for guidance purposes only. It should not be regarded as definitive law or advice and if any creditor or member has any concerns about acting as a Committee member he or she should take his own independent legal advice.

EXHIBIT 67

CWR Form No 15

Liquidator's Certificate (Composition of Liquidation Committee) (O. 9, r. 1)

THE COMPANIES LAW

OFFICIAL LIQUIDATOR'S CERTIFICATE

COMPOSITION OF LIQUIDATION COMMITTEE

Charitable DAF HoldCo, Ltd. (In Official liquidation)

Grand Court FSD Cause No. 116 of 2025

The Official Liquidator hereby certifies that a liquidation committee has been constituted on the basis that he has determined the Company to be solvent for the purposes of section 110(4) of the Companies Law and CWR Order 9 and that the following contributories have been appointed:

1. Julie Diaz, representing Highland Dallas Foundation, Inc., 3000 Pegasus Park Drive #930, Dallas, TX 75247 (jdiaz@dallasfoundation.org)
2. Deborah Wilkerson, representing Highland Kansas City Foundation, Inc.,1055 Broadway Blvd. #130, Kansas City, MO 64105 (wilkerson@growyourgiving.org)
3. Jacqueline M. Carrera, representing Highland Santa Barbara Foundation, Inc., 1111 Chapala Street, Santa Barbara, CA 93101 (jcarrera@sbfoundation.org)
4. Rose Bradshaw, representing North Texas Community Foundation, 7777 Main Street, Suite 2850, Fort Worth, TX 76102 (rbradshaw@northtexascf.org)
5. Jennier Colegate, representing DFW Charitable Foundation c/o Baker & Partners (Cayman) Limited, P.O. Box, 636, Buckingham Square, 720 West Bay Road, Cayman Islands, KY1-1107 (jennifercolegate@bakerandpartners.com)

Dated this 21st day of July 2025.

Margot MacInnis – Joint Official Liquidator of Charitable DAF HoldCo, Ltd. (In Official Liquidation)
Grant Thornton Specialist Services (Cayman) Ltd
2nd floor, Century Yard, Cricket Square
PO Box 1044, Grand Cayman, Cayman Islands KY1-1102
Contact: +1 345 949 7100

EXHIBIT 68

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION),[1]	Case No. 25-11376 (___)
Debtor in a foreign proceeding.	

VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN MAIN PROCEEDING, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

[1] The Debtor is incorporated in the Cayman Islands as an exempted company and registered with registration number 170388. The Debtor's registered office is located at HSM Corporate Services Limited, P.O. Box 31726, 68 Fort Street, George Town, Grand Cayman, KY1-1207, Cayman Islands.

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Hon. Burton R. Lifland, Una O'Boyle, Esq. and Erin Healy Mautner, Esq.,
Chapter 15 of the United States Bankruptcy Code: An Annotated Section-By-Section Analysis 41

Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Limited (the "Petitioners"), the duly appointed joint official liquidators (the "JOLs") of Charitable DAF HoldCo, Ltd (In Official Liquidation) ("HoldCo" or the "Debtor"), a Cayman Islands exempted company in official liquidation in the Cayman Islands (the "Cayman Proceeding"),[2] which was brought under the supervision of the Grand Court of the Cayman Islands Financial Services Division (the "Cayman Court") by an order dated May 6, 2025 (Cause No. FSD 116 of 2025) (JAJ) (the "Supervision Order"), by its undersigned United States counsel, Reed Smith LLP ("Reed Smith"), respectfully submit the *Official Form 401 Chapter 15 Petition for Recognition of a Foreign Proceeding* (ECF No. 1) and this *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (together, the "Petition"), the accompanying Declaration of Caroline Moran executed on July 21, 2025 (the "Moran Decl."), and the Declaration of Margot MacInnis executed on July 21, 2025 (the "MacInnis Decl." and, together with the Moran Decl., the "Declarations"), for entry of an order (the "Proposed Order"), substantially in the form attached hereto as Exhibit A, pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"): (a) recognizing the Cayman Proceeding as a foreign main proceeding under sections 1515 and 1517 of the Bankruptcy Code; (b) recognizing the Petitioners as the Debtor's foreign representatives under sections 101(24), 1509 and 1517 of the Bankruptcy Code; and (c) granting relief pursuant to sections 105(a), 1502, 1507, 1510, 1520 and 1521 of the Bankruptcy Code.

[2] Entitled *In the matter of section 131 of the Companies Act (2025 Revision) and in the matter of Charitable DAF HoldCo Ltd* FSD 116 of 20256 (JAJ).

PRELIMINARY STATEMENT[3]

1. On May 6, 2025, the Cayman Court appointed the JOLs, in their capacity as independent fiduciaries and court officers, to liquidate HoldCo under its supervision. Under Cayman law, the JOLs' duties include the collection, realization and distribution of the assets of HoldCo to its creditors and, if there is a surplus, to equity holders. Cayman law affords the JOLs authority to investigate HoldCo's business and affairs in furtherance of their duties.

2. HoldCo is a Cayman Islands exempted company, formed in 2011 to serve as the sole limited partner of the Charitable DAF Fund, LP (the "Fund"), a Cayman Islands exempted limited partnership established to manage investments for the benefit of certain U.S. tax-exempt charitable organizations. For more than a decade, HoldCo facilitated significant charitable activity in the United States by distributing profits realized from the Fund's investment portfolio, which maintained a net asset value of approximately $270 million, to its ultimate, beneficial interest holders: four large, well established charities serving communities in need in the United States.

3. Beginning in 2024, HoldCo's directors, Mr. Mark Patrick and Mr. Paul Murphy, executed a series of complex, interrelated transactions—without the knowledge of HoldCo's beneficial interest holders—that resulted in the dilution of HoldCo's beneficial interest holders' stake in HoldCo from 100% to under 50% and the divestment of HoldCo's interest in the Fund in exchange for a membership interest in a Delaware limited liability company that was purported to be redeemed for the sum of approximately $1.6 million. These transactions occurred not long after Mr. Patrick had approved significant increases in his remuneration package.

[3] Capitalized terms used in this section but not otherwise defined shall have the meanings ascribed to them elsewhere in this Petition.

4. Since their appointment on May 6, 2025, the JOLs have conducted an extensive investigation, which is ongoing, into the facts and circumstances regarding these transactions. Based on the evidence amassed by the JOLs to date, on July 14, 2025, the Cayman Court granted leave to the JOLs to bring claims on behalf of HoldCo against Mr. Patrick, Mr. Murphy and certain other defendants for breaches of fiduciary and other duties, unlawful means conspiracy, unjust enrichment, restitution and other equitable relief and damages by way of filing a "Writ and Statement of Claim" (the "Statement of Claim"). On July 15, 2025, HoldCo proceeded to file the Statement of Claim with the Cayman Court, commencing litigation. At the same time, HoldCo filed an application for (a) a proprietary injunction to prevent the defendants from dealing with HoldCo's assets that are now held or controlled by the defendants together with disclosure orders (the "Injunction Application") and (b) leave to serve US-based defendants the Statement of Claim and the Injunctive Relief Application (the "Leave to Serve Application" and, together with the Injunctive Relief Application, the "Applications"). The Applications have been listed for hearing on July 31, 2025.

5. The Petitioners now commence this case under chapter 15 of the Bankruptcy Code (this "Chapter 15 Case") to obtain recognition of the Cayman Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code. The basis for recognition is straightforward. HoldCo is subject to official liquidation in the Cayman Islands, its jurisdiction of organization, which is being administered, since May 6, 2025, in accordance with Part V of the Cayman Islands Companies Act (2025 Revision) (the "Companies Act"), a law relating to, among other things, insolvency or the adjustment of debt, by JOLs appointed by the Cayman Court and under the supervision of the Cayman Court.

6. Chapter 15 of the Bankruptcy Code was enacted to provide effective mechanisms for dealing with cases of cross-border insolvency such as this one. Its express objectives include fostering: (a) cooperation between United States courts, trustees, examiners, debtors and debtors in possession, and the courts and other competent authorities of foreign countries; (b) greater legal certainty for trade and investment; (c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; and (d) protection and maximization of the value of the debtor's estate. These goals will be furthered by the granting of chapter 15 recognition here.

7. Recognition of the Cayman Proceeding as a foreign main proceeding is crucial for several reasons, including: (a) to assist the JOLs in fulfilling their duty under the relevant provisions of the Companies Act to investigate the assets, affairs, rights, liabilities, and obligations of the Debtor, including, if necessary, by compelling parties in interest to provide information requested by the JOLs; and (b) to prevent the further dissipation of assets that comprise the group of entities and affiliates that were formerly owned, directly or indirectly, by HoldCo and the Fund, including by recognizing and enforcing orders for injunctive relief with respect to persons or entities formerly affiliated with HoldCo as may be entered by the Cayman Court. Each of these reasons is squarely within and consistent with the broader goals underpinning the purpose of chapter 15 recognition. The Petitioners anticipate that the Chapter 15 Case will complement the Debtor's Cayman Proceeding to ensure the effective and economic administration of the Debtor's liquidation efforts.

BACKGROUND

8. The following is an overview of the Debtor's business, capital structure, events leading to the Cayman Proceeding and this Chapter 15 Case as of the date of the filing of the Petition (the "Petition Date").

A. Overview of HoldCo and its Stakeholders

9. HoldCo is a Cayman Islands exempted company, incorporated on October 27, 2011. Its registered office is at HSM Corporate Services Limited, P.O. Box 31726, 68 Fort Street, George Town, Grand Cayman, KY1-1207, Cayman Islands.[4] (MacInnis Decl. ¶ 8, Ex. 3)

10. HoldCo's share capital is divided into participating shares (the "Participating Shares"), which do not have voting rights but confer the right to participate in HoldCo's profits or assets including by way of the receipt of dividends, and management shares (the "Management Shares"), which have voting rights but confer no other right to participate in HoldCo's profits or assets. Accordingly, holders of Participating Shares (the "Participating Shareholders") have the entirety of the economic interest in HoldCo, whereas the holder of Management Shares (the "Management Shareholder") has the control rights. (MacInnis Decl. ¶ 9, Ex. 5)

11. Until recently, four nonprofit corporations collectively held 100% of HoldCo's Participating Shares: Highland Dallas Foundation, Inc. (the "Highland Dallas Foundation"), Highland Kansas City Foundation, Inc. (the "Highland Kansas City Foundation"), Highland Santa Barbara Foundation, Inc. ("Highland Santa Barbara Foundation" and, together with Highland Dallas Foundation and Highland Kansas City Foundation, the "Supporting Organizations") and

[4] Previously, HoldCo maintained its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

The Community Foundation of North Texas ("CFNT," and, together with the Supporting Organizations, the "Original Participating Shareholders"). (MacInnis Decl. ¶ 10, Ex. 6)

12. As of the date hereof, HoldCo has one Management Shareholder and five registered Participating Shareholders. The Management Shares in HoldCo are held entirely by Mr. Mark Eric Patrick, a U.S. resident, who is also a director of HoldCo. Mr. Patrick acquired the Management Shares on March 25, 2021, upon taking assignment of the Management Shares previously held by Mr. Grant Scott. HoldCo's second director is Mr. Paul Murphy, a Cayman Islands resident. (MacInnis Decl. ¶ 11, Exs. 6-10)

13. As of the date hereof, the Participating Shareholders are:

(a) Highland Dallas Foundation, a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code of 1986 (the "IRC") incorporated in Delaware on November 22, 2011, which was issued 100 Participating Shares in HoldCo on November 30, 2011;

(b) Highland Kansas City Foundation, a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Delaware on November 23, 2011, which was issued 100 Participating Shares in HoldCo on November 30, 2011;

(c) Highland Santa Barbara Foundation, a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Delaware on November 22, 2011, which was issued 100 Participating Shares in HoldCo on November 30, 2011;

(d) CFNT for the Highland Capital Management, L.P. Charitable Fund at CFNT, a public charity exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Texas, which was issued 5 Participating Shares in HoldCo on August 12, 2015; and

(e) DFW Charitable Foundation ("DFW"), a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Delaware on December 9, 2024, which was issued 318 Participating Shares in HoldCo on February 7, 2025 ("DFW Share Issuance"). Mr. Patrick is its registered director, president and sole member.[5]

(MacInnis Decl. ¶ 12, Exs. 11-21)

i. The Charitable Structure

14. Four charities held the ultimate economic interest in HoldCo prior to the DFW Share Issuance and held Participating Shares, either directly or indirectly. They are:

(a) The Dallas Foundation ("TDF") (which controls Highland Dallas Foundation): a charitable entity established in Texas in 1929 which has awarded over $1 billion in grants and manages over $500 million in assets;

(b) Greater Kansas City Community Foundation ("GKCCF") (which controls Highland Kansas Foundation): a charitable entity established in Missouri in 1978 which has awarded over $7 billion in grants and manages over $6 billion held in charitable funds;

(c) Santa Barbara Foundation ("SBF" and, together with TDF and GKCCF, the "Charities," and each, a "Charity") (which controls Highland Santa Barbara Foundation): a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million; and

(d) CFNT is a charity established in 1981 which manages assets totaling $513 million and donated $38.9 million to local nonprofits in 2023. CFNT holds its Participating Shares in HoldCo directly (i.e., without interposing a supporting organization). Prior to the DFW Share Issuance, CFNT held 1.639% of the Participating Shares.

(MacInnis Decl. ¶ 13, Ex. 19)

15. Each of the Charities held its interests in HoldCo indirectly through Highland Dallas Foundation, Highland Kansas City Foundation, and Highland Santa Barbara Foundation respectively (i.e., TDF held its interest through the Participating Shares held by Highland Dallas Foundation, etc.). (MacInnis Decl. ¶ 14, Exs. 23-25)

[5] HoldCo contests the validity of the DFW Share Issuance in the Cayman Litigation (defined below).

16. The Supporting Organizations were incorporated by Mr. James Dondero in November 2011 for the purpose of making charitable donations to their respective charity from the proceeds received by the Supporting Organizations from HoldCo. (MacInnis Decl. ¶ 15, Exs. 26-28)

17. Each of the Supporting Organizations is "organized and operated exclusively to support and benefit" its relevant, supported Charity. For US tax purposes, each Supporting Organization is classified as a Type I supporting organization of its respective Charity, which means that it is operated, supervised and controlled by that Charity. Consistent with this classification, the governance arrangements of each of the Supporting Organizations affords each Charity two votes and two director-nominees, to the individual member's (Mr. Dondero or his designee's) one vote and one director-nominee. (MacInnis Decl. ¶ 16, Exs. 23-28, 29-31)

18. HoldCo was formed for tax efficiency purposes to avoid a Charity or Supporting Organization becoming liable for "unrelated business taxable income" ("UBTI") with respect to investments it may wish to make in a hedge fund or private equity fund, here, the Fund, where substantial assets were held. (MacInnis Decl. ¶17, Ex. 92)

19. HoldCo was, between November 2011 and December 18, 2024, the sole limited partner of the Fund, a Cayman Islands exempted limited partnership formed to invest and manage assets for the benefit or ultimate benefit of certain registered charitable organizations in the United States, through which it indirectly owned a larger group of entities (collectively, the "DAF Structure"). (MacInnis Decl. ¶ 18)

20. The role of HoldCo was to facilitate the making of discretionary cash distributions to Participating Shareholders, which would be drawn from the proceeds of investment returns made within asset-holding entities in the DAF Structure. (MacInnis Decl. ¶ 19, Exs. 32-33, 35-36)

B. Overview of the Fund

21. The Fund is a Cayman Islands exempted limited partnership formed October 25, 2011 (registration no. 53083), having its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands. The Fund is governed by the Second Amended and Restated Limited Partnership Agreement, dated March 11, 2024 (the "Fund LPA"). Prior to the Relevant Transactions, HoldCo was the sole limited partner of the Fund. (MacInnis Decl. ¶ 20. Exs. 34-36)

22. The Fund was formed and operates to "make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code … for the economic benefit of [HoldCo] and its Indirect Charitable Owners." (MacInnis Decl. ¶ 21, Ex. 5)

23. Charitable DAF GP, LLC (the "Original GP"), a Delaware limited liability company registered as a foreign company in the Cayman Islands which was, at the Fund's formation and until March 7, 2024, the general partner of the Fund, at which time it was replaced by CDH GP, LTD (the "New GP" or "CDH"), a Cayman Islands exempt company incorporated on February 27, 2024, by Mr. Patrick, its sole director, at Mr. Patrick's instigation, without notice to the Original Participating Shareholders. (MacInnis Decl. ¶ 22, Exs. 37-39, 94)

24. The Fund's sole asset is or was its ownership of 100% of the issued share capital, in CLO HoldCo Ltd ("CLO HoldCo"). CLO Holdco is organized as a Cayman Islands exempt company incorporated with limited liability, having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands. (MacInnis Decl. ¶ 23 Exs. 32-33, 40-43)

25. Based upon their initial research and investigation, the JOLs understand that the Fund's known subsidiaries, that it holds through CLO HoldCo (as listed in Schedule A of the

proposed order accompanying the Injunction Application (defined below), the "Fund Entities") are mostly passive investment vehicles holding a mix of assets, including cash, promissory notes, shares in Nexpoint[6] entities, publicly traded stock, real estate, receivables/proceeds from litigation proceedings, receivable amounts from brokers, dividends due, and amounts due from affiliates. (MacInnis Decl. ¶ 24, Ex. 82)

26. At all relevant times, the Fund had a net asset value of approximately $270 million. (MacInnis Decl. ¶ 25, Ex. 51)

C. Key Transactions Precipitating the Debtor's Liquidation

i. The Relevant Transactions

27. Beginning in 2024, HoldCo's directors, Mr. Patrick and Mr. Murphy (together, the "Directors") executed a series of complex, interrelated transactions without the knowledge or consent of the Original Participating Shareholders. These transactions consisted of (a) HoldCo's contribution of its interest in the Fund to a newly formed entity organized in Delaware, CDMCFAD, LLC ("CDM"), controlled by Mr. Patrick, in exchange for membership interests in CDM that, unlike the Original Participating Shareholders Participating Shares in HoldCo, were redeemable and afforded HoldCo no fiduciary safeguards (the "LP/LLC Exchange"); (b) the DFW Share Issuance, i.e., the purported issuance of 318 participating shares in HoldCo to DFW, a Delaware nonprofit corporation incorporated and controlled by Mr. Patrick, on February 7, 2025, sufficient to make it, rather than the Original Participating Shareholders, the majority owner of HoldCo's participating shares; and (c) the purported redemption of HoldCo's interest in CDM in exchange for approximately $1.6 million on March 27, 2025 (the "Redemption" and, together with

[6] Nexpoint is an investment management firm registered with the U.S. Securities and Exchange Commission that was founded by Mr. Dondero, who currently serves as its President.

the LP/LLC Exchange and the DFW Share Issuance, the "Relevant Transactions"). (MacInnis Decl. ¶ 26, Exs 20-21, 44-46)

(A) The LP/LLC Exchange

28. On December 12, 2024, CDM was incorporated as a limited liability company in Delaware. Mr. Patrick was the sole member of CDM. (MacInnis Decl. ¶ 27 Exs 47-48)

29. On December 18, 2024, without informing the Supporting Organizations or the Charities, (i) the Directors passed resolutions to transfer HoldCo's entire limited partnership interest in the Fund (the "Fund Partnership Interest") to CDM, in exchange for a contribution by CDM's sole member—Mr. Patrick—of 100% of the issued and outstanding membership interests in CDM; and (ii) HoldCo, CDM, and the New GP entered into a Deed of Assignment and Assumption, executed by Mr. Patrick in three capacities: on behalf of: (x) HoldCo, as Director; (y) CDM, as manager; and (z) the New GP, as Director, pursuant to which (a) HoldCo assigned its entire interest in the Fund to CDM (the "CDM Assignment"), (b) the New GP provided its written consent to the CDM Assignment and the admission of CDM as the new limited partner, in accordance with the Fund LPA, and (c) CDM agreed to exercise its reasonable best endeavors to ensure that 100% of the membership interest in CDM (the "CDM Membership Interest") would be transferred to HoldCo. (MacInnis Decl. ¶ 28, Exs. 44-45)

30. The LP/LLC Exchange occurred in at least two stages: (a) first, HoldCo transferred its entire interest in the Fund to CDM; and (b) second, CDM procured the transfer of 100% of its share capital to HoldCo, making HoldCo the sole membership interest holder of CDM rather than the sole limited partner in the Fund. The effect of the LP/LLC Exchange was that: (a) CDM was inserted into the corporate structure as a subsidiary of HoldCo and became the holder of the entire interest in the Fund previously held by HoldCo; and (b) HoldCo became the sole membership interest holder in CDM, resulting in its sole asset—formerly its 100% limited partnership interest

in the Fund—being exchanged for the CDM Membership Interest. (MacInnis Decl. ¶ 29, Exs. 42, 45-46)

31. The LP/LLC Exchange prejudiced the interests of HoldCo. The CDM Membership Interest was less valuable than the Fund Partnership Interest because, among other reasons, whereas the New GP had owed fiduciary duties to HoldCo in the Fund, the manager, Mr. Patrick, did not owe any fiduciary duties to CDM; and, unlike the Fund Partnership Interest, the CDM Membership Interest was susceptible to being redeemed by Mr. Patrick (as Manager) in his sole discretion and for any reason, for "fair market value" as defined by Article 6.9, i.e., a "good faith determination of value." (MacInnis Decl. ¶ 30, Ex. 48)

(B) DFW Share Issuance

32. On December 9, 2024, DFW, a nonprofit non-stock corporation, was incorporated in Delaware exclusively for charitable purposes. (MacInnis Decl. ¶ 31, Ex. 49)

33. On February 7, 2025, without informing the Supporting Organizations or the Charities, the Directors passed resolutions for HoldCo to issue 318 Participating Shares to DFW, which, upon issuance, would allot DFW 51.04% of the Participating Shares of HoldCo. That same day, also without notice to the Supporting Organizations or the Charities, HoldCo issued and allotted 318 Participating Shares to DFW, resulting in DFW holding a 51.04% interest in HoldCo and diluting the Original Participating Shareholders' aggregate shareholding from 100% to 48.96%. (MacInnis Decl. ¶ 32, Exs. 20-21)

(C) Redemption

34. Following the LP/LLC Exchange, ValueScope, Inc. ("ValueScope") was instructed without informing the Supporting Organizations or the Charities to prepare two valuation analyses: (a) the 100% membership interest in CDM; and (b) certain Participating Shares of HoldCo as of March 25, 2025 (the "March 2025 ValueScope Valuations"). Historically, between December 2020 and September 2024, ValueScope conducted a series of valuation analyses of 100 Participating Shares on a net asset value ("NAV") basis at HoldCo's request to determine their fair market value ("FMV"). The final NAV-based valuation prepared by ValueScope prior to the Relevant Transactions was dated January 7, 2025, and gave a valuation of 100 Participating Shares as of September 30, 2024. ValueScope determined that, as of September 30, 2024, the NAV of the Fund was $269.05 million, NAV per share was $882,140, FMV per share was $759,614 and the FMV of 100 Participating shares was $75,961,370. (MacInnis Decl. ¶ 33, Exs. 50-51, 93)

35. The March 2025 ValueScope Valuations, however: (a) applied a discounted cash flow ("DCF") methodology to estimate the present value of expected future distributions, rather than the asset-based approach used in at least the prior five annual valuations by ValueScope; (b) determined the FMV of 100 Participating Shares to be $536,784; (c) applied a 99.2% discount for lack of control ("DLOC"); and (d) applied a 20.00% discount for lack of marketability ("DLOM"). The DCF model relied on projected future distributions to HoldCo, with those projections based on historical distributions that were also controlled by Mr. Patrick. (MacInnis Decl. ¶ 34, Exs. 50, 93)

36. Accordingly, the FMV of 100 Participating Shares in HoldCo apparently declined from $75,961,370 on September 30, 2024, to $536,784 on March 25, 2025—a 99.29% reduction in less than six months, coinciding with the LP/LLC Exchange and attributable to the shift in valuation methodology from NAV to DCF. Although the March 2025 ValueScope Valuations

reports identified "total equity" of approximately $269 million and concluded that all Participating Shares had a combined value of only approximately $1.6 million, the analyses did not address who benefited from the residual value of roughly $267.4 million. (MacInnis Decl. ¶ 35, Ex. 50)

37. On March 27, 2025, without informing the Supporting Organizations or the Charities, HoldCo entered into a letter agreement with CDM (the "Letter Agreement"), pursuant to which HoldCo assigned to CDM various contracts and agreements to which it was a party. On the same day, Mr. Patrick executed, in his capacity as manager of CDM and president of DFW, the following, again without notice to the Supporting Organizations or the Charities: (i) an Admission and Amendment No. 1 Agreement between CDM and DFW, under which DFW was admitted as a member of CDM in exchange for a capital contribution of $1,637,192; and (ii) a Redemption and Amendment No. 2 Agreement under which CDM redeemed HoldCo's CDM shares for the same sum of $1,637,192 (the "Redemption Sum") (together, the "Admission and Redemption"). (MacInnis Decl. ¶ 36, Exs, 52-54)

38. Additionally, on March 27, 2025, Mr. Patrick, in his capacity as manager of CDM, executed a written consent (the "Manager Consent") approving the Admission and Redemption. The Manager Consent stated that the redemption of HoldCo's shares of CDM under the Letter Agreement was justified due to alleged attempts by the Supporting Organizations to exert control, and the potential loss of their nonprofit and tax-exempt status. (MacInnis Decl. ¶ 37, Ex. 55)

39. On April 2, 2025, the Directors, by written resolution: (a) noted the redemption of HoldCo's shareholding in CDM for the Redemption Sum; and (b) resolved to make a shareholder distribution totaling $1,612,192.01 (the "Redemption Distributions"). (MacInnis Decl. ¶ 38, Ex. 46)

40. The substantive financial effect of the Redemption was that DFW paid the Redemption Sum to CDM, and HoldCo's shares in CDM were redeemed for that same amount—effectively transferring or selling HoldCo's interest in CDM to DFW for the Redemption Sum. As a result of the Redemption: (a) HoldCo realized its interest in the Fund, which had a NAV of approximately $269.1 million, for only around $1.6 million; (b) HoldCo purported to distribute that approximately $1.6 million to accounts in the name of the Participating Shareholders; (c) the Original Participating Shareholders, being the Supporting Organizations and CFNT were actually or effectively divested of their indirect interest—subject to the discretion of the person holding the Control Position—in the Fund and its underlying assets; and (d) the Original Participating Shareholders, being the Supporting Organizations and CFNT, whose economic interest in HoldCo had been diluted from 100% to 48.96% following the DFW Share Issuance, were entitled to their proportionate share of distributions in the amount of 48.96% of the Redemption Sum. As such, HoldCo had no assets at that time. (MacInnis Decl. ¶ 39)

ii. The Remuneration Transactions

41. Following his appointment as director of HoldCo on March 25, 2021, Mr. Patrick resolved to dramatically increase his remuneration (collectively, the "Renumeration Transactions"). Specifically (and among other things):

(a) Directors' fees increased from around $40,000 in 2022 to almost $600,000 in 2023.

(b) On September 13, 2024, the Directors resolved to increase Mr. Patrick's salary to $850,000 per annum and approve a long-term incentive ("LTI") of 7.5% of annualized net fund returns in excess of 10% (capped at 25% annualized return).

(c) On or around October 1, 2024:

(i) The Directors resolved that Mr. Patrick was to receive an LTI payment of $975,000 and an annual discretionary bonus for 2023 at an amount of 2.5 times his base salary.

(ii) Mr. Patrick signed an "employment agreement" for his position at HoldCo, effective as of March 24, 2021, which provided, among other things, for a base salary of $850,000 and an LTI payment of $4,759,000 for the period from March 24, 2021 to March 24, 2024.

(MacInnis Decl. ¶ 40. Exs. 56-58, 93)

42. By way of contrast to the remuneration that Mr. Patrick resolved he should be awarded, his predecessor's salary (Grant Scott) during his tenure in the same position was approximately $60,000 per annum. (MacInnis Decl. ¶ 41, Ex. 83)

43. As regards expenses, expenses overall for the first half of 2024 were around $18.3 million – almost the same amount spent over the entire course of 2023 (i.e., $18.6 million). (MacInnis Decl. ¶ 42, Ex. 56)

D. Lack of Transparency and Misleading Disclosures Provided to Supporting Organizations

44. As more fully set forth in the Statement of Claim, prior to and during the time when the Directors were consummating the Relevant Transactions, the Directors persistently declined to disclose information regarding their actions and intentions notwithstanding the Supporting Organizations repeated requests. (MacInnis Decl. ¶ 43, Ex. 59)

45. In November 2023, the Directors sought legal advice under Cayman law regarding the rights and duties of HoldCo's controlling person in connection with various matters including, diluting Participating Shares, redeeming Participating Shares, liquidating HoldCo to distribute its assets elsewhere or otherwise render the Participating Shares worthless, each in the context of potential future disputes with the Original Participating Shareholders. (MacInnis Decl. ¶ 44)

46. In or around August 2024, the Supporting Organizations were provided with a financial analysis of the Fund's annual expenses, which showed—or appeared to show—a significant increase in expenditures, as described above, both with respect to Directors fees and overall expenses. (MacInnis Decl. ¶ 45, Ex. 56)

47. In late October 2024, as a result of concerns from this additional expenditure, the Supporting Organizations requested that Mr. Patrick provide relevant financial information for the HoldCo and the Fund. Mr. Patrick did not do so. (MacInnis Decl. ¶ 46)

48. On November 11, 2024, Holland and Knight, LLP ("H&K"), U.S. attorneys for the Supporting Organizations, issued a letter to Mr. Murphy advising that the Supporting Organizations no longer had confidence in the governance of HoldCo and/or the Fund and considered that a reorganization of the governance structures was required to protect the charitable efforts of the Supporting Organizations (the "No Confidence Letter"). (MacInnis Decl. ¶ 47, Ex. 60)

49. On November 26, 2024, Mr. Patrick sought and obtained advice regarding whether HoldCo could issue further Participating Shares to a new nonprofit organization to dilute the Supporting Organizations so as to weaken any winding-up petition brought by the Supporting Organizations on just and equitable grounds. On November 27, 2024, Cayman Islands counsel responded to the Directors confirming that, if other shareholders were to oppose an equitable winding up, such opposition would be taken into consideration and would likely help. Mr. Patrick incorporated DFW as a nonprofit, non-stock corporation in Delaware on December 9, 2024. (MacInnis Decl. ¶ 48, Exs. 49, 61-62)

50. On December 11, 2024, Mr. Murphy and HoldCo's Cayman counsel gave a presentation to attorneys from H&K on behalf of the Supporting Organizations providing various assurances regarding governance matters being addressed by the Directors. The meeting was, by all accounts, positively regarded. The attorneys on behalf of the Supporting Organizations invited Mr. Murphy to make the same presentation directly to the Supporting Organizations. (MacInnis Decl. ¶ 49, Ex. 63)

51. Nonetheless, the very next day, Mr. Patrick incorporated CDM and, on December 18, 2024, the Directors consummated the LP/LLC Exchange, each without disclosing the same to the Supporting Organizations. (MacInnis Decl. ¶ 50)

52. On January 23, 2025, having received no follow-up to the December 11, 2024 meeting with Mr. Murphy, Julie Diaz, the CEO of The Dallas Foundation, sent Mr. Patrick an email advising that the Supporting Organizations needed to better understand HoldCo and the Fund's asset position, and requesting certain information be provided by February 10, 2025. (MacInnis Decl. ¶ 51, Ex. 64)

53. Having received no response, on January 28, 2025, Ms. Diaz sent a further email to the Directors expressing serious concern: (i) that the Supporting Organization's requests for information continued to be disregarded, and (ii) about the ongoing lack of transparency on the party of the Directors. (MacInnis Decl. ¶ 52, Ex. 64)

54. On January 30, 2025, Mr. Murphy replied to Ms. Diaz stating that the Directors: (i) had not received the January 23 email, but understood the next step was for the Directors to "present directly" to the Supporting Organizations to address the No-Confidence Letter; and (ii) are coopering with the Supporting Organizations to provide additional information – but "have no legal obligation to do so" and such cooperation "should not be construed as an implicit acknowledgement of any duty to continue providing information to you." (MacInnis Decl. ¶ 53, Ex. 64)

55. On January 31, 2025, Mr. Michael Stockham of H&K responded to Mr. Murphy noting that he and Mr. Patrick were fiduciaries, managing $270 million in assets for the benefit of charities that support the most vulnerable (i.e., the Charities) and: "[w]hatever your side's obvious

antagonism to Mr. Dondero, the fact remains that the underlying assets are ultimately for these charitable missions." (MacInnis Decl. ¶ 54, Ex. 64)

56. On February 4, 2025, Mr. Murphy responded that while open to resolving the concerns, they (i.e., the Directors) were struggling to understand the Supporting Organization's change in position. (MacInnis Decl. ¶ 55, Ex. 64)

57. On February 7, 2025, H&K responded that the Directors were fiduciaries in control of $270 million for the benefit of charities: "these monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed and … fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees." (MacInnis Decl. ¶ 56, Ex. 64)

58. On the same date, without informing the Supporting Organizations, the Directors consummated the purported DFW Share Issuance. (MacInnis Decl. ¶ 57, Ex. 21)

59. On February 14, 2025, H&K received a letter from Mr. Mancino, a partner in Seyfarth Shaw LLP ("Seyfarth"), a U.S. law firm apparently engaged by the Fund, which rejected the accuracy of the reported increases in expenditure. On February 27, 2025, H&K responded that his clients were frustrated by the lack of transparency and refusal to answer simple queries about the financial position. In response, Seyfarth sought available dates for Mr. Murphy to make the promised presentation to the Supporting Organizations. H&K responded the next day with three potential dates/times for the proposed call between March 26 and April 3, 2025. Mr. Mancino did not respond. (MacInnis Decl. ¶ 58, Exs. 21, 70-71, 75)

60. On March 20, 2025, Mr. Mancio sent a letter purportedly on behalf of HoldCo to the IRS about Mr. Dondero's alleged influence and control over the Supporting Organizations. The letter makes serious and unsubstantiated allegations about the Supporting Organizations,

absent evidentiary support, including that they each (i.e., all of them): "operates for Mr. Dondero's private benefit when he uses his influence or control over them to cause them to use or attempt to use their influence as Participating Shareholders of [HoldCo] to wrest control of [HoldCo] and its assets. . ." (MacInnis Decl. ¶ 59, Ex. 72)

61. Commencing on March 27, 2025, the Directors initiated steps to effectuate the Redemption, which they consummated on April 2, 2025, without informing the Supporting Organizations. On that same day, the Directors resolved to place HoldCo into voluntary liquidation and appointed Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd as joint voluntary liquidators. (MacInnis Decl. ¶ 60, Exs. 46, 55, 65, 73-74)

62. Notwithstanding the consummation of the Redemption and the commencement of voluntary liquidation of HoldCo the day prior, April 3, 2025, Mr. Mancino sent an email to H&K stating that he had just learned there was a call scheduled for the following day and seeking to reschedule. H&K responded that no such call had been arranged and queried about the apparent source of confusion. (MacInnis Decl. ¶ 61, Ex. 76)

E. The Cayman Proceeding

63. Unaware of the Directors resolution to place HoldCo into voluntary liquidation, on April 23, 2025, the Supporting Organizations presented a petition seeking the winding up of HoldCo on a just and equitable basis under section 92(e) of the Companies Act (the "J&E Petition"). It was only after filing the J&E Petition that the Directors disclosed they had consummated the Relevant Transactions and commenced a voluntary liquidation of HoldCo on April 2, 2025. (MacInnis Decl. ¶ 62, Exs. 66, 77)

64. On May 2, 2025, the Supporting Organizations filed a petition seeking an order for the voluntary liquidation of HoldCo—now a debtor—to continue under the supervision of the Cayman Court pursuant to section 131 of the Companies Act (the "Supervision Petition").

Following a hearing and review of the Supervision Petition, supporting affidavits and affirmations with exhibits, and the documents filed in Cause No. FSD 116 of 2025 (JAJ)—including the J&E Petition and the affidavits of the JOLs confirming their consent to act—the Cayman Court issued the Supervision Order. Pursuant to the Supervision Order, the voluntary liquidation of the Debtor was continued under the supervision of the Cayman Court, and the JOLs were appointed under section 131 of the Companies Act and Order 15, rule 8 of the Companies Winding Up Rules (2023 Consolidation) (the "Winding Up Rules"). (MacInnis Decl. ¶ 63, Exs. 1, 67, 78-79)

65. Also pursuant to the Supervision Order, the Petitioners were authorized to exercise the following powers, among others, under Part I of Schedule 3 to the Companies Act without further Cayman Court sanction: (a) the power to commence legal proceedings in the name and on behalf of the Debtor to obtain information, documents, or the examination of individuals in the Cayman Islands or the United States; and (b) the power to apply in the Cayman Islands or the United States for the preservation, freezing, or attachment of assets to which the Debtor is or may arguably be entitled. Moreover, the Petitioners were authorized to seek registration or recognition of themselves and/or the Cayman Proceeding in any U.S. state for any purpose related to the exercise of the above-described powers in the Supervision Order. (MacInnis Decl. ¶ 64, Ex. 78)

i. Conduct of the Cayman Proceeding

66. The JOLs have diligently performed their duties in progressing the Cayman Proceeding from and after their appointment. The JOLs have taken steps to fulfil their statutory obligations by: filing notice of the winding up with the Cayman Islands Registrar of Companies; circulating notices of the winding up to known stakeholders, service providers of HoldCo, and known contributories of HoldCo; publishing their notice of appointment in the Cayman Islands Gazette and Cayman Compass Newspaper; determining HoldCo should be treated as solvent for

the purposes of Section 110(4) of the Companies Act, as well as Orders 8 & 9 of the Winding Up Rules; determining the functional currency of the liquidation to be U.S. dollars pursuant to Order 16, Rule 13 of the Winding Up Rules; changing the registered office of HoldCo from Campbells Corporate Services Limited to HSM Corporate Services Ltd; publishing a Report to Contributories on July 2, 2025, and on July 3, 2025, convening the first meeting of contributories held on July 9, 2025. (MacInnis Decl. ¶ 65, Exs. 68-69, 78-80)

67. Moreover, to identify, secure and recover HoldCo's books and records, the JOLs have: (a) issued formal correspondence to over 50 parties, including, directors, shareholders, banks, service providers, the prior appointed joint voluntary liquidators, notifying them of the JOLs appointment and requesting books and records; (b) issued requests to hold an interview with the directors; and (c) held discussions with various parties to discuss the history and financial affairs of HoldCo. (MacInnis Decl. ¶ 66)

68. The JOLs have engaged extensively with representatives of various interested parties in connection with, among other things, seeking and obtaining sanction of the Cayman Court to engage Cayman and US counsel.[7] In addition, the JOLs, through counsel, have engaged with representatives of CDM, the New GP, and CLO HoldCo in relation to a potential protocol intended to allay the JOLs' concerns regarding asset dissipation, transparency and asset management while the JOLs progress their investigation. The JOLs, however, do not believe the protocol proposed by CDM, the New GP, and CLO HoldCo would adequately protect HoldCo's position and, to date, the parties have been unable to reach terms of agreement with respect to any protocol. (MacInnis Decl. ¶ 67, Ex. 81)

[7] In respect of which, on June 24, 2025, the Cayman Court sanctioned the engagements of Cayman and US counsel by the JOLs.

69. Since the date of their appointment, the JOLs have conducted an extensive and detailed investigation into HoldCo's affairs, albeit that those investigations are not yet complete. This has involved a review of HoldCo's books and records (to the extent that they have been able to obtain them and to the extent that they are complete) and numerous inquiries and requests for information directed to persons previously involved with HoldCo. There have, however, been several limitations on the JOLs' investigations in connection with the information requests made from those persons previously involved in the HoldCo, including certain US-based service providers who have asserted that they do not recognize the JOLs authority under the Supervision Order, where the JOLs have not been able to obtain copies of the requested information. Notwithstanding these limitations, the JOLs' investigation has progressed sufficiently to enable them to identify significant areas of concern. (MacInnis Decl. ¶ 68)

ii. Commencement of the Cayman Litigation

70. On July 4, 2025, the JOLs applied to the Cayman Court in the Cayman liquidation proceedings on an *ex parte* basis for sanction to commence litigation proceedings by way of filing a Writ and Statement of Claim (the "Statement of Claim") against the following defendants (collectively, the "Named Defendants"): (1) Mark Eric Patrick; (2) Paul Murphy; (3) CDM; (4)

DFW; (5) CDH as general partner for and on behalf of the Fund, and in its capacity as New GP; and (6) CLO HoldCo (the "Cayman Litigation").[8] (MacInnis Decl. ¶ 69, Ex. 59)

71. A further description of each of the Named Defendants is as follows:

(a) **Mr. Mark Patrick**. Mr. Patrick is a U.S. attorney and was employed as tax counsel by Highland Capital Management, L.P., an investment company founded by Mr. James Dondero, from 2008 – 2021 and as tax counsel by Highgate Consulting Group, Inc. d/b/a d/b/a Skyview Group from March 2021 to October 2024. He was instrumental in the creation of the Fund in 2011; in particular, he advised on the tax structure of using an offshore "blocker" company. Mr. Patrick is one of two directors of HoldCo, having been appointed as director on March 25, 2021. In that capacity, he was responsible for the supervision of the day-to-day operations of HoldCo. As director, Mr. Patrick owed, and continues to owe, fiduciary duties to HoldCo. Mr. Patrick was also: (i) the holder of all of the Management Shares in HoldCo; (ii) the manager of CDM; (iii) the sole member and sole director of DFW, which is now the sole member of CDM; (iv) the sole director and sole shareholder of CDH GP, Ltd, the New GP; and (v) a director of CLO HoldCo, the entity through which the Fund holds its assets.

(b) **Mr. Paul Murphy**. Mr. Murphy was the other director of HoldCo, having been appointed so on April 22, 2021. Mr. Murphy is also a director of CLO HoldCo.

(c) **CDM**. A limited liability company incorporated in Delaware on December 12, 2024. Mr. Patrick is the Manager of CDM. DFW has been the sole member of CDM since March 27, 2025.

(d) **DFW**. A nonprofit, non-stock corporation incorporated in Delaware on December 9, 2024, by Mr. Douglas Mancino, a partner in Seyfarth Shaw LLP ("Seyfarth"), a U.S. law firm apparently engaged by the Fund. DFW is

[8] In determining whether to commence the Cayman Litigation, the JOLs gave due regard to the Named Defendants' likely defenses with respect to the propriety of the Relevant Transactions and the Remuneration Transactions. At a high level, the JOLs understand that the Named Defendants will seek to justify the Relevant Transactions on three independent grounds: (1) on the basis that the Original Participating Shareholders did not have an economic interest in HoldCo, which was formed simply to act as a throughput for discretionary, charitable donations to qualifying recipients (which were not necessarily the Supporting Organizations, CFNT or the Charities), such that the Original Participating Shareholders did not lose any cognizable interest because of the Relevant Transactions; (2) the Relevant Transactions were necessary and appropriate to protect HoldCo and its Directors from attempts by Mr. Dondero and the Supporting Organizations to improperly exercise dominion and control over HoldCo's assets, which would expose HoldCo (x) to breaches of US tax law and regulation and (y) claims from third parties that HoldCo and the Fund Entities were alter egos of Mr. Dondero in lawsuits against Mr. Dondero; and (3) on the basis that the Directors relied appropriately on third party valuation reports in effectuating the Redemption at FMV. The JOLs likewise understand that Mr. Patrick intends to rely on a third party report to justify the Remuneration Transactions. On the basis of the investigation conducted by the JOLs to date, the JOLs do not find these defenses and justifications to be availing or credible.

organized under the General Corporation Law of the State of Delaware exclusively for charitable purposes. The JOLs understand that DFW is now the holder of the majority of the Participating Shares in HoldCo pursuant to the DFW Share issuance on February 7, 2025, and controlled by Mr. Patrick as its sole member.

(e) **The New GP**. A Cayman Islands exempted limited company incorporated on February 27, 2024. It replaced the Original GP as the Fund's current general partner on March 7, 2024, after Mr. Patrick sought advice from Walkers on forming a new entity to replace the Original GP. On February 5, 2024, Shields Legal asked Mr. Patrick whether that entity should be a Cayman LLC or exempted company, to which he responded: "*Doesn't matter to me. Whatever from a strategic point of view – hard to find or track, or trace. Or find owners, etc. Generic name. Strong litigation protection*."

(f) **CLO HoldCo**. A Cayman Islands exempted limited company. CLO HoldCo is the Fund's only direct subsidiary. The Fund held all of CLO HoldCo's issued shares.

(MacInnis Decl. ¶ 70)

72. HoldCo's claims pleaded in the Statement of Claim arise as a result of the breaches by the Directors of their fiduciary duties owed to HoldCo, having caused HoldCo to have dissipated its assets through a combination of (a) the Relevant Transactions and (b) the Remuneration Transactions, all of which were for the benefit of entities controlled by Mr. Patrick or for his benefit, personally. In addition to asserting claims against the Directors for willful breaches of their fiduciary duties to HoldCo, the Statement of Claim asserts claims against: (i) the Named Defendants for unlawful means conspiracy based on the Named Defendants having conspired and combined together to injure HoldCo by unlawful means and HoldCo having suffered loss and damage as a result; (ii) CDM for knowing receipt of HoldCo's property, its partnership interest in the Fund, which had been misappropriated from HoldCo by virtue of the Directors breach of fiduciary duties; and (iii) CDM for unjust enrichment on the basis that it received HoldCo's interest in the Fund without there being a valid assignment or other justification for that receipt, such that it is liable to HoldCo in restitution. (MacInnis Decl. ¶ 71, Ex. 59)

73. At the hearing of the sanction application on July 14, 2025, to obtain an order granting the JOLs sanction to commence the Cayman Litigation, the JOLs were required to satisfy the Cayman Court in the Cayman Proceeding that: (a) the Cayman Litigation had a reasonable prospect of success; and (b) the interests of HoldCo's stakeholders were best served by the JOLs commencing the Cayman Litigation.[9] The Cayman Court granted sanction for the JOLs to commence the Cayman Litigation. (MacInnis Decl. ¶ 72, Ex. 85)

74. On July 15, 2025, the Debtor proceeded to file the Statement of Claim with the Cayman Court to commence the Cayman Litigation (which has the cause number FSD 201 of 2025 (RPJ)). At the same time the JOLs filed an application for: (a) a proprietary injunction to prevent the Named Defendants from dealing with the assets of the Debtor that are held now held or controlled by the Named Defendant together with disclosure orders ("Injunction Application"); and (b) leave to serve the U.S.-based defendants with the Statement of Claim and Injunction Application ("Leave to Serve Application" and together with the Injunction Application, the "Applications"). (MacInnis Decl. ¶ 73, Exs. 59, 82-83)

75. Additionally, on July 15, 2025, the Debtor: (1) emailed copies of the Statement of Claim and the Applications to the Cayman Islands attorneys for the Named Defendants and asked them to accept service; and (2) served copies of the Statement of Claim at the Cayman Islands registered addresses of CDH GP, Ltd. and CLO HoldCo, Ltd. The Applications have been listed for hearing on July 31, 2025 (the "Injunction Hearing Date"). (MacInnis Decl. ¶ 74)

76. The Named Defendants are entitled to participate and be heard on that date. In the event the Named Defendants do not participate, the Cayman Court will hear the Injunction

[9] *Re ICP Strategic Credit Income Fund* [2014] 1 CILR 314.

Application on an *ex parte on notice* basis and, if the Injunction is granted, will schedule an *inter partes* hearing for a later date. (MacInnis Decl. ¶ 75. Exs. 82-83)

77. Should the Cayman Court grant the Injunctive Relief Application following the scheduled hearing on the Injunction Hearing date, and issue an order consistent with draft order for relief sought therein (the "Injunctive Relief Order"), the JOLs expect to seek recognition and enforcement of the Injunctive Relief Order against the Named Defendants on a provisional basis pursuant to section 1519 of the Bankruptcy Code pending the recognition of the Cayman Proceeding, at which time the JOLs also seek recognition of the Injunctive Relief Order in this Chapter 15 Case as set forth herein pursuant to sections 1507(a) and 1521(a) of the Bankruptcy Code. (MacInnis Decl. ¶ 76, Ex. 82)

iii. Injunction Application

78. The Injunction Application seeks orders that:

(a) the Named Defendants will (i) preserve and will not in any way dispose of, deal with, encumber, transfer or diminish the value of (as applicable) their or any interest of (of whatsoever nature) whether held directly or indirectly, in the Fund, the Fund Entities, and/or any assets of the Fund; and (ii) procure that the Fund Entities and their wholly owned subsidiaries will not in any way dispose of, deal with, encumber, transfer or diminish the value of any of their assets;

(b) the Named Defendants will preserve and will not in any way dispose of, deal with, encumber, transfer or diminish any assets in their possession or control, whether they are in or outside the Cayman Islands, which were, are or may be received (whether directly or indirectly): (i) by way of distribution, disposition, dividend, benefit, payment or other transfer from (as the case may be) HoldCo, the Fund, DFW, CDM, the New GP, the Fund Entities and/or their wholly owned subsidiaries; or (ii) from any assets of the Fund, the Fund Entities, and/or their wholly owned subsidiaries;

(c) the Named Defendants shall not do anything to cause, procure, incite, promote or assist a breach by any other Named Defendant of the above sections (a) and (b); and

(d) the Named Defendants shall make ancillary asset disclosures.

(MacInnis Decl. ¶ 77. Ex. 82)

79. The basis for the injunctive relief sought is that the Named Defendants each own and/or control assets that HoldCo has an equitable proprietary interest in (or at least a seriously arguable case that it does):

(a) Prior to the Relevant Transactions taking place, HoldCo held the Fund Partnership Interest, and thereby indirectly owned (99%) of all assets held by the Fund through its wholly owned subsidiary, CLO HoldCo (and its subsidiaries).

(b) After the Relevant Transactions took place, and by reason of the Directors' breaches of fiduciary duty – (i) CDM now holds the Fund Partnership Interest, which continues to hold its assets through CLO HoldCo (and its subsidiaries); (ii) DFW is the sole member of CDM; (iii) Mark Patrick is the sole member of DFW; and (iv) Mark Patrick has full control over DFW, CDM, the New GP (and thus the Fund), and (together with Mr. Murphy) CLO HoldCo. Mr. Patrick therefore has the ability to control and/or deal with the Fund Partnership Interest and the Fund's assets, including any distributions of the Fund's assets received by CDM as its sole limited partner. Mr. Patrick now exercises this control free from the oversight previously exercised by the Supporting Organizations and CFNT through their holding of Participating Shares in HoldCo.

(MacInnis Decl. ¶ 78, Exs. 6, 40, 44-49. 52-55, 84)

80. Moreover, HoldCo has at least a seriously arguable case that CDM and DFW hold these assets through steps taken by the Directors that amounted to breaches of fiduciary duty, and therefore that these assets are subject to a constructive trust in favor of HoldCo, which is the necessary pre-requisite for the Cayman Court to grant a proprietary injunction restraining the disposition of that property. (MacInnis Decl. ¶ 79, Moran Decl. ¶¶ 40, 42-45)

81. Under Cayman law, to obtain proprietary injunctive relief, the Debtor must show: (1) the existence of a serious issue to be tried as to whether it has a proprietary interest in the assets (such that the claim would be capable of surviving summary judgment), (2) that the balance of convenience is in favor of granting the injunction; and (3) that it is otherwise just and convenient

to grant the injunction. Moreover, under Cayman law, a court may order defendants to disclose information if the Debtor demonstrates that it is just and convenient to do so. (MacInnis Decl. ¶ 80, Moran Decl. ¶¶ 42-45)

1. Serious Issues to be Tried

82. On July 14, 2025, the Cayman Court granted sanction for the JOLs to file the Statement of Claim and in doing so accepted that the merits of the JOLs' claims satisfied the relevant threshold for the sanction of commencement of claims by official liquidators (which is higher than the 'serious issue to be tried' threshold for a proprietary injunction). (MacInnis Decl. ¶ 81, Ex. 85)

83. The Directors and DFW have put forward explanations as to why the transfer of the Fund Partnership Interest to CDM was legally justifiable, which the JOLs do not believe stand up to scrutiny. (MacInnis Decl. ¶ 82. Exs. 44, 70, 72, 86-87)

2. Balance of convenience

84. The JOLs do not believe that the proprietary injunctions they seek would hinder the operation of the Fund or the Fund Entities in any material way. The Fund and the Fund Entities are mostly passive investment vehicles that hold shares or interests in other Fund Entities, cash, debt instruments, receivables, vacant land and/or stock in publicly traded companies. They are not, as far as the JOLs understand, engaged in the active trading of assets or the making of new investments on a frequent basis. (MacInnis Decl. ¶ 83, Ex. 82)

85. Accordingly, the JOLs believe that there is no justification for any new investments or other transactions to be made by any of those entities, beyond payments needed to stay in good standing and comply with their statutory obligations. (MacInnis Decl. ¶ 84)

86. Against that backdrop, the JOLs' position is that no dispositions of the assets of the Fund, the Fund Entities or any other subsidiaries above $10,000 need or should be made pending the determination of HoldCo's proprietary claim which, if successful, would see the Fund Partnership Interest returned to HoldCo and HoldCo would therefore wholly own (indirectly) all assets of the Fund, the Fund Entities and their wholly owned subsidiaries. Should any payments or dispositions be made by the Fund, the Fund Entities or any of their wholly owned subsidiaries that have the effect of harming the value of the Fund Partnership Interest, such payment or disposition would render the proprietary relief the JOLs are seeking much less effective. (MacInnis Decl. ¶ 85)

87. Notwithstanding the above, the JOLs recognize that there may become a need for certain payments or other dispositions of assets to be made to preserve, maintain or improve the value of existing assets held by the Named Defendants, the Fund Entities and/or their wholly owned subsidiaries. Accordingly, the JOLs' proposed order to the Injunctive Relief Application provides for:

(a) The entity concerned to make a written request to the JOLs to make any such payments, together with full supporting information and documentation as well as an explanation of the rationale for the transaction; and

(b) The JOLs to decide within 7 days whether to approve or disapprove the proposed transaction.

(MacInnis Decl. ¶ 86. Ex. 82)

88. The JOLs also recognize that there will likely be a need for certain payments to be made by the Named Defendants, the Fund Entities or their wholly owned subsidiaries that are reasonably necessary in the ordinary course of business to keep the corporate Named Defendants, the Fund Entities or their wholly owned subsidiaries in good standing. The JOLs' proposed order

to the Injunctive Relief Application allows for any such payments of $10,000 or less to be made. (MacInnis Decl. ¶ 87, Ex. 82)

89. The JOLs are also unaware of any harm that would be caused to CDM by preserving the status quo in respect of the Fund Partnership Interest. By comparison, if a proprietary injunction is not granted and CDM were to transfer the Fund Partnership Interest to another party or otherwise deal with that interest in some way, HoldCo could be significantly prejudiced. Specifically, HoldCo's proprietary claim to the Fund Partnership Interest could be undermined or become more difficult to enforce. (MacInnis Decl. ¶ 88)

90. As to whether damages would be an adequate remedy for HoldCo in lieu of proprietary relief, as far as the JOLs' are aware, CDM has no other assets beyond the Fund Partnership Interest and therefore would likely be unable to meet any order for damages made against it. Only an order for CDM (and the other Named Defendants, to the extent they hold assets that derive from the Fund Partnership Interest) to restore HoldCo's property could return HoldCo to the position it would have been in had the improper transactions carried out by the Named Defendants not taken place. The JOLs' believe that the only way to ensure that such an order will be effective at the conclusion of these proceedings is for a proprietary injunction to be granted against the Named Defendants in respect of that property in the interim. (MacInnis Decl. ¶ 89)

91. Further, as explained above, HoldCo, its Supporting Organizations, the Charities and the Fund are part of a carefully constructed investment structure for: (i) the tax efficient treatment of charitable donations; and (ii) investments to be made for the ultimate benefit of the Charities and CFNT. Without the re-transfer of the Fund Partnership Interest to HoldCo, those parties may be unable to achieve their charitable objectives as effectively or at all. An award of damages in lieu of proprietary relief would mean that HoldCo would hold only cash and no other

assets or investments, and the Charities and Supporting Organizations would effectively be back to square one in terms of setting up a proper investment structure to carry out their investments and protect their tax-exempt status. (MacInnis Decl. ¶ 90)

3. Disclosure of assets

92. The JOLs have only limited information as to what assets each of the Named Defendants, Fund Entities and their wholly owned subsidiaries hold. Even so, the JOLs have no way of verifying this information or knowing if it is completely up to date. (MacInnis Decl. ¶ 91)

93. In circumstances where, in the JOLs' case, a misappropriation of the HoldCo's sole and valuable asset has already occurred, the JOLs believe protection is needed to prevent any further dissipation of assets from occurring in breach of any injunction that is granted. The JOLs believe that this protection can be afforded by way of disclosure orders in support of the injunction requiring the Named Defendants to disclose what assets they each hold and their approximate value. Having that information in hand will allow the JOLs (and the Cayman Court) to effectively police the injunction (in terms of preventing dissipation of Fund assets and thereby preserving the value of the Fund Partnership Interest). (MacInnis Decl. ¶ 92)

94. In addition, the proposed order in support of the Injunctive Relief Application seeks confirmation as to:

(a) All of the entities owned directly or indirectly by the Fund, including full details as to their owners, directors, officers or other controllers, and places and details of incorporation. This will allow the JOLs to have a complete picture of the Fund structure.

(b) All payments by way of salary, bonus, dividend, distribution or other compensation made to Mr. Patrick or Mr. Murphy by HoldCo, the Fund, DFW, CDM, the New GP, CLO HoldCo, or any of the Fund Entities or other entities revealed by (a) above since February 27, 2024.

(c) All payments to any attorney, lawyer, third party consultant, accountant, or external professional services advisor, whether a firm, partnership, company or individual, made by HoldCo, the Fund, DFW, CDM, the New GP, CLO

HoldCo, or any of the Fund Entities or other entities revealed by (a) above since February 27, 2024.

(MacInnis Decl. ¶ 93, Ex. 82)

4. Cross undertaking in damages

95. The Debtor is not offering to provide a cross-undertaking as to damages in the Injunction Application. This is because in this case, the JOLs are not only acting in the Debtor's best interests, but also in a position analogous to the public interest based on the charitable or non-profit status of at least the underlying Charities, which are the intended recipients of donations made from the Debtor. No cross-undertaking in damages should be required in such circumstances. (MacInnis Decl. ¶ 94)

F. The Texas Proceeding

96. On July 1, 2025, the Supporting Organizations commenced an action (the "TRO Action") against defendants Mark Patrick, DFW, CDM, CDH, and the Original GP (collectively, the "TRO Defendants") by filing *Plaintiffs' Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Request for Appointment of Receiver* (the "TRO Application") in the Texas Business Court, 1st Division (the "Texas Court"). Among other things, the TRO Action seeks: (1) a temporary restraining order; (2) a temporary injunction; and (3) the appointment of a receiver against some of the TRO Defendants arising from various breaches of fiduciary duties and related claims alleged to be owed to the Supporting Organizations directly. (MacInnis Decl. ¶ 95. Ex. 85)

97. On July 2, 2025, during the hearing for the TRO Action, in lieu of a decision rendered by the Texas Court, and at the direction of the Texas Court, the parties entered into a Rule 11 Agreement under the Texas Rules of Civil Procedure (the "Rule 11 Agreement"), which the JOLs understand is a binding contract among the parties. The key points of the Rule 11

Agreement are: (a) that the TRO Defendants shall not make any payments or disbursements other than those in the ordinary course of business; (b) investments and monies must be kept in the existing entities that currently hold those investments and monies, provided that, if any investment is monetized on its own terms, then the entity may prudently reinvest the resulting cash proceeds into liquid securities; and (c) there shall be no changes to the corporate structure of ownership of the TRO Defendants. The Texas Court scheduled a further hearing on the TRO Action on July 24 and 25, 2025. (MacInnis Decl. ¶ 96, Ex. 88)

98. Following the hearing on July 2, 2025, the parties to the TRO Action amended and modified the Rule 11 Agreement (the "Final Rule 11 Agreement") to: (a) provide the TRO Defendants the opportunity to challenge the Texas Court's jurisdiction (the "Plea") pursuant to a briefing schedule concluding on July 24, 2025; (b) clarify the parties' discovery rights with respect to the TRO Action; and (c) evidence the restrictions imposed upon the activities of the TRO Defendants and their subsidiaries pursuant to the Rule 11 Agreement pending a decision by the Texas Court of the TRO Action and the Plea. On July 14, 2025, the TRO Defendants filed a jurisdictional challenge, asserting that: (1) the Texas Court lacks subject matter jurisdiction to hear the TRO Action; and (2) the Supporting Organizations lack standing, suggesting that the JOLs, on behalf of HoldCo, are the appropriate parties to assert the claims alleged in the TRO Action. (MacInnis Decl. ¶ 97, Ex. 89-90)

99. The JOLs support the Final Rule 11 Agreement in the near term in that it imposes restrictions on the covered entities regarding asset dissipation in the short term, pending the outcome of the Injunctive Relief Application filed by the JOLs in the Cayman Court and the recognition of relief as may be granted by the Cayman Court in this Chapter 15 Case. The JOLs believe that the Cayman Court is the appropriate forum to adjudicate causes of action that belong

to HoldCo as asserted in the Cayman Litigation. The JOLs are also cognizant of the need for administrative efficiency in connection with the Cayman Proceeding and their duties to realize upon HoldCo's assets, and, accordingly, reserve rights with respect to coordination and management of the TRO Action, the Cayman Litigation and this Chapter 15 Case. (MacInnis Decl. ¶ 98, Exs. 59, 89)

G. This Chapter 15 Case

100. On the Petition Date, the Petitioners commenced this Chapter 15 Case. (MacInnis Decl. ¶ 99)

101. Consistent with the purpose of official liquidation under Part V of the Companies Act, the Petitioners are also empowered to investigate: (a) the causes for the failure of HoldCo, as necessary, and (b) generally, the promotion, business, dealings and financial affairs of HoldCo. *See* Companies Act, section 110(2). (MacInnis Decl. ¶ 100, Ex. 78)

102. Section 97(1) of the Companies Act provides in relevant part that upon the entry of a winding up order against a company, no suit or other proceeding may be commenced or continued against the company except with leave of the Cayman Court and subject to such terms as the Cayman Court might impose. This automatic stay mirrors the stay imposed in United States bankruptcy proceedings and serves to, *inter alia*, facilitate the Petitioners' ability to deal with claims and creditors collectively and comprehensively. (MacInnis Decl. ¶ 101, Ex. 78)

103. A general principle underlying the Companies Act and the Cayman Proceeding is that creditors are treated on a *pari passu* basis, subject to certain exceptions.[10] *See* Companies Act, section 140. (MacInnis Decl. ¶ 102, Ex. 78)

[10] For example, see sections 140 and 141 of the Companies Act.

104. Cayman liquidation proceedings are fair and equitable insofar as all creditors and interest holders have the opportunity to be heard by the Cayman Court and no creditors will be prejudiced on the sole basis that they are foreign based. All creditors are treated equally, regardless of where they are domiciled. (MacInnis Decl. ¶ 103)

JURISDICTION AND VENUE

105. The United States Bankruptcy Court for the District of Delaware (this "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

106. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

107. This Chapter 15 Case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of the Petition in accordance with section 1515 of the Bankruptcy Code.

108. The Petitioners confirm their consent, pursuant to rule 7008 of the Bankruptcy Rules and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") to the entry of final orders or judgments by the Court to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

109. Venue in this district is proper under 28 U.S.C. § 1410(1) because the Debtor has its principal assets in the United States located in Delaware, and 28 U.S.C. §1410(3) because it is

consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the Petitioners.

110. With regard to section 1410(1), the Debtor has an ownership interest in a $150,000 advance security retainer deposited with and held by Reed Smith in a trust account located in Wilmington, Delaware with M&T Bank (the "Reed Smith Retainer") in accordance with Delaware Rule of Professional Responsibility 1.5. *See, e.g.*, *In re Farfetch Limited (in Official Liquidation),* Case No. 24-11519 (CTG) [D.I. 46] (Bankr. D. Del. 2024) (establishing venue in Delaware where Debtor held a retainer in the jurisdiction); *In re Berau Capital Res. PTE*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015) (finding that an attorney retainer was sufficient to establish venue); *In re Octaviar Admin Pty*., 511 B.R. 361, 372-74 (Bankr. S.D.N.Y. 2014) (finding that an attorney retainer is sufficient to confer jurisdiction in the United States); *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (holding that establishing a deposit account in New York "had the effect of establishing a basis for venue in [the Southern District of New York] under 28 U.S.C. § 1410(1)"); *In re Global Ocean Carriers Ltd*., 251 B.R. 31, 39 (Bankr. D. Del. 2000) (retainers held in escrow by counsel for a debtor in the United States is "property" in the United States).

111. With regard to section 1410(3): (i) the Debtor's economic stakeholders, the Supporting Organizations, are Delaware nonprofit corporations exempt from taxation under section 501(c)(3) of the Internal Revenue Code, (ii) the Debtor has past direct ownership of CDM, which is organized in Delaware, and (iii) prior to the commencement of the Cayman Proceeding, the Debtor and the Directors engaged Delaware counsel in connection with the Relevant Transactions.

112. The statutory predicates for the relief requested in this Petition are sections 101(23)-(24), 105(a), 306, 542(e), 1502, 1504, 1507, 1509, 1510, 1512, 1515, 1516, 1517, 1520, 1521, 1522, and 1524 of the Bankruptcy Code and Bankruptcy Rule 2004.

RELIEF REQUESTED

113. The Petitioners have commenced this Chapter 15 Case as an ancillary proceeding to the Cayman Proceeding and respectfully file this Petition contemporaneously with the accompanying documentation required by sections 1504 and 1515 of the Bankruptcy Code.

114. The Petitioners respectfully request that this Court enter an order, substantially in the form of the Proposed Order attached hereto as Exhibit A, pursuant to sections 105(a), 542(e), 1504, 1507, 1509, 1510, 1515, 1517, 1520 and 1521 of the Bankruptcy Code that:

(a) recognizes the Cayman Proceeding as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code, or, in the alternative, as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code;

(b) recognizes the Petitioners as the "foreign representatives" as defined in section 101(24) of the Bankruptcy Code;

(c) recognizes and gives full force and effect in the United States to the Supervision Order and the Injunctive Relief Order, including any and all extensions or amendments thereof authorized by the Cayman Court and extending the protection of such orders;

(d) grants the Debtor all of the relief afforded pursuant to section 1520 of the Bankruptcy Code, including, without limitation, the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtor and its property that is now within or in the future is located within the territorial jurisdiction of the United States;

(e) authorizes the Debtor to conduct the examination of witnesses, the taking of evidence or the delivery of information concerning the Debtors' assets, affairs, rights, obligations or liabilities in accordance with section 1519(a)(3) and 1521(a)(4) of the Bankruptcy Code, Rule 2004 of the Bankruptcy Rules, and the Federal Rules of Civil Procedures, as incorporated by the Bankruptcy Rules;

(f) authorizes the Debtor to compel all persons that hold recorded information, including books, documents, records, and papers relating to the Debtor's

property or financial affairs to turnover or disclose such recorded information in accordance with section 542(e), 1521(a)(4) and 1521(a)(7) of the Bankruptcy Code; and

(g) provides such other and further relief as the Court deems just and proper.

BASIS FOR RELIEF REQUESTED

115. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between United States courts and foreign courts, to afford greater legal certainty for trade and investment, to protect and maximize the value of debtors' assets, and to facilitate the fair and efficient administration of cross-border insolvencies in a manner that protects the interests of all creditors and other interested parties, including the debtor. 11 U.S.C. § 1501.

116. Consistent with these principles, the Petitioners commence this action under chapter 15 of the Bankruptcy Code to obtain recognition of the Cayman Proceeding and certain related relief. This Chapter 15 Case seeks to complement the Cayman Proceeding to: (i) investigate, the assets, affairs, and liabilities of the Debtor that are within the territorial jurisdiction of the United States; (ii) ensure the effective and economical administration of the Debtor's liquidation; and (iii) protect against asset dissipation pending the outcome of the Petitioners' continuing investigations and the Cayman Litigation.

A. HoldCo Is an Eligible "Debtor" Under Chapter 15 of the Bankruptcy Code

117. HoldCo qualifies as a "debtor" as such term is defined in section 1502(1), which provides that a debtor is "an entity that is the subject of a foreign proceeding." *See* 11 U.S.C. 1502(1). Here, HoldCo is an "entity," which includes a corporation. *See* 11 U.S.C. §§ 101(15) (definition of "entity," which includes a "person") and 101(41) (definition of "person," which includes a "partnership" and a "corporation"). HoldCo is: (1) a corporate entity organized under the laws of the Cayman Islands; and (2) is the subject of the Cayman Proceeding.

118. Accordingly, as courts, including courts in the Third Circuit have held, no further showing is required for HoldCo to qualify as a "debtor" eligible for relief under chapter 15 of the Bankruptcy Code. *See, e.g.*, Transcript of Hearing at 9, 3–18, *In re Bemarmara Consulting A.S.*, Case No. 13-13037(KG) (Bankr. D. Del. Dec. 17, 2013) [D.I. 38] (finding section 109(a) of the Bankruptcy Code to be inapplicable to Chapter 15 because section 109(a) "provides for [debtors]" under the Bankruptcy Code, and it is the foreign representative, and not the debtor in the foreign proceeding, who petitions the court in chapter 15 cases); *see also In re Talal Qais Abdulmunem Al Zawawi*, 634 B.R. 11 (Bankr. M.D. Fla. 2021); 637 B.R. 663 (M.D. Fla. 2022); appeal No. 22-11024, Doc 53-1 (11th Cir. April 3, 2024). Further, "[s]ection 1502 defines [d]ebtor as an entity that is the subject of a foreign proceeding. And there was nothing in that definition in Section 1502 which reflects upon a requirement that [d]ebtor have assets." *Bemarmara Consulting,* at pp. 9. Therefore, section 109(a) of the Bankruptcy Code does not apply and HoldCo qualifies as a debtor under chapter 15.

119. However, even if, as some courts in other circuits have held, section 109(a) applies to determine whether a foreign debtor is eligible to be a debtor in a chapter 15 case, HoldCo is an eligible debtor. *See, e.g.*, *Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 241 (2d Cir. 2013) (holding that section 109(a) applies to chapter 15 debtors). Section 109(a) provides that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." *See* 11 U.S.C. § 109(a). Accordingly, a foreign debtor can satisfy the section 109 requirement by possessing even a nominal amount of property in the United States. *See In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 200 (Bankr. D. Del. 2015) (stating that courts have determined that the property requirement of section 109(a) is satisfied by foreign debtors with "even a minimal amount of property located in the

United States") (citing *In re Aerovias Nacionales de Colombia S.A. (In re Avianca)*, 303 B.R. 1, 8 (Bankr. S.D.N.Y. 2003)); *In re Berau Capital Res. Pte. Ltd.*, 540 B.R. at 82 (holding that section 109(a) neither requires a specific quantum of property in the United States, nor states when or for how long that property must be located within the United States); *In re Zais Inv. Grade Ltd. VII*, 455 B.R. 839, 842 (Bankr. D.N.J. 2011) (finding that securities and cash pledged as collateral and held by a trustee are nominally the property of a Cayman Island corporation, and that the corporation is therefore an eligible debtor under section 109).

120. HoldCo is eligible to be a debtor under section 109(a) of the Bankruptcy Code because it has property located in the United States consisting of the Reed Smith Retainer. For these reasons, HoldCo satisfies the requirements to be deemed a debtor under chapter 15 of the Bankruptcy Code whether or not section 109(a) of the Bankruptcy Code applies.

B. The Cayman Proceeding is a Foreign Main Proceeding

121. The Cayman Proceeding is entitled to recognition as a foreign main proceeding under chapter 15 of the Bankruptcy Code. Section 1517(a) of the Bankruptcy Code provides that, after notice and hearing, a court shall enter an order recognizing a foreign proceeding as a foreign main proceeding if: (a) such foreign proceeding is a foreign main proceeding within the meaning of section 1502(4) and 1517(b)(1) of the Bankruptcy Code, (b) the foreign representative applying for recognition is a person or body, and (c) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517; *see also* Hon. Burton R. Lifland, Una O'Boyle, Esq. and Erin Healy Mautner, Esq., *Chapter 15 of the United States Bankruptcy Code: An Annotated Section-By-Section Analysis* ("The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings . . . [t]he requirements of this section . . . are all that must be fulfilled to attain recognition"); *see also In re Foreign Econ. Indus. Bank*, 607 B.R. 160, 168 (Bankr. S.D.N.Y. 2019) (internal citations omitted) ("The language of this section makes

clear that the decision whether to grant recognition is not dependent upon any findings about the nature of the foreign proceeding . . . [i]nstead, if the three requirements of this section are met, the court is obligated to grant recognition."). Section 1517(b) of the Bankruptcy Code provides that a foreign proceeding "shall be recognized . . . (1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1517(b)(1). Here, as explained below, all requirements for recognition of the Cayman Proceeding, the Petitioners, and this Petition are satisfied.

i. The Cayman Proceeding Constitutes a "Foreign Proceeding"

122. The Cayman Proceeding qualifies as a "foreign proceeding" under chapter 15 of the Bankruptcy Code. Section 101(23) of the Bankruptcy Code defines a "foreign proceeding" as:

> a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

123. Based on this definition, courts have held that a "foreign proceeding" is:

(a) a proceeding;

(b) that is either judicial or administrative;

(c) that is collective in nature;

(d) that is in a foreign country;

(e) that is authorized or conducted under a law related to insolvency or the adjustment of debts;

(f) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court; and

(g) which proceeding is for the purpose of reorganization or liquidation.

See In re Ir. Bank Resolution Corp. (In Special Liquidation), 2014 Bankr. LEXIS 1990, at *40 (D. Del. April 30, 2014) (citing *In re Betcorp Ltd.*, 400 B.R. 266, 277 (Bankr. D. Nev. 2009)); *see also*

In re Overnight and Control Comm'n of Avćmzit, S.A., 385 B.R. 525, 532-33 (Bankr. S.D.N.Y. 2008) (discussing factors). As set forth in the Declarations, the Cayman Proceeding satisfies such requirements and, therefore, qualifies as a "foreign proceeding" for purposes of section 101(23) of the Bankruptcy Code.

124. *First*, the Cayman Proceeding was brought pursuant to section 131 of the Companies Act. *See* Companies Act § 131. For purposes of chapter 15 recognition, "the hallmark of a 'proceeding' is a statutory framework that constrains a company's actions and that regulates the final distribution of a company's assets." *Betcorp*, 400 B.R. at 278. Because the Cayman Proceeding operates under such a statutory framework, it satisfies the first factor of section 101(23) of the Bankruptcy Code.

125. *Second*, the Cayman Proceeding is judicial in character. A liquidation proceeding is deemed judicial in character when it involves a court "exercis[ing] its supervisory powers." *In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010). Here, the Cayman Proceeding is subject to the control and supervision of the Cayman Court. Specifically, in the Cayman Proceeding, the Debtor's assets and affairs are subject to the control and supervision of the Cayman Court for the purpose of the liquidation, pursuant to the Supervision Order, which, *inter alia*, (i) appoints the JOLs as joint official liquidators, (ii) authorizes the Petitioners to commence legal proceedings in the name and on the behalf of the Debtor to obtain information or pursue a stay in the Cayman Islands or in the United States, and (iii) permits the Petitioners to present a petition for the winding up of the Fund. *See* Supervision Order ¶¶ 2-6; MacInnis Decl. ¶¶ 63-64.

126. *Third*, the Cayman Proceeding is collective in nature in that it considers the rights of all of the Debtor's creditors and interest holders. *See* Moran Decl. at ¶ 57. A collective

proceeding is one in which all creditors' interests are adequately and fairly addressed. *See Betcorp Ltd.*, 400 B.R. at 281 (stating that a proceeding is collective where such proceeding "considers the rights and obligations of all creditors" in contrast to a non-collective proceeding, such as a "receivership remedy instigated at the request, and for the benefit, of a single secured creditor"). United States bankruptcy courts have recognized that Cayman liquidation proceedings qualify as collective judicial proceedings for the purposes of chapter 15 recognition. *See In re Silicon Valley Bank (Cayman Islands Branch)*, 658 B.R. 75, 92 (Bankr. S.D.N.Y. 2024) (citing *In re Ocean Rig UDW Inc.,* 570 B.R. 687, 701-02 02 (Bankr. S.D.N.Y. 2017)) ("concluding, among other things, that the Cayman liquidation proceedings commenced under Part V of the Companies Law are unquestionably collective judicial proceedings"); *see also In re Millard*, 501 B.R. 644, 650 (Bankr. S.D.N.Y. 2013) (recognizing a Cayman Liquidation as a collective judicial proceeding irrespective of whether the debtor was solvent or insolvent). The Supervision Order was entered pursuant to Companies Act section 131, which sits within Part V. Therefore, the Court should find that the Cayman Proceeding is a collective one.

127. *Fourth*, the Cayman Proceeding and the Cayman Court are located in the foreign territory of the Cayman Islands. United States courts have found that a proceeding in the Cayman Islands satisfies the foreign country requirement for the purposes of establishing a foreign proceeding. *See, e.g., Principal Growth Strategies, LLC v. AGH Parent LLC*, 615 B.R. 529 (D. Del. 2020); *In re Receivers Hugh Dickson & John Royle for an Ex Parte Order Pursuant to 28 U.S.C. § 1782 for Discovery in Aid of Foreign Proceedings*, Civil Action No. 20-940 (ES) (MAH), 2020 U.S. Dist. LEXIS 71828 (D.N.J. Mar. 10, 2020).

128. *Fifth*, as described above, the Companies Act, which governs the Cayman Proceeding, relates to insolvency and the adjustment of debt. *See* Moran Decl, at ¶ 56. Specifically,

the Cayman Proceeding is governed by Part V of the Companies Act (which is the Cayman Islands statute applicable to corporate insolvencies and liquidations), in which the Debtor's assets and affairs are subject to the supervision of the Cayman Court, for the purpose of liquidation, pursuant to the Supervision Order made by the Cayman Court. *See* Supervision Order, ¶¶ 2-6.

129. *Sixth*, the Cayman Proceeding subjects the Debtor's assets and affairs to the supervision of the Cayman Court during the pendency of the proceedings. *See* Supervision Order, generally; Moran Decl., at ¶¶ 58-59.

130. *Finally*, the objective of the Cayman Proceeding is the liquidation of the Debtor. The Petitioners submit that the Supporting Organizations commenced the Cayman Proceeding for the purpose of liquidation, as required by section 101(23) of the Bankruptcy Code. *See* Moran Decl., at ¶¶ 58-59.

131. As described above, the Cayman Proceeding satisfies all elements required for recognition as a foreign proceeding under section 101(23) of the Bankruptcy Code and applicable case law. United States courts have recognized collective proceedings similar to the Cayman Proceeding as "foreign proceedings" on numerous occasions. *See, e.g., In re Farfetch Limited (in Official Liquidation),* Case No. 24-11519 (CTG) [D.I. 46] (Bankr. D. Del. 2024) (recognizing a Cayman liquidation proceeding as a "foreign proceeding"); *In re IIG Glob. Trade Fin. Fund Ltd.*, No. 20-10132 (MEW), 2023 Bankr. LEXIS 1145 (Bankr. S.D.N.Y. April 27, 2023) (same); *In re Modern Land (China) Co.*, 641 B.R. 768 (Bankr. S.D.N.Y. 2022) (same); *In re Suntech Power Holdings Co.*, 520 B.R. at 399 (same).

ii. The Cayman Proceeding is a "Foreign Main Proceeding"

132. Chapter 15 of the Bankruptcy Code applies where a foreign representative seeks assistance in a United States Court. 11 U.S.C. § 1501(b)(1). The stated objectives of chapter 15

include: (i) cooperation between domestic courts and foreign courts in cross-border insolvency cases, (ii) "legal certainty for trade and investment," (iii) protection of all interested parties in a cross-border insolvency, and (iv) "maximization of the value of the debtor's assets." 11 U.S.C. § 1501(a); *see In re Oversight & Control Comm'n. of Avánzit*, S.A., 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008) (citing *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund*, 374 B.R. 122, 126 (Bankr. S.D.N.Y. 2007)). The Petitioners respectfully submit that each of these goals would be best achieved by recognizing that the Cayman Islands are the Debtor's COMI (defined and described below and that the Cayman Proceeding is therefore a "foreign main proceeding").

133. In addition to qualifying as a "foreign proceeding" under section 101(23) of the Bankruptcy Code, the Cayman Proceeding also qualifies as a "foreign main proceeding," which is defined in the Bankruptcy Code as "a foreign proceeding pending in the country where the debtor has the center of its main interests." *See* 11 U.S.C. § 1502(4); *see also* 11 U.S.C. § 1517(b)(1) (providing that an order of recognition as a foreign main proceeding shall be entered if the foreign proceeding that is subject to the petition "is pending in the country where the debtor has the center of its main interests"). The relevant time period for determining the location of a debtor's COMI is at or around the date on which the chapter 15 petition is filed. *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013); *Flynn v. Wallace* (*In re Irish Bank Resolution Corp. (In Special Liquidation))*, 538 B.R. 692, 697 (D. Del. 2015); *Ocean Rig UDW Inc.*, 570 B.R. at 705-06; *In re Ascot Fund Ltd.*, 603 B.R. 271, 279 (Bankr. S.D.N.Y. 2019); *In re Suntech Power Holdings Co.*, 520 B.R. at 416.

134. While the term COMI is not expressly defined in the Bankruptcy Code, bankruptcy courts have enumerated factors relevant to the determination of a debtor's COMI.

135. Delaware courts consider specific factors when assessing a Debtor's COMI. As an initial matter, section 1516 of the Bankruptcy Code provides that "[i]n the absence of evidence to the contrary, the debtor's registered office … is presumed to be the center of the debtor's main interests." Here, the Debtor's registered office is located in the Cayman Islands. Accordingly, the Debtor is entitled to the statutory presumption that its COMI is located in the Cayman Islands.

136. A court will also consider the following factors relevant to determining COMI:

(a) the location of the debtor's headquarters;

(b) the location of those who actually manage the debtor;

(c) the location of the debtor's primary assets;

(d) the location of the majority of the debtor's creditors or a majority of the creditors who would be affected by the case; and/or

(e) the jurisdiction whose law would apply to most disputes.

See In re Ir. Bank Resolution Corp. (In Special Liquidation), 2014 Bankr. LEXIS 1990, at *138. Considering these factors, and for the reasons provided below, the Debtor's COMI is located in the Cayman Islands.

137. The Debtor was incorporated in 2011 in the Cayman Islands under the laws of the Companies Act. The Debtor has its registered office, and is headquartered, at HSM Corporate Service Ltd., 68 Fort Street, George Town, PO Box 31726, Grand Cayman KY1-1207, Cayman Islands.

138. Since the entry of the Supervision Order in the Cayman Proceeding on May 6, 2025, the Petitioners have assumed sole authority, subject to the supervision of the Cayman Court, to manage the Debtor's assets and administer its estate. *See* MacInnis Decl. ¶¶ 62-64. In connection therewith, the Petitioners have fulfilled their statutory obligations to publish and disseminate notices of HoldCo's winding up and their appointment, obtained sanction from the Cayman Court

to engage Cayman Islands and U.S. counsel, published a Report to Contributories on July 2, 2025, and, on July 3, 2025, convened the first meeting of contributories held on July 9, 2025, issued formal correspondence to over 50 parties, including, directors, shareholders, banks, service providers, the prior appointed joint voluntary liquidators, requesting books and records, held discussions with various parties regarding HoldCo's history and financial affairs, and commenced the Cayman Litigation and the Applications. In connection therewith, the Petitioners have made decisions regarding the Cayman Proceeding, retained U.S. counsel to advise the Petitioners on U.S. law matters, and maintained control over the Debtor. *Id.* at ¶¶ 62-68.

139. The Petitioners have conducted these activities from their office in the Cayman Islands. Moreover, the actions of the Petitioners in connection with the Debtor's estate are subject to supervision by a Cayman Islands judge in the Cayman Court. *See id.*; *see also Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d at 137 ("[A]ny relevant activities, including liquidation activities and administrative functions, may be considered in the COMI analysis."); *In re Suntech Power Holdings Co.*, 520 B.R. at 416 (A "court may consider the location of the debtor's 'nerve center,' including from where the debtor's activities are directed and controlled, in determining a debtor's COMI."). Accordingly, the facts support a finding that those who actually manage the Debtor are located in the Cayman Islands.

140. The Debtor's registered office, current management, accounting, planning, budgeting, and human resources materials are located in the Cayman Islands. As discussed below, discovery is necessary to determine additional information regarding the Debtor's assets other than the Reed Smith Retainer.

141. Based on the facts and circumstances set forth herein, there are no facts sufficient to rebut the presumption that the Debtor's COMI is in the Cayman Islands. Therefore, the Cayman Proceeding should be recognized as a foreign main proceeding.

142. Certain other factors also support a finding that the Debtor's COMI is located in the Cayman Islands. For instance, the outward appearance of the Debtor's COMI is an important consideration. All of the Debtor's recent activities have been conducted and ascertainable as being in the Cayman Islands. Accordingly, the Cayman Islands can be reasonably ascertainable by the Debtor's creditors and other stakeholders as the Debtor's COMI.

143. Additionally, having commenced the Cayman Litigation, the Debtor certainly holds causes of action in the Cayman Islands. While the Debtor may also hold claims in other jurisdictions, the location of causes of action in the Cayman Islands makes this factor at least neutral.

144. Based on these facts, the totality of the circumstances—particularly, the fact that the Debtor's nerve center has been the Cayman Islands since the appointment of the Petitioners as joint official liquidators—strongly weighs in favor of the conclusion that the Debtor's COMI is located in the Cayman Islands. Because the Cayman Proceeding is pending in the location of the Debtor's COMI, the Cayman Proceeding should be recognized as a foreign main proceeding.

C. In the Alternative, the Cayman Proceeding Should be Recognized as a Foreign Nonmain Proceeding

145. In the event that this Court determines that the Cayman Proceeding will not be deemed a "foreign main proceeding," it should instead recognize the Cayman Proceeding as a "foreign nonmain proceeding" as defined in section 1502(5) of the Bankruptcy Code. 11 U.S.C. § 1502(5). Under section 1517(b) of the Bankruptcy Code, a foreign proceeding shall be recognized as a foreign nonmain proceeding if it is pending in a country where the debtor has an

"establishment." *See* 11 U.S.C. § 1517(b)(2). Section 1502 of the Bankruptcy Code defines an "establishment" as "any place of operations where the debtor carries out a non-transitory economic activity." *See* 11 U.S.C. § 1502(2). The "establishment" requirement is satisfied by conducting business locally. *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. at 130-31, *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008).

146. The Debtor conducts pertinent economic activity in the Cayman Islands. As noted above, its headquarters is located in the Cayman Islands. Accordingly, the Petitioners submit that at a minimum, the Debtor maintains an establishment in the Cayman Islands where non-transitory economic activity takes place. Moreover, prior to the commencement of the Cayman Proceeding, and while the Debtor was approving the Relevant Transactions, one of the Directors, Mr. Murphy, was resident in the Cayman Islands. As explained above, the Petitioners have been continuing the operation of the Debtor during the winding up of its affairs pursuant to the Cayman Proceeding.

147. For these reasons, to the extent that this Court finds that the Cayman Proceeding is not a "foreign main proceeding," there are sufficient grounds for this Court to find that the Debtor has an "establishment" in the Cayman Islands and to recognize the Cayman Proceeding as a "foreign nonmain proceeding" per the definition provided in section 1502(5) of the Bankruptcy Code. See *In re SphinX, Ltd.*, 351 B.R. 103, 122 (Bankr. S.D.N.Y. 2006) *aff'd*, 371 B.R. 10 (S.D.N.Y. 2007) (finding that "no negative consequences would appear to result from recognizing the [foreign] proceedings as nonmain proceedings, that is the better choice.").

D. The Petitioners Satisfy the Requirements of a "Foreign Representative" Under Section 101(24) of the Bankruptcy Code

148. For recognition under chapter 15, a foreign proceeding must also have a foreign representative. *See* 11 U.S.C. § 1517(a)(2) (providing that a foreign representative shall apply for recognition of the foreign proceeding). The Petitioners submit that this Chapter 15 Case was

commenced by a duly authorized "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code, which provides as follows:

> The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding. 11 U.S.C. § 101(24).

149. Pursuant to the Supervision Order, the Cayman Court authorized the appointment of Margot MacInnis and Sandipan Bhowmik as the JOLs, authorized and empowered them to act jointly and severally as the foreign representatives in connection with the Cayman Proceeding. *See* Supervision Order, ¶¶ 2-3. The Cayman Court, by way of the Supervision Order, further granted the JOLs the power to, among other things: (i) commence legal proceedings in the name and on behalf of the Debtor to obtain the information, documents, or examine individuals in the United States; (ii) apply for the preservation, freezing or attachment of assets to which the Debtor is or may be entitled; and (iii) seek registration or recognition of themselves and/or the Cayman Proceeding in any state in the United States for either of the reasons referenced in (i) or (ii). *See Id.* at ¶¶ 5-6. As a result of the authority granted by the Cayman Court and under United States law, the Petitioners are entitled to file this Chapter 15 Case in the United States for the purpose of having themselves, the Cayman Proceeding, the Supervision Order, and other orders of the Cayman Court recognized and enforced in the United States. *See Id.* ¶¶ 2-6.

E. The Petition Was Properly Filed and Satisfies the Requirements under Section 1515 of the Bankruptcy Code

150. The Petitioners duly and properly commenced this Chapter 15 Case by filing the Petition, accompanied by all fees, documents, and information required by the Bankruptcy Code, Bankruptcy Rules and Local Rules, including: (a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses

of all persons or bodies authorized to administer foreign proceedings of the Debtor, (ii) all parties to litigation pending in the United States in which the Debtor is a party at the time of the commencement of the Chapter 15 Case, and (iii) all entities against whom at relief is being sought under section 1519 of the Bankruptcy Code; (c) a statement identifying all of the Debtor's foreign proceedings that are known to the Petitioners; and (d) a certified copy of the Supervision Order.

151. Accordingly, because the Petition satisfies section 1517 of the Bankruptcy Code, the Court should recognize the Cayman Proceeding in this Chapter 15 Case. Granting such recognition will promote the United States public policy of respecting foreign proceedings as articulated in sections 1501(a) and 1508 of the Bankruptcy Code and further cooperation between courts to the maximum extent possible as mandated by section 1525(a) of the Bankruptcy Code. For these reasons, the conditions for recognition of the Cayman Proceeding are satisfied under section 1517 of the Bankruptcy Code.

F. The Petitioners are Entitled to Automatic Relief Under Section 1520 of the Bankruptcy Code

152. Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign proceeding as a foreign main proceeding, *see* 11 U.S.C. § 1520(a), including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to HoldCo and to its property that is located within the territorial jurisdiction of the United States. Given that the protections set forth in section 1520(a) flow automatically from the recognition of a foreign main proceeding under section 1517, the Petitioners respectfully submit that no further showing is required to the extent the Court recognizes the Cayman Proceeding as a foreign main proceeding.

G. The Petitioners are Entitled to Additional Relief Under Section 1521 of the Bankruptcy Code

153. Upon recognition of a foreign proceeding, section 1521 of the Bankruptcy Code provides specific grounds for additional relief. Specifically, section 1521 authorizes the Court to grant "any appropriate relief," including "any relief that may be available to a trustee" subject to certain limitations and provided that "the interests of the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. §§ 1521, 1522. Here, the Petitioners respectfully request that this Court grant relief under sections 1521(a)(1), (2), (3), (4), (5), (6) and (7) of the Bankruptcy Code.

i. The Foreign Representative is Entitled to Appropriate Relief Under Sections 1521 (a)(1), (2), (3), (4), (5), (6) and (7)

154. As stated below, the Petitioners seek further relief upon recognition in the form of availing themselves of discovery rights under the Bankruptcy Code to assist them in their investigation of the assets and affairs of the Debtor, to identify the location of property over which the Debtor has or may assert a proprietary interest, and in their efforts to recover books and records of the Debtor in the possession of third parties to investigate the location of the Fund and other assets of the Debtor. This will help avoid the potential loss of critical evidence relating to the Debtor's assets and liabilities, as well as causes of action against third parties.

155. First, pursuant to sections 1521(a)(1), (2), and (3), the Petitioners request: (1) that this Court stay the commencement, continuation, or execution of any individual action or proceeding concerning the Debtor's assets, rights, obligations, or liabilities to the extent they have not already been stayed by section 1520(a); and (2) the Court suspend the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a). These provisions are necessary to ensure the Debtor's assets or interests in the United States are not dissipated during the course of the Cayman Proceeding.

156. Second, to enable them to identify, protect, and preserve the Debtor's estate for the benefit of all its creditors, the Petitioners request that this Court entrust them with the administration or realization of all or part of the Debtor's assets within the territorial jurisdiction of the United States pursuant to section 1521(a)(5). *See IIG Global Trade Finance Fund Ltd., No. 20-10132 (MEW) (Bankr. S.D.N.Y Jan. 17, 2020)* ECF No. 9 (ordering that the administration or realization of all or parts of the assets of [the debtor] within the territorial jurisdiction of the U.S. is entrusted to its liquidators); *In re Frontera Resources Caucasus Corp. and David Griffin*, No. 19-13418 (MEW) (Bankr. S.D.N.Y Oct. 25, 2019) ECF No. 19 (ordering that the liquidators are entrusted with the administration and realization of [the debtor's] assets within the territorial jurisdiction of the United States); *In re Air Berlin PLC & Co. Luftverkehrs KG*, No. 17-12282 (MEW) (Bankr. S.D.N.Y Aug. 18, 2017) ECF. No. 24 (granting 1521(a)(5) relief). This authority would be consistent with the Petitioners' authority to administer the Debtor's assets under Cayman law.

157. Finally, as discussed below, the Petitioners request that this Court provide discovery relief pursuant to sections 542(e), 1519(a)(3), 1521(a)(4), 1521(a)(7) of the Bankruptcy Code and Bankruptcy Rule 2004.

ii. Injunctive Relief is Appropriate

158. The standards, procedures, and limitations applicable to an injunction also apply to relief sought under sections 1521(a)(1), (2), (3), and (6) of the Bankruptcy Code. *See* 11 U.S.C. § 1521(e). Generally, to obtain an injunction, a movant must demonstrate the likelihood of irreparable harm. *See Clarkson v. Coughlin*, 898 F. Supp. 1019, 1035 (S.D.N.Y. 1995). Irreparable harm in the chapter 15 context exists if there is a risk of disruption to the orderly and fair distribution of assets through dissenting creditor actions to the detriment of other creditors. *See, e.g., In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) ("[I]rreparable harm is present

when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and fair distribution of assets in a single, centralized forum.") (*quoting* Collier on Bankruptcy ¶ 304.05 (15th ed. Rev. 2003)); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) ("[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors").

159. The risk of irreparable harm exists here, particularly in light of the consummation of the Relevant Transactions, which dispossessed the Debtor of its direct and indirect interests in the DAF Structure, and the risk that the Debtor's proprietary interests asserted in the Cayman Litigation could be further dissipated pending the outcome of the Cayman Litigation and the JOLs continuing investigation of the Relevant Transactions and the Remuneration Transactions. It is imperative that the Debtor's assets are protected while the JOLs' investigations are ongoing—recognition of the Injunctive Relief Order (discussed below) is therefore critical.

160. Absent injunctive relief, the Debtor's efforts to orderly liquidate through the Cayman Proceeding and to maximize value for all stakeholders could be thwarted by the actions of the Named Defendants or other parties in interest, a result that is inconsistent with the Bankruptcy Code. The interests of affected parties under the Cayman Proceeding are sufficiently protected under section 1522(a) of the Bankruptcy Code because all similarly situated parties will be treated equally and fairly during the pendency of the Cayman Proceeding. Moreover, all parties will have the opportunity to be heard in the Cayman Proceeding and the Cayman Litigation. The injunction also will not cause undue hardship or prejudice to the rights of any U.S.-based creditors or other parties in interest and is consistent with principles of comity. Accordingly, the injunction should be granted.

161. The ultimate goal of the Petitioners is to protect the Debtor and to preserve and maximize realization on the assets of the Debtor for the benefit of its creditors and other stakeholders. The additional relief requested by the Petitioners under sections 1521, 362, and 105 of the Bankruptcy Code will assist the Petitioners in carrying out their duties as joint official liquidators to achieve this goal and will promote the effective administration of the Cayman Proceeding.

iii. Discovery Relief is Both Necessary and Appropriate to Uncover Assets and Determine Causes of Action

162. It is crucial that the Petitioners be permitted to take discovery pursuant to sections 1519(a)(3), 542(e), 1521(a)(4), and 1521(a)(7) of the Bankruptcy Code. The Petitioners seek discovery to: (i) locate the Fund and uncover related frauds and potential assets of the Debtor; and (ii) determine causes of action against and defenses to third parties. These rules indicate Congress's recognition of the need for foreign debtors to conduct discovery with respect to their assets, liabilities and affairs, including the investigation of potential causes of actions. *See, e.g., In re Comair Ltd.*, No. 21-10298(JLG), 2021 Bankr. LEXIS 3137, at *28 (Bankr. S.D.N.Y. Nov. 14, 2021), appeal dismissed, No. 21 CIV. 10146 (AT), 2023 U.S. Dist. LEXIS 6146 (S.D.N.Y. Jan. 12, 2023); *In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 471 B.R. 342, 346 (Bankr. S.D.N.Y. 2012); *In re Glitnir banki hf.*, No. 08-14757 SMB, 2011 Bankr. LEXIS 3296 at *19 (Bankr. S.D.N.Y. Aug. 19, 2011); *In re Hughes*, 281 B.R. 224, 229 (Bankr. S.D.N.Y. 2002).

163. Specifically, the discovery of third party causes of action could uncover "contingent property interests" of the Debtor. *See In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 471 B.R. 342, 346 (Bankr. S.D.N.Y. 2012) (citing *In re Kane*, 628 F.3d 631, 641 n.7 (3d Cir. 2000) (noting that property of the estate "encompasses contingent property interests such as causes of action")). The Petitioners are seeking discovery to promote a significant chapter 15 objective by

permitting the Petitioners to fulfill their roles. *See In re Markus*, 607 B.R. 379, 390 (Bankr. S.D.N.Y. 2019), *aff'd in part*, vacated in part on other grounds, remanded sub nom. *Markus v. Rozhkov*, 615 B.R. 679 (S.D.N.Y. 2020) (quoting *In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. 803, 821 (Bankr. S.D.N.Y. 2018)).

164. Additionally, section 542(e) provides "[s]ubject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." 11 U.S.C. § 542(e). Foreign representatives in chapter 15 cases seeking court-ordered discovery at times seek relief pursuant to section 542(e), which is either directly applicable to chapter 15 cases or, in the alternative, delineate relief which can be granted by the court pursuant to section 1521(a)(4). *See In re Platinum Partners Value Arbitrage Fund, LP*, 583 B.R. 803 (Bankr. S.D.N.Y. 2018); *see also In re AJW Offshore Ltd.*, 488 B.R. 551, 564 (Bankr. E.D.N.Y. 2013) (finding that a foreign representative may seek disclosure pursuant to section 542(e)); *In re ABC Learning Ctr.'s, Ltd.*, 445 B.R. 318, 341 (Bankr. D. Del. 2010) (allowing the right to seek turnover under section 542).

165. Following sections 542(e) and 1521(a)(4), Bankruptcy Rule 2004 provides an additional ground for a court to authorize discovery in a chapter 15 case, with the stated purpose of determining the nature and extent of the bankruptcy estate. *See In re Glitnir banki hf.*, No. 08-14757 (SMB), 2011 Bankr. LEXIS 3296, at *20 (Bankr. S.D.N.Y. Aug. 19, 2011). "The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred." *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (citation omitted).

In particular, discovery under Rule 2004 can be used to "facilitate[s] . . . the unearthing of frauds." *In re Orion Healthcorp, Inc.*, 596 B.R. 228, 235 (Bankr. E.D.N.Y. 2019) (citation omitted). Thus, Rule 2004 can be used as a "pre-litigation discovery device." *In re Wilson*, 413 B.R. 330, 336 (Bankr. E.D. La. 2009). Likewise, a Rule 2004 motion "need not be tied to specific factual allegations between parties." *See In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997). Rather, Rule 2004 examinations may be "broad, unfettered and in the nature of a 'fishing expedition.'" *See In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008); *see also In re Hughes*, 281 B.R. at 226 (same).

166. Finally, courts have found that a foreign representative may be authorized to take discovery in accordance with section 542(e) and Bankruptcy Rule 2004 pursuant to sections 1507 and 1521(a)(7). *See CohnReznick LLP v. Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (In re Platinum Partners Value Arbitrage Fund L.P.)*, 2018 U.S. LEXIS 109684, at *11 (S.D.N.Y. 2018); *Platinum Partners Value Arbitrage Fund*, 583 B.R. at 810. If recognition is granted, section 1507 of the Bankruptcy Code grants the bankruptcy court authority to "provide additional assistance to a foreign representative under this title or under other laws of the United States" provided that such assistance is "consistent with the principles of comity" and satisfies the fairness considerations set forth in section 1507(b). Thus, chapter 15 provides courts with broad, flexible, and pragmatic rules to fashion relief that is "largely discretionary and turns on subjective factors that embody principals of comity." *In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. at 810 (Bankr. S.D.N.Y. 2018) (citation omitted). And, section 1521(a)(7) broadly affords a foreign representative "any additional relief that may be available to a trustee . . ." 11 U.S.C. § 1521(a)(7).

167. Here, the Petitioners must be afforded broad discovery rights in the United States to facilitate their investigations. First, this requires access to all documents relating to the Debtor's property or financial affairs, necessitating the need for section 542(e) relief. Second, the Petitioners must be able to broadly issue Rule 2004 examinations, as well as to be afforded all discovery rights under the Federal Rules of Civil Procedures, as incorporated by the Bankruptcy Rules. Only by affording the Petitioners the necessary tools to complete their investigations will the JOLs be able to maximize distributions such that creditors and interested parties are sufficiently protected.

H. The Injunctive Relief Order, As Entered by the Cayman Court, Should Be Fully Enforced Within the Territorial Jurisdiction of the United States Under Sections 105(a), 1507 and 1521(a)(7) of the Bankruptcy Code and Under Principles of Comity

168. Upon recognition of the Cayman Proceeding as a foreign proceeding—whether main or nonmain—the Court has the authority to provide additional assistance to the JOLs pursuant to the Bankruptcy Code or other applicable laws of the United States, so long as such relief is consistent with principles of comity. *See* 11 U.S.C. §§ 1507 and 1521(a)(7). Indeed, "[t]he plain language of Bankruptcy Code sections 1521(a) and 1507 give this Court a broad grant of discretion to aid foreign courts in accordance with principles of comity." *See In re Credito Real, S.A.B. de C.V., SOFOM, E.N.R.*, 2025 Bankr.LEXIS 751, at *39 (Bankr. D. Del. April 1, 2025). Additionally, section 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

169. Chapter 15 specifically contemplates that the court should be guided by principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief. *In re Atlas Shipping A/S*, 404 B.R. 726, 738 (Bankr. S.D.N.Y. 2009); s*ee also, In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. at 333 ("relief [post-recognition] is largely discretionary and turns on subjective factors that embody principles of comity." (citing §§ 1507, 1521, and 1525).). Chapter

15 of the Bankruptcy Code empowers "courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter in accordance with comity." *In re Rede Energia, S.A.*, 515 B.R. 69, 91 (Bankr. S.D.N.Y. 2014) (citing *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. at 333-34; *In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006) ("chapter 15 maintains—and in some respects enhances—the 'maximum flexibility' . . . that section 304 provided bankruptcy courts in handling ancillary cases in light of principles of international comity and respect for the laws and judgments of other nations.") (internal citations omitted). These principles are embedded in the relief available under Chapter 15, which "provides courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives in the chapter in accordance with comity." *In re Rede Energia, S.A.*, 515 B.R. at 91.

170. Accordingly, "[a]fter recognition, chapter 15 specifically contemplates that the court will exercise its discretion consistent with principles of comity." *In re British American*, 488 B.R. 205, 239 (Bankr. S.D. Fla 2013) (quoting *In re Atlas Shipping A/S*, 404 B.R. 726, 738 (Bankr. S.D.N.Y. 2009)). Courts are "guided by the principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief." *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 696 (Bankr. S.D.N.Y.2010) (citing *In re Atlas Shipping*, 404 B.R. at 738); *see also CT Inv. Mgmt v. Cozumel Caribe (In re Cozumel Caribe S.A. de C.V.)*, 482 B.R. 96, 113 (Bankr. S.D.N.Y. 2012) (noting that comity is a "central tenet" in chapter 15 proceedings); 11 U.S.C. § 1501 (stating that the purpose of chapter 15 is to provide mechanisms for cooperation and comity between courts dealing with cross-border insolvency cases); *see also In re Agrokor*, 591 B.R. 163, 186 (Bankr. S.D.N.Y. 2018) ("Once a case is recognized as a foreign main proceeding, as has already occurred here, Chapter 15

specifically contemplates that the court will exercise its discretion consistent with principles of comity."); *In re Oi S.A.*, 587 B.R. 253, 264 (Bankr. S.D.N.Y. 2018) ("Chapter 15 … provides courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter in accordance with comity.") (internal quotations and citations omitted).

171. Indeed, section 1509(b)(3) expressly states that upon the foreign representative's recognition, the Court "must grant comity or cooperation to the foreign representative." 11 U.S.C. § 1509(b)(3). Chapter 15's legislative history evidences this principle. Congress has stated that "comity is raised in the introductory language [of Chapter 15] to make clear that it is the central concept to be addressed." *In re Oi*, 587 B.R. at 264 (quoting H.R. Rep. No. 109-31, pt. 1, at 109 (2005), as reprinted in 2005 U.S.C.C.A.N. 88, 172).

172. In *Hilton v. Guyot*, the United States Supreme Court defined comity as follows:

> Comity in the legal sense, is neither a matter of absolute obligation, on the one hand, nor mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

159 U.S. 113, at 141. "Comity is a common law rule by which courts in the United States give deference to foreign judgments." *In re Neves*, 570 B.R. 420, 426 (Bankr. S.D. Fla. 2017).

173. The proponent of comity bears the initial burden to satisfy the comity considerations set forth in *Hilton v. Guyot*, which considers the following:

> (a) whether the foreign court was competent and used proceedings consistent with civilized jurisprudence; (b) whether the judgment was rendered by fraud; and (c) whether the foreign judgment was prejudicial because it violated American public policy notions of what is decent and just.

Daewoo Motor America, Inc. v. General Motors Corp., 459 F.3d 1249, 1258 (11th Cir. 2006) (quoting *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1238 (11th Cir. 2004)).

174. The first factor requires the proponent of comity to "describe the process by which the [foreign order] was obtained, why that process is not unfair, and why it does not offend the United States' notions of justice." *In re Neves*, 570 B.R. at 426. Once the proponent of comity satisfies this burden, the burden shifts to the party opposing comity to show that the foreign order "violates American public policy notions of what is decent and just." *Id*. at 427; see also *Tahan v. Hodgson*, 662 F.2d 862, 864 (D.C. Cir. 1981) (a foreign judgment may not be recognized on comity if its recognition would be "repugnant to fundamental notices of what is decent and just"). This burden is "high and unfrequently met" and is applicable only in "clear-cut cases." *Ackerman v. Levine*, 788 F.2d 830, 841 (2d Cir. 1986) (citations omitted).

175. Further, all relief under Chapter 15 is subject to the public policy exception set forth in section 1506. Under section 1506, the Court may refuse "to take an action governed by [Chapter 15] if the action would be manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. This public policy exception is "narrowly construed, because the word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States.'" *In re ABC Learning Ctrs*., 728 F.3d at 309 (quoting H.R. Rep. No. 109-31(I), at 109 (2005) reprinted in U.S.C.C.A.N. 88, 172); *see also In re Ashapura Minechem Ltd*., 480 B.R. 129, 139 n.60 (S.D.N.Y. 2012) (internal quotations omitted) (citation omitted) (explaining that courts have "uniformly" interpreted the public policy exception "narrowly and applied it sparingly")

176. In considering comity, the relief granted in the foreign proceeding need not be identical to the relief that is available in the United States to be entitled to comity. *See In re Rede Energia*, 515 B.R. at 69. Indeed, the Restatement (Second) of Conflict of Laws states that the

principle of international comity should not be limited to monetary awards as foreign orders for equitable relief have been afforded comity in the United States. Restatement § 102.

177. In that regard, under principles of comity, courts have recognized injunctions issued by foreign courts, even if such injunctions may not be enforceable in the United States. *See In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 700 (noting "[p]rinciples of comity in chapter 15 cases support enforcement of the [foreign order] in the United States whether or not the same relief could be ordered in a plenary case under chapter 11.").

I. Recognition of the Injunctive Relief Order is Warranted under Sections 1521(a)(7) and 1507 of the Bankruptcy Code

i. Legal Standard for Relief Under Sections 1521(a)(7) and 1507

178. The Court has authority under sections 1521(a)(7) and 1507 to recognize and enforce the Injunctive Relief Order.

179. Upon recognition of a foreign proceeding, section 1521(a)(7) authorizes the Court to grant "any appropriate relief" at the request of the foreign representative "where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors[,]" including any relief that may be available to a trustee or debtor-in-possession, subject to certain exceptions that do not apply here. 11 U.S.C. § 1521(a)(7); *see In re Cell C Proprietary Ltd.*, 571 B.R. 542, 554 (Bankr. S.D.N.Y. 2017) (noting that the list of "appropriate relief" under section 1521(a) is "non-exhaustive"); *In re Daebo Int'l Shipping Co., Ltd.*, 543 B.R. 47, 52–53 (Bankr. S.D.N.Y. 2015).

180. The Court has "exceedingly broad" discretion to grant relief under section 1521(a). *In re Markus*, 610 B.R. at 76; *In re U.S. Steel Canada Inc.*, 571 B.R. 600, 609 (Bankr. S.D.N.Y. 2017) (citation omitted). However, such relief may be granted "only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a). An analysis under section 1522 requires a balancing test of the respective interests. *See In re Oi*, 587 B.R. at 265 (citing various cases).

181. Furthermore, Section 1507 of the Bankruptcy Code also permits the Court to grant the requested relief as "additional assistance." 11 U.S.C. § 1507(a). *Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de CV (In re Vitro S.A.B. de CV)*, 701 F.3d 1031,1057 (5th Cir. 2012) (explaining that section 1507's "broad grant of assistance is intended to be a catchall"); *see also* H.R. Rep. No. 109-31, pt. 1, at 109 (2005) (noting that section 1507 authorizes "additional relief" beyond that available under section 1521 of the Bankruptcy Code). Though the "interplay between the relief available under sections 1507 and 1521 is far from clear," some courts analyze relief under these sections in a two-step approach: first considering relief under section 1521 and, if such relief is not available, then the Court may consider the relief requested under section 1507. *In re Olinda Star, Ltd.*, 614 B.R. 28, 47 (Bankr. S.D.N.Y. 2020) (citing various cases).

182. To grant "additional assistance" under section 1507, the Court shall consider whether the additional assistance is consistent with principles of comity and whether it satisfies the following fairness considerations set forth in section 1507(b):

> (1) just treatment of all holders of claims against or interests in the debtor's property;
>
> (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
>
> (3) prevention of preferential or fraudulent dispositions of property of the debtor;
>
> (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

11 U.S.C. § 1507(b); *In re Agrokor*, 591 B.R. at 188-89

183. Courts have recognized and enforced foreign orders under sections 1521 and 1507 to give effect and ensure compliance with the foreign order. Such is the case with foreign confirmation orders or orders to facilitate their implementation. *In re Olinda Star, Ltd.*, 614 B.R. at 47-48 (recognizing BVI scheme of arrangement and entering a permanent injunction against acts that would interference with the scheme); *In re Avanti Comms. Grp. PLC*, 582 B.R. 603 (Bankr. S.D.N.Y. 2018) (recognizing and enforcing UK schemes of arrangement which, among other things, granted third party releases); *In re Cell C Proprietary Ltd.*, 571 B.R. at 551 (recognizing South African arrangement sanctioned by South African court); *In re Rede Energia S.A.*, 515 B.R. at 93-94 (recognizing Brazilian reorganization and confirmation decision and enjoining actions in the United States in contravention of the decision

184. American courts have also afforded comity to *ex parte* interim injunctions. For instance, in *Gorsoan Ltd. v. Bullock*, No. 2020-020803-CA-01 (Fla. 11th Cir. Ct. Feb. 17, 2021), the court recognized an *ex parte* interim injunction order issued by a Cypriot court freezing Bullock's assets worldwide. In so doing, the court noted its rich history of affording comity to foreign interim injunctions. *Id.* at p. 3; *see also Amezcua v. Cortez*, No. 3D20- 1649, at 6 (Fla. 3d DCA Jan. 13, 2021) (recognizing Mexican embargo order prohibiting transfer of condominium unit); *Cermesoni v. Maneiro*, 144 So. 3d 627, 629 (Fla. 3d DCA 2014); *Nahar v.Nahar*, 656 So. 2d 225, 229 (Fla. 3d DCA 1995.

ii. Recognition of the Injunctive Relief Order is Appropriate under Sections 1521 and 1507 of the Bankruptcy Code

185. Section 1521(a)(7) of the Bankruptcy Code provides the granting of any additional relief – in this case, the recognition of the Injunctive Relief Order – that may otherwise be available to a trustee in bankruptcy. Here, such an Injunctive Relief Order may be enforceable in the United States under section 105(a). *See American Film Technologies v. Taritero (In re American Film Technologies)*, 175 B.R. 847, 855 (Bankr. D. Del. 1994) (utilizing section 105 to issue a preliminary injunction). Additionally, the standard for an injunction in the Cayman Islands is similar to that in the Third Circuit. *See* Moran Decl., at ¶ 42 (discussing the standard for injunctive relief in the Cayman Islands).[11] Indeed, as set forth in the Moran Declaration, the Cayman Court has already determined that (a) the Cayman Litigation had a reasonable prospect of success and (b) that the interests of the Debtor's stakeholders were best served by the JOLs commencing the Cayman Litigation. *See* Moran Decl., at ¶ 32.

[11] To determine whether to issue a preliminary injunction, a court must consider: (1) whether the movant has a reasonable probability of success on the merits; (2) whether irreparable harm would result if the relief sought is not granted; (3) whether the relief would result in greater harm to the non-moving party, and (4) whether the relief is in the public interest. *See Swartzwelder v. McNeilly*, 297 F.3d 228, 234 (3d Cir. 2002).

186. Further, the Named Defendants have been afforded due process and given notice of the Injunctive Relief Application and the Injunction Hearing Date and will have the opportunity to appear at the hearing and respond to the Injunctive Relief Application before relief is granted by the Cayman Court. *See* Moran Decl., at ¶ 35. Moreover, the nature of the relief being sought is similar to the relief that has been raised among the parties in protocol discussions in the Cayman Proceeding and is, in substance, akin to the restrictions that the Named Defendants agreed to assume in the Rule 11 Agreement in the Texas Proceeding. *See* MacInnis Decl., at ¶¶ 68, 97. Therefore, to the extent the Injuncitve Relief Order is entered in the Cayman Islands, it should be recognized by this Court in the interests of comity.

187. In addition, recognition of the Injunctive Relief Order satisfies the relevant equitable and practical considerations outlined in section 1507(b) of the Bankruptcy Code. First, the relief promotes fair and equitable treatment of all creditors by preserving the value of HoldCo's estate for the benefit of all stakeholders, rather than potentially allowing the Named Defendants to obtain an unfair advantage through the dissipation or diversion of assets. Second, recognition ensures that U.S.-based creditors are not exposed to procedural disadvantage in the Cayman Proceeding, as the Injunctive Relief Order operates neutrally to safeguard HoldCo's property pending full adjudication of the claims, rather than favoring any specific jurisdiction or creditor group. Third, the Injunctive Relief Order directly addresses and prevents improper transfers or dissipation of HoldCo's assets, which is essential to maintaining the status quo during the JOLs' ongoing investigation and the Cayman Litigation. Finally, the relief sought supports a distribution framework that is aligned, in substance, with U.S. bankruptcy priorities by ensuring assets are preserved for collective resolution and eventual equitable distribution. These considerations, grounded in the principles of comity and cross-border cooperation, strongly support recognition

of the Injunctive Relief Order, which represents the Cayman Court's necessary and proportionate response to the JOLs' and the Named Defendants' failure to reach agreement on a protocol to mitigate the risk of asset dissipation pending completion of the JOLs' investigation and the Cayman Litigation.

188. Accordingly, the JOLs seek, should the Cayman Court issue the Injunctive Relief Order, full enforcement of the Injunctive Relief Order within the territorial jurisdiction of the United States to ensure that the mitigation of any risk of asset dissipation—including asset dissipation of funds for the benefit of U.S. charities—pending completion of the JOLs' investigation and the Cayman Litigation is applied consistently across the two relevant jurisdictions, furthering the very goals of international cooperation and assistance to foreign courts and principles of comity.

J. Granting the Relief Requested herein, Including Recognition of the Cayman Proceeding and Injunctive Relief Order, Are Not Manifestly Contrary to U.S. Public Policy

189. The requested relief herein advances the public policy objectives of chapter 15 of the Bankruptcy Code, including cooperation, fairness, and efficiency, and the protection and maximization of asset value. As set forth in the Moran Declaration, Cayman law provides a structured process for the liquidation of a debtor's assets, involving judicial oversight and opportunity for creditor participation, which is aligned with U.S. principles of due process and fair treatment of creditors. *See* Moran Decl. ¶¶ 29, 64. To aid an orderly liquidation, it is imperative that the Petitioners be afforded the necessary relief to both protect the Debtor's assets and conduct ongoing investigations—this includes recognition of the Cayman Proceeding and Injunctive Relief Order. Absent this Court granting the relief requested herein, there is a significant risk of further asset dissipation—particularly related to the Fund. Therefore, such relief promotes the fair and efficient administration of cross-border insolvency, protects the interests of all creditors and other

parties in interest, including the Debtor, and maximizes the value of the Debtor's assets. *See* 11 U.S.C. § 1501(a).

NOTICE

190. Notice of this Petition has been provided in accordance with the terms set forth in the *Motion of Petitioners for Entry of an Order Scheduling a Hearing on Chapter 15 Petition for Recognition and Related Relief and Specifying Form and Manner of Service of Notice*. The Petitioners submit that such notice is proper, and that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Petitioners respectfully request the Court to enter an order, substantially in the form attached as **Exhibit A**, granting the requested relief and such other and further relief as may be just and proper.

Dated: July 21, 2025
Wilmington, Delaware

Respectfully submitted,

REED SMITH LLP

By: */s/ Jason D. Angelo*

Jason D. Angelo (No. 6009)
1201 North Market Street, Suite 1500
Wilmington, DE 19801
Telephone: +1.302.778.7500
Facsimile: +1.302.778.7575
E-mail: jangelo@reedsmith.com

-and-

Casey Laffey, Esq. (*pro hac vice* forthcoming)
Aaron Javian, Esq. (*pro hac vice* forthcoming)
Ian M. Turetsky, Esq. (*pro hac vice* forthcoming)
Richard C. Solow, Esq. (*pro hac vice* forthcoming)
REED SMITH LLP
599 Lexington Avenue
New York, NY 100220
Telephone: +1.212.521.5400
Facsimile: +1.713.521.5450
E-mail: claffey@reedsmith.com
ajavian@reedsmith.com
ituretsky@reedsmith.com
rsolow@reedsmith.com

Counsel to Margot MacInnis and Sandipan Bhowmik as Joint Official Liquidators of Chapter 15 Debtor

VERIFICATION OF PETITION

I, Margot MacInnis, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America, as follows:

My colleague, Sandipan Bhowmik, and I are the duly appointed Joint Official Liquidators of Charitable DAF HoldCo, Ltd (in Official Liquidation) (the "Debtor"), a Cayman Islands exempted company in official liquidation in the Cayman Islands, which was brought under the supervision of the Grand Court of the Cayman Islands Financial Services Division by an order dated May 6, 2025 (Cause No. FSD 116 of 2025)(JAJ). As such, I have full authority to verify the foregoing Petition on behalf of the Debtor.

I have read the foregoing Petition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 21, 2025
Cayman Islands

/s/ Margot MacInnis
MARGOT MACINNIS

Joint Official Liquidator of
Charitable DAF HoldCo, Ltd
(in Official Liquidation)

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION),[1] Debtor in a foreign proceeding.	Chapter 15 Case No. 25-11376 (___)

ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND DISCRETIONARY RELIEF

Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Limited (the "Petitioners"), the duly appointed joint official liquidators of Charitable DAF HoldCo, Ltd ("HoldCo" or the "Debtor"), a Cayman Islands exempted company in official liquidation in the Cayman Islands (the "Cayman Proceeding"), which was brought under the supervision of the Grand Court of the Cayman Islands Financial Services Division (the "Cayman Court") by an order dated May 6, 2025 (Cause No. FSD 116 of 2025) (JAJ) (the "Supervision Order"), by its undersigned United States counsel, Reed Smith LLP ("Reed Smith") having filed in their capacity as the authorized foreign representatives of HoldCo the Official Form Petition and the *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Verified Petition")[2] and the accompanying Moran Decl. and MacInnis Decl., seeking relief pursuant to chapter 15 of the Bankruptcy Code; and upon due consideration of the Verified Petition, Moran Decl., MacInnis Decl., together with all exhibits thereto, in support of the Verified

[1] The Debtor is incorporated in the Cayman Islands as an exempted company and registered with registration number 170388. The Debtor's registered office is located at HSM Corporate Services Limited, P.O. Box 31726, 68 Fort Street, George Town, Grand Cayman, KY1-1207, Cayman Islands.

[2] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Verified Petition.

Petition, as well as any objections thereto; and a hearing having been held on [DATE], 2025 (the "Hearing") to consider the Verified Petition, at which the Moran Decl. and MacInnis Decl. were received into evidence; and appropriate and timely notice of the filing of the Verified Petition and the Hearing thereon having been given by the Petitioners pursuant to section 1514 of the Bankruptcy Code; and such notice having been adequate and sufficient for all purposes; and no other or further notice being necessary or required; and all interested parties having had an opportunity to be heard at the Hearing; and after due deliberation and sufficient cause appearing therefore, the Court finds:[3] (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(a), 11 U.S.C. §§ 109 and 1501 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; (ii) venue is properly located in this district pursuant to 28 U.S.C. §§ 1410(1) and 1410(3); (iii) the Verified Petition was properly filed and served; (iv) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); (v) the Debtor is subject to foreign main proceedings within the meaning of section 1502(4) and 1517(b)(1) of the Bankruptcy Code; (vi) the Petitioners are "persons" and the "foreign representatives" of the Debtor within the meaning of section 101(24) of the Bankruptcy Code; (vii) the Debtor's chapter 15 case was properly commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code; (viii) the Debtor has its center of main interests in the Cayman Islands; (ix) the Verified Petition satisfies the requirements of section 1515 of the Bankruptcy Code and Rule 1007(a)(4) of the Bankruptcy Rules; (x) the Petitioners have demonstrated that the relief requested is necessary and appropriate, in the interests of the public and international comity,

[3] The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

consistent with the public policy of the United States, and warranted pursuant to sections 105(a), 362, 542, 1507(a), 1509(b)(2)-(3), 1520, 1521 and 1522 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules and will not cause hardship to creditors of the Debtor or other parties-in-interest that is not outweighed by the benefit of granting that relief; (xi) the interest of the public will be served by this Court's granting of the relief requested by the Petitioners; (xii) all of the relief contained in this Order is within the Court's jurisdiction, is essential to the success of the Cayman Proceeding, confers material benefits on, and is in the best interests of, the Debtor, its creditors, interest holders and other parties-in-interest, and critical and integral to the overall objectives of the liquidation and, with respect to injunctive relief, meets the legal and factual requirements for issuing an injunction; and (xiii) all creditors, interest holders and other parties-in-interest, including the Debtor, are sufficiently protected by the grant of relief ordered hereby in accordance with section 1522(a) of the Bankruptcy Code.

IT IS HEREBY ORDERED THAT:

1. The Verified Petition is granted and any objections thereto are overruled with prejudice.

2. The Debtor's Cayman Proceeding is granted recognition as a foreign main proceeding pursuant to sections 1517(a) and 1517(b)(1) of the Bankruptcy Code.

3. All relief afforded to a foreign main proceeding automatically upon recognition pursuant to section 1520 of the Bankruptcy Code is granted including, without limitation, the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtor and its property that is now within or in the future is located within the territorial jurisdiction of the United States.

4. The Petitioners are granted recognition as "foreign representatives" pursuant to section 101(24) of the Bankruptcy Code in respect of the Cayman Proceeding.

5. Pursuant to sections 1521(a)(1), (2) and (3) of the Bankruptcy Code, all persons and entities, other than the Petitioners and their representatives and agents, are hereby enjoined (to the extent they have not been stayed under section 1520(a)), in each case from:

a. executing against the assets of the Debtor;

b. commencing or continuing, including the issuance or employment of process, any judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtor;

c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtor;

d. transferring, relinquishing or disposing of any property of the Debtor to any person or entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Petitioners; and

e. commencing or continuing an individual action or proceeding concerning the assets, rights, obligations or liabilities of the Debtor;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States.

6. No persons or entities may take any action inconsistent with the Supervision Order, any order entered by the Cayman Court in relation to the Applications, and any orders issued in the Cayman Proceeding identified in the Verified Petition.

7. No action taken by the Petitioners in preparing, disseminating, applying for, implementing, or otherwise in connection with this Order, any order entered in respect of the Verified Petition, this Chapter 15 Case, any further order for additional relief in this Chapter 15 Case, or any adversary proceedings or contested matters in connection therewith, constitutes a waiver of any immunity afforded to the Petitioners as foreign representatives, including without limitation pursuant to section 1510 of the Bankruptcy Code.

8. In accordance with sections 1519(a)(3) and 1521(a)(4) of the Bankruptcy Code, Rule 2004 of the Bankruptcy Rules, and the Federal Rules of Civil Procedure, as incorporated by the Bankruptcy Rules, the Petitioners are authorized to conduct the examination of witnesses, the taking of evidence, or the delivery of information concerning the Debtor's assets, affairs, rights, obligations, or liabilities.

9. In accordance with sections 542(e), 1521(a)(4), and 1521(a)(7) of the Bankruptcy Code, subject to any applicable privilege, all persons that hold recorded information, including books, documents, records, and papers, relating to the Debtor's property or financial affairs are required to turnover or disclose such recorded information to the Petitioners.

10. Pursuant to section 1521(a)(5) of the Bankruptcy Code, the administration or realization of all or part of the assets of Debtor within the territorial jurisdiction of the United States is hereby entrusted to the Petitioners and the Petitioners are hereby established as the exclusive representatives of Debtor in the United States.

11. Pursuant to sections 105(a), 1507, and 1521(a)(7) of the Bankruptcy Code, the Injunctive Relief Order is hereby recognized, given full force and effect and is fully enforceable within the territorial jurisdiction of the United States.

12. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (A) this Order shall be effective immediately and enforceable upon its entry; (B) the Petitioners are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (B) the Petitioners and the Debtor are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

13. A copy of this Order shall be served in accordance with *Order Scheduling Hearing on Chapter 15 Petitions and Relating Relief and Specifying Form and Manner of Service of Notice* (D.I. ●). Such service shall be good and sufficient service and adequate notice for all purposes.

14. This Court shall retain jurisdiction with respect to the effect, enforcement, amendment, or modification of this Order, any request for additional relief or any adversary proceeding brought in and through this chapter 15 case, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

15. This Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

EXHIBIT 69

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION),[1]	Case No. 25-11376 (___)
Debtor in a foreign proceeding.	

DECLARATION OF MARGOT MACINNIS IN SUPPORT OF CHAPTER 15 PETITION FOR (I) RECOGNITION OF FOREIGN MAIN PROCEEDING, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

I, Margot MacInnis, pursuant to 28 U.S.C. § 1746, hereby declare (this "Declaration") under penalty of perjury under the laws of the United States of America, that the following is true and correct to the best of my knowledge and belief:

A. The Joint Official Liquidators and the Cayman Proceeding

1. My colleague, Sandipan Bhowmik, and I (the "Petitioners" or "JOLs") are the duly appointed Joint Official Liquidators of Charitable DAF HoldCo, Ltd (in Official Liquidation) ("HoldCo" or the "Debtor"), a Cayman Islands exempted company in official liquidation in the Cayman Islands (the "Cayman Proceeding"), which was brought under the supervision of the Grand Court of the Cayman Islands Financial Services Division (the "Cayman Court") by an order dated May 6, 2025 (Cause No. FSD 116 of 2025)(JAJ) (the "Supervision Order").[2]

[1] The Debtor is incorporated in the Cayman Islands as an exempted company, and registered with registration number 53083. The Debtor's registered office is located at HSM Corporate Services Limited, P.O. Box 31726, 68 Fort Street, George Town, Grand Cayman, KY1-1207, Cayman Islands.

[2] Ex. 1, Supervision Order in the Grand Court of the Cayman Islands FSD 2025-0116 (JAJ).

2. I respectfully submit this Declaration in support of the Petitioners' Verified Petition dated July 21, 2025 (the "Verified Petition")[3] seeking the United States Bankruptcy Court for the District of Delaware's (this "Court") (a) recognition of the Cayman Proceeding as a "foreign main proceeding" pursuant to 11 U.S.C. § 1517(b)(1) of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") or in the alternative as a "foreign nonmain proceeding" pursuant to section 1517(b)(2) of the Bankruptcy Code; (b) recognition of the Petitioners as "foreign representatives" of HoldCo, pursuant to sections 1509 and 1517 of the Bankruptcy Code; and (c) granting relief pursuant to sections 105(a), 1502, 1507, 1510, 1520 and 1521 of the Bankruptcy Code.

3. I am Managing Director of Grant Thornton Specialist Services (Cayman) Limited ("Grant Thornton"). I am one of the JOLs of HoldCo, alongside Mr. Bhowmik also of Grant Thornton. Mr. Bhowmik and I were appointed as JOLs of HoldCo by the Supervision Order.[4]

4. I have been practicing in the field of insolvency and financial investigations for over 25 years and have been appointed as an official liquidator of numerous companies and investment funds over this period. I am the practice leader for Grant Thornton UK's investments in Grant Thornton's Specialist Services practice in the Cayman Islands and the British Virgin Islands ("BVI"), as well as the Offshore Group leader. My practice over the past 25 or so years has focused on asset tracing and recovery, insolvency, and corporate recovery assignments in the Cayman Islands and Offshore. Over that period, I have taken voluntary and compulsory appointments in connection with entities that were solvent, insolvent and in some cases of doubtful solvency both in the Cayman Islands and BVI. I have been appointed liquidator on some of the

[3] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Verified Petition.

[4] Ex. 1, Supervision Order in the Grand Court of the Cayman Islands FSD 2025-0116 (JAJ).

most complex, contentious and high-profile liquidations in the Cayman Islands and BVI, and in circumstances where the result and return to stakeholders were objectively successful. I am a Chartered Accountant, CPA, and hold professional certifications with ACAMS and CFE. I have been a board member of both RISA, IWIRC Cayman Islands and the international board of IWIRC, a member of ABI and INSOL, and in my various roles with these organizations over the years I have sat on technical committees responsible for the creating and delivering the technical content for conferences, seminars and roundtables.[5]

5. I am duly authorized to make this Declaration on behalf of the JOLs. I am fully familiar with the facts of this matter. Unless otherwise indicated, all statements contained herein are true to the best of my knowledge and based upon my personal knowledge of HoldCo's operations and financial condition, my review of relevant documents and my conversations with relevant personnel. I am over the age of 18 and, if called to testify, would testify competently about the facts set forth herein.

6. I am familiar with the Model Law on Cross-Border Insolvency, adopted by the United Nations Commission on International Trade Law (UNCITRAL), and approved by a resolution of the United Nations General Assembly on December 15, 1997. I also understand that the Model Law has been adopted in the United States as chapter 15 of the Bankruptcy Code.

7. I make this Declaration in my statutory capacity as an officer of the Cayman Court and request an extension of comity for the benefit of all of HoldCo's creditors and investors, whose interests I represent. For the reasons discussed below, I submit that: (a) Mr. Bhowmik and I are duly appointed "foreign representatives" of HoldCo in the Cayman Proceeding and that the Cayman Proceeding constitutes a "foreign proceeding" within the meaning of sections 101(23)

[5] Ex. 2, Curriculum Vitae of Margot MacInnis.

and (24) of the Bankruptcy Code, respectively; (b) this case was properly commenced in accordance with the requirements of chapter 15 of the Bankruptcy Code; and (c) the Cayman Proceeding satisfies all of the requirements to be recognized as a "foreign main proceeding" pursuant to sections 1502(4) and 1517(b)(1) of the Bankruptcy Code or in the alternative as a "foreign nonmain proceeding" pursuant to sections 1502(5) and 1517(b)(2) of the Bankruptcy Code.

B. Overview of HoldCo and its Stakeholders

8. HoldCo is a Cayman Islands exempted company, incorporated on October 27, 2011.[6] Its registered office is at HSM Corporate Services Limited, P.O. Box 31726, 68 Fort Street, George Town, Grand Cayman, KY1-1207, Cayman Islands.[7]

9. HoldCo's share capital is divided into Participating Shares, which do not have voting rights but confer the right to participate in HoldCo's profits or assets including by way of the receipt of dividends, and Management Shares, which have voting rights but confer no other right to participate in HoldCo's profits or assets.[8] Accordingly, Participating Shareholders have the entirety of the economic interest in HoldCo, whereas the Management Shareholder has the control rights.[9]

10. Until recently, four nonprofit corporations collectively held 100% of HoldCo's Participating Shares: Highland Dallas Foundation, Highland Kansas City Foundation, Highland Santa Barbara Foundation, and CFNT.[10]

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[6] Ex. 3, Certificate of Incorporation - Charitable DAF Holdco, Ltd; Ex. 4, Charitable DAF HoldCo Articles of Association.

[7] Previously, HoldCo maintained its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

[8] Ex. 5, Amended and Restated Memorandum and Articles of Association of Charitable DAF HoldCo, Ltd.

[9] Id.

[10] Ex. 6, Register of Members Charitable DAF Holdco Ltd.

11. As of the date hereof, HoldCo has one Management Shareholder and five registered Participating Shareholders.[11] The Management Shares in HoldCo are held entirely by Mr. Mark Eric Patrick, a U.S. resident, who is also a director of HoldCo. Mr. Patrick acquired the Management Shares on March 25, 2021, upon taking assignment of the Management Shares previously held by Mr. Grant Scott.[12] HoldCo's second director is Mr. Paul Murphy, a Cayman Islands resident.[13]

12. As of the date hereof, the Participating Shareholders are:

(a) Highland Dallas Foundation, a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Delaware on November 22, 2011, which was issued 100 Participating Shares in HoldCo on November 30, 2011;[14]

(b) Highland Kansas City Foundation, a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Delaware on November 23, 2011, which was issued 100 Participating Shares in HoldCo on November 30, 2011;[15]

(c) Highland Santa Barbara Foundation, a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Delaware on November 22, 2011, which was issued 100 Participating Shares in HoldCo on November 30, 2011;[16]

(d) CFNT for the Highland Capital Management, L.P. Charitable Fund at CFNT, a public charity exempt from federal income tax under § 501(c)(3) of the IRC

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[11] Id.

[12] Ex. 7, Resolutions of the Sole Director (100 Management Shares); Ex. 8, Share Transfer (100 Management Shares) from Grant James Scott to Mark E. Patrick.

[13] Ex. 6, Register of Members Charitable DAF Holdco Ltd; Ex. 9, Director Resolutions - Appointment of Paul Murphy; Ex. 10, Director Report of Charitable DAF Holdco, Ltd.

[14] Ex. 11, IRS Determination Letter to Highland Dallas Foundation; Ex. 12, Share Transfer Form; Ex. 13, Highland Dallas Foundation Share Transfer.

[15] Ex. 12, Share Transfer Form; Ex. 14, IRS Determination Letter to Highland Kansas City Foundation; Ex. 15, Highland Kansas City Foundation Share Transfer.

[16] Ex. 12, Share Transfer Form; Ex. 16, IRS Determination Letter to Highland Santa Barbara; Ex. 17, Highland Santa Barbara Foundation Share Transfer.

incorporated in Texas, which was issued 5 Participating Shares in HoldCo on August 12, 2015;[17] and

(e) DFW Charitable Foundation, a nonprofit corporation exempt from federal income tax under § 501(c)(3) of the IRC incorporated in Delaware on December 9, 2024, which was issued 318 Participating Shares in HoldCo on February 7, 2025.[18] Mr. Patrick is its registered director, president and sole member.

i. The Charitable Structure

13. Four charities held the ultimate economic interest in HoldCo prior to the DFW Share Issuance and held Participating Shares, either directly or indirectly. They are:

(a) The Dallas Foundation (which controls Highland Dallas Foundation): a charitable entity established in Texas in 1929 which has awarded over $1 billion in grants and manages over $500 million in assets;

(b) Greater Kansas City Community Foundation (which controls Highland Kansas Foundation): a charitable entity established in Missouri in 1978 which has awarded over $7 billion in grants and manages over $6 billion held in charitable funds;

(c) Santa Barbara Foundation (which controls Highland Santa Barbara Foundation): a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million; and

(d) CFNT is a charity established in 1981 which manages assets totaling $513 million and donated $38.9 million to local nonprofits in 2023. CFNT holds its Participating Shares in HoldCo directly (i.e., without interposing a supporting organization). Prior to the DFW Share Issuance, CFNT held 1.639% of the Participating Shares.[19]

14. Each of the Charities held its interests in HoldCo indirectly through Highland Dallas Foundation, Highland Kansas City Foundation, and Highland Santa Barbara Foundation

[17] Ex. 18, IRS Determination Letter to CFNT; Ex. 19, Share Transfer Form of CFNT.

[18] Ex. 20, DFW Share Transfer; Ex. 21, Director Resolution (Share Issuance to DFW).

[19] Ex. 19, Share Transfer Form of CFNT.

respectively (i.e., TDF held its interest through the Participating Shares held by Highland Dallas Foundation, etc.).[20]

15. The Supporting Organizations were incorporated by Mr. James Dondero in November 2011 for the purpose of making charitable donations to their respective charity from the proceeds received by the Supporting Organizations from HoldCo.[21]

16. Each of the Supporting Organizations is "organized and operated exclusively to support and benefit" its relevant, supported Charity.[22] For U.S. tax purposes, each Supporting Organization is classified as a Type I supporting organization of its respective Charity, which means that it is operated, supervised and controlled by that Charity.[23] Consistent with this classification, the governance arrangements of each of the Supporting Organizations affords each Charity two votes and two director-nominees, to the individual member's (Mr. Dondero or his designee's) one vote and one director-nominee.[24]

17. HoldCo was formed for tax efficiency purposes to avoid a Charity or Supporting Organization becoming liable for UBTI with respect to investments it may wish to make in a hedge fund or private equity fund, here, the Fund, where substantial assets were held.[25]

18. HoldCo was, between November 2011 and December 18, 2024, the sole limited partner of the Fund, a Cayman Islands exempted limited partnership formed to invest and manage

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[20] Ex. 23 Highland Dallas Foundation SO Agreement; Ex. 24 Highland Kansas City Foundation SO Agreement; Ex. 25 Highland Santa Barbara Foundation SO Agreement.

[21] Ex. 26, Highland Dallas Foundation Certificate of Formation; Ex. 27, Highland Kansas City Foundation Certificate of Formation; Ex. 28, Highland Santa Barbara Foundation Certificate of Formation.

[22] Id.

[23] Ex. 23 Highland Dallas Foundation SO Agreement; Ex. 24 Highland Kansas City Foundation SO Agreement; Ex. 25 Highland Santa Barbara Foundation SO Agreement.

[24] Ex. 29 Highland Dallas Foundation By-Laws; Ex. 30 Highland Kansas City Foundation By-Laws; Ex. 31 Highland Santa Barbara Foundation By-Laws.

[25] Ex. 91, Haynes & Boone Memo.

assets for the benefit or ultimate benefit of certain registered charitable organizations in the United States, through which it indirectly owned the DAF Structure.

19. The role of HoldCo was to facilitate the making of discretionary cash distributions to Participating Shareholders, which would be drawn from the proceeds of investment returns made within asset-holding entities in the DAF Structure.[26]

C. Overview of the Fund

20. The Fund is a Cayman Islands exempted limited partnership formed October 25, 2011 (registration no. 53083), having its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands. The Fund is governed by the Second Amended and Restated Limited Partnership Agreement, dated March 11, 2024. Prior to the Relevant Transactions, HoldCo was the sole limited partner of the Fund.[27]

21. The Fund was formed and operates to "make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code … for the economic benefit of [HoldCo] and its Indirect Charitable Owners".[28]

22. Charitable DAF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands which was, at the Fund's formation and until March 7, 2024, the general partner of the Fund, at which time it was replaced by CDH GP, LTD, a Cayman

[26] Ex. 32, Structure chart of the DAF Structure prior to the Relevant Transactions; Ex. 33, Structure chart of the DAF Structure after to the Relevant Transactions; Ex. 35, A&R Exempted Limited Partnership Agreement of Charitable DAF Fund, LP; Ex. 36, Second A&R Exempted Limited Partnership Agreement of Charitable DAF Fund, LP.

[27] Ex. 34, Certificate of Registration of Charitable DAF Fund LP; Ex. 35, A&R Exempted Limited Partnership Agreement of Charitable DAF Fund, LP; Ex. 36, Second A&R Exempted Limited Partnership Agreement of Charitable DAF Fund, LP.

[28] Ex. 5, Amended and Restated Memorandum and Articles of Association of Charitable DAF HoldCo, Ltd.

Islands exempt company incorporated on February 27, 2024, by Mr. Patrick, its sole director, at Mr. Patrick's instigation, without notice to the Original Participating Shareholders.[29]

23. The Fund's sole asset is or was its ownership of 100% of the issued share capital, in CLO HoldCo Ltd.[30] CLO Holdco is organized as a Cayman Islands exempt company incorporated with limited liability, having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.[31]

24. Based upon their initial research and investigation, the JOLs understand that the Fund's known subsidiaries, that it holds through CLO HoldCo (as listed in Schedule A of the proposed order accompanying the Injunction Application)[32], are mostly passive investment vehicles holding a mix of assets, including cash, promissory notes, shares in Nexpoint[33] entities, publicly traded stock, real estate, receivables/proceeds from litigation proceedings, receivable amounts from brokers, dividends due, and amounts due from affiliates.

25. At all relevant times, the Fund had a net asset value of approximately $270 million.[34]

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[29] Ex. 37, Charitable DAF GP LLC Managing Member Consent to Assignment to CDH GP Ltd; Ex. 38, Section 10-Replacement of Charitable DAF GP LLC; Ex. 39, Register of Members for CDH GP Ltd.; Ex. 94, Certificate of Incorporation - CDH GP, Ltd.

[30] Ex. 40, CLO HoldCo, Ltd Register of Members as of 5.19.2021; Ex. 32, Structure chart of the DAF Structure prior to the Relevant Transactions; Ex. 33, Structure chart of the DAF Structure after to the Relevant Transactions.

[31] Ex. 41, CLO HoldCo, Ltd CORIS Report; Ex. 42, CLO HoldCo, Ltd - Members & Articles of Association; Ex. 43, CLO HoldCo, Ltd Certificate of Incorporation.

[32] Ex. 82, Injunction Application.

[33] Nexpoint is an investment management firm registered with the U.S. Securities and Exchange Commission that was founded by Mr. Dondero, who currently serves as its President.

[34] Ex. 51, September 2024 ValueScope Valuation.

D. Key Transactions Precipitating the Debtor's Liquidation

i. The Relevant Transactions

26. Beginning in 2024, HoldCo's Directors executed a series of complex, interrelated transactions without the knowledge or consent of the Original Participating Shareholders. These transactions consisted of (a) HoldCo's contribution of its interest in the Fund to a newly formed entity organized in Delaware, CDM, controlled by Mr. Patrick, in exchange for membership interests in CDM that, unlike the Original Participating Shareholders Participating Shares in HoldCo, were redeemable and afforded HoldCo no fiduciary safeguards;[35] (b) the DFW Share Issuance, i.e., the purported issuance of 318 participating shares in HoldCo to DFW, a Delaware nonprofit corporation incorporated and controlled by Mr. Patrick, on February 7, 2025, sufficient to make it, rather than the Original Participating Shareholders, the majority owner of HoldCo's participating shares;[36] and (c) the purported redemption of HoldCo's interest in CDM in exchange for approximately $1.6 million on March 27, 2025.[37]

1. The LP/LLC Exchange

27. On December 12, 2024, CDM was incorporated as a limited liability company in Delaware. Mr. Patrick was the sole member of CDM.[38]

28. On December 18, 2024, without informing the Supporting Organizations or the Charities: (i) the Directors passed resolutions to transfer HoldCo's Fund Partnership Interest to CDM, in exchange for a contribution by CDM's sole member—Mr. Patrick—of 100% of the

[35] Ex. 44, Director Resolutions to Transfer Fund from HoldCo to CDM for CDM Shares; Ex. 45, Deed of Assignment & Assumption to CDM.

[36] Ex. 20, DFW Share Transfer; Ex. 21, Director Resolution (Share Issuance to DFW).

[37] Ex. 46, Director Resolutions - Redemption of CDM Shares.

[38] Ex. 47, CDM Certificate of Formation; Ex. 48, CDM LLC Agreement.

issued and outstanding membership interests in CDM;[39] and (ii) HoldCo, CDM, and the New GP entered into a Deed of Assignment and Assumption, executed by Mr. Patrick in three capacities: on behalf of: (x) HoldCo, as Director; (y) CDM, as manager; and (z) the New GP, as Director, pursuant to which: (a) HoldCo assigned its Fund Partnership Interest to CDM; (b) the New GP provided its written consent to the CDM Assignment and the admission of CDM as the new limited partner, in accordance with the Fund LPA; and (c) CDM agreed to exercise its reasonable best endeavors to ensure that the CDM Membership Interest would be transferred to HoldCo.[40]

29. The LP/LLC Exchange occurred in at least two stages: (a) first, HoldCo transferred its entire interest in the Fund to CDM; and (b) second, CDM procured the transfer of 100% of its share capital to HoldCo, making HoldCo the sole membership interest holder of CDM rather than the sole limited partner in the Fund. The effect of the LP/LLC Exchange was that: (a) CDM was inserted into the corporate structure as a subsidiary of HoldCo and became the holder of the entire interest in the Fund previously held by HoldCo;[41] and (b) HoldCo became the sole membership interest holder in CDM, resulting in its sole asset—formerly its 100% limited partnership interest in the Fund—being exchanged for the CDM Membership Interest.[42]

30. The LP/LLC Exchange prejudiced the interests of HoldCo. The CDM Membership Interest was less valuable than the Fund Partnership Interest because, among other reasons, whereas the New GP had owed fiduciary duties to HoldCo in the Fund, the manager, Mr. Patrick, did not owe any fiduciary duties to CDM; and, unlike the Fund Partnership Interest, the CDM Membership Interest was susceptible to being redeemed by Mr. Patrick (as Manager) in his sole

[39] Ex. 44, Director Resolutions to Transfer Fund from HoldCo to CDM for CDM Shares.

[40] Ex. 45, Deed of Assignment & Assumption to CDM.

[41] Ex. 32, Structure chart of the DAF Structure prior to the Relevant Transactions.

[42] Ex. 45, Deed of Assignment & Assumption to CDM; Ex. 46, Director Resolutions - Redemption of CDM Shares.

discretion and for any reason, for "fair market value" as defined by Article 6.9, i.e., a "good faith determination of value."[43]

2. DFW Share Issuance

31. On December 9, 2024, DFW, a nonprofit non-stock corporation, was incorporated in Delaware exclusively for charitable purposes.[44]

32. On February 7, 2025, without informing the Supporting Organizations or the Charities, the Directors passed resolutions for HoldCo to issue 318 Participating Shares to DFW, which, upon issuance, would allot DFW 51.04% of the Participating Shares of HoldCo. That same day, also without notice to the Supporting Organizations or the Charities, HoldCo issued and allotted 318 Participating Shares to DFW, resulting in DFW holding a 51.04% interest in HoldCo and diluting the Original Participating Shareholders' aggregate shareholding from 100% to 48.96%.[45]

3. Redemption

33. Following the LP/LLC Exchange, ValueScope was instructed without informing the Supporting Organizations or the Charities to prepare two valuation analyses: (a) the CDM Membership Interest;[46] and (b) certain Participating Shares of HoldCo as of March 25, 2025.[47] Historically, between December 2020 and September 2024, ValueScope conducted a series of valuation analyses of 100 Participating Shares on a NAV basis at HoldCo's request to determine their FMV. The final NAV-based valuation prepared by ValueScope prior to the Relevant

[43] Ex. 48, CDM LLC Agreement.

[44] Ex. 49, Certificate of Incorporation of DFW Charitable Foundation.

[45] Ex. 20, DFW Share Transfer; Ex. 21, Director Resolution (Share Issuance to DFW).

[46] Ex. 93, March 2025 ValueScope Valuation of Membership Interests of CDM.

[47] Ex. 50, March 2025 ValueScope Valuation of Participation Shares of HoldCo.

Transactions was dated January 7, 2025, and gave a valuation of 100 Participating Shares as of September 30, 2024. ValueScope determined that, as of September 30, 2024, the NAV of the Fund was $269.05 million, NAV per share was $882,140, FMV per share was $759,614 and the FMV of 100 Participating shares was $75,961,370.[48]

34. The March 2025 ValueScope Valuation, however: (a) applied a DCF methodology to estimate the present value of expected future distributions, rather than the NAV based approach used in at least the prior five annual valuations by ValueScope; (b) determined the FMV of 100 Participating Shares to be $536,784; (c) applied a 99.2% DLOC; and (d) applied a 20.00% DLOM.[49] The DCF model relied on projected future distributions to HoldCo, with those projections based on historical distributions that were also controlled by Mr. Patrick.[50]

35. Accordingly, the FMV of 100 Participating Shares in HoldCo apparently declined from $75,961,370 on September 30, 2024, to $536,784 on March 25, 2025—a 99.29% reduction in less than six months, coinciding with the LP/LLC Exchange and attributable to the shift in valuation methodology from NAV to DCF.[51] Although the March 2025 ValueScope Valuation report identified "total equity" of approximately $269 million and concluded that all Participating Shares had a combined value of only approximately $1.6 million, the analysis did not address who benefited from the residual value of roughly $267.4 million.[52]

36. On March 27, 2025, without informing the Supporting Organizations or the Charities, HoldCo entered into the Letter Agreement with CDM, pursuant to which HoldCo

[48] Ex. 51, September 2024 ValueScope Valuation.

[49] Ex. 50, March 2025 ValueScope Valuation of Participation Shares of HoldCo; Ex. 93, March 2025 ValueScope Valuation of Membership Interests of CDM.

[50] Id.

[51] Ex. 50, March 2025 ValueScope Valuation of Participation Shares of HoldCo.

[52] Id.

assigned to CDM various contracts and agreements to which it was a party.[53] On the same day, Mr. Patrick executed, in his capacity as manager of CDM and president of DFW, the following, again without notice to the Supporting Organizations or the Charities: (i) an Admission and Amendment No. 1 Agreement between CDM and DFW, under which DFW was admitted as a member of CDM in exchange for a capital contribution of $1,637,192;[54] and (ii) a Redemption and Amendment No. 2 Agreement under which CDM redeemed HoldCo's CDM shares for the same sum of $1,637,192.[55]

37. Additionally, on March 27, 2025, Mr. Patrick, in his capacity as manager of CDM, executed the Manager Consent approving the Admission and Redemption.[56] The Manager Consent stated that the redemption of HoldCo's shares of CDM under the Letter Agreement was justified due to alleged attempts by the Supporting Organizations to exert control, and the potential loss of their nonprofit and tax-exempt status.[57]

38. On April 2, 2025, the Directors, by written resolution: (a) noted the redemption of HoldCo's shareholding in CDM for the Redemption Sum; and (b) resolved to make a shareholder distribution totaling $1,612,192.01.[58]

39. The substantive financial effect of the Redemption was that DFW paid the Redemption Sum to CDM, and HoldCo's shares in CDM were redeemed for that same amount—effectively transferring or selling HoldCo's interest in CDM to DFW for the Redemption Sum. As a result of the Redemption: (a) HoldCo realized its interest in the Fund, which had a NAV of

[53] Ex. 52, Letter Agreement.

[54] Ex. 53, CDM Redemption Agreement (Amendment #1).

[55] Ex. 54, CDM Redemption Agreement (Amendment #2).

[56] Ex. 55 CDM Manager Consent to Admission and Redemption.

[57] Id.

[58] Ex. 46, Director Resolutions - Redemption of CDM Shares.

approximately $269.1 million, for only around $1.6 million; (b) HoldCo purported to distribute that approximately $1.6 million to accounts in the name of the Participating Shareholders; (c) the Original Participating Shareholders, being the Supporting Organizations and CFNT were actually or effectively divested of their indirect interest—subject to the discretion of the person holding the Control Position—in the Fund and its underlying assets; and (d) the Original Participating Shareholders, being the Supporting Organizations and CFNT, whose economic interest in HoldCo had been diluted from 100% to 48.96% following the DFW Share Issuance, were entitled to their proportionate share of distributions in the amount of 48.96% of the Redemption Sum. As such, HoldCo had no assets at that time.

ii. The Remuneration Transactions

40. Following his appointment as director of HoldCo on March 25, 2021, Mr. Patrick resolved to dramatically increase his remuneration. Specifically (and among other things):

(a) Directors' fees increased from around $40,000 in 2022 to almost $600,000 in 2023.[59]

(b) On September 13, 2024, the Directors resolved to increase Mr. Patrick's salary to $850,000 per annum and approve an LTI of 7.5% of annualized net fund returns in excess of 10% (capped at 25% annualized return).[60]

(c) On or around October 1, 2024:

(i) The Directors resolved that Mr. Patrick was to receive an LTI payment of $975,000 and an annual discretionary bonus for 2023 at an amount of 2.5 times his base salary.[61]

(ii) Mr. Patrick signed an "employment agreement" for his position at HoldCo, effective as of March 24, 2021, which provided, among other

[59] Ex. 56, Expenses.

[60] Ex. 57, 09.13.2024 Director Resolutions re. M. Patrick Compensation.

[61] Ex. 58, 10.01.2024 - Director Resolutions re. M. Patrick Compensation.

things, for a base salary of $850,000 and an LTI payment of $4,759,000 for the period from March 24, 2021 to March 24, 2024.[62]

41. By way of contrast to the remuneration that Mr. Patrick resolved he should be awarded, his predecessor's salary (Grant Scott) during his tenure in the same position was approximately $60,000 per annum.[63]

42. As regards expenses, expenses overall for the first half of 2024 were around $18.3 million – almost the same amount spent over the entire course of 2023 (i.e., $18.6 million).[64]

E. Lack of Transparency and Misleading Disclosures Provided to Supporting Organizations

43. As more fully set forth in the Statement of Claim, prior to and during the time when the Directors were consummating the Relevant Transactions, the Directors persistently declined to disclose information regarding their actions and intentions notwithstanding the Supporting Organizations repeated requests.[65]

44. In November 2023, the Directors sought legal advice under Cayman law regarding the rights and duties of HoldCo's controlling person in connection with various matters including, diluting Participating Shares, redeeming Participating Shares, liquidating HoldCo to distribute its assets elsewhere or otherwise render the Participating Shares worthless, each in the context of potential future disputes with the Original Participating Shareholders.

45. In or around August 2024, the Supporting Organizations were provided with a financial analysis of the Fund's annual expenses, which showed—or appeared to show—a

[62] Ex. 92, Mark Patrick Employment Agreement.

[63] Ex. 83, Hr'g Tr. 132:10-11, *In re Highland Capital Management, L.P.*, No. 19-34054-sgj-11, Bankr. N.D. Tex. (Dallas Div.) Jun. 8, 2021, ECF No. 2440.

[64] Ex. 56, Expenses.

[65] Ex. 59, Statement of Claim.

significant increase in expenditures, as described above, both with respect to Directors fees and overall expenses.[66]

46. In late October 2024, as a result of concerns from this additional expenditure, the Supporting Organizations requested that Mr. Patrick provide relevant financial information for the HoldCo and the Fund. Mr. Patrick did not do so.

47. On November 11, 2024, H&K, U.S. attorneys for the Supporting Organizations, issued a letter to Mr. Murphy advising that the Supporting Organizations no longer had confidence in the governance of HoldCo and/or the Fund and considered that a reorganization of the governance structures was required to protect the charitable efforts of the Supporting Organizations.[67]

48. On November 26, 2024, Mr. Patrick sought and obtained advice regarding whether HoldCo could issue further Participating Shares to a new nonprofit organization to dilute the Supporting Organizations so as to weaken any winding-up petition brought by the Supporting Organizations on just and equitable grounds.[68] On November 27, 2024, Cayman Islands counsel responded to the Directors confirming that, if other shareholders were to oppose an equitable winding up, such opposition would be taken into consideration and would likely help.[69] Mr. Patrick incorporated DFW as a nonprofit, non-stock corporation in Delaware on December 9, 2024.[70]

49. On December 11, 2024, Mr. Murphy and HoldCo's Cayman counsel gave a presentation to attorneys from H&K on behalf of the Supporting Organizations providing various

[66] Ex. 56, Expenses.

[67] Ex. 60, No Confidence Letter.

[68] Ex. 61, Email from Mr. Murphy to Mr. Patrick.

[69] Ex. 62, Email from Walkers to the Directors.

[70] Ex. 49, Certificate of Incorporation of DFW Charitable Foundation.

assurances regarding governance matters being addressed by the Directors.[71] The meeting was, by all accounts, positively regarded. The attorneys on behalf of the Supporting Organizations invited Mr. Murphy to make the same presentation directly to the Supporting Organizations.

50. Nonetheless, the very next day, Mr. Patrick incorporated CDM and, on December 18, 2024, the Directors consummated the LP/LLC Exchange, each without disclosing the same to the Supporting Organizations.[72]

51. On January 23, 2025, having received no follow-up to the December 11, 2024 meeting with Mr. Murphy, Julie Diaz, the CEO of The Dallas Foundation, sent Mr. Patrick an email advising that the Supporting Organizations needed to better understand HoldCo and the Fund's asset position, and requesting certain information be provided by February 10, 2025.[73]

52. Having received no response, on January 28, 2025, Ms. Diaz sent a further email to the Directors expressing serious concern: (i) that the Supporting Organization's requests for information continued to be disregarded; and (ii) about the ongoing lack of transparency on the party of the Directors.[74]

53. On January 30, 2025, Mr. Murphy replied to Ms. Diaz stating that the Directors: (i) had not received the January 23 email, but understood the next step was for the Directors to "present directly" to the Supporting Organizations to address the No-Confidence Letter; and (ii) are coopering with the Supporting Organizations to provide additional information – but "have no

[71] Ex. 63, Walkers Presentation - Participating Shareholder Rights Charitable DAF HoldCo Ltd.

[72] See ¶¶27-30, above.

[73] Ex. 64, Emails (Julie Diaz, Paul Murphy, Michael Stockham).

[74] Id.

legal obligation to do so" and such cooperation "should not be construed as an implicit acknowledgement of any duty to continue providing information to you."[75]

54. On January 31, 2025, Mr. Michael Stockham of H&K responded to Mr. Murphy noting that he and Mr. Patrick were fiduciaries, managing $270 million in assets for the benefit of charities that support the most vulnerable (i.e., the Charities) and: "[w]hatever your side's obvious antagonism to Mr. Dondero, the fact remains that the underlying assets are ultimately for these charitable missions."[76]

55. On February 4, 2025, Mr. Murphy responded that while open to resolving the concerns, they (i.e., the Directors) were struggling to understand the Supporting Organization's change in position.[77]

56. On February 7, 2025, H&K responded that the Directors were fiduciaries in control of $270 million for the benefit of charities: "these monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed and … fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees."[78]

57. On the same date, without informing the Supporting Organizations, the Directors consummated the purported DFW Share Issuance.[79]

58. On February 14, 2025, H&K received a letter from Mr. Mancino, a partner in Seyfarth, a U.S. law firm apparently engaged by the Fund, which rejected the accuracy of the reported increases in expenditure.[80] On February 27, 2025, H&K responded that his clients were

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[75] Id.

[76] Id.

[77] Id.

[78] Id.

[79] Ex. 21, Director Resolution (Share Issuance to DFW).

[80] Ex. 70, February 14, 2025 Seyfarth Letter.

frustrated by the lack of transparency and refusal to answer simple queries about the financial position.[81] In response, Seyfarth sought available dates for Mr. Murphy to make the promised presentation to the Supporting Organizations.[82] H&K responded the next day with three potential dates/times for the proposed call between March 26 and April 3, 2025. Mr. Mancino did not respond.[83]

59. On March 20, 2025, Mr. Mancino sent a letter purportedly on behalf of HoldCo to the IRS about Mr. Dondero's alleged influence and control over the Supporting Organizations.[84] The letter makes serious and unsubstantiated allegations about the Supporting Organizations, absent evidentiary support, including that they each (i.e., all of them): "operates for Mr. Dondero's private benefit when he uses his influence or control over them to cause them to use or attempt to use their influence as Participating Shareholders of [HoldCo] to wrest control of [HoldCo] and its assets. . ."[85]

60. Commencing on March 27, 2025, the Directors initiated steps to effectuate the Redemption, which they consummated on April 2, 2025, without informing the Supporting Organizations.[86] On that same day, the Directors resolved to place HoldCo into voluntary liquidation and appointed Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd as joint voluntary liquidators.[87]

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[81] Ex. 71, February 27, 2025 H&K Letter.

[82] Ex. 75, March 2025 Emails (D. Mancion & D. Rosenberg).

[83] Id.

[84] Ex. 72, Seyfarth Letter to IRS.

[85] Id.

[86] Ex. 46, Director Resolutions - Redemption of CDM Shares; Ex. 55, CDM Manager Consent to Admission and Redemption; Ex. 73, Director Resolutions - Assignment of Contracts to CDM.

[87] Ex. 65, Charitable DAF Holdco Resolutions re Voluntary Liquidation; Ex. 74, Sole Voting Shareholder Resolutions (Voluntary Liquidation).

61. Notwithstanding the consummation of the Redemption and the commencement of voluntary liquidation of HoldCo the day prior, on April 3, 2025, Mr. Mancino sent an email to H&K stating that he had just learned there was a call scheduled for the following day and seeking to reschedule.[88] H&K responded that no such call had been arranged and queried about the apparent source of confusion.[89]

F. The Cayman Proceeding

62. Unaware of the Directors resolution to place HoldCo into voluntary liquidation, on April 23, 2025, the Supporting Organizations presented a petition seeking the winding up of HoldCo on a just and equitable basis under section 92(e) of the Companies Act.[90] It was only after filing the J&E Petition that the Directors disclosed they had consummated the Relevant Transactions and commenced a voluntary liquidation of HoldCo on April 2, 2025.[91]

63. On May 2, 2025, the Supporting Organizations filed a petition seeking an order for the voluntary liquidation of HoldCo—now a debtor—to continue under the supervision of the Cayman Court pursuant to section 131 of the Companies Act.[92] Following a hearing and review of the Supervision Petition, supporting affidavits and affirmations with exhibits, and the documents filed in Cause No. FSD 116 of 2025 (JAJ)—including the J&E Petition and the affidavits of the JOLs confirming their consent to act—the Cayman Court issued the Supervision Order.[93] Pursuant to the Supervision Order, the voluntary liquidation of the Debtor was continued

[88] Ex. 76, April 2025 Emails (D. Mancion & D. Rosenberg).

[89] Id.

[90] Ex. 77, J&E Petition; Ex. 78, Companies Act.

[91] Ex. 66, Walkers Letter re Charitable DAF Holdco. Ltd in Voluntary Liquidation.

[92] Ex. 67, Supervision Petition in the Grand Court of the Cayman Islands FSD 2025-0116 (JAJ).

[93] Ex. 1, Supervision Order in the Grand Court of the Cayman Islands FSD 2025-0116 (JAJ).

under the supervision of the Cayman Court, and the JOLs were appointed under section 131 of the Companies Act and Order 15, rule 8 of the Winding Up Rules.[94]

64. Also pursuant to the Supervision Order, the Petitioners were authorized to exercise the following powers, among others, under Part I of Schedule 3 to the Companies Act[95] without further Cayman Court sanction: (a) the power to commence legal proceedings in the name and on behalf of the Debtor to obtain information, documents, or the examination of individuals in the Cayman Islands or the United States; and (b) the power to apply in the Cayman Islands or the United States for the preservation, freezing, or attachment of assets to which the Debtor is or may arguably be entitled.[96] Moreover, the Petitioners were authorized to seek registration or recognition of themselves and/or the Cayman Proceeding in any U.S. state for any purpose related to the exercise of the above-described powers in the Supervision Order.[97]

i. Conduct of the Cayman Proceeding

65. The JOLs have diligently performed their duties in progressing the Cayman Proceeding from and after their appointment. The JOLs have taken steps to fulfil their statutory obligations: by filing notice of the winding up with the Cayman Islands Registrar of Companies; circulating notices of the winding up to known stakeholders, service providers of HoldCo, and known contributories of HoldCo; publishing their notice of appointment in the Cayman Islands Gazette and Cayman Compass Newspaper;[98] determining HoldCo should be treated as solvent for the purposes of Section 110(4) of the Companies Act, as well as Orders 8 & 9 of the Winding Up

[94] Id.; Ex. 78, Companies Act; Ex. 79, Winding Up Rules.

[95] Ex. 78, Companies Act.

[96] Id.

[97] Id.

[98] Ex. 68, Charitable DAF HoldCo - Gazette - Notice of Appointment JOL; Ex. 69, Charitable DAF HoldCo - Compass - Notice of First Meeting of Contributories.

Rules; determining the functional currency of the liquidation to be U.S. dollars pursuant to Order 16, Rule 13 of the Winding Up Rules; changing the registered office of HoldCo from Campbells Corporate Services Limited to HSM Corporate Services Ltd; publishing a Report to Contributories on July 2, 2025; and on July 3, 2025, convening the first meeting of contributories held on July 9, 2025.[99]

66. Moreover, to identify, secure and recover HoldCo's books and records, the JOLs have: (a) issued formal correspondence to over 50 parties, including, directors, shareholders, banks, service providers, the prior appointed joint voluntary liquidators, notifying them of the JOLs appointment and requesting books and records; (b) issued requests to hold an interview with the directors; and (c) held discussions with various parties to discuss the history and financial affairs of HoldCo.

67. The JOLs have engaged extensively with representatives of various interested parties in connection with, among other things, seeking and obtaining sanction of the Cayman Court to engage Cayman and U.S. counsel.[100] In addition, the JOLs, through counsel, have engaged with representatives of CDM, New GP, and CLO HoldCo in relation to a potential protocol intended to allay the JOLs' concerns regarding asset dissipation, transparency and asset management while the JOLs progress their investigation. The JOLs, however, do not believe the protocol proposed by CDM, the New GP, and CLO HoldCo would adequately protect HoldCo's position and, to date, the parties have been unable to reach terms of agreement with respect to any protocol.[101]

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[99] Ex. 78, Companies Act; Ex. 79, Winding Up Rules; Ex. 80, Filed Resolutions re Change of Registered Office - Charitable DAF Holdco, Ltd.

[100] In respect of which, on June 24, 2025, the Cayman Court sanctioned the engagements of Cayman and U.S. counsel by the JOLs.

[101] Ex. 81, Various May & June 2025 Letters and Drafts of the Protocol.

68. Since the date of their appointment, the JOLs have conducted an extensive and detailed investigation into HoldCo's affairs, albeit that those investigations are not yet complete. This has involved a review of HoldCo's books and records (to the extent that they have been able to obtain them and to the extent that they are complete) and numerous inquiries and requests for information directed to persons previously involved with HoldCo. There have, however, been several limitations on the JOLs' investigations in connection with the information requests made from those persons previously involved in the HoldCo, including certain U.S.-based service providers who have asserted that they do not recognize the JOLs authority under the Supervision Order, where the JOLs have not been able to obtain copies of the requested information. Notwithstanding these limitations, the JOLs investigation has progressed sufficiently to enable them to identify significant areas of concern.

ii. Commencement of the Cayman Litigation

69. On July 4, 2025, the JOLs applied to the Cayman Court in the Cayman liquidation proceedings on an *ex parte* basis for sanction to commence litigation proceedings by way of filing the Statement of Claim[102] against the following defendants: (1) Mark Eric Patrick; (2) Paul Murphy; (3) CDM; (4) DFW; (5) CDH as general partner for and on behalf of the Fund, and in its capacity as New GP; and (6) CLO HoldCo.[103]

[102] Ex. 59, Statement of Claim; Ex. 85, Sanction to File Statement of Claim.

[103] In determining whether to commence the Cayman Litigation, the JOLs gave due regard to the Named Defendants' likely defenses with respect to the propriety of the Relevant Transactions and the Remuneration Transactions. At a high level, the JOLs understand that the Named Defendants will seek to justify the Relevant Transactions on three independent grounds: (1) on the basis that the Original Participating Shareholders did not have an economic interest in HoldCo, which was formed simply to act as a throughput for discretionary, charitable donations to qualifying recipients (which were not necessarily the Supporting Organizations, CFNT or the Charities), such that the Original Participating Shareholders did not lose any cognizable interest because of the Relevant Transactions; (2) the Relevant Transactions were necessary and appropriate to protect HoldCo and its Directors from attempts by Mr. Dondero and the Supporting Organizations to improperly exercise dominion and control over HoldCo's assets, which would (x) expose HoldCo (x) to breaches of US tax law and regulation and (y) claims from third parties that HoldCo and the Fund Entities were alter egos of Mr. Dondero in lawsuits against Mr. Dondero; and (3) on the basis that the Directors relied appropriately on third party valuation reports in effectuating the Redemption at FMV. The JOLs likewise

70. A further description of each of the Named Defendants is as follows:

(a) **Mr. Mark Patrick**. Mr. Patrick is a U.S. attorney and was employed as tax counsel by Highland Capital Management, L.P., an investment company founded by Mr. James Dondero, from 2008 – 2021 and as tax counsel by Highgate Consulting Group, Inc. d/b/a d/b/a Skyview Group from March 2021 to October 2024. He was instrumental in the creation of the Fund in 2011; in particular, he advised on the tax structure of using an offshore "blocker" company. Mr. Patrick is one of two directors of HoldCo, having been appointed as director on March 25, 2021. In that capacity, he was responsible for the supervision of the day-to-day operations of HoldCo. As director, Mr. Patrick owed, and continues to owe, fiduciary duties to HoldCo. Mr. Patrick was also: (i) the holder of all of the Management Shares in HoldCo; (ii) the manager of CDM; (iii) the sole member and sole director of DFW, which is now the sole member of CDM; (iv) the sole director and sole shareholder of CDH GP, Ltd, the New GP; and (v) a director of CLO HoldCo, the entity through which the Fund holds its assets.

(b) **Mr. Paul Murphy**. Mr. Murphy was the other director of HoldCo, having been appointed so on April 22, 2021. Mr. Murphy is also a director of CLO HoldCo.

(c) **CDM**. A limited liability company incorporated in Delaware on December 12, 2024, Mr. Patrick is the Manager of CDM. DFW has been the sole member of CDM since March 27, 2025.

(d) **DFW**. A nonprofit non-stock corporation incorporated in Delaware on December 9, 2024, by Mr. Douglas Mancino, a partner in Seyfarth, a U.S. law firm apparently engaged by the Fund. DFW is organized under the General Corporation Law of the State of Delaware exclusively for charitable purposes. The JOLs understand that DFW is now the holder of the majority of the Participating Shares in HoldCo pursuant to the DFW Share issuance on February 7, 2025, and controlled by Mr. Patrick as its sole member.

(e) **The New GP**. A Cayman Islands exempted limited company incorporated on February 27, 2024. It replaced the Original GP as the Fund's current general partner on March 7, 2024, after Mr. Patrick sought advice from Walkers on forming a new entity to replace the Original GP. On February 5, 2024, Shields Legal asked Mr. Patrick whether that entity should be a Cayman LLC or exempted company, to which he responded: "*Doesn't matter to me. Whatever from a strategic point of view – hard to find or track, or trace. Or find owners, etc. Generic name. Strong litigation protection.*"

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understand that Mr. Patrick intends to rely on a third party report to justify the Remuneration Transactions. On the basis of the investigation conducted by the JOLs to date, the JOLs do not find these defenses and justifications to be availing or credible.

(f) **CLO HoldCo**. A Cayman Islands exempted limited company. CLO HoldCo is the Fund's only direct subsidiary. The Fund held all of CLO HoldCo's issued shares.

71. HoldCo's claims pleaded in the Statement of Claim arise as a result of the breaches by the Directors of their fiduciary duties owed to HoldCo, having caused HoldCo to have dissipated its assets through a combination of: (a) the Relevant Transactions; and (b) the Remuneration Transactions, all of which were for the benefit of entities controlled by Mr. Patrick or for his benefit, personally.[104] In addition to asserting claims against the Directors for willful breaches of their fiduciary duties to HoldCo, the Statement of Claim asserts claims against: (i) the Named Defendants for unlawful means conspiracy based on the Named Defendants having conspired and combined together to injure HoldCo by unlawful means and HoldCo having suffered loss and damage as a result; (ii) CDM for knowing receipt of HoldCo's property, its partnership interest in the Fund, which had been misappropriated from HoldCo by virtue of the Directors breach of fiduciary duties; and (iii) CDM for unjust enrichment on the basis that it received HoldCo's interest in the Fund without there being a valid assignment or other justification for that receipt, such that it is liable to HoldCo in restitution.[105]

72. At the hearing of the sanction proceeding on July 14, 2025, to obtain an order granting the JOLs sanction to commence the Cayman Proceeding, the JOLs were required to satisfy the Cayman Court in the Cayman liquidation proceedings that: (a) the Cayman Litigation had a reasonable prospect of success; and (b) the interests of HoldCo's stakeholders were best

[104] Ex. 59, Statement of Claim.

[105] Ex. 59, Statement of Claim.

served by the JOLs commencing the Cayman Litigation.[106] The Cayman Court granted sanction for the JOLs to commence the Cayman Litigation.[107]

73. On July 15, 2025, the Debtor proceeded to file the Statement of Claim with the Cayman Court to commence the Cayman Litigation (which has the cause number FSD 201 of 2025 (RPJ)).[108] At the same time the JOLs filed an application for: (a) a proprietary injunction to prevent the Named Defendants from dealing with the assets of the Debtor that are held now held or controlled by the Named Defendant together with disclosure orders; and (b) leave to serve the U.S. based defendants with the Statement of Claim and Injunction Application.[109]

74. Additionally, on July 15, 2025, the Debtor: (1) emailed copies of the Statement of Claim and the Applications to the Cayman Islands attorneys for the Named Defendants and asked them to accept service; and (2) served copies of the Statement of Claim at the Cayman Islands registered addresses of CDH GP, Ltd. and CLO Holdco, Ltd. The Applications have been listed for hearing on July 31, 2025.

75. The Named Defendants are entitled to participate and be heard on that date. In the event the Named Defendants do not participate, the Cayman Court will hear the Injunction Application on an *ex parte on notice* basis and, if the Injunction is granted, will schedule an *inter partes* hearing for a later date.[110]

76. Should the Cayman Court grant the Injunctive Relief Application following the scheduled hearing on the Injunction Hearing date, and issue the Injunctive Relief Order, the JOLs

[106] *Re ICP Strategic Credit Income Fund* [2014] 1 CILR 314.

[107] Ex. 85, Sanction to File Statement of Claim.

[108] Ex. 59, Statement of Claim.

[109] Ex. 82, Injunction Application.

[110] Ex. 82, Injunction Application.

expect to seek recognition and enforcement of the Injunctive Relief Order against the Named Defendants on a provisional basis pursuant to section 1519 of the Bankruptcy Code pending the recognition of the Cayman Proceeding, at which time the JOLs will also seek recognition of the Injunctive Relief Order in this Chapter 15 Case pursuant to sections 1507(a) and 1521(a) of the Bankruptcy Code.[111]

iii. Injunction Application

77. The Injunction Application seeks orders that:

(a) the Named Defendants will: (i) preserve and will not in any way dispose of, deal with, encumber, transfer or diminish the value of (as applicable) their or any interest of (of whatsoever nature) whether held directly or indirectly, in the Fund, the Fund Entities, and/or any assets of the Fund; and (ii) procure that the Fund Entities and their wholly owned subsidiaries will not in any way dispose of, deal with, encumber, transfer or diminish the value of any of their assets;

(b) the Named Defendants will preserve and will not in any way dispose of, deal with, encumber, transfer or diminish any assets in their possession or control, whether they are in or outside the Cayman Islands, which were, are or may be received (whether directly or indirectly): (i) by way of distribution, disposition, dividend, benefit, payment or other transfer from (as the case may be) HoldCo, the Fund, DFW, CDM, the New GP, the Fund Entities and/or their wholly owned subsidiaries; or (ii) from any assets of the Fund, the Fund Entities, and/or their wholly owned subsidiaries;

(c) the Named Defendants shall not do anything to cause, procure, incite, promote or assist a breach by any other Named Defendant of the above sections (a) and (b); and

(d) the Named Defendants shall make ancillary asset disclosures. [112]

78. The basis for the injunctive relief sought is that the Named Defendants each own and/or control assets that HoldCo has an equitable proprietary interest in (or at least a seriously arguable case that it does):

[111] Ex. 82, Injunction Application.

[112] Ex. 82, Injunction Application.

(a) Prior to the Relevant Transactions taking place, HoldCo held the Fund Partnership Interest, and thereby indirectly owned (99%) of all assets held by the Fund through its wholly owned subsidiary, CLO HoldCo (and its subsidiaries).[113]

(b) After the Relevant Transactions took place, and by reason of the Directors' breaches of fiduciary duty – (i) CDM now holds the Fund Partnership Interest, which continues to hold its assets through CLO HoldCo (and its subsidiaries); (ii) DFW is the sole member of CDM; (iii) Mark Patrick is the sole member of DFW; and (iv) Mark Patrick has full control over DFW, CDM, the New GP (and thus the Fund), and (together with Mr. Murphy) CLO HoldCo. Mr. Patrick therefore has the ability to control and/or deal with the Fund Partnership Interest and the Fund's assets, including any distributions of the Fund's assets received by CDM as its sole limited partner. Mr. Patrick now exercises this control free from the oversight previously exercised by the Supporting Organizations and CFNT through their holding of Participating Shares in HoldCo.[114]

79. Moreover, HoldCo has at least a seriously arguable case that CDM and DFW hold these assets through steps taken by the Directors that amounted to breaches of fiduciary duty, and therefore that these assets are subject to a constructive trust in favor of HoldCo, which is the necessary pre-requisite for the Cayman Court to grant a proprietary injunction restraining the disposition of that property. [115]

80. Under Cayman law, to obtain proprietary injunctive relief, the Debtor must show: (1) the existence of a serious issue to be tried as to whether it has a proprietary interest in the assets (such that the claim would be capable of surviving summary judgment); (2) that the balance of convenience is in favor of granting the injunction; and (3) that it is otherwise just and convenient

[113] Ex. 40, CLO HoldCo, Ltd Register of Members as of 5.19.2021; Ex. 84, Charitable DAF Fund, LP Register of Members as of 5.19.2021.

[114] Ex. 6, Register of Members Charitable DAF Holdco Ltd; Ex. 44, Director Resolutions to Transfer Fund from HoldCo to CDM for CDM Shares; Ex. 45, Deed of Assignment & Assumption to CDM; Ex. 46, Director Resolutions - Redemption of CDM Shares; Ex. 47, CDM Certificate of Formation; Ex. 49, Certificate of Incorporation of DFW Charitable Foundation; Ex. 52, Letter Agreement; Ex. 53, CDM Redemption Agreement (Amendment #1); Ex. 54, CDM Redemption Agreement (Amendment #2); Ex. 55, CDM Manager Consent to Admission and Redemption.

[115] See Moran Decl. ¶¶ 40, 42-45.

to grant the injunction. Moreover, under Cayman law, a court may order defendants to disclose information if the Debtor demonstrates that it is just and convenient to do so.[116]

1. Serious issues to be tried

81. On July 14, 2025, the Cayman Court granted sanction for the JOLs to file the Statement of Claim and in doing so accepted that the merits of the JOLs' claims satisfied the relevant threshold for the sanction of commencement of claims by official liquidators.

82. The Directors and DFW have put forward explanations as to why the transfer of the Fund Partnership Interest to CDM was legally justifiable, which the JOLs do not believe stand up to scrutiny as explained above.[117]

2. Balance of convenience

83. The JOLs do not believe that the proprietary injunctions they seek would hinder the operation of the Fund or the Fund Entities in any material way.[118] The Fund and the Fund Entities are mostly passive investment vehicles that hold shares or interests in other Fund Entities, cash, debt instruments, receivables, vacant land and/or stock in publicly traded companies. They are not, as far as the JOLs understand, engaged in the active trading of assets or the making of new investments on a frequent basis.

84. Accordingly, the JOLs believe that there is no justification for any new investments or other transactions to be made by any of those entities, beyond payments needed to stay in good standing and comply with their statutory obligations.

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[116] See Moran Decl. ¶¶ 42-45.

[117] Ex. 44, Director Resolutions to Transfer Fund from HoldCo to CDM for CDM Shares; Ex. 70, February 14, 2025 Seyfarth Letter; Ex. 72, Seyfarth Letter to IRS; Ex. 86, Paul Murphy 12.4.2024 Presentation Slides; Ex. 87, 12.18.2024 Carrington Coleman Email.

[118] Ex. 82, Injunction Application.

85. Against that backdrop, the JOLs' position is that no dispositions of the assets of the Fund, the Fund Entities or any other subsidiaries above $10,000 need or should be made pending the determination of HoldCo's proprietary claim which, if successful, would see the Fund Partnership Interest returned to HoldCo and HoldCo would therefore wholly own (indirectly) all assets of the Fund, the Fund Entities and their wholly owned subsidiaries. Should any payments or dispositions be made by the Fund, the Fund Entities or any of their wholly owned subsidiaries that have the effect of harming the value of the Fund Partnership Interest, such payment or disposition would render the proprietary relief the JOLs are seeking much less effective.

86. Notwithstanding the above, the JOLs recognize that there may become a need for certain payments or other dispositions of assets to be made to preserve, maintain or improve the value of existing assets held by the Named Defendants, the Fund Entities and/or their wholly owned subsidiaries. Accordingly, the JOLs' proposed order to the Injunctive Relief Application provides for:

(a) The entity concerned to make a written request to the JOLs to make any such payments, together with full supporting information and documentation as well as an explanation of the rationale for the transaction; and

(b) The JOLs to decide within 7 days whether to approve or disapprove the proposed transaction.[119]

87. The JOLs also recognize that there will likely be a need for certain payments to be made by the Named Defendants, the Fund Entities or their wholly owned subsidiaries that are reasonably necessary in the ordinary course of business to keep the corporate Named Defendants, the Fund Entities or their wholly owned subsidiaries in good standing. The JOLs' proposed order to the Injunctive Relief Application allows for any such payments of $10,000 or less to be made.[120]

[119] Ex. 82, Injunction Application.

[120] Id.

88. The JOLs are also unaware of any harm that would be caused to CDM by preserving the status quo in respect of the Fund Partnership Interest. By comparison, if a proprietary injunction is not granted and CDM were to transfer the Fund Partnership Interest to another party or otherwise deal with that interest in some way, HoldCo could be significantly prejudiced. Specifically, HoldCo's proprietary claim to the Fund Partnership Interest could be undermined or become more difficult to enforce.

89. As to whether damages would be an adequate remedy for HoldCo in lieu of proprietary relief, as far as the JOLs' are aware, CDM has no other assets beyond the Fund Partnership Interest and therefore would likely be unable to meet any order for damages made against it. Only an order for CDM (and the other Named Defendants, to the extent they hold assets that derive from the Fund Partnership Interest) to restore HoldCo's property could return HoldCo to the position it would have been in had the improper transactions carried out by the Named Defendants not taken place. The JOLs' believe that the only way to ensure that such an order will be effective at the conclusion of these proceedings is for a proprietary injunction to be granted against the Named Defendants in respect of that property in the interim.

90. Further, as explained above, HoldCo, its Supporting Organizations, the Charities and the Fund are part of a carefully constructed investment structure for (i) the tax efficient treatment of charitable donations; and (ii) investments to be made for the ultimate benefit of the Charities and CFNT.[121] Without the re-transfer of the Fund Partnership Interest to HoldCo, those parties may be unable to achieve their charitable objectives as effectively or at all. An award of damages in lieu of proprietary relief would mean that HoldCo would hold only cash and no other assets or investments, and the Charities and Supporting Organizations would effectively be back

[121] See ¶¶13-19, above.

to square one in terms of setting up a proper investment structure to carry out their investments and protect their tax-exempt status.

3. Disclosure of assets

91. The JOLs have only limited information as to what assets each of the Named Defendants, Fund Entities and their wholly owned subsidiaries hold. Even so, the JOLs have no way of verifying this information or knowing if it is completely up to date.

92. In circumstances where, in the JOLs' case, a misappropriation of the HoldCo's sole and valuable asset has already occurred, the JOLs believe protection is needed to prevent any further dissipation of assets from occurring in breach of any injunction that is granted. The JOLs believe that this protection can be afforded by way of disclosure orders in support of the injunction requiring the Named Defendants to disclose what assets they each hold and their approximate value. Having that information in hand will allow the JOLs (and the Cayman Court) to effectively police the injunction (in terms of preventing dissipation of Fund assets and thereby preserving the value of the Fund Partnership Interest).

93. In addition, the proposed order in support of the Injunctive Relief Application seeks confirmation as to:

(a) All of the entities owned directly or indirectly by the Fund, including full details as to their owners, directors, officers or other controllers, and places and details of incorporation. This will allow the JOLs to have a complete picture of the Fund structure.[122]

(b) All payments by way of salary, bonus, dividend, distribution or other compensation made to Mr. Patrick or Mr. Murphy by HoldCo, the Fund, DFW, CDM, the New GP, CLO HoldCo, or any of the Fund Entities or other entities revealed by (a) above since February 27, 2024.[123]

[122] Ex. 82, Injunction Application.

[123] Id.

(c) All payments to any attorney, lawyer, third party consultant, accountant, or external professional services advisor, whether a firm, partnership, company or individual, made by HoldCo, the Fund, DFW, CDM, the New GP, CLO HoldCo, or any of the Fund Entities or other entities revealed by (a) above since February 27, 2024.[124]

4. Cross undertaking in damages

94. The Debtor is not offering to provide a cross-undertaking as to damages in the Injunction Application. This is because in this case, the JOLs are not only acting in the Debtor's best interests, but also in a position analogous to the public interest based on the charitable or non-profit status of at least the underlying Charities, which are the intended recipients of donations made from the Debtor. No cross-undertaking in damages should be required in such circumstances.

G. The Texas Proceeding

95. On July 1, 2025, the Supporting Organizations commenced the TRO Action against defendants Mark Patrick, DFW, CDM, CDH, and the Original GP by filing *Plaintiffs' Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Request for Appointment of Receiver* in the Texas Business Court, 1st Division.[125] Among other things, the TRO Action seeks: (1) a temporary restraining order; (2) a temporary injunction; and (3) the appointment of a receiver against some of the TRO Defendants arising from various breaches of fiduciary duties and related claims alleged to be owed to the Supporting Organizations directly.[126]

96. On July 2, 2025, during the hearing for the TRO Action, in lieu of a decision rendered by the Texas Court, and at the direction of the Texas Court, the parties entered into a

[124] Id.

[125] Ex. 85, Supporting Organizations Texas Business Court TRO Petition.

[126] Id.

Rule 11 Agreement under the Texas Rules of Civil Procedure, which the JOLs understand is a binding contract among the parties.[127] The key points of the Rule 11 Agreement are: (a) that the TRO Defendants shall not make any payments or disbursements other than those in the ordinary course of business; (b) investments and monies must be kept in the existing entities that currently hold those investments and monies, provided that, if any investment is monetized on its own terms, then the entity may prudently reinvest the resulting cash proceeds into liquid securities; and (c) there shall be no changes to the corporate structure of ownership of the TRO Defendants.[128] The Texas Court scheduled a further hearing on the TRO Action on July 24 and 25, 2025.

97. Following the hearing on July 2, 2025, the parties to the TRO Action amended and modified the Rule 11 Agreement to: (a) provide the TRO Defendants the opportunity to challenge the Texas Court's jurisdiction pursuant to a briefing schedule concluding on July 24, 2025; (b) clarify the parties' discovery rights with respect to the TRO Action; and (c) evidence the restrictions imposed upon the activities of the TRO Defendants and their subsidiaries pursuant to the Rule 11 Agreement pending a decision by the Texas Court of the TRO Action and the Plea.[129] On July 14, 2025, the TRO Defendants filed a jurisdictional challenge, asserting that: (1) the Texas Court lacks subject matter jurisdiction to hear the TRO Action; and (2) the Supporting Organizations lack standing, suggesting that the JOLs, on behalf of HoldCo, are the appropriate parties to assert the claims alleged in the TRO Action.[130]

98. The JOLs support the Final Rule 11 Agreement in the near term in that it imposes restrictions on the covered entities regarding asset dissipation in the short term, pending the

[127] Ex. 88, Proposed Order (Rule 11 Agreement).

[128] Id.

[129] Ex. 89, Final Rule 11 Agreement.

[130] Ex. 90, Defendants' MTD & Plea to the Jurisdiction.

outcome of the Injunctive Relief Application filed by the JOLs in the Cayman Court and the recognition of relief as may be granted by the Cayman Court in this Chapter 15 Case.[131] The JOLs believe that the Cayman Court is the appropriate forum to adjudicate causes of action that belong to HoldCo as asserted in the Cayman Litigation.[132] The JOLs are also cognizant of the need for administrative efficiency in connection with the Cayman Proceeding and their duties to realize upon HoldCo's assets, and, accordingly, reserve rights with respect to coordination and management of the TRO Action, the Cayman Litigation and this Chapter 15 Case.

H. This Chapter 15 Case

99. On the Petition Date and in my capacity as one of the JOLs of the Debtor, I, alongside Mr. Bhowmik, filed a petition under chapter 15 of the Bankruptcy Code for recognition of the Cayman Proceeding, thereby commencing the Debtor's Chapter 15 Case.

100. Consistent with the purpose of official liquidation under Part V of the Companies Act, section 110(2), the Petitioners are also empowered to investigate: (a) the causes for the failure of HoldCo, as necessary, and (b) generally, the promotion, business, dealings and financial affairs of HoldCo.[133]

101. Section 97(1) of the Companies Act provides in relevant part that upon the entry of a winding up order against a company, no suit or other proceeding may be commenced or continued against the company except with leave of the Cayman Court and subject to such terms as the Cayman Court might impose.[134] This automatic stay mirrors the stay imposed in United

[131] Ex. 89, Final Rule 11 Agreement.

[132] Ex. 59, Statement of Claim.

[133] Ex. 78, Companies Act.

[134] Id.

States bankruptcy proceedings and serves to, *inter alia*, facilitate the Petitioners' ability to deal with claims and creditors collectively and comprehensively.

102. A general principle underlying the Companies Act and the Cayman Proceeding is that creditors are treated on a *pari passu* basis, subject to certain exceptions.[135]

103. Cayman liquidation proceedings are fair and equitable insofar as all creditors and interest holders have the opportunity to be heard by the Cayman Court and no creditors will be prejudiced on the sole basis that they are foreign based. All creditors are treated equally, regardless of where they are domiciled.

I. Qualifications for Recognition and Jurisdiction in the United States

104. On the Petition Date and in my capacity as one of the JOLs of the Debtor, I, alongside Mr. Bhowmik, filed a petition under chapter 15 of the Bankruptcy Code for recognition of the Cayman Proceeding, thereby commencing the Debtor's Chapter 15 Cases.

105. I was authorized pursuant to the Supervision Order to act as one of the JOLs of the Cayman Proceeding and to seek recognition and approval of the Cayman Proceeding as necessary, including as "foreign main proceedings" under the Bankruptcy Code. In light of the statutory presumption embodied in section 1516(a) of the Bankruptcy Code, the Bankruptcy Code's definition of "foreign representative," and the Supervision Order, I understand that I satisfy the requirements to serve as the "foreign representative" of the Cayman Proceeding.

106. I have been advised that, in order to qualify for recognition under chapter 15, the Verified Petition must meet certain requirements. In particular, it must be brought by a "foreign representative" of a "foreign proceeding" that is pending before a "foreign court," all as defined in the Bankruptcy Code.

[135] For example, see sections 140 and 141 of the Companies Act. Ex. 78, Companies Act.

107. I am aware of the definition of "foreign representative," as referred to in 11 U.S.C. § 101(24), and I believe that the JOLs qualify as such. The JOLs were appointed by the Cayman Court pursuant to the Companies Act to act as the JOLs of HoldCo. Among other things, the JOLs are authorized to exercise the following powers under Part I of Schedule 3 to the Companies Act without further Cayman Court sanction: (a) the power to commence legal proceedings in the name and on behalf of HoldCo to obtain information, documents, or the examination of individuals in the Cayman Islands or the United States; and (b) the power to apply in the Cayman Islands or the United States for the preservation, freezing, or attachment of assets to which HoldCo is or may arguably be entitled. Moreover, the JOLs are authorized to seek registration or recognition of themselves and/or the Official Liquidation in any U.S. state for any purpose related to the exercise of the powers described in the Supervision Order.[136] As such, the JOLs are the persons responsible for representing HoldCo in the Cayman Proceedings and in all related matters, including this matter, and are therefore "foreign representatives" of HoldCo within the meaning of section 101(24) of the Bankruptcy Code.[137]

108. I also have been advised that a "foreign court" is defined in section 1502 of the Bankruptcy Code as "a judicial or other authority competent to control or supervise a foreign proceeding." I respectfully submit that the Cayman Court qualifies as a foreign court for the purposes of section 1502.

109. I understand that a "foreign proceeding" is defined as "a collective judicial . . . proceeding in a foreign country . . . under a law relating to insolvency or the adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a

[136] Id.

[137] Ex. 1, Supervision Order.

foreign court, for the purpose of reorganization or liquidation." 11 U.S.C. § 101(23). I respectfully submit that the Cayman Proceeding qualifies as such, since, by definition, it is a liquidation proceeding pursuant to and governed by the Companies Act under the collective judicial supervision of the Cayman Court for the benefit of all of HoldCo's creditors, and parties in interest.[138]

110. I am also aware that section 1517(b)(1) of the Bankruptcy Code provides that a foreign proceeding shall be recognized as a "foreign main proceeding" if the foreign proceeding is "pending in the country where the debtor has the center of its main interests". I understand that section 1516(c) of the Bankruptcy Code provides that a debtor's "registered office" is presumed to be the debtor's COMI in the absence of evidence to the contrary. Since HoldCo was formed under the laws of the Cayman Islands and maintains its registered office there,[139] I believe that there is no basis for rebutting this statutory presumption that is afforded. In any case, the facts clearly indicate that HoldCo's COMI is the Cayman Islands. As demonstrated by the facts included herein, I further believe that HoldCo is engaged in non-transitory economic activity in the Cayman Islands.

111. As JOLs, we have displaced the prior board of directors of HoldCo. No action with respect to HoldCo, whether transactional-related or litigation-related, may be taken without the express approval and consent of myself and Mr. Bhowmik. All of HoldCo's known assets and interests are under the sole and exclusive control of the JOLs from the Cayman Islands. Consistent

[138] Id.; Ex. 77, J&E Petition.

[139] Ex. 3, Certificate of Incorporation - Charitable DAF Holdco, Ltd; Ex. 5, Amended and Restated Memorandum and Articles of Association of Charitable DAF; Ex. 80, Filed Resolutions re Change of Registered Office - Charitable DAF Holdco, Ltd.

with the Companies Act, the Winding Up Rules and the Supervision Order, Mr. Bhowmik and I have engaged in numerous activities to further HoldCo's liquidation.[140]

112. Since our appointment by the Cayman Court, we have worked from our offices at Grant Thornton in the Cayman Islands, from which all decisions are made, and have: (i) retained Cayman Islands and U.S. legal counsel from our Cayman Islands offices and under Cayman Islands law; (ii) obtained certain books and records of HoldCo in the Cayman Islands; (iii) regularly communicated with creditors and shareholders from the Cayman Islands; and (iv) commenced investigations into the affairs of HoldCo and its subsidiaries, including taking steps to identify and seek discovery from potential parties in interest both within and outside the Cayman Islands. All relevant inquiries from creditors and other parties-in-interest are now directed to the JOLs.

113. I have reviewed documentation issued by and to HoldCo prior to the Cayman Proceeding, including the Amended and Restated Memorandum and Articles of Association of HoldCo dated February 20, 2025, the Fund LPA, books and records of HoldCo, and various shareholder and directors resolutions of HoldCo. In all such documentation which I have reviewed, HoldCo is referred to and addressed as a Cayman Islands company. Thus, all parties-in-interest were aware that HoldCo was a Cayman Islands company. No creditor or stakeholder objected to the liquidation in the Cayman Islands and all major stakeholders are actively participating in the Cayman Proceeding. All creditors of HoldCo must submit their claims in the Cayman Proceeding, and stakeholders have the right to access the Cayman Court and appeal decisions of the JOLs.

114. Based upon the above, I am confident that HoldCo's "nerve center" has been established in the Cayman Islands with the JOLs. I also believe that all relevant creditors,

[140] Ex. 1, Supervision Order; Ex. 78, Companies Act; Ex. 79, Winding Up Rules.

stakeholders, and shareholders regard HoldCo to be a Cayman Islands company and the Cayman Islands to be HoldCo's current "nerve center." I further believe it is clear that since the commencement of the Cayman Proceeding, HoldCo has been engaged in non-transitory economic activity in the Cayman Islands.

115. In accordance with 11 U.S.C. § 1515(c), I am aware of no other pending foreign insolvency proceedings, except the Cayman Proceeding, in which HoldCo is the subject of the proceeding.

116. In accordance with Rule 1007-1(a)(4) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), a schedule of known and pending actions in the United States in which HoldCo is named as a party is attached to the Form 401 Petition, together with the disclosures required under Bankruptcy Rule 7007.1, the JOLs are authorized under Cayman Islands law, subject to sanction of the Cayman Court, to act on behalf of HoldCo in staying, defending against, or prosecuting these actions, as applicable.

J. Need for Broad Discovery Rights

117. I am aware that this Court can afford the JOLs broad discovery rights pursuant to sections 542(e), 1521(a)(4), and 1521(a)(7) of the Bankruptcy Code.

118. I am of the belief that the JOLs must be afforded broad discovery rights in the United States to facilitate their investigations, particularly with respect to the Fund. First, this requires access to all documents relating to the Debtor's property or financial affairs, necessitating the need for section 542(e) relief. Second, the Petitioners must be able to broadly issue Rule 2004 examinations, as well as to be afforded all discovery rights under the Federal Rules of Civil Procedures, as incorporated by the Bankruptcy Rules. Only by affording the Petitioners the

necessary tools to complete their investigations will the JOLs be able to maximize distributions such that creditors and interested parties are sufficiently protected.

K. Need for Recognition of the Injunctive Relief Order

119. I am aware that this Court can recognize the Injunctive Relief Order under section 1507(b) after considering certain equitable and practical considerations. These include: (i) just treatment of all holders of claims against or interests in HoldCo's property; (ii) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims the Cayman Proceeding; (iii) prevention of preferential or fraudulent dispositions of property of HoldCo; (iv) distribution of proceeds of HoldCo's property substantially in accordance with the order prescribed under U.S. Bankruptcy law; and (v) if appropriate, the provision of an opportunity for a fresh start for HoldCo pursuant to the Cayman Proceeding.

120. I am of the belief that the Injunctive Relief Order should be recognized by this Court under section 1507(b). First, the relief promotes fair and equitable treatment of all creditors by preserving the value of HoldCo's estate for the benefit of all stakeholders, rather than potentially allowing the Named Defendants to obtain an unfair advantage through the dissipation or diversion of assets. Second, recognition ensures that U.S.-based creditors are not exposed to procedural disadvantage in the Cayman Proceeding, as the Injunctive Relief Order operates neutrally to safeguard HoldCo's property pending full adjudication of the claims, rather than favoring any specific jurisdiction or creditor group.[141] Third, the Injunctive Relief Order directly addresses and prevents improper transfers or dissipation of HoldCo's assets, which is essential to maintaining the status quo during the JOLs' ongoing investigation and the Cayman Litigation.[142] Finally, I have

[141] Ex. 82, Injunction Application.

[142] Id.

been advised that the relief sought supports a distribution framework that is aligned, in substance, with U.S. bankruptcy priorities by ensuring assets are preserved for collective resolution and eventual equitable distribution.

121. Additionally, I have been advised that the Injunctive Relief Order can be recognized by this Court under section 1521(a)(7) of the Bankruptcy Code if such relief is otherwise available to a trustee in bankruptcy. The Cayman Court has already determined that: (a) the Cayman Litigation had a reasonable prospect of success; and (b) that the interests of the Debtor's stakeholders were best served by the JOLs commencing the Cayman Litigation.[143] Further, the Named Defendants have been afforded due process and given notice of the Injunctive Relief Application and the Injunction Hearing Date and will have the opportunity to appear at the hearing and respond to the Injunctive Relief Application before relief is granted by the Cayman Court.[144] Therefore, to the extent the Injuncitve Relief Order is entered in the Cayman Islands, I am of the belief it should be recognized by this Court in the interests of comity.

122. For all of these reasons, I respectfully request that this Court enter an Order: (a) recognizing my colleague, Sandipan Bhowmik, and myself as duly authorized foreign representatives of HoldCo and the Cayman Proceeding as a foreign main proceeding, or in the alternative as a "foreign non main proceeding", under chapter 15 of the Bankruptcy Code; (b) granting relief pursuant to sections 105(a), 1502, 1507, 1510, 1520 and 1521 of the Bankruptcy Code; and (c) granting such other and further relief as this Court may deem just and proper.

[*Remainder of page intentionally left blank.*]

[143] Ex. 85, Sanction to File Statement of Claim.

[144] Ex. 82, Injunction Application.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 21, 2025
Cayman Islands

/s/ Margot MacInnis
MARGOT MACINNIS

Joint Official Liquidator of
Charitable DAF HoldCo, Ltd
(in Official Liquidation)

EXHIBIT 1

FSD NO. 116 OF 2025 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD

BEFORE THE HONOURABLE JUSTICE JALIL ASIF KC
IN CHAMBERS

6 MAY 2025

SUPERVISION ORDER

UPON the petition filed on 2 May 2025 by (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund for an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd continue under the supervision of the Court pursuant to s.131 Companies Act (2025 Revision)

AND UPON hearing counsel for the Petitioners and counsel for DFW Charitable Foundation

AND UPON reading the petition herein, the affidavit of Julie Diaz and exhibit JD-2 sworn on 29 April 2025 and the affirmation of Rhiannon Zanetic and exhibit RMZ-1 signed (but not affirmed) on 29 April 2025

AND UPON reading the following documents filed in Cause FSD 2025-0099 (JAJ): the winding up petition filed on 10 April 2025, the first affidavit of Julie Diaz and exhibit JD-1 sworn on 10 April 2025, the affidavit of James Dondero and exhibit JDD-1 sworn on 9 April 2025 and the affidavit of Geoffrey Sykes and exhibit GS-1 sworn on 27 April 2025

AND UPON reading the affidavit of Margot Macinnis and exhibit MM-1 sworn on 28 April 2025 and the affidavit of Sandipan Bhowmik and exhibit SB-1 sworn on 28 April 2025 providing their consents to act as official liquidators of Charitable DAF HoldCo, Ltd

IT IS HEREBY ORDERED that:

1. The voluntary liquidation of Charitable DAF HoldCo, Ltd ("the Company") be continued under the supervision of the Court pursuant to s.131 of the Act and O.15, r.8 of the Companies Winding Up Rules (2023 Consolidation).

THIS ORDER was filed by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 3, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/0016**)

Filed: 09-May-2025 15:00 EST
Auth Code: C02067594574
www.verify.gov.ky File#: 263805

2. The following persons are appointed as joint official liquidators of the Company:

Name	Address	Contact Details
Margot MacInnis	Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, Century Yard, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands	+1 345 949 8588 margot.macinnis@uk.gt.com
Sandipan Bhowmik		+1 345 949 8588 sandipan.bhowmik@uk.gt.com

3. The joint official liquidators may act jointly and severally.

4. The joint official liquidators are not required to give security for their appointment.

5. The joint official liquidators are authorised to exercise the following powers in Part I of Third Schedule 3 to the Companies Act, without requiring further sanction by the Court:

   a) the power to commence legal proceedings in the name and on behalf of the Company to obtain the provision of information and/or documents and/or the examination of individuals in the Cayman Islands or the United States; and

   b) the power to apply in the Cayman Islands or the United States for the preservation, freezing or attachment of assets to which the Company is or may arguably be entitled.

6. The joint official liquidators are in addition authorised to exercise the following powers and to take the following steps without further sanction by the Court:

   a) the power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;

   b) the power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised; and

   c) the power to seek registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the exercise of the powers specified in paragraphs 5(a) or 5(b) of this Order.

7. The Court dispenses with the requirement for the summons herein and the hearing of the summons to be advertised pursuant to CWR O.15.

8. The joint official liquidators' reasonable remuneration and expenses be paid out of the assets of the Company in accordance with s.109 of the Act, Part III of the Insolvency Practitioners Regulations and CWR O.20.

9. The joint voluntary liquidators shall prepare a final report and accounts for the period from the commencement of the voluntary liquidation until the date of this Order and shall deliver such report to the joint official liquidators within 28 days of this Order.

THIS ORDER was filed by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 4, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/0016**)

Filed: 09-May-2025 15:00 EST
Auth Code: C02067594574
www.verify.gov.ky File#: 263805

10. The costs of this summons shall be paid out of the assets of the Company as an expense in the liquidation, such costs to be taxed on the indemnity basis if not agreed with the joint official liquidators.

Dated 6 May 2025
Filed 6 May 2025

THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

THIS ORDER was filed by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 4, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/0016**)

Filed: 09-May-2025 15:00 EST
Auth Code: C02067594574
www.verify.gov.ky File#: 263805

EXHIBIT 2

Commercial in confidence

Margot MacInnis

Partner, Practice Leader – Cayman Islands



Contact details

T +1 345 769 7218

E margot.macinnis@uk.gt.com

Background

Margot is the head of Grant Thornton Specialist Services in the Cayman Islands. With over 25 years of experience in offshore and cross border restructuring and insolvency matters, Margot is an innovator and known for her leadership and success across dozens of high profile complex cross border asset recovery and insolvency cases.

Margot has extensive experience in insolvency and forensic assignments, including global asset recovery engagements. Margot is a certified fraud examiner and has provided expert or supporting forensic or financial analysis and regularly appointed to by the Cayman and BVI Courts and regulators in connection with provisional, official liquidation appointments as well as a Receiver in litigated disputes and other insolvency matters

Margot is regularly appointed by the Cayman court as an official on provisional liquidator to locate assets, secure and enforce collateral internationally and work closely with creditors and liquidation committees to establish strategy to maximise their return. Margot's experience covers various industries including funds and alternative investment, oil and gas, medical technology banking, mining, real estate and property investment and manufacturing companies. Her work often has a cross-border focus including work in Cayman, BVI, Asia, United States, Canada, Switzerland, U.K. and Europe.

Professional Qualifications and Memberships

- Appointment Taker recognized by the Grand Court in the Cayman Islands and BVI Court.
- Member of the Association of Certified Fraud Examiners
- Member of the Association of Certified Anti Money Laundering Specialists
- Member of the New Brunswick Institute of Chartered Accountants, Canada
- Member of several other professional associations including:
  - NBICA (Canada),
  - Cayman Islands Society of Professional Accountants (CIIPA)
  - International Women's Insolvency & Restructuring Confederation (IWIRC)

Relevant Experience

- Appointed Joint Provisional Liquidator of a Cayman top co Company trading on the NYSE, headquartered in HK with subsidiaries in BVI, PRC and Singapore with the entire group estimated to be worth north of US$1 billion. Work included pursuing litigation in HK and Cayman against former management and preserving assets in the PRC.
- Appointed Liquidator of a number of large US based hedge funds and appointed under Chapter 15 as the foreign representative including Sphinx Group of Companies, China Medical, and Platinum Partners.
- Regularly appointed with the Hong Kong office on cross-border insolvency matters, many of which involve hedge funds and developing realisation strategies in respect of the wind up of the portfolios or funds.
- Appointed under Chapter 15 as the foreign representative in a number of high-profile bankruptcy and restructuring cases including Richard Pelletier, China Medical, China Milk, William & Patricia Millard, Richard Pelletier and Platinum Partners.
- Appointed Liquidator (in Cayman) of a group of 22 companies with an investment strategy designed to achieve returns consistent with the performance of the S&P Index. Work included the winding up of the portfolio positions; obtaining Chapter 15 recognition; asset tracing and investigation of third-party claims; resolving issues relating to rights and interest of creditors and investors; and the successful scheme of arrangement to achieve distributions of the US$500m of assets and recoveries from the litigation strategy.

An Industry Thought Leader

- Former Caribbean board member of International board of and local chapter of the Women's Insolvency & Restructuring Confederation (IWIRC)
- Who's Who Legal Global Elite Thought Leaders – Asset Recovery Expert 2021, 2022, 2023 and 2024
- Lexology Index (fka. Who's Who Legal) Country Awards, Cayman Islands - Experts 2024 and Consulting Experts – Asset Recovery 2024
- Who's Who Legal Thought Leaders - Restructuring & Insolvency Advisors 2022
- Who's Who Legal Advisors – Restructuring & Insolvency Advisors 2020
- Who's Who Legal's Restructuring and Insolvency Advisers – Leading Practitioner 2024

EXHIBIT 3

COPY

WK–263805

Certificate Of Incorporation

*I, **FLOSSIEBELL M. MARAGH** Assistant Registrar of Companies of the Cayman Islands DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said Law in respect of registration were complied with by*

Charitable DAF HoldCo, Ltd

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the 27th day of October Two Thousand Eleven

Given under my hand and Seal at George Town in the Island of Grand Cayman this 27th day of October Two Thousand Eleven

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

Assistant Registrar of Companies,
Cayman Islands.

COPY

WK–263805

Certificate Of Incorporation

I, ***FLOSSIEBELL M. MARAGH*** *Assistant Registrar of Companies of the Cayman Islands DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said Law in respect of registration were complied with by*

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Given under my hand and Seal at George Town in the Island of Grand Cayman this 27th day of October Two Thousand Eleven

CERTIFIED TO BE A TRUE AND CORRECT COPY

Sig..

Flossiebell M. Maragh
Assistant Registrar

Date *27 October 2011*

(SGD. FLOSSIEBELL M. MARAGH)

Assistant Registrar of Companies,
Cayman Islands.

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

COPY

WK–263805

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REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

CERTIFIED TO BE A TRUE AND CORRECT COPY

Sig.. _____

Flossiebell M. Maragh
Assistant Registrar

Date *27 October 2011*

(SGD. FLOSSIEBELL M. MARAGH)

Assistant Registrar of Companies, Cayman Islands.

EXHIBIT 4

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

WALKERS

Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: RP/GOL/H-109190

REGISTERED AND FILED
AS NO: 263805 THIS 27 DAY
OF October, 2011
Asst. Registrar of Companies
Cayman Islands

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

1. The name of the company is Charitable DAF HoldCo, Ltd (the "**Company**").

2. The registered office of the Company will be situated at the offices of Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is **US$50,000.00** divided into **5,000,000** shares of a nominal or par value of **US$0.01** each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER
Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands	ONE SHARE

(Sgd) Roderick Palmer
Roderick Palmer
as Authorised Signatory of Walkers Nominees Limited

Dated: 27 October 2011

(Sgd) Grainne O'Leary
Signature of Witness

Name: Grainne O'Leary

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
Flossiebell M. Marason
Assistant Registrar
Date. 27 October, 2011

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

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COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF



CHARITABLE DAF HOLDCO, LTD

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.



"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders

and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

2. In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

3. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

4. The business of the Company may be commenced at any time after incorporation.

5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

7. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

   (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

   (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

   and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.

13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation,

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

WALKERS

Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: RP/GOL/H-109190

REGISTERED AND FILED
AS NO: 263805 THIS 27 DAY
OF October, 2011
Asst. Registrar of Companies
Cayman Islands

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

1. The name of the company is Charitable DAF HoldCo, Ltd (the "**Company**").

2. The registered office of the Company will be situated at the offices of Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is **US$50,000.00** divided into **5,000,000** shares of a nominal or par value of **US$0.01** each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER
Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands	ONE SHARE

(Sgd) Roderick Palmer
Roderick Palmer
as Authorised Signatory of Walkers Nominees Limited

Dated: 27 October 2011

(Sgd) Grainne O'Leary
Signature of Witness

Name: Grainne O'Leary

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
Flossiebell M. Marason
Assistant Registrar
Date. 27 October, 2011

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

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COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF



CHARITABLE DAF HOLDCO, LTD

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

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"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.



"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders

and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

2. In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

3. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

4. The business of the Company may be commenced at any time after incorporation.

5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

7. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

   (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

   (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

   and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.

13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation,

allotment or issue of further Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Shares of any Class by the Company.

CERTIFICATES

14. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

15. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

LIEN

16. The Company has a first and paramount lien on every Share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that Share. The Company also has a first and paramount lien on every Share (whether or not fully paid) registered in the name of a Person indebted or under liability to the Company (whether he is the sole registered holder of a Share or one of two or more joint holders) for all amounts owing by him or his estate to the Company (whether or not presently payable). The Directors may at any time declare a Share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a Share extends to any amount payable in respect of it.

17. The Company may sell, in such manner as the Directors in their absolute discretion think fit, any Share on which the Company has a lien, but no sale shall be made unless an amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Persons entitled thereto by reason of his death or bankruptcy.

18. For giving effect to any such sale the Directors may authorise some Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

19. The proceeds of the sale after deduction of expenses, fees and commission incurred by the Company shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the Person entitled to the Shares immediately prior to the sale.

CALLS ON SHARES

20. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares, and each Shareholder shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on such Shares.

21. The joint holders of a Share shall be jointly and severally liable to pay calls in respect thereof.

22. If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the Person from whom the sum is due shall pay interest upon the sum at the rate of eight percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

23. The provisions of these Articles as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time, whether on account of the amount of the Share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of partly paid Shares for a difference between the Shareholders, or the particular Shares, in the amount of calls to be paid and in the times of payment.

25. The Directors may, if they think fit, receive from any Shareholder willing to advance the same all or any part of the moneys uncalled and unpaid upon any partly paid Shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding without the sanction of an Ordinary Resolution, eight percent per annum) as may be agreed upon between the Shareholder paying the sum in advance and the Directors.

FORFEITURE OF SHARES

26. If a Shareholder fails to pay any call or instalment of a call in respect of any Shares on the day appointed for payment, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

27. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.

28. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Directors to that effect.

29. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

30. A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the Shares

forfeited, but his liability shall cease if and when the Company receives payment in full of the amount unpaid on the Shares forfeited.

31. A statutory declaration in writing that the declarant is a Director, and that a Share has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts in the declaration as against all Persons claiming to be entitled to the Share.

32. The Company may receive the consideration, if any, given for a Share on any sale or disposition thereof pursuant to the provisions of these Articles as to forfeiture and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of and that Person shall be registered as the holder of the Share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the disposition or sale.

33. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes due and payable, whether on account of the amount of the Share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

34. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

35. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor.

36. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

37. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

TRANSMISSION OF SHARES

38. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.

39. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to

decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

40. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

41. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

42. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

43. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

44. Subject to the Law, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;

(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law; and

(d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.

45. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

46. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.

47. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

48. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Law. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.

49. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.

50. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:

(a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;

(b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Law, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.

51. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

52. The Directors may, whenever they think fit, convene a general meeting of the Company.

53. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.

54. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the

objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

55. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

56. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

57. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

58. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

59. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

60. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

61. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

62. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

63. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

64. The chairman may adjourn a meeting from time to time and from place to place either:

(a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting); or

(b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:

(i) secure the orderly conduct or proceedings of the meeting; or

(ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

65. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

66. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

67. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

68. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

69. Subject to any rights and restrictions for the time being attached to any Share, on a show of hands every Shareholder present in person and every Person representing a Shareholder by proxy shall, at a general meeting of the Company, each have one vote and on a poll every

Shareholder and every Person representing a Shareholder by proxy shall have one vote for each Share of which he or the Person represented by proxy is the holder.

70. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

71. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

72. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

73. On a poll votes may be given either personally or by proxy.

74. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

75. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

76. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

77. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

78. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

79. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

80. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

81. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

82. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

83. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

84. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

85. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

86. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR

87. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be deemed to be an officer of the Company solely as a result of his appointment as an alternate. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.

88. Any Director may appoint any Person , whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

89. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

90. The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the

administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

91. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

92. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

93. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

94. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.

95. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

96. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

97. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

98. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

99. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

100. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

101. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

102. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or

(f) is removed from office pursuant to any other provision of these Articles.

PROCEEDINGS OF DIRECTORS

103. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

104. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

105. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.

106. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

107. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

108. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

109. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

110. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

111. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.

112. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

113. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

114. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

115. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

116. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

DIVIDENDS

117. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Law and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

118. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

119. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

120. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

121. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

122. Subject to any rights and restrictions for the time being attached to any Shares, all dividends shall be declared and paid according to the amounts paid up on the Shares, but if and for so long as nothing is paid up on any of the Shares dividends may be declared and paid according to the par value of the Shares.

123. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

124. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

125. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

126. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

127. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

128. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

129. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

130. Subject to the Law and these Articles, the Directors may:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Shares held by them respectively, or

(ii) paying up in full unissued Shares or debentures of a nominal amount equal to that sum,

and allot the Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Shares,

and any such agreement made under this authority being effective and binding on all those Shareholders; and

(e) generally do all acts and things required to give effect to any of the actions contemplated by this Article.

SHARE PREMIUM ACCOUNT

131. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.

132. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price

provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

133. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

134. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

135. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

136. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

137. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

INDEMNITY

138. Every Director (including for the purposes of this Article any alternate Director appointed pursuant to the provisions of these Articles), Secretary, assistant Secretary, or other officer for the time being and from time to time of the Company (but not including the Company's auditors) and the personal representatives of the same (each an "**Indemnified Person**") shall be indemnified and secured harmless against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such Indemnified Person, other than by reason of such Indemnified Person's own dishonesty, wilful default or fraud, in or about the conduct of the Company's business or affairs (including as a result of any mistake of judgment) or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by such Indemnified Person in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Cayman Islands or elsewhere.

139. No Indemnified Person shall be liable:

(a) for the acts, receipts, neglects, defaults or omissions of any other Director or officer or agent of the Company; or

(b) for any loss on account of defect of title to any property of the Company; or

(c) on account of the insufficiency of any security in or upon which any money of the Company shall be invested; or

(d) for any loss incurred through any bank, broker or other similar Person; or

(e) for any loss occasioned by any negligence, default, breach of duty, breach of trust, error of judgement or oversight on such Indemnified Person's part; or

(f) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities, or discretions of such Indemnified Person's office or in relation thereto;

unless the same shall happen through such Indemnified Person's own dishonesty, wilful default or fraud.

NON-RECOGNITION OF TRUSTS

140. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

141. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

142. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

143. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

144. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

145. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

146. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

147. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being

incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

148. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Law.

DISCLOSURE

149. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER

Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands

(Sgd) Roderick Palmer
Roderick Palmer
as Authorised Signatory for and on behalf of Walkers Nominees Limited

Dated: 27 October 2011

(Sgd) Grainne O'Leary
Signature of Witness

Name: Grainne O'Leary

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
Flossiebell M. Maragh
Assistant Registrar
Date. 27 October, 2011

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

WALKERS

Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: RP/GOL/H-109190

REGISTERED AND FILED
AS NO: 263805 THIS 27 DAY
OF October, 2011
Asst. Registrar of Companies
Cayman Islands

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

CHARITABLE DAF HOLDCO, LTD

1. The name of the company is Charitable DAF HoldCo, Ltd (the "**Company**").

2. The registered office of the Company will be situated at the offices of Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is **US$50,000.00** divided into **5,000,000** shares of a nominal or par value of **US$0.01** each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER
Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands	ONE SHARE

(Sgd) Roderick Palmer
Roderick Palmer
as Authorised Signatory of Walkers Nominees Limited

Dated: 27 October 2011

(Sgd) Grainne O'Leary
Signature of Witness

Name: Grainne O'Leary

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG. _____
Flossiebell M. Marach
Assistant Registrar
Date. 27 October, 2011

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

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COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF



CHARITABLE DAF HOLDCO, LTD

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.

"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:



(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders

and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

2. In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

3. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

4. The business of the Company may be commenced at any time after incorporation.

5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

7. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

   (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

   (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

   and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.

13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation,

allotment or issue of further Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Shares of any Class by the Company.

CERTIFICATES

14. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

15. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

LIEN

16. The Company has a first and paramount lien on every Share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that Share. The Company also has a first and paramount lien on every Share (whether or not fully paid) registered in the name of a Person indebted or under liability to the Company (whether he is the sole registered holder of a Share or one of two or more joint holders) for all amounts owing by him or his estate to the Company (whether or not presently payable). The Directors may at any time declare a Share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a Share extends to any amount payable in respect of it.

17. The Company may sell, in such manner as the Directors in their absolute discretion think fit, any Share on which the Company has a lien, but no sale shall be made unless an amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Persons entitled thereto by reason of his death or bankruptcy.

18. For giving effect to any such sale the Directors may authorise some Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

19. The proceeds of the sale after deduction of expenses, fees and commission incurred by the Company shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the Person entitled to the Shares immediately prior to the sale.

CALLS ON SHARES

20. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares, and each Shareholder shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on such Shares.

21. The joint holders of a Share shall be jointly and severally liable to pay calls in respect thereof.

22. If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the Person from whom the sum is due shall pay interest upon the sum at the rate of eight percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

23. The provisions of these Articles as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time, whether on account of the amount of the Share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of partly paid Shares for a difference between the Shareholders, or the particular Shares, in the amount of calls to be paid and in the times of payment.

25. The Directors may, if they think fit, receive from any Shareholder willing to advance the same all or any part of the moneys uncalled and unpaid upon any partly paid Shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding without the sanction of an Ordinary Resolution, eight percent per annum) as may be agreed upon between the Shareholder paying the sum in advance and the Directors.

FORFEITURE OF SHARES

26. If a Shareholder fails to pay any call or instalment of a call in respect of any Shares on the day appointed for payment, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

27. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.

28. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Directors to that effect.

29. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

30. A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the Shares

forfeited, but his liability shall cease if and when the Company receives payment in full of the amount unpaid on the Shares forfeited.

31. A statutory declaration in writing that the declarant is a Director, and that a Share has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts in the declaration as against all Persons claiming to be entitled to the Share.

32. The Company may receive the consideration, if any, given for a Share on any sale or disposition thereof pursuant to the provisions of these Articles as to forfeiture and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of and that Person shall be registered as the holder of the Share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the disposition or sale.

33. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes due and payable, whether on account of the amount of the Share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

34. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

35. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor.

36. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

37. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

TRANSMISSION OF SHARES

38. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.

39. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to

decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

40. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

41. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

42. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

43. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

44. Subject to the Law, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;

(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law; and

(d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.

45. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

46. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.

47. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

48. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Law. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.

49. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.

50. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:

(a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;

(b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Law, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.

51. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

52. The Directors may, whenever they think fit, convene a general meeting of the Company.

53. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.

54. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the

objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

55. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

56. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

57. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

58. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

59. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

60. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

61. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

62. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

63. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

64. The chairman may adjourn a meeting from time to time and from place to place either:

(a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting); or

(b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:

(i) secure the orderly conduct or proceedings of the meeting; or

(ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

65. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

66. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

67. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

68. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

69. Subject to any rights and restrictions for the time being attached to any Share, on a show of hands every Shareholder present in person and every Person representing a Shareholder by proxy shall, at a general meeting of the Company, each have one vote and on a poll every

Shareholder and every Person representing a Shareholder by proxy shall have one vote for each Share of which he or the Person represented by proxy is the holder.

70. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

71. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

72. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

73. On a poll votes may be given either personally or by proxy.

74. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

75. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

76. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

77. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

78. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

79. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

80. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

81. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

82. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

83. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

84. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

85. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

86. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR

87. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be deemed to be an officer of the Company solely as a result of his appointment as an alternate. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.

88. Any Director may appoint any Person , whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

89. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

90. The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the

administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

91. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

92. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

93. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

94. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.

95. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

96. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

97. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

98. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

99. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

100. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

101. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

102. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or

(f) is removed from office pursuant to any other provision of these Articles.

PROCEEDINGS OF DIRECTORS

103. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

104. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

105. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.

106. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

107. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

108. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

109. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

110. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

111. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.

112. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

113. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

114. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

115. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

116. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

DIVIDENDS

117. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Law and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

118. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

119. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

120. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

121. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

122. Subject to any rights and restrictions for the time being attached to any Shares, all dividends shall be declared and paid according to the amounts paid up on the Shares, but if and for so long as nothing is paid up on any of the Shares dividends may be declared and paid according to the par value of the Shares.

123. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

124. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

125. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

126. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

127. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

128. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

129. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

130. Subject to the Law and these Articles, the Directors may:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Shares held by them respectively, or

(ii) paying up in full unissued Shares or debentures of a nominal amount equal to that sum,

and allot the Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Shares,

and any such agreement made under this authority being effective and binding on all those Shareholders; and

(e) generally do all acts and things required to give effect to any of the actions contemplated by this Article.

SHARE PREMIUM ACCOUNT

131. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.

132. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price

provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

133. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

134. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

135. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

136. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

137. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

INDEMNITY

138. Every Director (including for the purposes of this Article any alternate Director appointed pursuant to the provisions of these Articles), Secretary, assistant Secretary, or other officer for the time being and from time to time of the Company (but not including the Company's auditors) and the personal representatives of the same (each an "**Indemnified Person**") shall be indemnified and secured harmless against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such Indemnified Person, other than by reason of such Indemnified Person's own dishonesty, wilful default or fraud, in or about the conduct of the Company's business or affairs (including as a result of any mistake of judgment) or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by such Indemnified Person in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Cayman Islands or elsewhere.

139. No Indemnified Person shall be liable:

(a) for the acts, receipts, neglects, defaults or omissions of any other Director or officer or agent of the Company; or

(b) for any loss on account of defect of title to any property of the Company; or

(c) on account of the insufficiency of any security in or upon which any money of the Company shall be invested; or

(d) for any loss incurred through any bank, broker or other similar Person; or

(e) for any loss occasioned by any negligence, default, breach of duty, breach of trust, error of judgement or oversight on such Indemnified Person's part; or

(f) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities, or discretions of such Indemnified Person's office or in relation thereto;

unless the same shall happen through such Indemnified Person's own dishonesty, wilful default or fraud.

NON-RECOGNITION OF TRUSTS

140. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

141. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

142. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

143. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

144. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

145. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

146. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

147. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being

incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

148. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Law.

DISCLOSURE

149. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER

Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands

(Sgd) Roderick Palmer
Roderick Palmer
as Authorised Signatory for and on behalf of Walkers Nominees Limited

Dated: 27 October 2011

(Sgd) Grainne O'Leary
Signature of Witness

Name: Grainne O'Leary

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
Flossiebell M. Makagh
Assistant Registrar
Date. 27 October, 2011

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

EXHIBIT 5

CHARITABLE DAF HOLDCO, LTD

THE COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM AND ARTICLES OF ASSOCIATION

(ADOPTED BY SPECIAL RESOLUTION DATED 20 FEBRUARY 2025)

Campbells

Floor 4, Willow House, Cricket Square
Grand Cayman KY1-9010
Cayman Islands

campbellslegal.com

(14133-42760)

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CHARITABLE DAF HOLDCO, LTD

THE COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM OF ASSOCIATION

(ADOPTED BY SPECIAL RESOLUTION DATED 20 FEBRUARY 2025)

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1. The name of the Company is Charitable DAF HoldCo, Ltd.

2. The registered office of the Company will be situated at the offices of Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are:

   (a) to benefit community-focused non-profit foundations established or located anywhere in the world or for the purposes recognised as charitable, as the Directors may from time to time determine, in furtherance of the following mission statement: "Charitable DAF makes investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference"; and

   (b) to do all such things in the opinion of the Directors are or may be incidental or conducive to the above objects or any part of them.

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Companies Act (as amended) of the Cayman Islands (the "**Act**").

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is US$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US$0.01 each 100 Management Shares of a nominal or par value of US$0.01 each provided always that subject to the Act and the Articles of Association the Company shall have power

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to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Act to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

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CHARITABLE DAF HOLDCO, LTD

THE COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

ARTICLES OF ASSOCIATION

(ADOPTED BY SPECIAL RESOLUTION DATED 20 FEBRUARY 2025)

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Act shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Act**" means the Companies Act (as amended) of the Cayman Islands.

"**AEOI**" means:

(i) sections 1471 to 1474 of the Code and any associated legislation, regulations or guidance, and any other similar legislation, regulations or guidance enacted in any other jurisdiction which seeks to implement similar financial account information reporting and/or withholding tax regimes;

(ii) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters - the Common Reporting Standard and any associated guidance;

(iii) any intergovernmental agreement, treaty, regulation, guidance, standard or other agreement between the Cayman Islands (or any Cayman Islands government body) and any other jurisdiction (including any government bodies in such jurisdiction), entered into in

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order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in sub-paragraphs (i) and (ii); and

(iv) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding sub-paragraphs.

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Code**" means the US Internal Revenue Code of 1986, as amended.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Electronic Record**" has the same meaning as in the Electronic Transactions Act.

"**Electronic Transactions Act**" means the Electronic Transactions Act (as amended) of the Cayman Islands.

"**Gross Negligence**" has the meaning ascribed under the laws of the State of Delaware in the United States.

"**Management Director**" means a director of the Company holding a Management Share (as defined below).

"**Management Share**" means a voting non-participating share in the capital of the Company of $0.01 nominal or par value, that shall be non-redeemable at the option of the holder but redeemable by the Company in accordance with these Articles, and issued subject to and in accordance with the provisions of the Act and these Articles and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Shares.

"**Material Transaction**" means any transaction (or series of connected transactions), including an acquisition, distribution, investment or divestiture by the Company, for the aggregate amount in excess of $250,000;

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.

"**Office**" means the registered office of the Company as required by the Act.

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a

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poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Participating Share**" means a non-voting, participating, non-redeemable share in the capital of the Company of $0.01 nominal or par value issued subject to and in accordance with the provisions of the Act and these Articles, and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Share. All references to "Participating Shares" herein shall be deemed to be Participating Shares of any or all Classes or Series as the context may require. For the avoidance of doubt, in these Articles the expression "Participating Share" shall include a fraction of a Participating Share.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Act and these Articles, means the Register maintained by the Company pursuant to the Act and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Act and includes any Branch Register(s) established by the Company in accordance with the Act.

"**Restricted Person**" means any Person holding Participating Shares:

(a) in breach of the law or requirements of any country or governmental authority;

(b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the Code or an entity or organisation all of whose beneficiaries are exempt under Section 501(c)(3) of the Code; or

(c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered.

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"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a Management Share or Participating Share or both as the context so requires.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber.

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Act.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Act, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

"**United States**" and "**US**" means the United States of America (including the District of Columbia), its states, territories and possessions.

In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

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(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re- enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case;

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another;

(h) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Act; and

(i) sections 8 and 19(3) of the Electronic Transactions Act shall not apply.

2. Subject to the preceding Articles, any words defined in the Act shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

3. The business of the Company may be commenced at any time after incorporation.

4. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

5. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Participating Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

6. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Act and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may

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keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Act, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Act.

SHARES

7. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

   (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine;

   (b) and grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

   and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

8. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Participating Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

9. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

10. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MANAGEMENT SHARES

11. The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganisation or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.

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PARTICIPATING SHARES

12. Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but may be entitled to vote at a separate class meeting in relation to a modification of rights pursuant to the immediately following Article. The Participating Shares shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

MODIFICATION OF RIGHTS

13. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Participating Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that the variation or abrogation of the rights attached to such Classes proposed for consideration is the same variation or abrogation for all such relevant Classes, but in any other case shall treat them as separate Classes.

14. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company.

CERTIFICATES

15. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

16. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

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TRANSFER OF SHARES

17. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

18. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor including any purported transfer that does not comply with applicable securities or tax laws.

19. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

20. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

21. If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles.

TRANSMISSION OF SHARES

22. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.

23. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the

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Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

24. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

25. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

26. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

27. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

28. Subject to the Act, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;

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(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Act; and

(d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.

29. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

30. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.

31. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

32. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Act. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.

33. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.

34. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:

(a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;

(b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Act, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.

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35. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

36. The Directors may, whenever they think fit, convene a general meeting of the Company.

37. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.

38. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

39. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

40. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

41. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

42. No business shall be transacted at any general meeting unless a quorum of Shareholders Is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles,

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one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

43. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

44. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

45. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

46. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

47. The chairman may adjourn a meeting from time to time and from place to place either:

(a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting): or

(b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:

(i) secure the orderly conduct or proceedings of the meeting; or

(ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

48. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded

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by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

49. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

50. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

51. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

52. On a show of hands every holder of Management Shares present in person and every Person representing such a Shareholder by proxy shall have one vote, and on a poll every holder of Management Shares present in person and every Person representing such Shareholder by proxy shall be entitled to one vote in respect of each of the Management Shares held by them.

53. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

54. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

55. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

56. On a poll votes may be given either personally or by proxy.

57. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

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58. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

59. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

60. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

61. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at genera! meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

62. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

63. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

64. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

65. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

66. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

67. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

68. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

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69. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

70. The Management Director shall be entitled to cast ten (10) votes on all matters and each other Director shall be entitled to cast one (1) vote. Such voting powers shall apply to voting in any committee or subcommittee of the Board. Every reference in these Articles to a majority or other proportion of the Directors, including for purposes of determining a quorum, shall refer to a majority or other proportion of the votes of the Directors then in office.

POWERS AND DUTIES OF DIRECTORS

71. Subject to the Act, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

72. The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or

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by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

73. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

74. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

75. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

76. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.

77. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

78. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and

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may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

79. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

80. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

81. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

82. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

83. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

84. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

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(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by ail of his co-Directors (not being less than two in number); or

(f) is removed from office pursuant to any other provision of these Articles, including without limitation, in the circumstance set out in Article 13.

PROCEEDINGS OF DIRECTORS

85. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

86. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

87. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two which must include the Management Director, and if there be one Director the quorum shall be one.

88. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

89. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director

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shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

90. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

91. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

92. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

93. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be, shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors. Notwithstanding anything to the contrary herein, a resolution in writing signed by all the Directors in respect of a Material Transaction must be duly notarized by a notary public.

94. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

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95. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

96. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

97. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

98. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

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DIVIDENDS

99. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Act and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

100. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

101. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

102. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

103. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

104. Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.

105. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

106. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

107. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

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108. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

109. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

110. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

111. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Act and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

112. Subject to the Act and these Articles, the Directors may:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Participating Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Participating Shares held by them respectively; or

(ii) paying up in full unissued Participating Shares or debentures of a nominal amount equal to that sum,

and allot the Participating Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Participating Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Participating Shares or

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debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of ail the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Participating Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Participating Shares, and any such agreement made under this authority being effective and binding on all those Shareholders; and

(iii) generally do all acts and things required to give effect to any of the actions contemplated by this Article.

SHARE PREMIUM ACCOUNT

113. The Directors shall in accordance with the Act establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.

114. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Act, out of capital.

NOTICES

115. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

116. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

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117. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

118. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

119. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

NON-RECOGNITION OF TRUSTS

120. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial

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interest in any Share or (except only as otherwise provided by these Articles or as the Act requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

121. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

122. Subject to any rights and restrictions for the time being attributed to any Class or Series, the assets available for distribution among the Shareholders shall then be applied in the following priority:

(a) first, in the payment to the holders of Participating Shares and Management Shares, *pari passu*, of a sum equal to the par value of the Participating Shares or Management Shares held by them; and

(b) second, in the payment of any balance to holders of Participating Shares, such payment being made in proportion to the number Participating Shares of the relevant Class and Series held.

123. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Participating Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Participating Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

124. Subject to the Act and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

125. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of,

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attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

126. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

127. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BYWAY OF CONTINUATION

128. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

129. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Act.

DISCLOSURE

130. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares or any Class or Series may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

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INDEMNITY

131. To the fullest extent permitted by law, no Director, Secretary, Assistant Secretary, committee member or other officer for the time being and from time to time of the Company (each, a "Covered Person" and collectively, "**Covered Persons**") shall be liable to the Company or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes wilful misconduct or Gross Negligence by such Covered Person (as determined by a non-appeaiable judgment of a court of competent jurisdiction).

132. Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

133. To the fullest extent permitted by law, the Company shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Company, any investment made, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Company, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or Gross Negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or Gross Negligence.

134. Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

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135. The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

DISPUTE RESOLUTION

136. Subject to the prior written consent of all parties involved in the Dispute (as defined below) to such dispute resolution procedures, the following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with these Articles or otherwise involving the Company, a trustee appointed to represent the Company on claims derivative of the Company, its Shareholders and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation:

(i) subject to the prior written consent of all parties involved in the Dispute, any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect;

(ii) the mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute;

(iii) the mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings; and

(iv) each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties,

(b) Arbitration:

Subject to the prior written consent of all parties involved in the Dispute to such dispute resolution procedure, if a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. The arbitration will be administered by JAMS/Endispute pursuant to JAMS' Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. ("**Arbitration Rules**"). In the event of a conflict, the provisions of these Articles will control:

(i) the arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue

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concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the United States Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, provided, however, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a State arbitration act of the United States preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures;

(ii) the arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrators) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law;

(iii) the party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive;

(iv) no discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty- five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non- parties, shall not be permitted;

(v) all aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable

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opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term; and

(vi) the result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

(c) Notwithstanding anything to the contrary herein, for greater certainty, in accordance with the terms herein, if all parties involved in the Dispute do not provide written consent to following the mediation and/or arbitration provisions herein, a party shall maintain its right to pursue his/her/its Dispute in court.

AEOI

137. Notwithstanding any other Article, in order to comply with AEOI, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by AEOI, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.

138. In order to comply with AEOI and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to AEOI or incur any costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) (together, "**costs**") associated with AEOI, the Directors may cause the Company to undertake any of the following actions:

(a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to AEOI; or (ii) where there has otherwise been non-compliance by the Company with AEOI whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;

(b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:

(i) comply with any applicable requirement to apply and collect withholding tax pursuant to AEOI;

(ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with AEOI;

GENERAL REGISTRY CAYMAN ISLANDS
Filed: 21-Feb-2025 09:26 EST
Auth Code: E90228166495
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(iii) ensure that any AEOI related costs are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs.

139. In order to give effect to the requirements imposed upon the Company by AEOI, as well as any of the actions contemplated by Articles 138(a) and 139(b), the Directors may undertake any of the following actions:

(a) create separate classes and/or series of Shares ("**AEOI Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of AEOI Shares as the Directors determine;

(b) may re-name any number of Shares (whether issued or unissued) as AEOI Shares, create a Separate Account with respect to such AEOI Shares and apply any AEOI related costs or withholding taxes to such Separate Account;

(c) allocate any AEOI costs or withholding tax among Separate Accounts on a basis determined solely by the Directors; and

(d) adjust the Net Asset Value per Share of any relevant Shares (including any AEOI Share).

GENERAL REGISTRY CAYMAN ISLANDS
Filed: 21-Feb-2025 09:26 EST
Auth Code: E90228166495
www.verify.gov.ky File#: 263805

Annexure

Fiscal Year

The fiscal year of the Company ends on the 31st day of December in each year, unless the Directors prescribe some other period therefor.

GENERAL REGISTRY CAYMAN ISLANDS

Filed: 21-Feb-2025 09:26 EST
Auth Code: E90228166495

www.verify.gov.ky File#: 263805

EXHIBIT 6

Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Share Class: Management

Authorised Capital of USD 1.00 divided into 100.00 Management shares of par value USD 0.01 each

Entry No.	Name and Address of Shareholder	Date of Entry	Cert. Nr	Shares Acquired	Issue Price	Amount Paid	Nature of Acquisition	Date Shares Disposed	Shares Disposed	Remarks	Balance Shares	Transaction Details
1	**WNL Limited** 190 Elgin Avenue George Town Grand Cayman KY1-9001 Cayman Islands	7-Nov-2011		1.00	0.01	In Full	7-Nov-2011 : Allotment of 1.00 Management share(s)	7-Nov-2011	1.00		0.00	7-Nov-2011 : Repurchase of 1.00 Management share(s)
2	**Grant James Scott** Highland Capital Managment, L.P. 13455 Noel Road, Suite 800 Dallas, TX 75240 USA	7-Nov-2011		100.00	1.00	In Full	7-Nov-2011 : Allotment of 100.00 Management share(s)	25-Mar-2021	100.00		0.00	25-Mar-2021 : Transfer of 100.00 Management share(s) to Mark E. Patrick
3	**Mark E. Patrick** 6716 Glenhurst Dr Dallas, TX 75254 USA	25-Mar-2021		100.00	1.00	In Full	25-Mar-2021 : Transfer of 100.00 Management share(s) to Mark E. Patrick		0.00		100.00	

Notes

1 *Where there is only one class of shares in issue, all issued shares carry equal (and unconditional) voting rights. Unless shares are described as "Non-Voting" they carry voting rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). Where shares are described as "Non-Voting" this designates that they do not carry rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). All shares carry unconditional voting rights, save where shares are described as "conditional" which designates that they only carry rights to vote at general meetings in certain circumstances.*

Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Summary

Name	Number and Class of Shares Held
Mark E. Patrick	100.00 Management
Total Management Shares outstanding: 100.00	
Total Management Shares remaining unissued: 0.00	

Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Share Class: Participating

Authorised Capital of USD 49,999.00 divided into 4,999,900.00 Participating shares of par value USD 0.01 each

Entry No.	Name and Address of Shareholder	Date of Entry	Cert. Nr	Shares Acquired	Issue Price	Amount Paid	Nature of Acquisition	Date Shares Disposed	Shares Disposed	Remarks	Balance Shares	Transaction Details
1	**The Highland Capital Management Partners CharitableTrust #2** Highland Capital Management, L.P 13455 Noel Rd, Suite 800 TX 75240 Dallas Texas USA	7-Nov-2011		300.00	3.00	In Full	7-Nov-2011 : Allotment of 300.00 Participating share(s)	30-Nov-2011	300.00		0.00	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Kansas City Foundation, Inc 30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Dallas Foundation, Inc 30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Santa Barbara Foundation, Inc
2	**Highland Kansas City Foundation, Inc** -	30-Nov-2011		100.00	1.00	In Full	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Kansas City Foundation, Inc		0.00		100.00	
3	**Highland Dallas Foundation, Inc** -	30-Nov-2011		100.00	1.00	In Full	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Dallas Foundation, Inc		0.00		100.00	
4	**Highland Santa Barbara Foundation, Inc** -	30-Nov-2011		100.00	1.00	In Full	30-Nov-2011 : Transfer of 100.00 Participating share(s) to Highland Santa Barbara Foundation, Inc		0.00		100.00	

Register of Members of

Charitable DAF HoldCo, Ltd

Registration No: 263805

Entry No.	Name and Address of Shareholder	Date of Entry	Cert. Nr	Shares Acquired	Issue Price	Amount Paid	Nature of Acquisition	Date Shares Disposed	Shares Disposed	Remarks	Balance Shares	Transaction Details
5	**Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT** 306 W. 7th St., Suite 1045 Forth Worth TX 76102 USA	13-Aug-2015		5.00	0.05	In Full	13-Aug-2015 : Allotment of 5.00 Participating share(s)		0.00		5.00	
6	**DFW Charitable Foundation** The Corporation Trust Company 1209 Orange Street Wilmington, DE 19801 United States	7-Feb-2025		318.00	3.18	In Full	7-Feb-2025 : Allotment of 318.00 Participating share(s)		0.00		318.00	

Notes

1 *Where there is only one class of shares in issue, all issued shares carry equal (and unconditional) voting rights. Unless shares are described as "Non-Voting" they carry voting rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). Where shares are described as "Non-Voting" this designates that they do not carry rights to vote at general meetings on all or substantially all matters (including the right to appoint or remove directors). All shares carry unconditional voting rights, save where shares are described as "conditional" which designates that they only carry rights to vote at general meetings in certain circumstances.*

Summary

Name	Number and Class of Shares Held	
Highland Kansas City Foundation, Inc	100.00	Participating
Highland Dallas Foundation, Inc	100.00	Participating
Highland Santa Barbara Foundation, Inc	100.00	Participating
Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT	5.00	Participating
DFW Charitable Foundation	318.00	Participating
Total Participating Shares outstanding: 623.00		
Total Participating Shares remaining unissued: 4,999,277.00		

EXHIBIT 7

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED March 25 **2021**

---

1. SHARE TRANSFER

1.1 **IT IS NOTED** that the Director has received a duly executed share transfer form relating to the transfer by Grant James Scott of 100 Management Shares to Mark E. Patrick.

1.2 **IT IS RESOLVED** that:

(a) the following share transfer (the "**Transfer**") be and is hereby ratified, confirmed and approved:

TRANSFEROR	TRANSFEREE	NO OF SHARES	DATE OF TRANSFER
Grant James Scott	Mark E. Patrick	100 Management Shares	24 March 2021

(b) the Company's registered office provider be instructed to update the Register of Members of the Company to reflect the Transfer.

2. GENERAL AUTHORISATION

2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

These written resolutions are signed by the sole Director of the Company.

Mark Patrick

Mark E. Patrick

EXHIBIT 8

CHARITABLE DAF HOLDCO, LTD

(the "Company")

SHARE TRANSFER FORM

Dated 24 March 2021

I, **Grant James Scott** (the "**Transferor**"), for good and valuable consideration received by me from **Mark E. Patrick** (the "**Transferee**"), do hereby:

1. transfer to the Transferee 100 Management Shares (the "**Shares**") for the par value of $0.01 each standing in my name in the register of members of the Company to hold unto the Transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of execution of this Share Transfer Form; and

2. consent that my name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.

SIGNED by **TRANSFEROR**:)
)
Name: Grant J. Scott

And the Transferee does hereby agree to take the Shares subject to the same conditions.

SIGNED by **TRANSFEREE**:)
)
Name: Mark E. Patrick

EXHIBIT 9

THE COMPANIES LISTED IN THE ATTACHED SCHEDULE
(EACH A "COMPANY" AND TOGETHER THE "COMPANIES")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF EACH COMPANY DATED April 22, **2021**

---

1. APPOINTMENT OF DIRECTOR

1.1 **IT IS NOTED** that the Directors wish to appoint Paul Murphy as a Director of each Company with effect from the date of these resolutions and that such proposed Director has indicated a willingness to hold such office and has executed a letter of consent and/or a services agreement in relation thereto (such appointment, the "**Director's Appointment**").

1.2 **IT IS RESOLVED** that:

(a) the Director's Appointment be and is hereby approved with effect from the date of these resolutions until such time as the Director resigns or is removed from office in accordance with the Articles of Association of each Company; and

(b) the registered office service provider be and is hereby instructed to update the Register of Directors of each Company and to make the necessary filings with the Registrar of Companies to reflect the Director's Appointment.

2. GENERAL AUTHORISATION

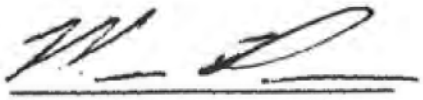
2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director or any officer or (if applicable) any attorney or duly authorised signatory of each Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of each Company, to do such further acts and things as the Director or any officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of each Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of each Company, or of the Director or any officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

[Remainder of page left blank intentionally]

These written resolutions are signed by the sole Director of the Company.



Mark E. Patrick

Schedule
(List of Companies)

Charitable DAF HoldCo, Ltd.
CLO HoldCo, Ltd.
Liberty CLO Holdco, Ltd.
Liberty Sub, Ltd.
HCT Holdco 2, Ltd.
MGM Studios Holdco, Ltd.

EXHIBIT 10



Director Details

Entity Name: **CHARITABLE DAF HOLDCO, LTD**

Director Name

Mark E. Patrick

Paul Murphy

Back to Entity Search | View Receipt

EXHIBIT 11

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JAN 19 2013

HIGHLAND DALLAS FOUNDATION INC
C/O HUNTON & WILLIAMS LLP
DOUGLAS M MANCINO
550 S HOPE ST STE 2000
LOS ANGELES, CA 90071

Employer Identification Number:
45-3961755
DLN:
17053058308022
Contact Person:
SHEILA M ROBINSON ID# 31220
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(3)
Form 990 Required:
Yes
Effective Date of Exemption:
November 22, 2011
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Specifically, we have determined that you are a Type I supporting organization under section 509(a)(3). A Type I supporting organization is operated, supervised, or controlled by one or more publicly supported organizations.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

HIGHLAND DALLAS FOUNDATION INC

Sincerely,

Holly O. Paz

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 4221-PC

EXHIBIT 12

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED NOVEMBER 30, 2011

---

1. PARTIPATING SHARE TRANSFER UPON DISSOLUTION OF THE HIGHLAND CAPITAL MANAGEMENT PARTNERS CHARITABLE TRUST #2

1.1 **IT IS NOTED** that the Director has received a duly executed share transfer form relating to the proposed transfer by The Highland Capital Management Partners Charitable Trust #2 of 100 Participating Shares to each of the three transferees listed below upon the dissolution of The Highland Capital Management Partners Charitable Trust #2.

1.2 **IT IS RESOLVED** that:

(a) the following share transfers (the "**Transfers**") be approved with effect from the date of dissolution of The Highland Capital Management Partners Charitable Trust #2 on November 30, 2011:

TRANSFEROR	TRANSFEREE	NO OF SHARES
The Highland Capital Management Partners Charitable Trust #2	Highland Kansas City Foundation, Inc.	100 Participating Shares
The Highland Capital Management Partners Charitable Trust #2	Highland Dallas Foundation, Inc.	100 Participating Shares
The Highland Capital Management Partners Charitable Trust #2	Highland Santa Barbara Foundation, Inc.	100 Participating Shares

(b) Walkers Corporate Services Limited be instructed to update the Register of Members of the Company to reflect the Transfers.

Grant Scott
Director

EXHIBIT 13

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

SHARE TRANSFER FORM
DATED NOVEMBER 30, 2011

The Highland Capital Management Partners Charitable Trust #2 (the "**Transferor**") for good and valuable consideration received by it from Highland Dallas Foundation, Inc. (the "**Transferee**"), does hereby transfer to the Transferee 100 Participating Shares of a par value of **US$0.01** each.

SIGNED for and behalf of **The Highland Capital Management Partners Charitable Trust #2**

Duly Authorised Signatory

Name: GRANT SCOTT

Title: TRUSTEE

EXHIBIT 14

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: MAR 21 2013

HIGHLAND KANSAS CITY FOUNDATION INC
C/O HUNTON & WILLIAMS LLP
DOUGLAS M MANCINO
550 SOUTH HOPE ST STE 2000
LOS ANGELES, CA 90071

Employer Identification Number:
45-3961865
DLN:
17053066302032
Contact Person:
GREGORY WOO ID# 95340
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(3)
Form 990 Required:
Yes
Effective Date of Exemption:
November 23, 2011
Contribution Deductibility:
Yes
Addendum Applies:
Yes

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Specifically, we have determined that you are a Type I supporting organization under section 509(a)(3). A Type I supporting organization is operated, supervised, or controlled by one or more publicly supported organizations.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

HIGHLAND KANSAS CITY FOUNDATION INC

Sincerely,

Holly O. Paz

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 4221-PC

EXHIBIT 15

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

SHARE TRANSFER FORM
DATED NOVEMBER 30, 2011

The Highland Capital Management Partners Charitable Trust #2 (the "**Transferor**") for good and valuable consideration received by it from Highland Kansas City Foundation, Inc. (the "**Transferee**"), does hereby transfer to the Transferee 100 Participating Shares of a par value of **US$0.01** each.

SIGNED for and behalf of **The Highland Capital Management Partners Charitable Trust #2**

Duly Authorised Signatory

Name: GRANT SCOTT

Title: TRUSTEE

EXHIBIT 16

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: FEB 12 2013

HIGHLAND SANTA BARBARA FOUNDATION
INC
C/O MARK PATRICK
300 CRESCENT CT STE 700
DALLAS, TX 75201

Employer Identification Number:
45-3962008
DLN:
17053060398012
Contact Person:
GINGER L JONES ID# 31646
Contact Telephone Number:
(877) 829-5500

Accounting Period Ending:
December 31
Public Charity Status:
509(a)(3)
Form 990 Required:
Yes
Effective Date of Exemption:
November 22, 2011
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

HIGHLAND SANTA BARBARA FOUNDATION

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Holly O. Paz

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 4221-PC

EXHIBIT 17

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

SHARE TRANSFER FORM
DATED NOVEMBER 30, 2011

The Highland Capital Management Partners Charitable Trust #2 (the "**Transferor**") for good and valuable consideration received by it from Highland Santa Barbara Foundation, Inc. (the "**Transferee**"), does hereby transfer to the Transferee 100 Participating Shares of a par value of **US$0.01** each.

SIGNED for and behalf of **The Highland Capital Management Partners Charitable Trust #2**

Duly Authorised Signatory

Name: GRANT Scott

Title: TRUSTEE

EXHIBIT 18

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
1100 COMMERCE STREET
DALLAS, TX 75242-0000

DEPARTMENT OF THE TREASURY

Date: MAY 19 1994

Employer Identification Number:
75-2267767
Case Number:
754123072
Contact Person:
SHARI FLOWERS
Contact Telephone Number:
(214) 767-6023
Our Letter Dated:
July 27, 1989
Addendum Applies:
No

COMMUNITY FOUNDATION OF
METROPOLITAN TARRANT COUNTY INC
306 W 7TH ST STE 702
FORT WORTH, TX 76102-4906

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Bobby E. Scott
District Director

Letter 1050 (DO/CG)

RECEIVED MAY 23 1994

Internal Revenue Service

Date: March 2, 2006

COMMUNITY FOUNDATION OF NORTH TEXAS
306 W 7TH ST STE 306
FORT WORTH, TX 76102-4906

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
Roger Meyer
ID# 31-07707
Toll Free Telephone Number:
877-829-5500
Federal Identification Number:
75-2267767

Dear Sir or Madam:

This is in response to your request of December 29, 2005, regarding your tax-exempt status.

In June 1989 we issued a determination letter that recognized you as exempt from federal income tax. Our records indicate that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records indicate that you are also classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code.

Our records indicate that contributions to you are deductible under section 170 of the Code, and that you are qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Internal Revenue Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

Cindy M. Westcott

Cindy Westcott
Manager, EO Determinations

EXHIBIT 19

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED August 12, **2015**

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1. ISSUE OF SHARES

1.1 **IT IS NOTED** that:

(a) capitalised terms not otherwise defined herein shall have the meaning given to those terms in the Articles of Association of the Company, as may be amended from time to time (the "**Articles**");

(b) the Company has received an application from the Community Foundation of North Texas (the "**Subscriber**") to subscribe for Participating Shares of the Company having a par value of US$0.01 each, in the amount set forth in the table below, at their aggregate nominal par value (the "**Shares**"):

SUBSCRIBER	NO. OF SHARES	SUBSCRIPTION PRICE
Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT	5 Participating Shares	$0.05

(c) in the opinion of the Directors, the issuance of the Shares to the Subscriber would be in the best interests of the Company.

1.2 **IT IS RESOLVED** that:

(a) in the opinion of the Directors, the issuance of the Shares to the Subscriber would be in the best interests of the Company.

(b) subject to payment in full being received by the Company, the Shares be and are hereby issued to the Subscriber, fully paid, in accordance with the table set forth above; and

(c) as the Subscriber has not requested the issue of a share certificate, Intertrust Corporate Services (Cayman) Limited, be and is hereby instructed to make the appropriate entries in the Register of Members of the Company in respect of the foregoing issue.

2. GENERAL AUTHORISATION

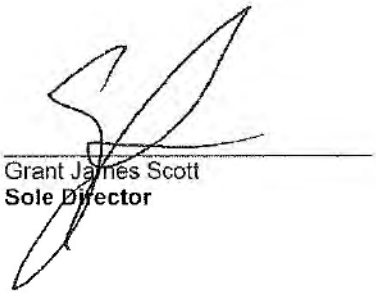
2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of

the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

[***Signature page follows***]



Grant James Scott
Sole Director

EXHIBIT 20

DFW Foundation
6716 Glenhurst Dr.
Dallas, TX 75254

February 7, 2025

Charitable DAF Holdco, Ltd.
Attn: Mark Patrick, Director
6716 Glenhurst Dr.
Dallas, TX 75254

Dear Mr. Patrick:

DFW Charitable Foundation, a Delaware non-profit non-stock corporation ("DFW"), wishes to acquire 318 participating shares in Charitable DAF Holdco, Ltd. ("DAF Holdco"), par value $0.01, for a total price of $3.18. Please find enclosed funds to acquire such 318 participating shares, effective as of the date first set forth above.

Thank you for your attention to this matter.

Sincerely,

DFW Foundation

By:_____
Shawn Raver
Director

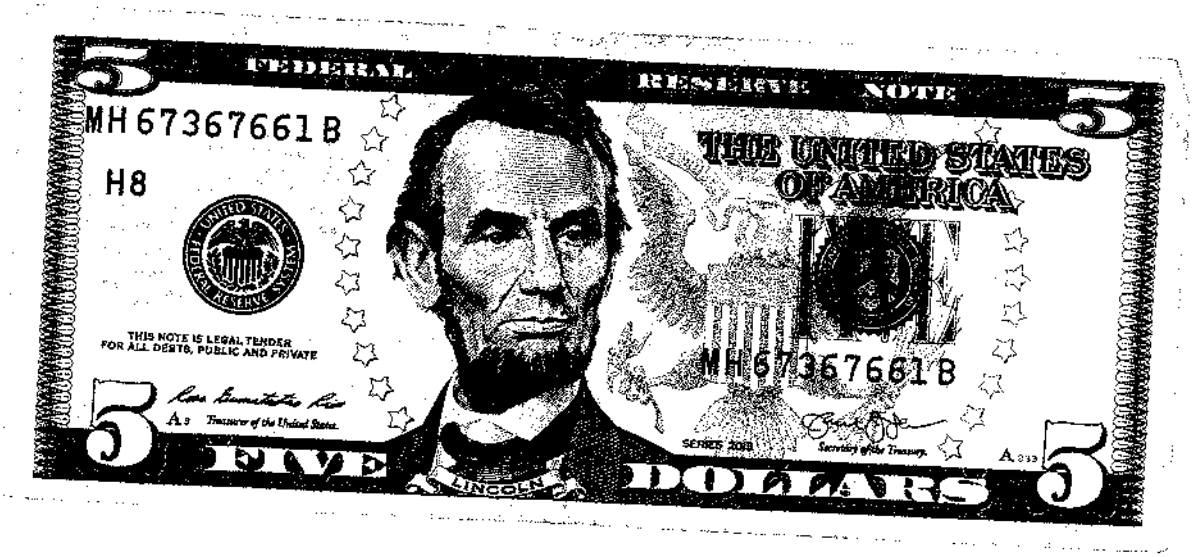


EXHIBIT 21

Charitable DAF HoldCo, Ltd
(the "**Company**")

Unanimous Written Resolutions of the Board of Directors of the Company

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1 Directors' Interests

1.1 It is noted that none of the directors of the Company (together the "**Directors**", and each a "**Director**") have any monetary or financial interest in the matters referred to herein.

2 Recent Developments

2.1 It is noted that the Directors have received communications from certain current Participating Shareholders requesting information and making false and misleading claims regarding the Company's and its subsidiaries' finances.

2.2 It is noted that the Directors believe the aforementioned communications were motivated and/or directed by James Dondero as retaliation for Mark Patrick's resignation from Skyview Group and the Company's various efforts to create independence between the Company and its subsidiaries on the one hand and James Dondero and his affiliates on the other hand.

2.3 It is noted that the Directors have knowledge that the false and misleading information forming the basis of these claims was provided by SEI, a back-office service provider to the Company and certain of its subsidiaries, to employees of certain Dondero-controlled entities such as Skyview Group or NexPoint.

2.4 It is noted that none of the concerns raised by the current Participating Shareholders were raised prior to Mark Patrick's resignations from Skyview Group, despite there being no change in the information provided or the frequency of information provided.

3 U.S. Counsel Tax Advice

3.1 It is noted that the Directors have received United States Tax Counsel advice that, among other things:

(a) "there is a significantly heightened risk that the Internal Revenue Service of the United States could severely penalize and/or revoke the tax-exempt status of one or more of the current Participating Shareholders, which could imperil the status and assets of the Company"; and

(b) "Increasing the number of Participating Shareholders would mitigate considerations of undue influence/private inurement/private beneift and broaden the scope of DAF's charitable reach to the public; and

(c) "The IRS will look favorably upon any and all attempts for DAF to maintain its

independence from what seems to be persistent attempts by James Dondero and the entities controled by him to use DAF for his private benefit and private inurement."

3.2 It is noted that the Directors believe the Share Issuance (as defined below) to DFW (as defined below) is based on this U.S. tax advice and will protect the Company and the current Participating Shareholders and will also further the Company's charitable mission.

4 Cayman Counsel Legal Advice

4.1 It is noted that the Directors have sought and obtained legal advice from separate Cayman Islands counsel ("**Walkers**"), who have confirmed that (i) the Directors have the ability to issue new Participating Shares as contemplated by the Share Issuance, (ii) if the Directors believe the Participating Shares are held by a Restricted Person (as defined in Article 21 of the Company's M&A), the Directors may require such shareholder to transfer its shares, and (iii) the Participating Shareholders have no or limited rights to information.

4.2 It is noted that attached as Exhibit A hereto is the Walkers presentation outlining the rights accompanying the Participating Shares (the "**Walkers Presentation**").

5 Issue of Shares

5.1 It is noted that the Company proposes to issue 318 Participating Shares of a nominal or par value of US$0.01 each as fully paid up (the "**Participating Shares**") to DFW Charitable Foundation ("**DFW**"), a Delaware non-profit non-stock corporation (the "**Share Issuance**").

5.2 Following the Share Issuance, DFW shall own 51.04% of the issued Participating Shares of the Company.

5.3 It is resolved that:

(a) the Share Issuance be approved with effect from the date of these resolutions;

(b) Campbells Corporate Services Limited be and is hereby instructed to make the appropriate entry in the register of members of the Company in respect of the Share Issuance;

(c) any and all actions of the Company, the Directors or any officer of the Company taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such actions had been presented for approval and approved by the Directors prior to such action(s) being taken; and

(d) the Directors shall meet on not less than a quarterly basis to discuss recent developments and how to best protect the Company and its shareholders.

6 Ancillary Documents

6.1 It is further resolved that:

(a) the Company do give, make, sign, execute and deliver all such agreements, letters, notices, certificates, acknowledgements, instructions and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of any Director be considered necessary or desirable for the purpose of compliance with any condition precedent or the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of all or any of the transactions contemplated by or referred to in all or any of the documents referred to above and the Company do all other such acts and things as might in the sole opinion and absolute discretion of any Director be necessary or desirable for the purpose aforesaid;

(b) the Ancillary Documents be in such form as any Director should in his absolute discretion and sole opinion approve, the signature of any such person on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company;

(c) the Ancillary Documents (where required to be executed by the Company) be executed by the signature thereof of any one Director together with such changes as such Director shall in his absolute discretion consider necessary or appropriate (the signature of such Director on any Ancillary Document being conclusive evidence of his approval of the same for and on behalf of the Company);

(d) the Ancillary Documents be valid, conclusive, binding on and enforceable against the Company when executed and delivered in the manner aforesaid;

(e) any and all actions of the Company, or of any Director or officer, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and hereby are ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval, and approved by, the Directors prior to such action being taken; and

(f) the prior execution of any Ancillary Documents by any Director are approved, ratifed and confirmed in all respects.

[*signature page(s) follow(s)*]

Name: **Mark Patrick**
Title: Director

Date: 2-7-2025

Name: **Paul Murphy**
Title: Director

Date: 7th February 2025

Exhibit A

Walkers Presentation

Walkers

Participating Shareholder Rights
Charitable DAF Holdco Ltd.



Making financial services work

Bermuda | British Virgin Islands | Cayman Islands | Dubai | Guernsey | Hong Kong | Ireland | Jersey | London | Singapore

Binding Effect of Articles of Association

Binding Effect of Articles of Association

"... the binding effect of the Articles as they stand ... is given statutory force by section 25(3) of the Companies Law which reads:

> '(3) Where registered the said articles of association shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to this law; ....'"

(*In the Matter of Strategic Turnaround Master Partnership Ltd* [2008] CIGC J1128-1, per Chief Justice Smellie at paragraph 135)

Participation in Discretionary Dividends

Participate in Discretionary Dividends

"The Participating Shares shall confer upon the Shareholders ... the right to participate in the profits or assets of the Company in accordance with these Articles." **(Art 12)**

Participation in Discretionary Dividends

"The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit." **(Art 102)**

"Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares." **(Art 105)**

Participating Shareholders do not have:

- **the right to cause or vote on distributions;**
- **the right to pro rata distributions based on their shareholding;**
- **the right to annual or timed distributions; or**
- **the right to receive notice of distributions to other Participating Shareholders.**

Removal of Directors

Removal of Directors

"Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution." **(Art 65)**

Participating Shareholders do not have:

- the right to remove Directors; or
- the right to appoint Directors.

Note: the right to appoint Directors is held by the Management Shareholder and the Directors, and the right to remove Directors is held solely by the Management Shareholder (Articles 64, 65, and 69, and Definition of "Ordinary Resolution").

Modification of Rights

Modification of Rights

"... the rights attached to [any] Class may ... only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting." **(Art 13)**

Participating Shareholders do not have:

- **the right to cause a distribution; or**
- **the right to amend the Articles.**

Modification of Rights – Issuance of Shares

"The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not ... be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company." **(Art 14)**

"... all Shares for the time being unissued shall be under the control of the Directors who may:

(a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine;

(b) and grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued." **(Art 7)**

Participating Shareholders do not have:

- **the right to vote on the issuance of further Participating Shares;**
- **pre-emption rights; or**
- **the right to receive notice of such issuance.**

Modification of Rights – Issuance of Shares

"The capital of the Company is US$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US$0.01 each 100 Management Shares of a nominal or par value of US$0.01 each..." **(Art 7)**

Note: Of the authorised share capital of the Company, 305 Participating Shares have been issued. In accordance with the Articles, the Directors may unilaterally issue additional Participating Shares and thereby dilute the power of existing shareholders for the purposes of voting on matters that may materially adversely vary or abrogate the rights of the Participating Shareholders.

Additional Note: many of the rights that shareholders of a company typically hold (e.g. the right to receive notices, and the right to vote at general meetings, including in respect of the appointment and removal of directors) are held by the Management Shareholder (Mark Patrick) rather than the Participating Shareholders. In addition, the Directors (Mark Patrick and Paul Murphy) have the ability to unilaterally declare dividends and issue new Participating Shares without the approval of the Participating Shareholders (or the Management Shareholder).

Share Redemption

Share Redemption

"**"Participating Share"** means a non-voting, participating, non-redeemable share in the capital of the Company of $0.01 nominal or par value issued subject to and in accordance with the provisions of the Act and these Articles..."

"... the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them..." **(Paragraph 7, Memorandum)**

"The rights conferred upon the holders of the Participating Shares ... shall not ... be deemed to be materially adversely varied or abrogated by ... the redemption or purchase of any Participating Shares of any Class by the Company." **(Art 14)**

Participating Shareholders do not have:

- the right to redeem their shares; or
- the right to vote on the Company's redemption of their shares.

Transfer of Shares

Share Transfer by Notice of the Directors – Restricted Person

"If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles." **(Art 21)**

"**Restricted Person**" means any Person holding Participating Shares:

a) in breach of the law or requirements of any country or governmental authority;

b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the Code or an entity or organisation all of whose beneficiaries are exempt under Section 501 (c)(3) of the Code; or

c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered."

Note: the Directors have duties to act, and to exercise their powers, in the best interests of the Company. The scope of those duties includes continually evaluating whether any Participating Shareholder may pose a threat to the Company which could cause them to fall within the definition of Restricted Person, and how best to protect the Company against any such threat.

General Meetings

General Meetings

"Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company..." **(Art 12)**

Participating Shareholders do not have:

- **the right to receive notice of general meetings;**
- **the right to attend general meetings;**
- **the right to speak at general meetings;**
- **the right to vote at general meetings; or**
- **the right to information regarding proceedings of general meetings.**

Limited Information Rights

Limited Information Rights

"The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors." **(Art 108)**

"The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution." **(Art 110)**

Participating shareholders have very limited information rights. Specifically, the articles do not provide the Participating Shareholders with the following:

- **the right to inspect any account;**
- **the right to inspect any book; or**
- **the right to inspect any document of the Company.**

Further to the above, we note that :

- This only applies to the limited company which issued the participation shares, i.e. DAF HoldCo;
- It does not apply to subsidiary entities;
- It does not apply to entities in which DAF HoldCo holds a passive interest; and
- There is no "look- through" down through all the entities in the structure.

EXHIBIT 22

intertrust GROUP
A CSC COMPANY

Registration No.: **263805**
Client No.: **KY059904**

REGISTER OF DIRECTORS
FOR:
CHARITABLE DAF HOLDCO, LTD

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited Walkers Corporate Services Limited; Walker House; 87 Mary Street; George Town; Grand Cayman KY1-9005; Cayman Islands.	Director	04 Nov 2011	04 Nov 2011
Grant James Scott Highland Capital Managment, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	04 Nov 2011	25 Mar 2021
Mark E. Patrick 6716 Glenhurst Dr, Dallas, Texas, TX 75254; USA.	Director	25 Mar 2021	
Paul Murphy Windsor Village, Unit #24; South Sound; Grand Cayman; Cayman Islands.	Director	22 Apr 2021	

Date printed: 18 December, 2023

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 23

THE DALLAS FOUNDATION

SUPPORTING ORGANIZATION OPERATING AGREEMENT

THIS SUPPORTING ORGANIZATION OPERATING AGREEMENT (this "Agreement") is made and entered into on November 30, 2011, by and between **THE DALLAS FOUNDATION** ("Foundation") and the **HIGHLAND DALLAS FOUNDATION, INC.** ("Supporting Organization"),

RECITALS:

A. Foundation is a Texas nonprofit corporation exempt from taxation under Internal Revenue Code ("Code") Section 501(c)(3), and a public charity described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. The principal objective of Foundation is to solicit, receive and accept property to be administered, used and applied for charitable purposes, primarily but not exclusively in or for the benefit of Dallas County, Texas.

B. Supporting Organization, a Delaware nonprofit non-stock charitable corporation, is established to operate exclusively for the benefit of, to perform the functions of, or carry out the purposes of Foundation.

C. Supporting Organization expects to obtain a determination letter from the Internal Revenue Service (the "IRS") that Supporting Organization is a tax-exempt organization described in Section 501(c)(3) of the Code and a Type 1 supporting organization described in Section 509(a)(3) of the Code.

D. Foundation and Supporting Organization have entered into this Agreement for the purpose of documenting their agreements relating to the operation of Supporting Organization as a Type 1 supporting organization of Foundation. It is the intent of the parties that the assets held by Supporting Organization will generate funds for grantmaking primarily but not exclusively in Dallas County and for the payment of fees to Foundation under this Agreement.

NOW THEREFORE, the parties agree as follows:

1. GOVERNANCE OF SUPPORTING ORGANIZATION

1.1 OPERATIONS. Supporting Organization is a separately-incorporated corporation, solely responsible for its own operations and for its compliance with tax and other laws. At all times during the term of this Agreement, Supporting Organization shall operate as a Type 1 supporting organization of Foundation, as contemplated in Section 509(a)(3)(B)(i) of the Code. Foundation recognizes that assets contributed to Supporting Organization will be held in the name of Supporting Organization and will be subject to spending and investment policies as shall be determined by the Board of Directors of Supporting Organization from time to time.

1.2 BOARD OF DIRECTORS. Supporting Organization's Board of Directors will be the governing body for Supporting Organization. Unless otherwise agreed by the parties, Supporting Organization's initial Board of Directors shall consist of three (3) members.

(a) FOUNDATION APPOINTMENTS. Foundation's Board of Trustees, as required by the Code, will at all times appoint a majority of Supporting Organization's directors. Foundation will cooperate with Supporting Organization to ensure that all persons appointed by Foundation are committed to the purposes of Supporting Organization. Foundation's appointees to Supporting Organization's Board of Directors may include Foundation's trustees or staff, as well as third parties selected by Foundation. Foundation's appointees shall not, apart from their service as Supporting

Organization directors or officers, be "disqualified persons" with respect to Supporting Organization as defined in Sections 509(a)(3)(C) and 4946 of the Code. Supporting Organization shall notify Foundation if any appointee is a disqualified person other than by virtue of his or her service as a Supporting Organization director or officer. Foundation's appointees to Supporting Organization's Board of Directors shall serve in accordance with Supporting Organization's Bylaws.

(b) **SUPPORTING ORGANIZATION APPOINTMENTS.** Mr. James Dondero or his successor shall elect or appoint a minority of the members of the Board of Directors of Supporting Organization (i.e., one, as long as the Board of Directors numbers three), who may be a disqualified person(s).

(c) **DISQUALIFIED PERSONS.** Under no circumstances shall individuals who are disqualified persons (other than by virtue of their service as directors or officers of Supporting Organization) have majority control of Supporting Organization's Board of Directors or have veto powers over actions by the Supporting Organization's Board of Directors, nor shall disqualified persons described in Section 4946 of the Code and persons described in Section 4958(c)(3)(B) of the Code be compensated by Supporting Organization or receive grants, loans or similar payments from Supporting Organization.

1.3 NO COMPENSATION. The parties agree that in order to avoid even the perception of personal benefit, no directors of Supporting Organization shall receive compensation for their service as such. Notwithstanding the foregoing, Supporting Organization's directors may be reimbursed for reasonable and necessary out of pocket expenses actually incurred for their board service.

1.4 MEETINGS. Supporting Organization's Board of Directors shall meet at least once annually in a manner permitted under Delaware law. The directors shall meet at least once annually in person, unless unforeseen circumstances make attendance in person impossible.

2. FINANCE AND OPERATIONS

2.1 FISCAL YEAR. Supporting Organization's fiscal year shall be the calendar year.

2.2 SERVICES. Foundation will provide the services to Supporting Organization described in **SCHEDULE A**, attached, and as such schedule may be amended by Foundation and Supporting Organization in writing from time to time.

2.3 FEES:

(a) In consideration for Foundation's services under this Agreement, Supporting Organization shall pay to Foundation the annual fees described more particularly in **SCHEDULE B,** attached.

(b) The parties may agree to additional fees in respect to the performance of any additional services not described in **SCHEDULE A** to this agreement. Foundation shall notify the Supporting Organization in advance of any changes in annual fees set forth in **SCHEDULE A**.

2.4 INVESTMENTS

(a) From time to time, some or all of Supporting Organization's funds may be invested with the pooled endowment funds of Foundation to achieve economies of scale and strive for the highest expected level of returns for a given level of risk with the goal of enabling Supporting Organization to achieve its philanthropic and financial objectives. Decisions with respect to the retention, investment, or reinvestment of assets or commingling of assets shall be made by Foundation's Board of Trustees or by a committee or agent authorized by the Board of Trustees, in accordance with Foundation's investment policies. Supporting Organization's funds will be accounted for and reported on separately.

(b) Supporting Organization may at any time remove any or all of its funds invested with Foundation's pooled investment fund and invest its own funds separately from those of Foundation, subject to limitations on investment withdrawals with regard to any particular investment class (e.g., limitations on early withdrawals from "fund of funds"). Supporting Organization may select its own custodian and investment consultant and pay the relevant fees directly, subject to Section 1.2(c) of this Agreement.

3. TERM

3.1 COMMENCEMENT. The term of this Agreement commenced upon the contribution of funds to Supporting Organization on November 30, 2011.

3.2 TERM. Supporting Organization and Foundation intend to engage in a long-term relationship. The initial term of this agreement shall be one year, and the term shall be renewed automatically for successive one-year periods. Notwithstanding the foregoing, this agreement may be terminated at any time by either party providing the other party with 30 days advance written notice of its intent to terminate the Agreement. Should either party wish to terminate this relationship, the following process will be followed:

(a) The parties will agree on amendments to the certificate of incorporation and bylaws of Supporting Organization. The amendments will change the status of Supporting Organization from a supporting organization of Foundation and provide for the transfer of Supporting Organization's assets to one or more of the following entities as determined by Supporting Organization:

(i) A stand-alone publicly-supported organization described in Section 501(c)(3) of the Code.

(ii) A supporting organization of another publicly-supported 501(c)(3) organization.

(iii) A donor-advised fund of a publicly-supported organization described in Section 501(c)(3) of the Code.

(b) Neither party will unreasonably withhold its approval of these amendments.

(c) In the event of the termination of this Agreement, each party shall be responsible for its own fees and costs related to the termination.

3.3 LOSS OF TAX-EXEMPT STATUS. This agreement shall be automatically terminated in the event that Supporting Organization is determined to not qualify as a tax-exempt organization described in Section 501(c)(3) of the Code.

4. INDEMNIFICATION AND INSURANCE

4.1 Foundation will indemnify, defend, and hold harmless Supporting Organization, its officers, directors, employees, members, agents, and affiliated organizations against and from any claims, liability, suits, damages, losses, or expenses whatsoever, including reasonable attorneys fees incurred, arising or alleged to arise out of the acts or omissions of Foundation, its officers, employees, members, agents, and affiliated organizations, under this Agreement. Foundation will maintain at all times during the term of this Agreement general liability and director and officer liability insurance in such amounts and against such risks as are standard in the industry, naming Supporting Organization and its directors and officers as additional insureds. The coverage will protect against the acts or omissions of Supporting Organization, its officers, directors, agents, and employees.

4.2 Supporting Organization will indemnify, defend, and hold harmless Foundation, its officers, trustees, employees, members, agents, and affiliated organizations against and from any claims, liability, suits, damages, losses, or expenses whatsoever, including reasonable attorneys fees incurred, arising or alleged to arise out of the acts or omissions of Supporting Organization, its officers, directors, employees, members, agents, and affiliated organizations, under this Agreement.

5. MISCELLANEOUS

5.1 GOVERNING LAW. This Agreement and the legal relations between the parties shall be governed by and construed under the laws of the State of Texas.

5.2 RECORDS. Supporting Organization will supply to Foundation on a timely basis copies of the following materials as they are created, updated, or amended: incorporation documents; annual filings with the State of Texas; meeting minutes and actions of the Board of Directors and of any committee with Board authority; board contact information; investment statements; and board policies.

5.3 PUBLICITY. Foundation may disclose the existence, funding and grants of the Supporting Organization in its Annual Report and other documentation published by Foundation. Any information presented for publication by the media shall be approved in advance by Supporting Organization. Foundation reserves the right to approve in advance any publicity from Supporting Organization mentioning Foundation.

5.4 FURTHER ASSURANCES. Each of the parties hereto does hereby covenant and agree, without any further consideration, to execute, acknowledge, and deliver all such other documents and to take all such other actions as may be necessary or convenient in order to carry out more effectively any of the purposes of this Agreement.

5.5 AMENDMENTS. This Agreement may be amended from time to time only by written instrument signed by both parties; and this Agreement shall be amended by the parties whenever necessary or advisable in order to comply with requirements of the Code relating to tax-exempt organizations and supporting organizations.

5.6 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements between the parties with regard to such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGHLAND DALLAS FOUNDATION, INC.

James Dondero, President

DALLAS FOUNDATION

Mary M. Jalonick, President

SCHEDULE A

SCHEDULE OF SERVICES

Foundation will provide to Supporting Organization the services indicated below:

1.1 Administrative Services.

a. Maintenance of Supporting Organization's records, reports and files.

b. Performance of related accounting services for Supporting Organization.

c. Payment of accounts payable and other liabilities of Supporting Organization.

d. Preparation and distribution of all financial statements required to be generated by Supporting Organization.

e. Oversight of the preparation and filing of all federal and state returns required of Supporting Organization.

f. As needed, preparation and distribution to the governing body of Supporting Organization of periodic reports on the financial condition of the Supporting Organization.

1.2 Corporate Formalities Services.

a. Calendaring of required member and board meetings.

b. Notice of all meetings.

c. Facilities and administrative support for member and board meetings.

d. Preparation of minutes.

e. Maintenance of minute book.

f. Assistance with selection of candidates for the board.

1.3 Grant Administration.

a. Assistance with development of program goals, guidelines and a form of Request for Proposal.

b. Disseminate RFP to target groups.

c. Receive and screen all proposals.

d. Preparation of a summary grid of proposals for review and decision by the Supporting Organization.

e. Prepare and send responses to applicants.

f. Disbursement of grants with grant letters.

g. Monitor performance of grantees.

h. Receive and review interim and annual reports from grantees.

Supporting Organization acknowledges that Foundation is providing only the services listed above. Any services not selected, and any services not listed above, shall not be within the scope of Foundation's responsibilities under this Agreement. Without limiting the foregoing, Supporting Organization acknowledges that Foundation is not providing any investment advice or services to Supporting Organization, and that Supporting Organization is responsible for the management and investment of its assets.

SCHEDULE B

SCHEDULE OF FEES

In consideration of the services provided to Supporting Organization by Foundation, Supporting Organization shall pay Foundation an annual administrative fee (Fee) in the amount of .25% of the assets owned directly or indirectly by Supporting Organization, plus out-of-pocket costs. The Fee is payable in quarterly installments in arrears in the amount of .0625% of the prior quarter-end net asset value, plus out-of-pocket expenses for said quarter.

EXHIBIT 24

Agreement and Acknowledgment of Legal Relationship

The Highland Kansas City Foundation, Inc. (the "Foundation") will request the IRS to grant to it public charity status, effective as of the date of its incorporation, by reason of its supporting organization relationship with the Greater Kansas City Community Foundation, a Missouri nonprofit corporation ("Community Foundation"). This relationship requires the active oversight and involvement of the Community Foundation. In furtherance of this relationship, the Community Foundation and the Foundation agree as follows:

The Community Foundation shall provide the following Base Services to the Foundation: (1) quarterly statements evidencing all account transactions including receipts, disbursements and investment earnings, (2) access to on-line tools provided to donors by the Community Foundation, (3) information upon request regarding grant making opportunities, (4) processing of all grants, (5) all other services generally provided for donor advised funds by the Community Foundation under the standard administrative fee schedule, and (6) appointment of two of the three directors of the Foundation as required by the Foundation's Articles of Incorporation and Bylaws. Additional services may be provided for an additional fee. Both parties shall agree in writing as to any additional services to be provided and the fee for such additional services.

The Community Foundation shall perform no management, accounting, tax or other services with respect to any subsidiaries of the Foundation, or any entities in which the Foundation owns or holds any interest.

In consideration of the Base Services to be provided, the Foundation shall pay the greater of (i) $62,500 or (ii) the administrative fee as set forth in the Community Foundation's then current public Administrative Fee Schedule (the "Administrative Fee Schedule"). The Foundation hereby acknowledges receipt of the current Administrative Fee Schedule attached as Exhibit B and accepts the terms of said schedule. This fee will be applied against the market value of assets held in the Foundation. Such fees will be assessed monthly, however the Foundation shall at all times maintain a cash reserve sufficient to cover the estimated fees for one year. Any and all direct operating expenses incurred by the Community Foundation, such as transaction fees, courier services, tax return preparation fees for Forms 990, legal fees and special audit fees, will be billed at actual cost. The Administrative Fee Schedule is subject to modification and may be increased or decreased at the sole discretion of the Community Foundation's Board of Directors. The Community Foundation shall promptly notify the Foundation of any such modification and send to the Foundation the new, modified Administrative Fee Schedule.

The Foundation agrees to provide the Community Foundation with any other records and data necessary for the Community Foundation to provide the Foundation with the Base Services and any additional services, and further, the Foundation warrants that any such records and data provided shall be accurate and true and that the Community Foundation may rely on such records and data in fulfilling its obligations hereunder. Further the Foundation shall cooperate in any audit of the Community Foundation for which information related to the Foundation is requested. The Foundation agrees to provide the Community Foundation with any and all information needed to fulfill the Community Foundation's obligations hereunder on such forms and in such format as may be reasonably requested by the Community Foundation.

Specifically, the Foundation agrees to provide the Community Foundation with the following on a timely basis (1) copies of the Foundation's Articles of Incorporation and Bylaws and tax exemption letter from the Internal Revenue Service, (2) copies of all Board meeting notices and minutes of the Board meetings, (3) financial reports at least quarterly, (4) copies of all account statements of the Foundation upon request of the Community Foundation, and (5) a copy of the Foundation's annual Form 990 report to the Internal Revenue Service. Further, the Foundation will notify the Community Foundation when any director appointed by the Community Foundation that is not otherwise affiliated with the Community Foundation finishes his or her term, resigns or otherwise ceases to serve.

This Agreement shall commence on November 30, 2011 and shall continue in effect until terminated by either party. Either party may terminate this Agreement upon 60 days advance written notice to the other party.

The Community Foundation is a public charity and any and all terms and conditions of this agreement which would otherwise adversely affect its status as a public charity shall be considered null and void.

This Agreement shall be interpreted and enforced according to the laws of the State of Missouri.

This Agreement contains the entire understanding of the parties and shall not be supplemented with any other term or condition unless such term or condition is reduced to writing and specifically incorporated herein by written agreement of the parties.

The undersigned have read and understand the contents of this agreement and are authorized to enter into this agreement on behalf of the parties hereto.

James Dondero, President
Highland Kansas City Foundation, Inc.
Date: November 30, 2011

Laura W. McKnight, President
Greater Kansas City Community Foundation
Date: 11/30/11

EXHIBIT B

ADMINISTRATIVE FEES
TO SUPPORT THE
GREATER KANSAS CITY COMMUNITY FOUNDATION'S
MISSION-BASED OPERATIONS

This administrative fee schedule applies to all funds at the Greater Kansas City Community Foundation and its regional affiliates. Through economies of scale, the Foundation is able to charge minimal fees compared to the cost of establishing and maintaining your own private foundation. The fees are used exclusively to support the Community Foundation's operating expenses—your investment in a public charity dedicated to improving the quality of life in our region and ensuring that each philanthropic investment returns the greatest personal and civic benefit possible.

ANNUAL ADMINISTRATIVE FEES ON THE MARKET VALUE OF FUND ASSETS

1.00% on the first $500,000
0.60% on the next $500,000
0.30% on the next $2 million
0.10% on the next $4 million

Funds with assets in excess of $7 million will be charged a flat fee of 0.25% on the total assets. The minimum fee is $250 per year. The minimum amount to establish a fund is $10,000. The fees stated above are the annual fees; fees are charged to the fund monthly based on the average fair market value of assets. For newly established funds, the minimum annual fee is prorated over the remainder of the year.

Funds will be charged for any extraordinary direct expenses incurred on behalf of a specific fund, such as commissions for the sale of contributed stock. Additional fees may be assessed for extraordinary services such as special grant processing and review or other non-standard services.

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EXHIBIT 25

SANTA BARBARA FOUNDATION

SUPPORTING ORGANIZATION OPERATING AGREEMENT

THIS AGREEMENT is made and entered into on November 30, 2011, by and between the **SANTA BARBARA FOUNDATION** ("Foundation") and the **Highland Santa Barbara Foundation, Inc.** ("Supporting Organization"),

RECITALS:

A. Foundation is a California nonprofit public benefit corporation exempt from taxation under Internal Revenue Code ("Code") Section 501(c)(3), and a public charity described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. The principal objective of Foundation is to solicit, receive and accept property to be administered, used and applied for charitable purposes, primarily but not exclusively in, or for the benefit of Santa Barbara County.

B. Supporting Organization, a Delaware nonprofit non-stock charitable corporation, is a "Type 1 Supporting Organization" under Section 509(a)(3) of the Code established to operate exclusively for the benefit of, to perform the functions of, or carry out the purposes of Foundation.

C. Supporting Organization expects to obtain a determination letter from the Internal Revenue Service that it is a tax-exempt organization under Section 501(c)(3) and a Type 1 supporting organization.

D. Foundation and Supporting Organization have entered into this Agreement for the purpose of documenting their agreements relating to the operation of Supporting Organization as a Type 1 Supporting Organization of Foundation. It is the intent of the parties that each year the assets held by Supporting Organization will generate funds for grantmaking primarily but not exclusively in Santa Barbara County and for the payment of fees to Foundation under this Agreement.

NOW THEREFORE, the parties agree as follows:

1. GOVERNANCE OF SUPPORTING ORGANIZATION

1.1 OPERATIONS. Supporting Organization is a separately-incorporated corporation, solely responsible for its own operations and for its compliance with tax and other laws. At all times during the term of this Agreement, Supporting Organization shall operate as a Type 1 Supporting Organization of Foundation, as contemplated in Section 509(a)(3)(B)(i) of the Code. Foundation recognizes that assets contributed to Supporting Organization will be held in the name of Supporting Organization and will be subject to spending and investment policies as shall be determined by the Board of Directors of Supporting Organization from time to time.

1.2 BOARD OF DIRECTORS. Supporting Organization's Board of Directors will be the governing body for Supporting Organization. Unless otherwise agreed by the parties, Supporting Organization's initial Board of Directors shall consist of 3 members.

(a) FOUNDATION APPOINTMENTS. Foundation's Board of Trustees, as required by the Code, will at all times appoint a majority of Supporting Organization's directors. Foundation will cooperate with Supporting Organization to ensure that all persons appointed by Foundation are committed to the purposes of Supporting Organization. Foundation's appointees to Supporting Organization's Board of Directors may include Foundation's trustees or staff, as well as third parties selected by Foundation.

Foundation's appointees shall not, apart from their service as Supporting Organization directors or officers, be "disqualified persons" as defined in Sections 509(a)(3)(C) and 4946 of the Code. Supporting Organization shall notify Foundation if any appointee is a disqualified person other than by virtue of his or her service as a Supporting Organization director or officer. Foundation's appointees to Supporting Organization's Board of Directors shall serve at the will of Foundation or for terms outlined in Supporting Organization's Bylaws.

(b) **SUPPORTING ORGANIZATION APPOINTMENTS.** Mr. James Dondero or his successor shall elect or appoint a minority of the board members (i.e., one, as long as the Board of Directors numbers three), who may be a disqualified person(s).

(c) **DISQUALIFIED PERSONS.** Under no circumstances shall individuals who are disqualified persons (other than by virtue of their service as directors or officers of Supporting Organization) have majority control of Supporting Organization's board or have veto powers over Supporting Organization's board. Disqualified persons described in Section 4946 of the Code and persons described in Section 4958(c)(3)(B) of the Code cannot be compensated by Supporting Organization or receive grants, loans or similar payments from Supporting Organization.

1.3 COMPENSATION. Foundation does not pay trustees or hire trustees to provide specific services. The parties agree that in order to avoid even the perception of personal benefit, no directors of Supporting Organization shall receive compensation for their service as such. Notwithstanding the foregoing, Supporting Organization's directors may be reimbursed for reasonable and necessary out of pocket expenses actually incurred for their board service.

1.4 MEETINGS. Supporting Organization's Board of Directors shall meet at least once annually in a manner permitted under Delaware law.

1.5 POLICIES. Within the first year of Supporting Organization's existence, Supporting Organization's Board of Directors shall establish the following policies, and provide copies of such policies to Foundation when they are created and amended: Charitable Mission Statement, Gift Acceptance Policy, Investment Policy, and Grantmaking Policy.

2. FINANCE AND OPERATIONS

2.1 FISCAL YEAR. Supporting Organization's fiscal year will be the calendar year.

2.2 SERVICES. Foundation will provide the services to Supporting Organization described in **SCHEDULE A**, attached, and as such schedule may be amended by Foundation and Supporting Organization in writing from time to time.

2.3 FEES:

(a) Supporting Organization shall pay to Foundation the fees described more particularly in **SCHEDULE B**, attached.

(b) The parties may agree to additional fees in respect to the performance of any additional services not described in **SCHEDULE A** to this agreement. Foundation shall notify the Supporting Organization in advance of any changes in administrative fees enacted by Foundation's Board of Trustees.

2.4 **INVESTMENTS**

(a) From time to time, some or all of Supporting Organization's funds may be invested with the pooled endowment funds of Foundation to achieve economies of scale and strive for the highest expected level of returns for a given level of risk with the goal of enabling Supporting Organization to achieve its philanthropic and financial objectives. Decisions with respect to the retention, investment, or reinvestment of assets or commingling of assets shall be made by Foundation's Board of Trustees or by a committee or agent authorized by the Board of Trustees, in accordance with Foundation's investment policies. Supporting Organization's funds will be accounted for and reported on separately.

(b) Supporting Organization may at any time remove any or all of its funds invested with Foundation's pooled investment fund and invest its own funds separately from those of Foundation, subject to limitations on investment withdrawals with regard to any particular investment class (e.g., limitations on early withdrawals from "fund of funds"). Supporting Organization may select its own custodian and investment consultant and pay the relevant fees directly.

3. TERM

3.1 COMMENCEMENT. The term of this Agreement shall commence upon the contribution of funds to Supporting Organization.

3.2 TERM. Supporting Organization and Foundation intend to engage in a long-term relationship. The initial term of this agreement shall be one year, and the term shall be renewed automatically for successive one-year periods. Notwithstanding the foregoing, this agreement may be terminated at any time by either party providing the other party with 30 days advance written notice of its intent to terminate the Agreement. Should either party wish to dissolve this relationship, the following process will be followed:

(a) The parties will agree on amendments to the certificate of incorporation and bylaws of Supporting Organization. The amendments will change the status of Supporting Organization from a supporting organization of Foundation and provide for the transfer of Supporting Organization's assets to one or more of the following entities as determined by Supporting Organization:

(i) A stand-alone publicly-supported 501(c)(3) organization, or

(ii) A supporting organization of another publicly-supported 501(c)(3) organization.

(iii) A donor-advised fund of a publicly-supported 501(c)(3) organization.

(b) Neither party will unreasonably withhold its approval of these amendments.

(c) In the event of the dissolution of this relationship, each party shall be responsible for its own fees and costs related to the dissolution.

3.3 LOSS OF TAX-EXEMPT STATUS. This agreement shall be automatically terminated upon the date the IRS determines that Supporting Organization is not a tax-exempt organization under Section 501(c)(3) of the Code.

4. INDEMNIFICATION AND INSURANCE

4.1 Foundation will indemnify, defend, and hold harmless Supporting Organization, its officers, directors, employees, members, agents, and affiliated organizations against and from any claims, liability, suits, damages, losses, or expenses whatsoever, including reasonable attorneys fees incurred, arising or alleged to arise out of the acts or omissions of Foundation, its officials, employees, members, agents, and affiliated organizations, under this Agreement. Foundation will maintain at all times during the term of this Agreement general liability and director and officer liability insurance in such amounts and against such risks as are standard in the industry, naming Supporting Organization and its directors and officers as additional insureds. The coverage will protect against the acts or omissions of Supporting Organization, its officers, directors, agents, and employees.

4.2 Supporting Organization will indemnify, defend, and hold harmless Foundation, its officers, trustees, employees, members, agents, and affiliated organizations against and from any claims, liability, suits, damages, losses, or expenses whatsoever, including reasonable attorneys fees incurred, arising or alleged to arise out of the acts or omissions of Supporting Organization, its officers, directors, employees, members, agents, and affiliated organizations, under this Agreement.

5. MISCELLANEOUS

5.1 GOVERNING LAW. This Agreement and the legal relations between the parties shall be governed under the laws of the State of California.

5.2 RECORDS. Supporting Organization will supply to Foundation on a timely basis copies of the following materials as they are created, updated, or amended: incorporation documents; annual filings with the State of California and IRS; meeting minutes and actions of the Board and of any committee with Board authority; board contact information; investment statements; and board policies.

5.3 PUBLICITY. Foundation may disclose the existence, funding and grants of the Supporting Organization in its Annual Report and other documentation published byFoundation. Any information presented for publication by the media shall be approved in advance by Supporting Organization. Foundation reserves the right to approve any publicity from Supporting Organization mentioning Foundation.

5.4 FURTHER ASSURANCES. Each of the parties hereto does hereby covenant and agree, without any further consideration, to execute, acknowledge, and deliver all such other documents and to take all such other actions as may be necessary or convenient in order to carry out more effectively any of the purposes of this Agreement.

5.5 AMENDMENTS. This Agreement may be amended from time to time by written instrument signed by the parties; and this Agreement shall be amended by the parties whenever necessary or advisable in order to comply with requirements of the Code relating to tax-exempt organizations and supporting organizations.

5.6 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements between the parties with regard to such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGHLAND SANTA BARBARA FOUNDATION, INC.

James Dondero, President
November 30, 2011

SANTA BARBARA FOUNDATION

Ronald V. Gallo, President & CEO
November 30, 2011

SCHEDULE A

SCHEDULE OF SERVICES

Foundation will provide to Supporting Organization the services indicated below:

1.1 Administrative Services.

a. Maintenance of Supporting Organization's records, reports and files.

b. Performance of related accounting services for Supporting Organization.

c. Payment of accounts payable and other liabilities of Supporting Organization.

d. Preparation and distribution of all financial statements required to be generated by Supporting Organization.

e. Oversight of the preparation and filing of all federal and state returns required of Supporting Organization.

f. As needed, preparation and distribution to the governing body of Supporting Organization of periodic reports on the financial condition of the Supporting Organization.

1.2 Corporate Formalities Services.

a. Calendaring of required member and board meetings.

b. Notice of all meetings.

c. Facilities and secretarial support for member and board meetings.

d. Preparation of minutes.

e. Maintenance of minute book.

f. Assistance with selection of candidates for the board.

1.3 Grant Administration.

a. Assistance with development of program goals, guidelines and a form of Request for Proposal.

b. Disseminate RFP to target groups.

c. Receive and screen all proposals.

d. Preparation of a summary grid of proposals for review and decision by the Corporation's governing board or officers.

e. Prepare and send responses to applicants.

f. Disbursement of grants with grant letters.

g. Monitor performance of grantees.

h. Receive and review interim and annual reports from grantees.

Supporting Organization acknowledges that Foundation is providing only the services listed above. Any services not selected, and any services not listed above, shall not be within the scope of Foundation's responsibilities under this Agreement. Without limiting the foregoing, Supporting Organization acknowledges that Foundation is not providing any investment advice or services to Supporting Organization, and that Supporting Organization is responsible for the management and investment of its assets.

SCHEDULE B

SCHEDULE OF FEES

In consideration of the services provided to Supporting Organization by Foundation, Supporting Organization shall pay Foundation an annual support fee (Fee) as outlined below. Fees are payable quarterly in arrears and are based on the prior quarter-end net asset value.

1% (100 basis points) per annum (i.e., 25 basis points per quarter) on the first $3 million
0.75% (75 basis points) per annum (i.e., 18.75 basis points per quarter) on the next $2 million
0.50% (50 basis points) per annum (i.e., 12.5 basis points per quarter) on the next $5 million up to $10 million
0.25% (25 basis points) per annum (i.e., 6.25 basis points per quarter) on all amounts over $10 million

EXHIBIT 26

EXHIBIT 4

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "HIGHLAND DALLAS FOUNDATION, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF NOVEMBER, A.D. 2011, AT 7:34 O'CLOCK P.M.

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

Jeffrey W. Bullock, Secretary of State

5069985 8100

AUTHENTICATION: 9177054

111224468

DATE: 11-23-11

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

EXHIBIT 4

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:17 PM 11/22/2011
FILED 07:34 PM 11/22/2011
SRV 111224468 - 5069985 FILE

CERTIFICATE OF INCORPORATION

OF

HIGHLAND DALLAS FOUNDATION, INC.

FIRST: The name of the corporation is Highland Dallas Foundation, Inc. (sometimes hereinafter referred to as the "corporation").

SECOND: The corporation is organized and shall be operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purposes, the corporation is organized and operated exclusively to support and benefit The Dallas Foundation, a Texas nonprofit corporation that is exempt from federal income taxation under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and a public charity described in section 509(a)(1) of the Code. In furtherance of these purposes, the corporation shall be controlled by The Dallas Foundation within the meaning of Section 509(a)(3)(B)(i) of the Code. The corporation shall possess and exercise all the powers and privileges granted by the Delaware General Corporation Law (the "Law") or by any other law of the State of Delaware or by this Certificate of Incorporation together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the corporation. Notwithstanding the foregoing, the corporation shall carry on only those activities permitted to be carried on by an organization that is exempt from taxation under section 501(c)(3) of the Code and an organization that is described in section 509(a)(3) of the Code.

THIRD: The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

FOURTH: The corporation shall be a nonprofit nonstock corporation, and it is not authorized to issue any capital stock. The directors of the corporation shall be elected in the manner and for the terms provided in the corporation's bylaws; provided, however, that the number of directors shall not be fewer than three (3). Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

FIFTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, the corporation's directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make grants, loans and similar payments in furtherance of the purposes set forth in Article SECOND hereof unless such compensation, grant, loan or similar payment would constitute an excess benefit transaction as that term is defined in either section 4958(c)(1) or section 4958(c)(3) of the Code. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any activities not permitted to be carried on by (i) a corporation exempt from federal income tax under section 501(c)(3) of the Code, (ii) a corporation contributions

EXHIBIT 4

to which are deductible under section 170 of the Code, or (iii) a supporting organization described in section 509(a)(3) of the Code.

SIXTH: The corporation shall have perpetual existence.

SEVENTH: To the fullest extent permitted by Law, no director of the corporation shall be liable to the corporation or any member for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to the corporation or its members, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, including but not limited to section 4958 of the Code, or (iii) any transaction from which the director derived an improper personal benefit. If the Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Law, as so amended. To the fullest extent permitted by Law, the corporation shall indemnify and may purchase and maintain insurance or other arrangements on behalf of any and all of the directors and officers of the corporation whom it may lawfully indemnify and insure to the maximum extent permitted by the Law, as amended from time to time, or by the laws of the State of Delaware, as in effect from time to time, in each case subject to the requirements of section 4958 of the Code. Any repeal or modification of this Article SEVENTH shall not adversely affect any right or protection of a director or officer of the corporation existing at the time of such repeal or modification.

EIGHTH: Upon the dissolution of the corporation, the corporation's assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code to The Dallas Foundation. If The Dallas Foundation is no longer described in section 501(c)(3) of the Code at the time of the distribution or is then no longer in existence, the corporation's assets shall be distributed to one or more organizations organized exclusively for charitable, educational, scientific or other exempt purposes and qualified as exempt under section 501(c)(3) of the Code, as shall be determined by the members of the corporation.

NINTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the members of the corporation are expressly authorized to make, alter and repeal the bylaws of the corporation.

TENTH: The incorporator is James Dondero whose mailing address is Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240.

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file and record this Certificate of Incorporation, and, accordingly, have hereto set my hand this 21st day of November, 2011.

James Dondero

EXHIBIT 27

EXHIBIT 4

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "HIGHLAND KANSAS CITY FOUNDATION, INC.", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF NOVEMBER, A.D. 2011, AT 4:23 O'CLOCK P.M.

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

Jeffrey W. Bullock, Secretary of State

5070449 8100

111227849

AUTHENTICATION: 9179752

DATE: 11-28-11

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

EXHIBIT 4

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:03 PM 11/23/2011
FILED 04:23 PM 11/23/2011
SRV 111227849 - 5070449 FILE

CERTIFICATE OF INCORPORATION

OF

HIGHLAND KANSAS CITY FOUNDATION, INC.

FIRST: The name of the corporation is Highland Kansas City Foundation, Inc. (sometimes hereinafter referred to as the "corporation").

SECOND: The corporation is organized and shall be operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purposes, the corporation is organized and operated exclusively to support and benefit the Greater Kansas City Community Foundation, a Missouri nonprofit corporation that is exempt from federal income taxation under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and a public charity described in section 509(a)(1) of the Code. In furtherance of these purposes, the corporation shall be controlled by the Greater Kansas City Community Foundation within the meaning of Section 509(a)(3)(B)(i) of the Code. The corporation shall possess and exercise all the powers and privileges granted by the Delaware General Corporation Law (the "Law") or by any other law of the State of Delaware or by this Certificate of Incorporation together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the corporation. Notwithstanding the foregoing, the corporation shall carry on only those activities permitted to be carried on by an organization that is exempt from taxation under section 501(c)(3) of the Code and an organization that is described in section 509(a)(3) of the Code.

THIRD: The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

FOURTH: The corporation shall be a nonprofit nonstock corporation, and it is not authorized to issue any capital stock. The directors of the corporation shall be elected in the manner and for the terms provided in the corporation's bylaws; provided, however, that the number of directors shall not be fewer than three (3). Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

FIFTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, the corporation's directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make grants, loans and similar payments in furtherance of the purposes set forth in Article SECOND hereof unless such compensation, grant, loan or similar payment would constitute an excess benefit transaction as that term is defined in either section 4958(c)(1) or section 4958(c)(3) of the Code. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any activities not permitted to be carried on by (i) a corporation

EXHIBIT 4

exempt from federal income tax under section 501(c)(3) of the Code, (ii) a corporation contributions to which are deductible under section 170 of the Code, or (iii) a supporting organization described in section 509(a)(3) of the Code.

SIXTH: The corporation shall have perpetual existence.

SEVENTH: To the fullest extent permitted by Law, no director of the corporation shall be liable to the corporation or any member for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to the corporation or its members, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, including but not limited to section 4958 of the Code, or (iii) any transaction from which the director derived an improper personal benefit. If the Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Law, as so amended. To the fullest extent permitted by Law, the corporation shall indemnify and may purchase and maintain insurance or other arrangements on behalf of any and all of the directors and officers of the corporation whom it may lawfully indemnify and insure to the maximum extent permitted by the Law, as amended from time to time, or by the laws of the State of Delaware, as in effect from time to time, in each case subject to the requirements of section 4958 of the Code. Any repeal or modification of this Article SEVENTH shall not adversely affect any right or protection of a director or officer of the corporation existing at the time of such repeal or modification.

EIGHTH: Upon the dissolution of the corporation, the corporation's assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code to the Greater Kansas City Community Foundation. If the Greater Kansas City Community Foundation is no longer described in section 501(c)(3) of the Code at the time of the distribution or is then no longer in existence, the corporation's assets shall be distributed to one or more organizations organized exclusively for charitable, educational, scientific or other exempt purposes and qualified as exempt under section 501(c)(3) of the Code, as shall be determined by the members of the corporation.

NINTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the members of the corporation are expressly authorized to make, alter and repeal the bylaws of the corporation.

TENTH: The incorporator is James Dondero whose mailing address is Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240.

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file and record this Certificate of Incorporation, and, accordingly, have hereto set my hand this 22nd day of November, 2011.

James Dondero

EXHIBIT 28

EXHIBIT 4

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "HIGHLAND SANTA BARBARA FOUNDATION, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF NOVEMBER, A.D. 2011, AT 7:36 O'CLOCK P.M.

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

Jeffrey W. Bullock, Secretary of State

5069989 8100

AUTHENTICATION: 9177064

111224480

DATE: 11-23-11

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

EXHIBIT 4

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:17 PM 11/22/2011
FILED 07:36 PM 11/22/2011
SRV 111224480 - 5069989 FILE

CERTIFICATE OF INCORPORATION

OF

HIGHLAND SANTA BARBARA FOUNDATION, INC.

FIRST: The name of the corporation is Highland Santa Barbara Foundation, Inc. (sometimes hereinafter referred to as the "corporation").

SECOND: The corporation is organized and shall be operated, exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purposes, the corporation is organized and operated exclusively to support and benefit Santa Barbara Foundation, a California nonprofit corporation that is exempt from federal income taxation under section 501(a) of the Code of 1986 as an organization described in section 501(c)(3) of the Code, and a public charity described in section 509(a)(1) of the Code. In furtherance of these purposes, the corporation shall be controlled by Santa Barbara Foundation within the meaning of Section 509(a)(3)(B)(i) of the Code. The corporation shall possess and exercise all the powers and privileges granted by the Delaware General Corporation Law (the "Law") or by any other law of the State of Delaware or by this Certificate of Incorporation together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the corporation. Notwithstanding the foregoing, the corporation shall carry on only those activities permitted to be carried on by an organization that is exempt from taxation under section 501(c)(3) of the Code and an organization that is described in section 509(a)(3) of the Code.

THIRD: The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

FOURTH: The corporation shall be a nonprofit nonstock corporation, and it is not authorized to issue any capital stock. The directors of the corporation shall be elected in the manner and for the terms provided in the corporation's bylaws; provided, however, that the number of directors shall not be fewer than three (3). Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

FIFTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, the corporation's directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make grants, loans and similar payments in furtherance of the purposes set forth in Article SECOND hereof unless such compensation, grant, loan or similar payment would constitute an excess benefit transaction as that term is defined in either section 4958(c)(1) or section 4958(c)(3) of the Code. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any activities not permitted to be carried on by (i) a corporation exempt from federal income tax under section 501(c)(3) of the Code, (ii) a corporation contributions

to which are deductible under section 170 of the Code, or (iii) a supporting organization described in section 509(a)(3) of the Code.

SIXTH: The corporation shall have perpetual existence.

SEVENTH: To the fullest extent permitted by Law, no director of the corporation shall be liable to the corporation or any member for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to the corporation or its members, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, including but not limited to section 4958 of the Code, or (iii) any transaction from which the director derived an improper personal benefit. If the Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Law, as so amended. To the fullest extent permitted by Law, the corporation shall indemnify and may purchase and maintain insurance or other arrangements on behalf of any and all of the directors and officers of the corporation whom it may lawfully indemnify and insure to the maximum extent permitted by the Law, as amended from time to time, or by the laws of the State of Delaware, as in effect from time to time, in each case subject to the requirements of section 4958 of the Code. Any repeal or modification of this Article SEVENTH shall not adversely affect any right or protection of a director or officer of the corporation existing at the time of such repeal or modification.

EIGHTH: Upon the dissolution of the corporation, the corporation's assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code to Santa Barbara Foundation. If Santa Barbara Foundation is no longer described in section 501(c)(3) of the Code at the time of the distribution or is then no longer in existence, the corporation's assets shall be distributed to one or more organizations organized exclusively for charitable, educational, scientific or other exempt purposes and qualified as exempt under section 501(c)(3) of the Code, as shall be determined by the members of the corporation.

NINTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the members of the corporation are expressly authorized to make, alter and repeal the bylaws of the corporation.

TENTH: The incorporator is James Dondero whose mailing address is Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240.

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file and record this Certificate of Incorporation, and, accordingly, have hereto set my hand this 21st day of November, 2011.

James Dondero

EXHIBIT 29

BYLAWS
OF

HIGHLAND DALLAS FOUNDATION, INC.

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BYLAWS

OF

HIGHLAND DALLAS FOUNDATION, INC.

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of Highland Dallas Foundation, Inc. (the "Corporation") shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is The Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have an office in the City of Dallas, State of Texas, and also offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEMBERSHIP

Section 2.1 Classes and Number. The Corporation shall have two classes of members and one member in each such class: the Institutional Member, which shall be The Dallas Foundation, and the Individual Member, which shall be James Dondero or an individual designated as the Individual Member in accordance with these Bylaws.

Section 2.2 Voting. Except as otherwise provided in these Bylaws, the Institutional Member shall be entitled to two (2) votes upon each matter submitted to a vote of the members, and the Individual Member shall be entitled to one (1) vote upon each matter submitted to a vote of the members. In addition to any voting rights provided in these Bylaws, members shall be entitled to vote upon any matter with respect to which the General Corporation Law of the State of Delaware, or its successor statute, as amended (the "Law"), requires a vote of the members.

Section 2.3 Transfer of Membership. Institutional Membership in the Corporation is not transferable or assignable. The Individual Membership is transferable or assignable as provided herein only upon the approval of the Institutional Member, with such approval not to be unreasonably withheld by the Institutional Member. Subject to the approval of the Institutional Member, Mr. Dondero, as the initial Individual Member, may at any time pursuant to a written notice delivered to the Institutional Member during his lifetime or by a provision in his Will or other testamentary document, transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. Each successor Individual Member shall succeed to the rights of the initial Individual Member. Subject to the approval of the Institutional Member, each successor Individual Member may in the same manner transfer his Individual Member

interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. In the event of a conflict between such transfer documents, the one bearing the latest date shall control. Each Individual Member may at any time revoke his transfer document that is to be effective in the future, in whole or in part, by written notice delivered to the Institutional Member. If at any time an Individual Member shall be disabled and no transfer of such member's interest is to occur as a result of such disability in accordance with the foregoing provisions of this Section, then such member's attorney-in-fact under a valid, effective power of attorney instrument may act for such member hereunder. In the event of the death of an Individual Member, such member's personal representative of his estate, or trustee of a trust to which the Individual Member transferred his interest, may, if necessary, act as the Individual Member hereunder until such time as the Individual Member interest is transferred from the estate or trust.

Section 2.4 Resignation of Member. A member may resign at any time upon written notice to the Secretary.

Section 2.5 Place of Meetings. All meetings of the members be held shall by means of remote communication as authorized by the Law, unless the Board of Directors decides to hold such a meeting by another permitted means.

Section 2.6 Annual Meetings. Except as otherwise provided by these Bylaws, annual meeting of the members, commencing with the year 2012, shall be held at such date and time in the month of December as shall be provided by resolution of the Board of Directors, at which the members shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.7 Special Meetings. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by the Law or by the Certificate of Incorporation, may be called by the President and shall be called by the Secretary at the request of a majority of the Board of Directors, or at the request in writing of a member entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.8 Notice of Meetings of Members. When notice is required to be given for a meeting of the members, such notice shall specify the date, time, and location of the meeting and shall be given to each member at least ten (10) days prior to the meeting (at least three (3) days in the case of a special meeting). Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the member's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the

facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a member's residence or place of business.

Section 2.9 Quorum. Both the Institutional Member and the Individual Member must be present in person or represented by proxy in order to constitute a quorum at all meetings of the members for the transaction of business, except as otherwise required by Law, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the members, the member entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 2.10 Voting. When a quorum is present at any meeting, the vote of a majority of the number of votes held by the members, present in person or represented by proxy, shall be the act of the members, unless the act of a greater number is required by Law or expressly by these Bylaws.

Section 2.11 Proxies. At any meeting of the members, any member entitled to vote, consent or approve any action or matter may do so in person or by proxy authorized by an instrument in writing or by a transmission permitted by law. Any member represented by proxy shall be counted as present at such meeting for all purposes. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to these Bylaws may be substituted or used in lieu of the original writing or transmission that could be used, provided that the copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.12 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the members may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by the member(s) holding the number of votes necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 2.12. Prompt notice of the taking of an action by the members without a meeting by less than unanimous written consent shall be given to each member who did not consent in writing to the action. Each such consent must state the date of each member's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the members at an actual meeting.

ARTICLE III

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such acts and things as are not by the Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the members, so long as the exercise of such powers and doing of such acts are consistent with the Corporation's prescribed purposes.

Section 3.2 Number of Directors. The number of Directors that shall constitute the Board of Directors shall be three (3). Two (2) Directors (the "Institutional Directors") shall be elected annually by the Institutional Member and one (1) Director (the "Individual Director") shall be elected annually by the Individual Member. Each Director shall hold office until such Director's successor is elected and qualified or until such Director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3 Vacancies. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, then (i) with respect to a vacancy of an Institutional Director seat, the Institutional Member shall elect a person to fill such vacancy, and (ii) with respect to a vacancy of an Individual Director seat, the Individual Member shall elect a person to fill such vacancy. If at any time there is no Individual Member who is able to fill a vacancy of an Individual Director seat, then the Institutional Member shall elect a successor Individual Director. Each Director elected to fill a vacancy shall hold office for the unexpired term of such Director's predecessor in office.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Committees of Directors. The Corporation shall have no committees unless the Board of Directors, by resolution or resolutions passed by the unanimous vote of the Board, designates one or more committees.

Section 3.6 Compensation of Directors. Except to the extent prohibited by section 4958(c)(3) of the Internal Revenue Code of 1986 (the "Code"), Directors, as such, may receive such stated salary for their services and/or such fixed sums and expenses for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Annual Meeting. The annual meeting of the Board of Directors shall be held at such place and at such time as may be determined by the Board of Directors. If the date, time and location of the annual meeting are specified by a resolution adopted by the Board of

Directors, no further notice of such annual meeting shall be required. If the date, time and location of an annual meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.8 Additional Regular Meetings. The Board of Directors may hold additional regular meetings for the purpose of taking any action and conducting any business that may properly come before the Board of Directors. If the date, time and location of the regular meeting are specified by a resolution adopted by the Board of Directors, no further notice of such regular meeting shall be required. If the date, time and location of a regular meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.9 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of any one or more Directors upon not less than three (3) days notice to each director. The person or persons calling a special meeting of the Board of Directors shall fix a date, time and location for holding such special meeting, which shall be specified in a notice provided for such special meeting consistent with the requirements of Section 3.10 below.

Section 3.10 Method and Timing of Notice. Unless otherwise provided herein, when notice is required to be given for a meeting of the Board of Directors, such notice shall be given to each Director at least ten (10) days prior to the meeting. Any notice given herein shall specify the date, time, and location of the meeting. Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the Director's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a Director's residence or place of business.

Section 3.11 Purpose not Required in Notice. Unless specifically required by the Law or these Bylaws for a particular action, the purpose of and business to be transacted at a meeting need not be specified in the notice of such meeting or in a waiver of notice of such meeting.

Section 3.12 Waiver of Notice. Any Director may waive notice of any meeting by a writing signed by the Director, whether signed before or after the holding of such meeting, and such signed written waiver shall be deemed the equivalent of the Director having received notice. A Director's attendance at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business of such meeting on the ground that the meeting is not lawfully called or convened.

Section 3.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the Board of Directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, are signed by all of the then-serving Directors. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 3.13. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the Board of Directors at an actual meeting.

Section 3.14 Validation of Action by Consent. All actions taken at a meeting of the Board of Directors which is not regularly called or noticed shall be valid as if taken at a meeting regularly called and noticed if each Director either consents in writing or is present at such meeting and does not object to the meeting being held. At such meeting any business may be transacted which is not excepted from the written consent or which is not objected to at such meeting for want of notice. If any meeting of the Board of Directors is irregular for want of notice, the proceedings of such meeting may be ratified, approved and rendered valid, and the irregularity or defect therein waived, by a writing signed by all Directors, provided a quorum was present at such meeting.

Section 3.15 Quorum and Manner of Acting. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. Except as otherwise provided by the Law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any Director may participate in a meeting of the Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at the meeting. In the absence of a quorum, a majority of the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given, except that notice shall be given to all Directors if the adjournment is for more than thirty days.

Section 3.16 Resignation and Removal of Directors. Each Director may resign at any time by written notice delivered to the member that appointed such Director and to the President and Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. The Institutional Member may remove an Institutional Director at any time, with or without cause. The Individual Member may remove an Individual Director at any time, with or without cause.

ARTICLE IV

OFFICERS

Section 4.1 Officers. The officers of the Corporation shall include a President and a Secretary, and may include a Chairman and a Chief Financial Officer. A person may hold multiple offices.

Section 4.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting or at a special meeting held in lieu thereof. Each officer, except such officers as may be appointed in accordance with the provisions of Section 4.3, shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal. None of the officers other than the Chairman need be members of the Board of Directors.

Section 4.3 Subordinate Officers. The Board of Directors may appoint such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers, Controller and other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board of Directors may from time to time determine. The Board of Directors may, by specific resolution, empower the President or another officer of the Corporation to appoint any such subordinate officers or agents.

Section 4.4 Removal. The President, the Secretary, the Chairman and/or the Chief Financial Officer may be removed at any time by the Board of Directors with or without cause. Any subordinate officer appointed pursuant to Section 4.3 may be removed at any time, with or without cause, by the Board of Directors or by the person holding the officer position by which the subordinate officer was appointed.

Section 4.5 The President. The President shall be the chief executive officer of the Corporation. He or she shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by the Law, the Certificate of Incorporation, or these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. In general the President shall perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.6 The Secretary. The Secretary shall:

(a) keep the minutes of the meetings of the members and of the Board of Directors;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; and

(d) in general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him or her by the Board of Directors or by the President of the Corporation.

Section 4.7 The Assistant Secretaries. If one or more Assistant Secretaries shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Secretary, or in his or her absence or disability, the Assistant Secretary designated by the Secretary (or in the absence of such designations, then any one of such Assistant

Secretaries) shall perform the duties of the Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

Section 4.8 Chairman. The Chairman, if any, shall preside when present at meetings of the Board of Directors; advise and counsel the other officers of the Corporation; and shall perform such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.9 The Chief Financial Officer. The Chief Financial Officer, if any, shall:

(a) receive and be responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depository as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized;

(b) render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation; and

(c) in general, perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to the Chief Financial Officer by the Board of Directors or by the chief executive officer of the Corporation.

Section 4.10 The Assistant Chief Financial Officers. If one or more Assistant Chief Financial Officers shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Chief Financial Officer, or in the Chief Financial Officer's absence or disability, the Assistant Chief Financial Officer designated by the Chief Financial Officer (or in the absence of such designation, then any one of such Assistant Chief Financial Officers) shall perform all the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon, the Chief Financial Officer.

Section 4.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE V

BOOKS AND RECORDS

Section 5.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 5.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection at all times by any member and by any member of the Board of Directors.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless changed by the Board of Directors.

Section 6.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 6.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board of Directors.

Section 6.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 6.5 Conflicts of Interest. No contract or agreement may be entered into by and between the corporation and any of the following: (a) a Director, officer, or employee of the corporation (hereinafter an "Insider"); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an "Entity") in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 144 of the Delaware General Corporation Law to the extent such provision is applicable to the transaction; and (ii) if one or more of the parties to the contract or transaction is a "disqualified person" with respect to the corporation within the meaning of Section 4958 of the Code, either (x) such transaction is reviewed and approved in accordance with the "rebuttable presumption safe harbor" provisions set forth in the regulations promulgated under Section 4958 of the Code or (y) the Board of Directors determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a gratuitous transfer of assets or promise to transfer assets to the corporation of any kind, including but not limited to, (i) a gift annuity, charitable remainder trust, charitable lead trust or similar split-interest arrangement which benefits both the Insider and the corporation; or (ii) a loan, lease, agreement of sale or purchase, pledge, guarantee, assumption of liability, bailment, or consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a Director, officer, and/or employee of the corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

Section 6.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the Law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, Directors or members of a committee of directors need be specified in any written waiver of notice.

Section 6.7 Ownership Interests in Other Entities. Any ownership interests (e.g., shares of stock in any other corporation which may from time to time be held by this Corporation) may be represented and voted at any meeting of owners of such entity by the President, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President.

Section 6.8 Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that the person is or was a Director or officer of the Corporation or is or was a Director or officer of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the laws of Delaware as the same now or may hereafter exist (but, in the case of any change, only to the extent that such change authorizes the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such change) against all costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the person's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that the director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors and officers.

(b) If a claim under subsection (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the

unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of members or disinterested Directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any Director, member, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) To the extent that any Director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, such person shall be indemnified against all costs and expenses actually and reasonably incurred by such person or on such person's behalf in connection therewith.

(f) Any amendment, repeal or modification of any provision of this Section by the members or the Directors of the Corporation shall not adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such amendment, repeal or modification.

(g) The provisions of this Section 6.7, and the limitations on liability and indemnification provided in such Section, shall survive the winding up and termination of the Corporation to the extent permitted by applicable law.

Section 6.9 Amendment of Bylaws. Only the members, by the affirmative unanimous vote of the members entitled to vote, may adopt, amend, or repeal these Bylaws, and alterations or amendments of these Bylaws made by the members shall not be altered or amended by the

Board of Directors to the extent such alteration or amendment expressly states that it can only be altered or amended by the members.

EXHIBIT 30

HIGHLAND KANSAS CITY FOUNDATION, INC.

Unanimous Written Consent of Directors
In Lieu of Organizational Meeting

THE UNDERSIGNED, being all of the directors of Highland Kansas City Foundation, Inc. (the "Foundation"), a Delaware nonprofit nonstock corporation, do hereby consent to the adoption of, and do hereby adopt, the following resolutions pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, and hereby direct that this Written Consent be filed with the minutes of the proceedings of the Board of Directors of the Foundation:

Approval of Certificate of Incorporation

The Certificate of Incorporation, filed with the Secretary of State of Delaware on November 23, 2011, is ratified and approved; and the Secretary is hereby ordered to file the Certificate of Incorporation in the minute book.

Adoption of Bylaws

The bylaws attached to this consent is hereby adopted and approved as the Bylaws of the Foundation; and the Secretary is ordered to file a copy of the Bylaws in the minute book.

Election of Officers

The following persons are elected as officers of the Foundation in the capacities set forth opposite their respective names below to serve until the next annual meeting of the Board of Directors and until their respective successors are elected and qualified or until their earlier death, resignation or removal:

President	James Dondero
Secretary and Treasurer	Grant Scott

Confirmation of Tax-Exempt Status

The officers are authorized (i) to proceed with preparation of an exemption application (IRS Form 1023) seeking to have the Foundation classified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code, (ii) to sign the application and related documents on behalf of the Foundation, (iii) to file the completed application package with the Internal Revenue Service, and (iv) to deal with the Service in all matters relating to the exemption application both in person and

through attorneys and other agents, all without any requirement to seek further authorization from the Board. When the Service issues a determination letter recognizing the Foundation's tax-exempt status, the Secretary is ordered to make copies of the exemption application and the IRS determination letter available for public inspection at the Foundation's principal office during regular business hours, as required by Section 6104(d) of the Internal Revenue Code.

Ratification of Preorganization Activities

The Foundation hereby adopts, approves, ratifies and confirms all contracts and agreements entered into and all other actions taken or performed by the incorporator of the Foundation in connection with the incorporation, organization and commencement of business of this Foundation.

Establishment of Corporate Bank Accounts

The officers of the Foundation are hereby authorized to open one or more commercial banking accounts for and in the name of the Foundation anywhere within the United States, at any time and from time to time, and to deposit to the credit of the Foundation in such banking accounts any monies, checks, drafts, orders or other commercial paper payable to the Foundation or its order, and at any time and from time to time to withdraw all or any part of the funds on deposit in the name of the Foundation in any such banking accounts and to designate or change the designation of the officer or officers or their designees who are authorized to make such deposits or withdrawals;

the forms of banking resolutions used by any banks in which accounts of the Foundation are established pursuant to the immediately preceding resolution, are hereby approved and adopted as if set forth herein in full;

the proper officers of the Foundation are hereby authorized to execute on behalf of the Foundation and to file with such banks (and the President or any Vice President or the Secretary of the Foundation is hereby authorized to certify) such forms of banking resolutions, together with proper signature cards designating the officers and agents of the Foundation who are authorized to sign checks and drafts to be paid from the Foundation's accounts in order to be filed in the minute book of the Foundation; and

with respect to any such banking accounts, any banking institution may act in reliance on such banking resolutions and signature cards until receipt of actual notice of the modification or revocation of the same.

Enabling Resolution

The officers of this Foundation be, and each of them hereby is, authorized, empowered and directed, for and on behalf of the Foundation, to take any and all further actions, to negotiate for and enter into agreements and amendments to agreements, to perform all such acts and things, to make, execute, file, deliver or record in the name and on behalf of the Foundation all such certificates, instruments, agreements, applications, papers or other documents, and to make all such payments as they, in their judgment, or in the judgment of any one or more of them, may deem necessary, advisable or appropriate in order to carry out the purposes and intent of, or consummate the transactions contemplated by, the foregoing resolutions and/or all of the transactions contemplated therein or thereby, and to carry on the business of this Foundation, the authorization therefor to be conclusively evidenced by the taking of such action or the execution and delivery of such certificates, instruments, agreements or documents.

[Remainder of page intentionally left blank; signatures appear on following page.]

IN WITNESS WHEREOF, the undersigned, being all of the directors of the Foundation, have caused this Unanimous Written Consent to be executed as of the 30th day of November, 2011.

James Dondero

Grant Scott

Deborah L. Wilkerson

BYLAWS

OF

HIGHLAND KANSAS CITY FOUNDATION, INC.

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BYLAWS

OF

HIGHLAND KANSAS CITY FOUNDATION, INC.

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of Highland Kansas City Foundation, Inc. (the "Corporation") shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is The Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have an office in the City of Dallas, State of Texas, and also offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEMBERSHIP

Section 2.1 Classes and Number. The Corporation shall have two classes of members and one member in each such class: the Institutional Member, which shall be the Greater Kansas City Community Foundation, and the Individual Member, which shall be James Dondero or an individual designated as the Individual Member in accordance with these Bylaws.

Section 2.2 Voting. Except as otherwise provided in these Bylaws, the Institutional Member shall be entitled to two (2) votes upon each matter submitted to a vote of the members, and the Individual Member shall be entitled to one (1) vote upon each matter submitted to a vote of the members. In addition to any voting rights provided in these Bylaws, members shall be entitled to vote upon any matter with respect to which the General Corporation Law of the State of Delaware, or its successor statute, as amended (the "Law"), requires a vote of the members.

Section 2.3 Transfer of Membership. Institutional Membership in the Corporation is not transferable or assignable. The Individual Membership is transferable or assignable as provided herein only upon the approval of the Institutional Member, with such approval not to be unreasonably withheld by the Institutional Member. Subject to the approval of the Institutional Member, Mr. Dondero, as the initial Individual Member, may at any time pursuant to a written notice delivered to the Institutional Member during his lifetime or by a provision in his Will or other testamentary document, transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. Each successor Individual Member shall succeed to the rights of the initial Individual Member. Subject to the approval of the Institutional Member, each successor Individual Member may in the same manner transfer his Individual Member

interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. In the event of a conflict between such transfer documents, the one bearing the latest date shall control. Each Individual Member may at any time revoke his transfer document that is to be effective in the future, in whole or in part, by written notice delivered to the Institutional Member. If at any time an Individual Member shall be disabled and no transfer of such member's interest is to occur as a result of such disability in accordance with the foregoing provisions of this Section, then such member's attorney-in-fact under a valid, effective power of attorney instrument may act for such member hereunder. In the event of the death of an Individual Member, such member's personal representative of his estate, or trustee of a trust to which the Individual Member transferred his interest, may, if necessary, act as the Individual Member hereunder until such time as the Individual Member interest is transferred from the estate or trust.

Section 2.4 Resignation of Member. A member may resign at any time upon written notice to the Secretary.

Section 2.5 Place of Meetings. All meetings of the members shall be held by means of remote communication as authorized by the Law, unless the Board of Directors decides to hold such a meeting by another permitted means.

Section 2.6 Annual Meetings. Except as otherwise provided by these Bylaws, annual meeting of the members, commencing with the year 2012, shall be held at such date and time in the month of December as shall be provided by resolution of the Board of Directors, at which the members shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.7 Special Meetings. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by the Law or by the Certificate of Incorporation, may be called by the President and shall be called by the Secretary at the request of a majority of the Board of Directors, or at the request in writing of a member entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.8 Notice of Meetings of Members. When notice is required to be given for a meeting of the members, such notice shall specify the date, time, and location of the meeting and shall be given to each member at least ten (10) days prior to the meeting (at least three (3) days in the case of a special meeting). Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the member's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the

facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a member's residence or place of business.

Section 2.9 Quorum. Both the Institutional Member and the Individual Member must be present in person or represented by proxy in order to constitute a quorum at all meetings of the members for the transaction of business, except as otherwise required by Law, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the members, the member entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 2.10 Voting. When a quorum is present at any meeting, the vote of a majority of the number of votes held by the members, present in person or represented by proxy, shall be the act of the members, unless the act of a greater number is required by Law or expressly by these Bylaws.

Section 2.11 Proxies. At any meeting of the members, any member entitled to vote, consent or approve any action or matter may do so in person or by proxy authorized by an instrument in writing or by a transmission permitted by law. Any member represented by proxy shall be counted as present at such meeting for all purposes. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to these Bylaws may be substituted or used in lieu of the original writing or transmission that could be used, provided that the copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.12 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the members may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by the member(s) holding the number of votes necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 2.13. Prompt notice of the taking of an action by the members without a meeting by less than unanimous written consent shall be given to each member who did not consent in writing to the action. Each such consent must state the date of each member's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the members at an actual meeting.

ARTICLE III

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such acts and things as are not by the Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the members, so long as the exercise of such powers and doing of such acts are consistent with the Corporation's prescribed purposes.

Section 3.2 Number of Directors. The number of Directors that shall constitute the Board of Directors shall be three (3). Two (2) Directors (the "Institutional Directors") shall be elected annually by the Institutional Member and one (1) Director (the "Individual Director") shall be elected annually by the Individual Member. Each Director shall hold office until such Director's successor is elected and qualified or until such Director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3 Vacancies. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, then (i) with respect to a vacancy of an Institutional Director seat, the Institutional Member shall elect a person to fill such vacancy, and (ii) with respect to a vacancy of an Individual Director seat, the Individual Member shall elect a person to fill such vacancy. If at any time there is no Individual Member who is able to fill a vacancy of an Individual Director seat, then the Institutional Member shall elect a successor Individual Director. Each Director elected to fill a vacancy shall hold office for the unexpired term of such Director's predecessor in office.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Committees of Directors. The Corporation shall have no committees unless the Board of Directors, by resolution or resolutions passed by the unanimous vote of the Board, designates one or more committees.

Section 3.6 Compensation of Directors. Except to the extent prohibited by section 4958(c)(3) of the Internal Revenue Code of 1986 (the "Code"), Directors, as such, may receive such stated salary for their services and/or such fixed sums and expenses for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Annual Meeting. The annual meeting of the Board of Directors shall be held at such place and at such time as may be determined by the Board of Directors. If the date, time and location of the annual meeting are specified by a resolution adopted by the Board of

Directors, no further notice of such annual meeting shall be required. If the date, time and location of an annual meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.8 Additional Regular Meetings. The Board of Directors may hold additional regular meetings for the purpose of taking any action and conducting any business that may properly come before the Board of Directors. If the date, time and location of the regular meeting are specified by a resolution adopted by the Board of Directors, no further notice of such regular meeting shall be required. If the date, time and location of a regular meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.9 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of any one or more Directors upon not less than three (3) days notice to each director. The person or persons calling a special meeting of the Board of Directors shall fix a date, time and location for holding such special meeting, which shall be specified in a notice provided for such special meeting consistent with the requirements of Section 3.10 below.

Section 3.10 Method and Timing of Notice. Unless otherwise provided herein, when notice is required to be given for a meeting of the Board of Directors, such notice shall be given to each Director at least ten (10) days prior to the meeting. Any notice given herein shall specify the date, time, and location of the meeting. Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the Director's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a Director's residence or place of business.

Section 3.11 Purpose not Required in Notice. Unless specifically required by the Law or these Bylaws for a particular action, the purpose of and business to be transacted at a meeting need not be specified in the notice of such meeting or in a waiver of notice of such meeting.

Section 3.12 Waiver of Notice. Any Director may waive notice of any meeting by a writing signed by the Director, whether signed before or after the holding of such meeting, and such signed written waiver shall be deemed the equivalent of the Director having received notice. A Director's attendance at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business of such meeting on the ground that the meeting is not lawfully called or convened.

Section 3.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the Board of Directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, are signed by all of the then-serving Directors. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 3.13. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the Board of Directors at an actual meeting.

Section 3.14 Validation of Action by Consent. All actions taken at a meeting of the Board of Directors which is not regularly called or noticed shall be valid as if taken at a meeting regularly called and noticed if each Director either consents in writing or is present at such meeting and does not object to the meeting being held. At such meeting any business may be transacted which is not excepted from the written consent or which is not objected to at such meeting for want of notice. If any meeting of the Board of Directors is irregular for want of notice, the proceedings of such meeting may be ratified, approved and rendered valid, and the irregularity or defect therein waived, by a writing signed by all Directors, provided a quorum was present at such meeting.

Section 3.15 Quorum and Manner of Acting. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. Except as otherwise provided by the Law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any Director may participate in a meeting of the Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at the meeting. In the absence of a quorum, a majority of the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given, except that notice shall be given to all Directors if the adjournment is for more than thirty days.

Section 3.16 Resignation and Removal of Directors. Each Director may resign at any time by written notice delivered to the member that appointed such Director and to the President and Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. The Institutional Member may remove an Institutional Director at any time, with or without cause. The Individual Member may remove an Individual Director at any time, with or without cause.

ARTICLE IV

OFFICERS

Section 4.1 Officers. The officers of the Corporation shall include a President and a Secretary, and may include a Chairman and a Chief Financial Officer. A person may hold multiple offices.

Section 4.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting or at a special meeting held in lieu thereof. Each officer, except such officers as may be appointed in accordance with the provisions of Section 4.3, shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal. None of the officers other than the Chairman need be members of the Board of Directors.

Section 4.3 Subordinate Officers. The Board of Directors may appoint such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers, Controller and other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board of Directors may from time to time determine. The Board of Directors may, by specific resolution, empower the President or another officer of the Corporation to appoint any such subordinate officers or agents.

Section 4.4 Removal. The President, the Secretary, the Chairman and/or the Chief Financial Officer may be removed at any time by the Board of Directors with or without cause. Any subordinate officer appointed pursuant to Section 4.3 may be removed at any time, with or without cause, by the Board of Directors or by the person holding the officer position by which the subordinate officer was appointed.

Section 4.5 The President. The President shall be the chief executive officer of the Corporation. He or she shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by the Law, the Certificate of Incorporation, or these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. In general the President shall perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.6 The Secretary. The Secretary shall:

(a) keep the minutes of the meetings of the members and of the Board of Directors;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; and

(d) in general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him or her by the Board of Directors or by the President of the Corporation.

Section 4.7 The Assistant Secretaries. If one or more Assistant Secretaries shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Secretary, or in his or her absence or disability, the Assistant Secretary designated by the Secretary (or in the absence of such designations, then any one of such Assistant

Secretaries) shall perform the duties of the Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

Section 4.8 Chairman. The Chairman, if any, shall preside when present at meetings of the Board of Directors; advise and counsel the other officers of the Corporation; and shall perform such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.9 The Chief Financial Officer. The Chief Financial Officer, if any, shall:

(a) receive and be responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depository as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized;

(b) render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation; and

(c) in general, perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to the Chief Financial Officer by the Board of Directors or by the chief executive officer of the Corporation.

Section 4.10 The Assistant Chief Financial Officers. If one or more Assistant Chief Financial Officers shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Chief Financial Officer, or in the Chief Financial Officer's absence or disability, the Assistant Chief Financial Officer designated by the Chief Financial Officer (or in the absence of such designation, then any one of such Assistant Chief Financial Officers) shall perform all the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon, the Chief Financial Officer.

Section 4.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE V

BOOKS AND RECORDS

Section 5.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 5.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection at all times by any member and by any member of the Board of Directors.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless changed by the Board of Directors.

Section 6.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 6.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board of Directors.

Section 6.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 6.5 Conflicts of Interest. No contract or agreement may be entered into by and between the corporation and any of the following: (a) a Director, officer, or employee of the corporation (hereinafter an "Insider"); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an "Entity") in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 144 of the Delaware General Corporation Law to the extent such provision is applicable to the transaction; and (ii) if one or more of the parties to the contract or transaction is a "disqualified person" with respect to the corporation within the meaning of Section 4958 of the Code, either (x) such transaction is reviewed and approved in accordance with the "rebuttable presumption safe harbor" provisions set forth in the regulations promulgated under Section 4958 of the Code or (y) the Board of Directors determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a gratuitous transfer of assets or promise to transfer assets to the corporation of any kind, including but not limited to, (i) a gift annuity, charitable remainder trust, charitable lead trust or similar split-interest arrangement which benefits both the Insider and the corporation; or (ii) a loan, lease, agreement of sale or purchase, pledge, guarantee, assumption of liability, bailment, or consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a Director, officer, and/or employee of the corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

Section 6.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the Law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, Directors or members of a committee of directors need be specified in any written waiver of notice.

Section 6.7 Ownership Interests in Other Entities. Any ownership interests (e.g., shares of stock in any other corporation which may from time to time be held by this Corporation) may be represented and voted at any meeting of owners of such entity by the President, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President.

Section 6.8 Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that the person is or was a Director or officer of the Corporation or is or was a Director or officer of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the laws of Delaware as the same now or may hereafter exist (but, in the case of any change, only to the extent that such change authorizes the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such change) against all costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the person's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that the director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors and officers.

(b) If a claim under subsection (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the

unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of members or disinterested Directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any Director, member, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) To the extent that any Director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, such person shall be indemnified against all costs and expenses actually and reasonably incurred by such person or on such person's behalf in connection therewith.

(f) Any amendment, repeal or modification of any provision of this Section by the members or the Directors of the Corporation shall not adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such amendment, repeal or modification.

(g) The provisions of this Section 6.7, and the limitations on liability and indemnification provided in such Section, shall survive the winding up and termination of the Corporation to the extent permitted by applicable law.

Section 6.9 Amendment of Bylaws. Only the members, by the affirmative unanimous vote of the members entitled to vote, may adopt, amend, or repeal these Bylaws, and alterations or amendments of these Bylaws made by the members shall not be altered or amended by the Board of Directors.

EXHIBIT 31

BYLAWS
OF

HIGHLAND SANTA BARBARA FOUNDATION, INC.

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BYLAWS

OF

HIGHLAND SANTA BARBARA FOUNDATION, INC.

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of Highland Santa Barbara Foundation, Inc. (the "Corporation") shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is The Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have an office in the City of Dallas, State of Texas, and also offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEMBERSHIP

Section 2.1 Classes and Number. The Corporation shall have two classes of members and one member in each such class: the Institutional Member, which shall be Santa Barbara Foundation, and the Individual Member, which shall be James Dondero or an individual designated as the Individual Member in accordance with these Bylaws.

Section 2.2 Voting. Except as otherwise provided in these Bylaws, the Institutional Member shall be entitled to two (2) votes upon each matter submitted to a vote of the members, and the Individual Member shall be entitled to one (1) vote upon each matter submitted to a vote of the members. In addition to any voting rights provided in these Bylaws, members shall be entitled to vote upon any matter with respect to which the General Corporation Law of the State of Delaware, or its successor statute, as amended (the "Law"), requires a vote of the members.

Section 2.3 Transfer of Membership. Institutional Membership in the Corporation is not transferable or assignable. The Individual Membership is transferable or assignable as provided herein only upon the approval of the Institutional Member, with such approval not to be unreasonably withheld by the Institutional Member. Subject to the approval of the Institutional Member, Mr. Dondero, as the initial Individual Member, may at any time pursuant to a written notice delivered to the Institutional Member during his lifetime or by a provision in his Will or other testamentary document, transfer his Individual Member interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. Each successor Individual Member shall succeed to the rights of the initial Individual Member. Subject to the approval of the Institutional Member, each successor Individual Member may in the same manner transfer his Individual Member

interest to an individual, or designate an individual, or series of individuals, to whom such Individual Member interest is to be transferred upon the occurrence of a future contingency, such as the death or failure to act of a current or future Individual Member. In the event of a conflict between such transfer documents, the one bearing the latest date shall control. Each Individual Member may at any time revoke his transfer document that is to be effective in the future, in whole or in part, by written notice delivered to the Institutional Member. If at any time an Individual Member shall be disabled and no transfer of such member's interest is to occur as a result of such disability in accordance with the foregoing provisions of this Section, then such member's attorney-in-fact under a valid, effective power of attorney instrument may act for such member hereunder. In the event of the death of an Individual Member, such member's personal representative of his estate, or trustee of a trust to which the Individual Member transferred his interest, may, if necessary, act as the Individual Member hereunder until such time as the Individual Member interest is transferred from the estate or trust.

Section 2.4 Resignation of Member. A member may resign at any time upon written notice to the Secretary.

Section 2.5 Place of Meetings. All meetings of the members shall be held by means of remote communication as authorized by the Law, unless the Board of Directors decides to hold such a meeting by another permitted means.

Section 2.6 Annual Meetings. Except as otherwise provided by these Bylaws, annual meeting of the members, commencing with the year 2012, shall be held at such date and time in the month of December as shall be provided by resolution of the Board of Directors, at which the members shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.7 Special Meetings. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by the Law or by the Certificate of Incorporation, may be called by the President and shall be called by the Secretary at the request of a majority of the Board of Directors, or at the request in writing of a member entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting. The Secretary shall provide notice of each such meeting to each member consistent with the requirements of Section 2.8 below.

Section 2.8 Notice of Meetings of Members. When notice is required to be given for a meeting of the members, such notice shall specify the date, time, and location of the meeting and shall be given to each member at least ten (10) days prior to the meeting (at least three (3) days in the case of a special meeting). Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the member's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the

facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a member's residence or place of business.

Section 2.9 Quorum. Both the Institutional Member and the Individual Member must be present in person or represented by proxy in order to constitute a quorum at all meetings of the members for the transaction of business, except as otherwise required by Law, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the members, the member entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 2.10 Voting. When a quorum is present at any meeting, the vote of a majority of the number of votes held by the members, present in person or represented by proxy, shall be the act of the members, unless the act of a greater number is required by Law or expressly by these Bylaws.

Section 2.11 Proxies. At any meeting of the members, any member entitled to vote, consent or approve any action or matter may do so in person or by proxy authorized by an instrument in writing or by a transmission permitted by law. Any member represented by proxy shall be counted as present at such meeting for all purposes. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to these Bylaws may be substituted or used in lieu of the original writing or transmission that could be used, provided that the copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.12 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the members may be taken without a meeting, without prior notice and without taking a vote if a consent or consents in writing, setting forth the action so taken, are signed by the member(s) holding the number of votes necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 2.13. Prompt notice of the taking of an action by the members without a meeting by less than unanimous written consent shall be given to each member who did not consent in writing to the action. Each such consent must state the date of each member's signature. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the members at an actual meeting.

ARTICLE III

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such acts and things as are not by the Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the members, so long as the exercise of such powers and doing of such acts are consistent with the Corporation's prescribed purposes.

Section 3.2 Number of Directors. The number of Directors that shall constitute the Board of Directors shall be three (3). Two (2) Directors (the "Institutional Directors") shall be elected annually by the Institutional Member and one (1) Director (the "Individual Director") shall be elected annually by the Individual Member. Each Director shall hold office until such Director's successor is elected and qualified or until such Director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3 Vacancies. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, then (i) with respect to a vacancy of an Institutional Director seat, the Institutional Member shall elect a person to fill such vacancy, and (ii) with respect to a vacancy of an Individual Director seat, the Individual Member shall elect a person to fill such vacancy. If at any time there is no Individual Member who is able to fill a vacancy of an Individual Director seat, then the Institutional Member shall elect a successor Individual Director. Each Director elected to fill a vacancy shall hold office for the unexpired term of such Director's predecessor in office.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Committees of Directors. The Corporation shall have no committees unless the Board of Directors, by resolution or resolutions passed by the unanimous vote of the Board, designates one or more committees.

Section 3.6 Compensation of Directors. Except to the extent prohibited by section 4958(c)(3) of the Internal Revenue Code of 1986 (the "Code"), Directors, as such, may receive such stated salary for their services and/or such fixed sums and expenses for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Annual Meeting. The annual meeting of the Board of Directors shall be held at such place and at such time as may be determined by the Board of Directors. If the date, time and location of the annual meeting are specified by a resolution adopted by the Board of

Directors, no further notice of such annual meeting shall be required. If the date, time and location of an annual meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.8 Additional Regular Meetings. The Board of Directors may hold additional regular meetings for the purpose of taking any action and conducting any business that may properly come before the Board of Directors. If the date, time and location of the regular meeting are specified by a resolution adopted by the Board of Directors, no further notice of such regular meeting shall be required. If the date, time and location of a regular meeting are specified in another manner, then notice shall be provided consistent with the requirements of Section 3.10 below.

Section 3.9 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of any one or more Directors upon not less than three (3) days notice to each director. The person or persons calling a special meeting of the Board of Directors shall fix a date, time and location for holding such special meeting, which shall be specified in a notice provided for such special meeting consistent with the requirements of Section 3.10 below.

Section 3.10 Method and Timing of Notice. Unless otherwise provided herein, when notice is required to be given for a meeting of the Board of Directors, such notice shall be given to each Director at least ten (10) days prior to the meeting. Any notice given herein shall specify the date, time, and location of the meeting. Notice shall be given (a) by written notice delivered personally, (b) by written notice sent by mail, email, or facsimile to the Director's mailing address, email address, or facsimile number as shown by the records of the Corporation, or (c) by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is delivered by email, such notice shall be deemed to be delivered when the email is sent, provided that the sender does not subsequently receive notice that the email transmission was not delivered to the designated email address. If delivered by facsimile, such notice shall be deemed to be delivered when the facsimile transmission indicates that the facsimile has been sent without error to the designated facsimile number. If delivered by telephone, such notice shall be deemed to be given at the time the telephone message shall reach and be communicated to a responsible individual at the phone number listed for a Director's residence or place of business.

Section 3.11 Purpose not Required in Notice. Unless specifically required by the Law or these Bylaws for a particular action, the purpose of and business to be transacted at a meeting need not be specified in the notice of such meeting or in a waiver of notice of such meeting.

Section 3.12 Waiver of Notice. Any Director may waive notice of any meeting by a writing signed by the Director, whether signed before or after the holding of such meeting, and such signed written waiver shall be deemed the equivalent of the Director having received notice. A Director's attendance at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business of such meeting on the ground that the meeting is not lawfully called or convened.

Section 3.13 Action by Written Consent. Any action required to be, or which may be, voted on, consented to or approved by the Board of Directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, are signed by all of the then-serving Directors. A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this Section 3.13. Such consent shall be placed in the minute book of the Corporation, and shall have the same force and effect as if approved by vote of the Board of Directors at an actual meeting.

Section 3.14 Validation of Action by Consent. All actions taken at a meeting of the Board of Directors which is not regularly called or noticed shall be valid as if taken at a meeting regularly called and noticed if each Director either consents in writing or is present at such meeting and does not object to the meeting being held. At such meeting any business may be transacted which is not excepted from the written consent or which is not objected to at such meeting for want of notice. If any meeting of the Board of Directors is irregular for want of notice, the proceedings of such meeting may be ratified, approved and rendered valid, and the irregularity or defect therein waived, by a writing signed by all Directors, provided a quorum was present at such meeting.

Section 3.15 Quorum and Manner of Acting. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. Except as otherwise provided by the Law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any Director may participate in a meeting of the Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at the meeting. In the absence of a quorum, a majority of the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given, except that notice shall be given to all Directors if the adjournment is for more than thirty days.

Section 3.16 Resignation and Removal of Directors. Each Director may resign at any time by written notice delivered to the member that appointed such Director and to the President and Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. The Institutional Member may remove an Institutional Director at any time, with or without cause. The Individual Member may remove an Individual Director at any time, with or without cause.

ARTICLE IV

OFFICERS

Section 4.1 Officers. The officers of the Corporation shall include a President and a Secretary, and may include a Chairman and a Chief Financial Officer. A person may hold multiple offices.

Section 4.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting or at a special meeting held in lieu thereof. Each officer, except such officers as may be appointed in accordance with the provisions of Section 4.3, shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal. None of the officers other than the Chairman need be members of the Board of Directors.

Section 4.3 Subordinate Officers. The Board of Directors may appoint such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers, Controller and other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board of Directors may from time to time determine. The Board of Directors may, by specific resolution, empower the President or another officer of the Corporation to appoint any such subordinate officers or agents.

Section 4.4 Removal. The President, the Secretary, the Chairman and/or the Chief Financial Officer may be removed at any time by the Board of Directors with or without cause. Any subordinate officer appointed pursuant to Section 4.3 may be removed at any time, with or without cause, by the Board of Directors or by the person holding the officer position by which the subordinate officer was appointed.

Section 4.5 The President. The President shall be the chief executive officer of the Corporation. He or she shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by the Law, the Certificate of Incorporation, or these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. In general the President shall perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.6 The Secretary. The Secretary shall:

(a) keep the minutes of the meetings of the members and of the Board of Directors;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; and

(d) in general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him or her by the Board of Directors or by the President of the Corporation.

Section 4.7 The Assistant Secretaries. If one or more Assistant Secretaries shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Secretary, or in his or her absence or disability, the Assistant Secretary designated by the Secretary (or in the absence of such designations, then any one of such Assistant

Secretaries) shall perform the duties of the Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

Section 4.8 Chairman. The Chairman, shall preside when present at meetings of the Board of Directors; advise and counsel the other officers of the Corporation; and shall perform such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.9 The Chief Financial Officer. The Chief Financial Officer, if any, shall:

(a) receive and be responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depository as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized;

(b) render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation; and

(c) in general, perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to the Chief Financial Officer by the Board of Directors or by the chief executive officer of the Corporation.

Section 4.10 The Assistant Chief Financial Officers. If one or more Assistant Chief Financial Officers shall be appointed pursuant to the provisions of Section 4.3 respecting subordinate officers, then, at the request of the Chief Financial Officer, or in the Chief Financial Officer's absence or disability, the Assistant Chief Financial Officer designated by the Chief Financial Officer (or in the absence of such designation, then any one of such Assistant Chief Financial Officers) shall perform all the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon, the Chief Financial Officer.

Section 4.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE V

BOOKS AND RECORDS

Section 5.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 5.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection at all times by any member and by any member of the Board of Directors.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless changed by the Board of Directors.

Section 6.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 6.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board of Directors.

Section 6.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 6.5 Conflicts of Interest. No contract or agreement may be entered into by and between the corporation and any of the following: (a) a Director, officer, or employee of the corporation (hereinafter an "Insider"); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an "Entity") in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 144 of the Delaware General Corporation Law to the extent such provision is applicable to the transaction; and (ii) if one or more of the parties to the contract or transaction is a "disqualified person" with respect to the corporation within the meaning of Section 4958 of the Code, either (x) such transaction is reviewed and approved in accordance with the "rebuttable presumption safe harbor" provisions set forth in the regulations promulgated under Section 4958 of the Code or (y) the Board of Directors determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a gratuitous transfer of assets or promise to transfer assets to the corporation of any kind, including but not limited to, (i) a gift annuity, charitable remainder trust, charitable lead trust or similar split-interest arrangement which benefits both the Insider and the corporation; or (ii) a loan, lease, agreement of sale or purchase, pledge, guarantee, assumption of liability, bailment, or consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a Director, officer, and/or employee of the corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

Section 6.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the Law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, Directors or members of a committee of directors need be specified in any written waiver of notice.

Section 6.7 Ownership Interests in Other Entities. Any ownership interests (e.g., shares of stock in any other corporation which may from time to time be held by this Corporation) may be represented and voted at any meeting of owners of such entity by the President, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President.

Section 6.8 Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that the person is or was a Director or officer of the Corporation or is or was a Director or officer of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the laws of Delaware as the same now or may hereafter exist (but, in the case of any change, only to the extent that such change authorizes the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such change) against all costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the person's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that the director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors and officers.

(b) If a claim under subsection (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the

unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of members or disinterested Directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any Director, member, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) To the extent that any Director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, such person shall be indemnified against all costs and expenses actually and reasonably incurred by such person or on such person's behalf in connection therewith.

(f) Any amendment, repeal or modification of any provision of this Section by the members or the Directors of the Corporation shall not adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such amendment, repeal or modification.

(g) The provisions of this Section 6.7, and the limitations on liability and indemnification provided in such Section, shall survive the winding up and termination of the Corporation to the extent permitted by applicable law.

Section 6.9 Amendment of Bylaws. Only the members, by the affirmative unanimous vote of the members entitled to vote, may adopt, amend, or repeal these Bylaws, and alterations

or amendments of these Bylaws made by the members shall not be altered or amended by the Board of Directors.

EXHIBIT 32

Before

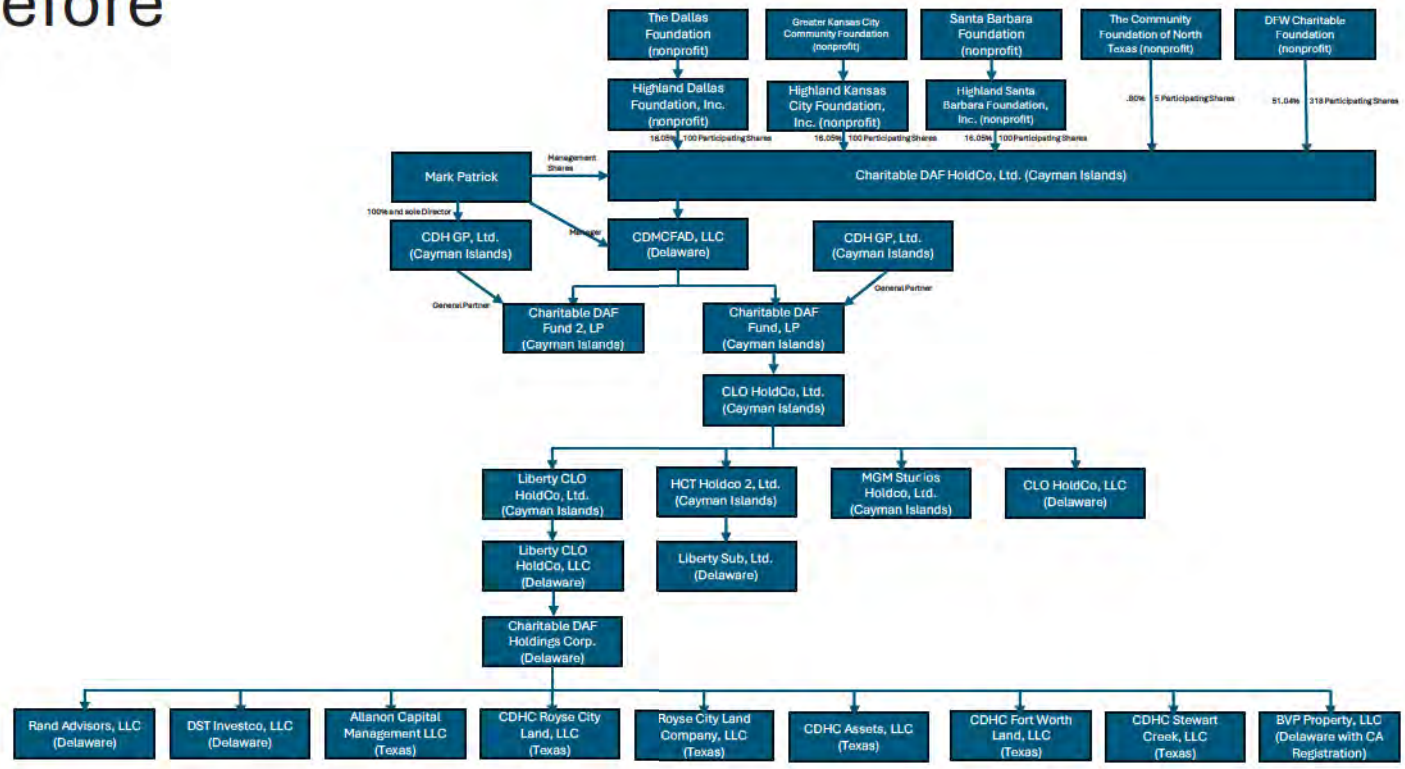

The Dallas Foundation (nonprofit)
Greater Kansas City Community Foundation (nonprofit)
Santa Barbara Foundation (nonprofit)
The Community Foundation of North Texas (nonprofit)
DFW Charitable Foundation (nonprofit)
Highland Dallas Foundation, Inc. (nonprofit)
Highland Kansas City Foundation, Inc. (nonprofit)
Highland Santa Barbara Foundation, Inc. (nonprofit)
16.05%
100 Participating Shares
16.05%
100 Participating Shares
16.05%
100 Participating Shares
.80%
5 Participating Shares
81.04%
218 Participating Shares
Mark Patrick
Management Shares
Charitable DAF HoldCo, Ltd. (Cayman Islands)
100% and sole Director
Manager
CDH GP, Ltd. (Cayman Islands)
CDMCFAD, LLC (Delaware)
CDH GP, Ltd. (Cayman Islands)
General Partner
General Partner
Charitable DAF Fund 2, LP (Cayman Islands)
Charitable DAF Fund, LP (Cayman Islands)
CLO HoldCo, Ltd. (Cayman Islands)
Liberty CLO HoldCo, Ltd. (Cayman Islands)
HCT Holdco 2, Ltd. (Cayman Islands)
MGM Studios Holdco, Ltd. (Cayman Islands)
CLO HoldCo, LLC (Delaware)
Liberty CLO HoldCo, LLC (Delaware)
Liberty Sub, Ltd. (Delaware)
Charitable DAF Holdings Corp. (Delaware)
Rand Advisors, LLC (Delaware)
DST Investco, LLC (Delaware)
Allanon Capital Management LLC (Texas)
CDHC Royse City Land, LLC (Texas)
Royse City Land Company, LLC (Texas)
CDHC Assets, LLC (Texas)
CDHC Fort Worth Land, LLC (Texas)
CDHC Stewart Creek, LLC (Texas)
BVP Property, LLC (Delaware with CA Registration)

EXHIBIT 33

Current – DAF Holdco



EXHIBIT 34

EXHIBIT 4

WK–53083

Certificate of Registration of Exempted Limited Partnership

*I, **JOY A. RANKINE** Assistant Registrar of Exempted Limited Partnership in the Cayman Islands DO HEREBY CERTIFY, pursuant to the Exempted Limited Partnership Law, 1991 that all the requisitions of the said Law in respect of registration were complied with by*

Charitable DAF Fund, LP

an Exempted Limited Partnership registered in the Cayman Islands on the 28th day of October Two Thousand Eleven

Given under my hand and Seal at George Town in the Island of Grand Cayman this 28th day of October Two Thousand Eleven

REGISTRAR OF LIMITED PARTNERSHIPS
EXEMPTED
CAYMAN ISLANDS

Assistant Registrar of Exempted Limited Partnership
Cayman Islands.

EXHIBIT 35

DATED NOVEMBER 7, 2011

AMENDED AND RESTATED

EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF

CHARITABLE DAF FUND, LP

WARNING

THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS DOCUMENT INTO THE CAYMAN ISLANDS MAY GIVE RISE TO THE IMPOSITION OF CAYMAN ISLANDS STAMP DUTY

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AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the "**Agreement**") is made on November 7, 2011

BETWEEN

(1) Charitable DAF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands and having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as general partner (the "**General Partner**"); and

(2) Charitable DAF HoldCo, Ltd, a Cayman Islands exempted Company having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as limited partner (the "**Limited Partner**"); and

(3) Each individual, partnership, corporation, limited liability company, trust or other entity (each, a "**Person**") admitted as a limited partner or general partner (collectively, the "**Partners**") of the Partnership (as defined below) in accordance with this Agreement, including any Persons hereafter admitted as Partners in accordance with this Agreement and excluding any Persons who cease to be Partners in accordance with this Agreement; and

(4) Walkers Nominees Limited having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9005, Cayman Islands as the initial limited partner (the "**Initial Limited Partner**") solely for the purposes of withdrawing as such.

WHEREAS, Charitable DAF Fund, LP (the "**Partnership**") was formed and registered as an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Law (as amended) of the Cayman Islands (the "**Law**"), and since its formation has been governed by the Initial Limited Partnership Agreement of the Partnership, dated October 25, 2011 (the "**Initial Agreement**"); and

WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**") and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein; and

WHEREAS, the parties hereto wish to amend and restate the Initial Agreement in its entirety and enter into this Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby adopt this Agreement to be their Limited Partnership Agreement, as follows:

IT IS AGREED:

ARTICLE I
GENERAL PROVISIONS; COMPENSATION AND EXPENSES

1.1 Continuation. The parties hereto continue the Partnership as an exempted limited partnership formed on October 25, 2011 pursuant to the Law.

1.2 Name. The business of the Partnership shall be carried on under the name of Charitable DAF Fund, LP.

1.3 Purpose and Powers. The purpose of the Partnership shall be to invest and trade, directly or indirectly, in securities of all types and other investment vehicles and instruments. At least initially, a majority of the Partnership's assets shall be invested in shares of CLO HoldCo, Ltd., a Cayman Islands exempted company ("**CLO HoldCo**"), but the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners.

1.4 Registered Office. The registered office of the Partnership is c/o Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands.

1.5 Partners. The name and addresses of the Partners are as follows:

Name	**Address**
Charitable DAF GP, LLC	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands
Charitable DAF HoldCo Ltd (Limited Partner)	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands

1.6 Powers.

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and

obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

1.7 Term. The Partnership was established on October 25, 2011 and shall continue until terminated in accordance with this Agreement or any amendment or modification thereof.

1.8 Admission of New Partners. The General Partner may at any time admit one or more new Partners on such terms as it may determine in its sole discretion; provided that any such new Limited Partner shall have as its equity owners solely Indirect Charitable Owners.

1.9 Taxable Year. The Taxable Year of the Partnership shall be a calendar fiscal year, or such other fiscal year as the General Partner shall determine in their sole discretion from time to time.

1.10 Liability of Partners.

(a) The General Partner shall be liable for all of the debts, liabilities and obligations of the Partnership.

(b) Except to the extent otherwise required by law or this Agreement, a Limited Partner shall not be personally liable for any obligations of the Partnership to third parties nor for the return of any distributions from the Partnership to the Limited Partner. A Limited Partner may be liable for the tax audit and related expenses referred to in Section 6.1.

1.11 Limitation on Assignability of Partners' Interests.

(a) A Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner. Any attempted assignment or substitution not made in accordance with this section shall be void *ab initio*.

(b) The General Partner may not assign their interests in the Partnership to any entity that is not under common control with the General Partner without the consent of a majority-in-interest of the Limited Partners. Notwithstanding the foregoing, the General Partner may freely assign their economic interest in the Partnership in whole or in part.

1.12 Definitions. For the purpose of this Agreement, unless the context otherwise requires:

(a) General Partner. The term "**General Partner**" shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

(b) Indirect Charitable Owners. The term "**Indirect Charitable Owner**" shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.

(c) Limited Partner. The term "**Limited Partner**" shall refer to Charitable DAF HoldCo Ltd (and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of this Agreement).

(d) Partner. The term "**Partner**" shall refer to the General Partner or the Limited Partner.

1.13 Service Providers. The General Partner may engage one or more Persons to act, or remove any one or more Persons from so acting, as service providers to the Company (including, without limitation, as manager, administrator, custodian, registrar and transfer agent, investment manager, investment adviser, sponsor and/or prime broker, auditors and legal counsel to the Partnership) in its sole discretion; provided, that any compensation paid to any such service provider that is affiliated with the General Partner shall be in an amount customary for services of a similar nature.

1.14 Partnership Expenses. The Partnership will bear its own operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees (if any), taxes, research costs, legal and accounting expenses and other operating expenses. In addition, the Partnership will bear its pro rata share of CLO HoldCo's operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees, taxes, research costs, legal and accounting expenses and other operating expenses. The Partnership will also bear (or reimburse the General Partner for) its organizational fees and expenses. To the extent the Partnership shares trading expenses with other accounts that may be managed by the General Partner or any affiliates, it will bear a proportionate share of the associated costs. In no event shall the General Partner receive any compensation from the Partnership.

1.15 Withdrawal of Initial Limited Partner. The Initial Limited Partner hereby withdraws as a limited partner immediately following the admission of the Limited Partners and thereafter shall have no further rights, liabilities or obligations under or in respect of this Agreement in its capacity as Initial Limited Partner.

ARTICLE II
POWERS

2.1 Partnership Powers. The Partnership shall have the following powers:

(a) To purchase, sell, invest and trade, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, syndicated debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; statutory claims; royalty claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (all such items being called herein a "**Financial Instruments**"), and to sell Financial Instruments short and cover such sales;

(b) To possess, transfer, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Financial Interests held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such Financial Interests in the name of the Partnership, in the name of any securities broker or firm, in the name of any nominee of such firm, or in the name of any other nominee or any other street name, or any combination thereof;

(c) To lend, either with or without security, any Financial Instruments, funds or other properties of the Partnership, including by entering into reverse repurchase agreements, and, from time to time, undertake leverage on behalf of the Partnership;

(d) To borrow or raise moneys and, from time to time, without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any of the foregoing instruments and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Partnership, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the Partnership for its purposes;

(e) To have and maintain one or more offices within or without the Cayman Islands and in connection therewith to rent or acquire office space, engage personnel and do such other acts and things as may be necessary or advisable in connection with the maintenance of such office or offices;

(f) To open, maintain and close bank accounts and brokerage accounts, including the power to draw checks or other orders for the payment of monies; and

(g) To enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of the foregoing objects and purposes.

2.2 Rights, Powers, Limitations on Liability and Indemnification of General Partner.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the General Partner, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including members of any committee and parties acting as agents for the execution of transactions) (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the Partnership or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the

business of the Partnership, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Partnership, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Partnership whom such Covered Person believes is authorized to make such suggestions on behalf of the Partnership, (iii) any act or omission by the Partnership, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Partnership selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Partnership or in furtherance of the business of the Partnership in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the Partnership shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Partnership, any investment made under or in connection with this Agreement, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Partnership, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

(f) The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may

otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) **Notwithstanding anything in this Agreement to the contrary, the aggregate maximum amount that a Covered Person may be liable to the Partnership and/or any of the Partners pursuant to this Agreement shall, to the extent not prohibited by law, never exceed the amount of management and incentive fees received by such Covered Person from the Partnership under this Agreement prior to the date that the acts or omissions giving rise to a claim for indemnification or liability shall have occurred. In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits. No Covered Person shall incur any liability for interest on any monies at any time received by such Covered Person or any investment loss or other charge resulting therefrom with respect to amounts invested hereunder.**

(i) **WAIVER OF CONSUMER RIGHTS: The Partnership and each of the Limited Partners waive all of their respective rights, if any, under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code ("DTPA"), a law that gives consumers special rights and protections. After consultation with an attorney of Partnership's own selection, Partnership voluntarily consents to this waiver. This waiver includes any right to recover attorneys' fees under the DTPA. Further, Partnership waives all of its rights to any and all protections afforded by any other state or federal Consumer Protection Acts, including the recovery of attorneys' fees.**

(j) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Covered Person, the Partnership (and not the applicable Covered Person) shall be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence or reckless or intentional misconduct of any Covered Person. Given the volume of transactions executed on behalf of the Partnership, Limited Partners acknowledge that trading errors (and similar errors) will occur and that the Partnership shall be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Covered Person.

(k) This Section 2.2 shall survive a Limited Partner's withdrawal as a limited partner of the Partnership and any termination of this Agreement.

ARTICLE III
CAPITAL ACCOUNTS AND DIVISION OF PROFITS AND LOSSES

3.1 Capital Contributions.

(a) Each Partner has made the capital contributions to the Partnership in the amount set forth in the records of the Partnership. The Limited Partner has contributed to the Partnership all of the outstanding equity interests of CLO HoldCo.

3.2 Capital Account; Allocation of Profits and Losses.

(a) There shall be established for each Partner on the books of the Partnership as of the first day of the fiscal period during which such Partner was admitted to the Partnership a capital account for such Partner in an amount equal to his capital contribution to the Partnership.

(b) Since the General Partner's capital account and contributions shall be the minimum required by Law, all income, deductions, gains, losses and credits of the Partnership shall be allocated shall be for the benefit of the Limited Partner, except as may otherwise be required by law. In the event any valuation of assets is necessary or appropriate, the General Partner shall determine such value in any reasonable manner determined by the General Partner in its sole discretion consistent with relevant accounting principles and applicable law.

(c) For purposes of determining the share of any items allocated to any period during the relevant Taxable Year of the Partnership, such shares shall be determined by the General Partner using any method permitted by the Code and the regulations thereunder. All allocations to be made by the General Partner may be overridden if necessary to comply with the Code, the regulations thereunder or other applicable law.

(d) To the extent that the Partnership pays withholding taxes as to a Partner, such amounts shall be charged to the applicable Partner's capital account; provided, however, that any such amounts may be treated as an advance to the Partner with interest to be charged to that Partner's capital account at a rate determined by the General Partner.

(e) Each Partner agrees not to treat, on any tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with treatment of such item by the Partnership.

ARTICLE IV
LEGAL INTERESTS, DISTRIBUTIONS AND PARTIAL WITHDRAWALS FROM CAPITAL ACCOUNT

4.1 Legal Interest. Each Partner shall have and own during any Taxable Year an undivided interest in the Partnership equal to his opening capital account for such period.

4.2 Distributions.

(a) Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses. In determining the amount of cash or securities available for distribution, the General Partner may retain reasonable reserves in such amounts as it determines may be necessary to cover expenses, contingencies and losses. Notwithstanding the foregoing, distributions made in connection with a sale of all or substantially all of the Partnership's assets or a liquidation of the Partnership shall be made in accordance with the capital account balances of the Partners within the time period set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(3).

(b) The General Partner may withhold and pay over to the U.S. Internal Revenue Service (or any other relevant taxing authority) such amounts as the Partnership is required to withhold or pay over, pursuant to the Code or any other applicable law, on account of a Partner's distributive share of the Partnership's items of gross income, income or gain.

For purposes of this Agreement, any taxes so withheld or paid over by the Partnership with respect to a Partner's distributive share of the Partnership's gross income, income or gain shall be deemed to be a distribution or payment to such Partner, reducing the amount otherwise distributable to such Partner pursuant to this Agreement and reducing the capital account of such Partner. If the amount of such taxes is greater than any such distributable amounts, then such Partner and any successor to such Partner's interest shall pay the amount of such excess to the Partnership, as a contribution to the capital of the Partnership.

4.3 Withdrawal. Without the consent of the General Partner, no Partner may withdraw as a Partner or make withdrawals from such Partner's capital account. In the event the General Partner permits any such withdrawal, the withdrawal shall be on such terms and conditions as the General Partner shall determine in its sole discretion. The General Partner may terminate all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.

ARTICLE V
DURATION OF PARTNERSHIP

5.1 Termination. The Partnership shall be required to be wound up and dissolved upon:

(a) the service of a notice by the General Partner on the other Partners requiring that the Partnership be wound up and dissolved; or

(b) the withdrawal by or resignation of the General Partner as general partner of the Partnership; or

(c) the withdrawal of all Limited Partners.

Upon the occurrence of any such event, the Partnership's affairs shall be wound up by the General Partner or such other Person as the General Partner shall appoint.

5.2 Winding Up. Upon the Partnership being required to be wound up and dissolved, the General Partner shall proceed with the liquidation and distribution of the assets of the Partnership, and upon completion of the winding up of the Partnership, shall have the authority to and shall execute and file a dissolution notice and such other documents required to effect the dissolution and termination of the Partnership in accordance with the Law. Before the distribution of all the assets of the Partnership, the business of the Partnership and the affairs of the Partners, as such, shall continue to be governed by this Agreement. The winding up of the Partnership and payment of creditors shall be effected in accordance with the Law.

ARTICLE VI
MISCELLANEOUS

6.1 Tax Matters Partner. The General Partner shall at all times constitute, and have full powers and responsibilities, as the Tax Matters Partner of the Partnership. In the event the Partnership shall be the subject of an income tax audit by any Federal, state or local authority, to the extent the Partnership is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and his decision shall be final and binding upon, the Partnership and each Partner thereof, and the Tax Matters Partner shall be indemnified and held harmless by the Partnership and each Partner for any action so taken by him in good faith. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Partnership to the extent of available Partnership funds, and any excess shall be paid by the Partners individually in proportion to their percentage interests in the Partnership.

6.2 Right to Hire.

(a) Nothing herein shall preclude the General Partner from engaging on behalf of the Partnership the services of any person or firm, whether or not affiliated with the General Partner, including the General Partner, to render for compensation such services to the Partnership as may be necessary to implement the business purposes of the Partnership.

(b) Each of the Partners consents that the General Partner, the Investment Manager or any Limited Partner or any affiliate (as defined in the Securities Act of 1933, as amended, and the regulations thereunder) of any of them, including without limitation the investment manager of the CLO HoldCo, may engage in or possess an interest in directly or indirectly, any other present or future business venture of any nature or description for his own account, independently or with others,

including but not limited to, any aspect of the securities business or any other business engaged in by the Partnership, and may become the general partner in other partnerships; and neither the Partnership nor any Partner shall have any rights in or to such independent venture or the income or profits derived therefrom.

(c) The General Partner, the Investment Manager and any affiliate or employee of such General Partner or Investment Manager, may hereafter render investment advisory services to other investors with respect to, and/or may own, purchase or sell, securities or other interests in property the same as or similar to those which the General Partner may purchase, hold or sell on behalf of the Partnership.

6.3 Applicable Law, etc. This Limited Partnership Agreement: (i) shall be binding on the executors, administrators, estates, heirs and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the Cayman Islands; and (iii) may be executed in more than one counterpart with the same effect as if the parties executing the several counterparts had all executed one counterpart as of the day and year first above written; provided, however, that in the aggregate, they shall have been signed by all of the Partners. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural as the identity of the person may require. The term "gross negligence" and its cognates shall be interpreted in accordance with the laws of the State of Delaware.

6.4 Power of Attorney. Each of the undersigned does hereby constitute and appoint the General Partner, with full power of substitution, his true and lawful representative and attorney in-fact, in his name, place and stead to make, execute, sign and file this Agreement and any amendment to this Agreement authorized by the terms of this Agreement, and all such other instruments, documents and certificates (and any amendments thereto) which may from time to time be required by the laws of the Cayman Islands, the United States of America, or any state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership and to take any further action that the General Partner considers advisable in its sole discretion in connection with the exercise of its authority pursuant to this Agreement. This power of attorney is intended to secure an interest in property and, in addition, the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable.

6.5 Tax Elections Under the Internal Revenue Code. The General Partner shall have the authority to make all tax elections and determinations on behalf of the Partnership under the Internal Revenue Code, the regulations promulgated thereunder or other applicable law to effect any elections, determinations or capital allocations.

6.6 Amendments to Partnership Agreement. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the consent of the General Partner together with the consent of a majority in interest of the Limited Partners, insofar as is consistent with the laws governing this Agreement. Notwithstanding the foregoing, the General Partner shall have the right to effect

amendments to this Agreement without the consent of any Limited Partner, including without limitation, to reflect: a change in the location of the Partnership's principal place of business; a change in the registered office or registered agent; a change in the name of the Partnership; admission of Partners in accordance with this Agreement; a change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the Tax Matters Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for Federal income tax purposes; a change of the provisions relating to the management fee or other compensation to the Investment Manager or the General Partner so that such provisions conform to any applicable requirements of the U.S. Securities and Exchange Commission and other regulatory authorities; a change (i) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any Federal or state agency or contained in any Federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, (ii) that is required or contemplated by this Agreement, or (iii) that is necessary or desirable to implement new regulations published by the Internal Revenue Service with respect to partnership allocations of income, gain, loss, deduction and credit; a change to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to the matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof; or a change that does not adversely affect the Limited Partners in any material respect; *provided, that* in no event shall the General Partner effect any amendment to this Agreement that has the effect of giving the General Partner any economic benefits in the assets of the Partnership; *provided further, that* the General Partner shall give notice to the Limited Partners of any such amendment.

6.7 Investment Representation. Each Partner hereby acknowledges and represents that it acquired its interest in the Partnership for investment purposes only and not with a view to its resale or distribution.

6.8 Notices. All notices, requests or approvals that any party hereto is required or desires to give to any Partner or to the Partnership shall be in writing signed by or on behalf of the party giving the same and delivered personally or sent overnight express mail by a reputable private carrier or by prepaid registered or certified mail, return receipt requested, addressed (i) to the Limited Partner at the addresses set forth beneath his signature to this Agreement; (ii) to the Partnership at the principal place of business of the Partnership with a copy of each such notice sent simultaneously to the General Partner and the Investment Manager at Nextbank Tower, 13455 Noel Road, 8th Floor, Dallas, Texas 75240; or (iii) to the respective party at such other address or addresses as the party may specify from time to time in a writing given to the Partnership in the manner provided in this Section 6.8 of ARTICLE VI. Notice shall be deemed to have been duly given and received (i) on the date of delivery, if personally delivered, (ii) on the next business day subsequent to sending by overnight express mail as aforesaid, or (iii) on the third day subsequent to mailing if mailed as aforesaid; provided that any withdrawal notices shall not be deemed to have been given until actually received by the Partnership.

6.9 General Partner Determinations. Any determinations or calculations made by the General Partner shall, if made in good faith and in the absence of manifest error, be binding upon the Partnership and its Limited Partners.

6.10 Dispute Resolution. The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation.

(1) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(2) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(3) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(4) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration. If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of this document will control.

(1) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the

Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

(2) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.

(3) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive.

(4) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The

total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

(5) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.

(6) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

6.11 Successors and Assigns. Subject to the limitations set forth in Section 1.11, this Agreement shall inure to the benefit of and be binding upon the parties and to their respective heirs, executors, administrators, successors and permitted assigns. For the avoidance of doubt, any Limited Partner who becomes a former Limited Partner shall remain bound to all terms and conditions of this Agreement.

6.12 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

6.13 No Third Party Rights. Except for rights expressly granted hereunder to the Covered Persons, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.

6.14 No Right to Partition. Each of the Partners, on behalf of themselves and their shareholders, partners, principals, members, successors and assigns, if any and as permitted hereunder, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

SIGNATURE PAGE FOR AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: _____

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name:
Title:

Witnessed by: _____

SIGNATURE PAGE FOR AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: Candi L. Rigg
Candi L. Rigg

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name: ROD PALMER
Title:

Witnessed by: Gráma Ó Gaoy

Exhibit G
Part 2

EXHIBIT 36

Execution Version

DATED 11 March 2024

SECOND AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

WARNING
THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS DOCUMENT INTO THE CAYMAN ISLANDS MAY GIVE RISE TO THE IMPOSITION OF CAYMAN ISLANDS STAMP DUTY

Execution Version

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Execution Version

SECOND AMENDED AND RESTATED

EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

THIS SECOND AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the "Agreement") is made on 11 March 2024

BETWEEN

(1) CDH GP, Ltd., a Cayman Islands exempted company having its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands as general partner (the "**General Partner**");

(2) Charitable DAF HoldCo, Ltd, a Cayman Islands exempted company having its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands as limited partner (the "**Limited Partner**"); and

(3) Each individual, partnership, corporation, limited liability company, trust or other entity (each, a "**Person**") admitted as a limited partner or general partner (collectively, the "**Partners**") of the Partnership (as defined below) in accordance with this Agreement, including any Persons hereafter admitted as Partners in accordance with this Agreement and excluding any Persons who cease to be Partners in accordance with this Agreement.

WHEREAS, Charitable DAF Fund, LP (the "**Partnership**") was formed on October 25, 2011 and registered as an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Act (as amended) of the Cayman Islands (the "**Act**"), and an Initial Limited Partnership Agreement of the Partnership was entered into as of the same date (the "**Initial Agreement**");

WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**") and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein;

WHEREAS, the Limited Partner and Charitable DAF GP, LLC, as general partner of the Partnership, amended and restated the Initial Agreement in its entirety on November 7, 2011 ("**A&R LPA**");

WHEREAS, Charitable DAF GP, LLC assigned to the General Partner its general partnership interest and the General Partner assumed the obligations of Charitable DAF GP, LLC, as general partner of the Partnership pursuant to an assignment and assumption agreement dated 7 March 2024; and

WHEREAS, the Limited Partner and the General Partner, desire to amend and restate the A&R LPA in its entirety as set forth below.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby adopt this Agreement to be their Limited Partnership Agreement, as follows:

IT IS AGREED:

ARTICLE I

GENERAL PROVISIONS; COMPENSATION AND EXPENSES

1.1 Continuation. The parties hereto continue the Partnership as an exempted limited partnership formed on October 25, 2011 pursuant to the Act.

1.2 Name. The name of the Partnership is Charitable DAF Fund, LP or such other name as the General Partner may from time to time determine provided that the words "Limited Partnership" or the abbreviations "LP" or "L.P." shall be included in the name as required by the Act.

1.3 Purpose and Powers. The purpose of the Partnership shall be to invest and trade, directly or indirectly, in securities of all types and other investment vehicles and instruments, and to engage in any lawful activity for which exempted limited partnerships may be formed under the Act. At least initially, a majority of the Partnership's assets shall be invested in shares of CLO HoldCo, Ltd., a Cayman Islands exempted company ("**CLO HoldCo**"), but the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners.

1.4 Registered Office. The registered office of the Partnership is c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands or such other place in the Cayman Islands as the General Partner may in its absolute discretion from time to time determine. The General Partner shall make the required filings with the Registrar of Exempted Limited Partnerships of any change to the Partnership's registered office in accordance with the Act.

1.5 Partners. The name and addresses of the Partners are as follows:

Name	**Address**
CDH GP, LTD. (General Partner)	c/o Campbells Corporate Services Limited Floor 4, Willow House Cricket Square Grand Cayman KY1-9010 Cayman Islands
Charitable DAF HoldCo, Ltd (Limited Partner)	c/o Campbells Corporate Services Limited Floor 4, Willow House Cricket Square Grand Cayman KY1-9010 Cayman Islands

1.6 Powers.

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and conduct of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and obligations of a general partner of an exempted limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in

this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management or conduct of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

1.7 Term. The Partnership was established on October 25, 2011 and shall continue until wound up and subsequently dissolved in accordance with this Agreement or any amendment or modification thereof.

1.8 Admission of New Partners. The General Partner may at any time admit one or more new Partners on such terms as it may determine in its sole discretion; provided that any such new Limited Partner shall have as its equity owners solely Indirect Charitable Owners.

1.9 Taxable Year. The Taxable Year of the Partnership shall be a calendar fiscal year, or such other fiscal year as the General Partner shall determine in their sole discretion from time to time.

1.10 Liability of Partners

(a) The General Partner shall be liable for all of the debts, liabilities and obligations of the Partnership.

(b) Except to the extent otherwise required by law or this Agreement, a Limited Partner shall not be personally liable for any obligations of the Partnership to third parties nor for the return of any distributions from the Partnership to the Limited Partner. Limited Partners should not take part in the conduct of the business of the Partnership and should not deal with third parties, nor for the return of any distributions from the Partnership to the Limited Partner, or otherwise hold itself out, as a general partner of the Partnership. A Limited Partner may be liable for the tax audit and related expenses referred to in Section 6.1

1.11 Limitation on Assignability of Partners' Interests.

(a) A Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner. Any attempted assignment or substitution not made in accordance with this section shall be void *ab initio*.

(b) The General Partner may not assign their interests in the Partnership to any entity that is not under common control with the General Partner without the consent of a majority-in-interest of the Limited Partners. Notwithstanding the foregoing, the General Partner may freely assign their economic interest in the Partnership in whole or in part. The General Partner shall file, or cause to be filed, any amended Section 10 Statement with the Cayman Islands Registrar of Exempted Limited Partnerships required to be filed pursuant to Section 10 of the Act to give effect to the provisions of this Section 1.11.

1.12 Definitions. For the purpose of this Agreement, unless the context otherwise requires:

(a) General Partner. The term "**General Partner**" shall refer to CDH GP, Ltd., and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

Indirect Charitable Owners. The term "Indirect Charitable Owner" shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 50l(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.

(b) Limited Partner. The term "**Limited Partner**" shall refer to Charitable DAF HoldCo Ltd (and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of this Agreement).

(c) Partner. The term "**Partner**" shall refer to the General Partner or the Limited Partner.

1.13 Service Providers. The General Partner may engage one or more Persons to act, or remove any one or more Persons from so acting, as service providers to the Company (including, without limitation, as manager, administrator, custodian, registrar and transfer agent, investment manager, investment adviser, sponsor and/or prime broker, auditors and legal counsel to the Partnership) in its sole discretion; provided, that any compensation paid to any such service provider that is affiliated with the General Partner shall be in an amount customary for services of a similar nature.

1.14 Partnership Expenses. The Partnership will bear its own operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees (if any), taxes, research costs, legal and accounting expenses and other operating expenses. In addition, the Partnership will bear its pro rata share of CLO HoldCo's operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees, taxes, research costs, legal and accounting expenses and other operating expenses. The Partnership will also bear (or reimburse the General Partner for) its organizational fees and expenses. To the extent the Partnership shares trading expenses with other accounts that may be managed by the General Partner or any affiliates, it will bear a proportionate share of the associated costs. In no event shall the General Partner receive any compensation from the Partnership.

1.15 Partnership Records. The General Partner shall cause to be maintained at the principal office of the Partnership, or at such other place as the Act may permit, a register of limited partnership interests which shall include such information as may be required by the Act (the "**Register**"). The Register shall not be part of this Agreement. The General Partner shall, from time to time, update the Register as required by the Act to accurately reflect the information therein and no action of any Limited Partner shall be required to amend or update the Register. [Upon the prior consent of the General Partner, the Limited Partners shall have the right to inspect the Register.] Any reference in this Agreement to the Register shall be deemed a reference to the Register as in effect from time to time. Subject to the terms of this Agreement, the General Partner may take any action authorised hereunder in respect of the Register, including making the Register available at the registered office to satisfy any order or notice pursuant to the Tax Information Authority Act (as amended) without any need to obtain the consent of any other Partner.

1.16 Limited Partner Information. Other than what has been expressly agreed to be provided to the Limited Partners herein, the Limited Partners are not entitled to any other additional information regarding the Partnership (including for the purposes of section 22 of the Act (which is disapplied with respect to the Partnership)) unless agreed by the General Partner in its sole discretion.

ARTICLE II

POWERS

2.1 Partnership Powers.

The Partnership shall have the following powers:

(a) To purchase, sell, invest and trade, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non- U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, syndicated debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; statutory claims; royalty claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (all such items being called herein a "**Financial Instruments**"), and to sell Financial Instruments short and cover such sales;

(b) To possess, transfer, mortgage, pledge, charge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Financial Interests held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such Financial Interests in the name of the Partnership, in the name of any securities broker or firm, in the name of any nominee of such firm, or in the name of any other nominee or any other street name, or any combination thereof;

(c) To lend, either with or without security, any Financial Instruments, funds or other properties of the Partnership, including by entering into reverse repurchase agreements, and, from time to time, undertake leverage on behalf of the Partnership;

(d) To borrow or raise moneys and, from time to time, without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any of the foregoing instruments and of the interest thereon by mortgage upon or pledge, charge,

conveyance or assignment in trust of the whole or any part of the property of the Partnership, whether at the time owned or thereafter acquired, and to sell, pledge, charge or otherwise dispose of such bonds or other obligations of the Partnership for its purposes;

(e) To have and maintain one or more offices within or without the Cayman Islands and in connection therewith to rent or acquire office space, engage personnel and do such other acts and things as may be necessary or advisable in connection with the maintenance of such office or offices;

(f) To open, maintain and close bank accounts and brokerage accounts, including the power to draw checks or other orders for the payment of monies; and

(g) To enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of the foregoing objects and purposes.

2.2 Rights, Powers, Limitations on Liability and Indemnification of General Partner.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the General Partner, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including members of any committee and parties acting as agents for the execution of transactions) (each, a **"Covered Person"** and collectively, **"Covered Persons")** shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the Partnership or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Partnership, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Partnership, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Partnership whom such Covered Person believes is authorized to make such suggestions on behalf of the Partnership, (iii) any act or omission by the Partnership, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Partnership selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Partnership or in furtherance of the business of the Partnership in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the Partnership shall indemnify and save harmless Covered Persons (the **"Indemnitees"),** from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection

with the business of the Partnership, any investment made under or in connection with this Agreement, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Partnership, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

(f) The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) **Notwithstanding anything in this Agreement to the contrary, the aggregate maximum amount that a Covered Person may be liable to the Partnership and/or any of the Partners pursuant to this Agreement shall, to the extent not prohibited by law, never exceed the amount of management and incentive fees received by such Covered Person from the Partnership under this Agreement prior to the date that the acts or omissions giving rise to a claim for indemnification or liability shall have occurred. In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits. No Covered Person shall incur any liability for interest on any monies at any time received by such Covered Person or any investment loss or other charge resulting therefrom with respect to amounts invested hereunder.**

(i) **WAIVER OF CONSUMER RIGHTS: The Partnership and each of the Limited Partners waive all of their respective rights, if any, under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code ("DTPA"), a law that gives consumers special rights and protections. After consultation with an attorney of Partnership's own selection, Partnership voluntarily consents to this waiver. This waiver includes any right to recover attorneys' fees under the DTPA Further, Partnership waives all of its rights to any and all protections afforded by any other state or federal Consumer Protection Acts, including the recovery of attorneys' fees.**

(j) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Covered Person, the Partnership (and not the applicable Covered Person) shall be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence or reckless or intentional misconduct of any Covered Person. Given the volume of transactions executed on behalf of the Partnership, Limited Partners acknowledge that trading errors (and similar errors) will occur and that the Partnership shall be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Covered Person.

(k) This Section 2.2 shall survive a Limited Partner's withdrawal as a limited partner of the Partnership and any termination of this Agreement.

ARTICLE III

CAPITAL ACCOUNTS AND DIVISION OF PROFITS AND LOSSES

3.1 Capital Contributions.

(a) Each Partner has made the capital contributions to the Partnership in the amount set forth in the records of the Partnership. The Limited Partner has contributed to the Partnership all of the outstanding equity interests of CLO HoldCo.

3.2 Capital Account; Allocation of Profits and Losses.

(b) There shall be established for each Partner on the books of the Partnership as of the first day of the fiscal period during which such Partner was admitted to the Partnership a capital account for such Partner in an amount equal to his capital contribution to the Partnership.

(c) Since the General Partner's capital account and contributions shall be the minimum required by Act, all income, deductions, gains, losses and credits of the Partnership shall be allocated shall be for the benefit of the Limited Partner, except as may otherwise be required by law. In the event any valuation of assets is necessary or appropriate, the General Partner shall determine such value in any reasonable manner determined by the General Partner in its sole discretion consistent with relevant accounting principles and applicable law.

(d) For purposes of determining the share of any items allocated to any period during the relevant Taxable Year of the Partnership, such shares shall be determined by the General Partner using any method permitted by the Code and the regulations thereunder. All allocations to be made by the General Partner may be overridden if necessary to comply with the Code, the regulations thereunder or other applicable law.

(e) To the extent that the Partnership pays withholding taxes as to a Partner, such amounts shall be charged to the applicable Partner's capital account; provided, however, that any such amounts may be treated as an advance to the Partner with interest to be charged to that Partner's capital account at a rate determined by the General Partner.

(f) Each Partner agrees not to treat, on any tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with treatment of such item by the Partnership.

ARTICLE IV

LEGAL INTERESTS, DISTRIBUTIONS AND PARTIAL WITHDRAWLS FROM CAPITAL ACCOUNT

4.1 Legal Interest. Each Partner shall have and own during any Taxable Year an undivided interest in the Partnership equal to his opening capital account for such period.

4.2 Distributions.

(a) Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses. In determining the amount of cash or securities available for distribution, the General Partner may retain reasonable reserves in such amounts as it determines may be necessary to cover expenses, contingencies and losses. Notwithstanding the foregoing, distributions made in connection with a sale of all or substantially all of the Partnership's assets or a liquidation of the Partnership shall be made in accordance with the capital account balances of the Partners within the time period set forth in Treasury Regulations Section 1.704- 1(b)(2)(ii)(b)(3).

(b) The General Partner may withhold and pay over to the U.S. Internal Revenue Service (or any other relevant taxing authority) such amounts as the Partnership is required to withhold or pay over, pursuant to the Code or any other applicable law, on account of a Partner's distributive share of the Partnership's items of gross income, income or gain.

(c) For purposes of this Agreement, any taxes so withheld or paid over by the Partnership with respect to a Partner's distributive share of the Partnership's gross income, income or gain shall be deemed to be a distribution or payment to such Partner, reducing the amount otherwise distributable to such Partner pursuant to this Agreement and reducing the capital account of such Partner. If the amount of such taxes is greater than any such distributable amounts, then such Partner and any successor to such Partner's interest shall pay the amount of such excess to the Partnership, as a contribution to the capital of the Partnership. Notwithstanding anything to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, will not be required to make a distribution to any Partner on account of its interest in the Partnership if such distribution would violate any provision of the Act or any other applicable law.

4.3 Withdrawal. Without the consent of the General Partner, no Partner may withdraw as a Partner or make withdrawals from such Partner's capital account. In the event the General Partner permits any such withdrawal, the withdrawal shall be on such terms and conditions as the General Partner shall determine in its sole discretion. The General Partner may require the withdrawal of all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.

ARTICLE V

DURATION OF PARTNERSHIP

5.1 Commencement of Winding Up. The Partnership shall be required to be wound up and subsequently dissolved pursuant to the provisions of Section 36(1)(a) of the Act after the earliest of:

(a) the service of a notice by the General Partner on the other Partners requiring that the Partnership be wound up and dissolved; or

(b) the withdrawal by or resignation of the General Partner as general partner of the Partnership; or

(c) the withdrawal of all Limited Partners.

Upon the occurrence of any such event, the Partnership's affairs shall be wound up by the General Partner or such other Person as the General Partner shall appoint to act as liquidator of the Partnership.

5.2 Winding Up. Upon the commencement of the winding up of the Partnership, the General Partner (or a duly appointed liquidator, as applicable) shall proceed with the liquidation and distribution of the assets of the Partnership in an orderly manner in accordance with this Agreement and the Act.

5.3 Termination. Upon completion of the winding up of affairs of the Partnership in accordance with the Act and this Agreement, the General Partner (or liquidator, as applicable) shall execute a notice of dissolution ("**Notice of Dissolution**") in respect of the Partnership and cause such Notice of Dissolution to be filed with the Registrar of Exempted Limited Partnerships of the Cayman Islands, and this Agreement shall terminate.

ARTICLE VI

MISCELLANEOUS

6.1 Tax Matters Partner. The General Partner shall at all times constitute, and have full powers and responsibilities, as the Tax Matters Partner of the Partnership. In the event the Partnership shall be the subject of an income tax audit by any Federal, state or local authority, to the extent the Partnership is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and his decision shall be final and binding upon, the Partnership and each Partner thereof, and the Tax Matters Partner shall be indemnified and held harmless by the Partnership and each Partner for any action so taken by him in good faith. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Partnership to the extent of available Partnership funds, and any excess shall be paid by the Partners individually in proportion to their percentage interests in the Partnership.

6.2 Right to Hire.

(a) Nothing herein shall preclude the General Partner from engaging on behalf of the Partnership the services of any person or firm, whether or not affiliated with the General Partner, including the General Partner, to render for compensation such services to the Partnership as may be necessary to implement the business purposes of the Partnership. For the avoidance of doubt, the General Partner and the Limited Partners confirm that any such compensation is received by the General Partner in its capacity as general partner of the Partnership and in

furtherance of the General Partner's authority to conduct the Partnership's business and affairs on behalf of the Partnership.

(b) Each of the Partners consents that the General Partner or any Limited Partner or any affiliate (as defined in the Securities Act of 1933, as amended, and the regulations thereunder) of any of them, including without limitation the investment manager of the CLO HoldCo, may engage in or possess an interest in directly or indirectly, any other present or future business venture of any nature or description for his own account, independently or with others, including but not limited to, any aspect of the securities business or any other business engaged in by the Partnership, and may become the general partner in other partnerships; and neither the Partnership nor any Partner shall have any rights in or to such independent venture or the income or profits derived therefrom.

(c) The General Partner and any affiliate or employee of such General Partner, may hereafter render investment advisory services to other investors with respect to, and/or may own, purchase or sell, securities or other interests in property the same as or similar to those which the General Partner may purchase, hold or sell on behalf of the Partnership.

6.3 Applicable Law, etc. This Agreement: (i) shall be binding on the executors, administrators, estates, heirs and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the Cayman Islands; and iii) may be executed in more than one counterpart, all of which taken together shall constitute one and the same instrument.

6.4 Power of Attorney. Each of the undersigned does hereby constitute and appoint the General Partner, with full power of substitution, his true and lawful representative and attorney in-fact, in his name, place and stead to make, execute, sign and file this Agreement and any amendment to this Agreement authorized by the terms of this Agreement, and all such other instruments, documents and certificates (and any amendments thereto) which may from time to time be required by the laws of the Cayman Islands, the United States of America, or any state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership and to take any further action that the General Partner considers advisable in its sole discretion in connection with the exercise of its authority pursuant to this Agreement.

This power of attorney is intended to secure a proprietary interest of the General Partner and, in addition, the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable.

6.5 Tax Elections Under the Internal Revenue Code. The General Partner shall have the authority to make all tax elections and determinations on behalf of the Partnership under the Internal Revenue Code, the regulations promulgated thereunder or other applicable law to effect any elections, determinations or capital allocations.

6.6 Amendments to Partnership Agreement. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the consent of the General Partner together with the consent of a majority in interest of the Limited Partners, insofar as is consistent with the laws governing this Agreement. Notwithstanding the foregoing, the General Partner shall have the right to effect amendments to this Agreement without the consent of any Limited Partner, including without limitation, to reflect: a change in the location of the Partnership's principal place of business; a change in the registered office or registered agent; a change in the name of the Partnership; admission of Partners in accordance with this Agreement; a change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the Tax Matters Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for Federal income tax purposes; a change of the provisions relating to the management fee or other compensation to the General Partner so that such provisions conform to any applicable requirements of the U.S. Securities and Exchange

Commission and other regulatory authorities; a change (i) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any Federal or state agency or contained in any Federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, (ii) that is required or contemplated by this Agreement, or (iii) that is necessary or desirable to implement new regulations published by the Internal Revenue Service with respect to partnership allocations of income, gain, loss, deduction and credit; a change to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to the matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof; or a change that does not adversely affect the Limited Partners in any material respect; provided, that in no event shall the General Partner effect any amendment to this Agreement that has the effect of giving the General Partner any economic benefits in the assets of the Partnership; provided further, that the General Partner shall give notice to the Limited Partners of any such amendment.

6.7 Investment Representation. Each Partner hereby acknowledges and represents that it acquired its interest in the Partnership for investment purposes only and not with a view to its resale or distribution.

6.8 Notices. All notices, requests or approvals that any party hereto is required or desires to give to any Partner or to the Partnership shall be in writing signed by or on behalf of the party giving the same and delivered personally or sent overnight express mail by a reputable private carrier or by prepaid registered or certified mail, return receipt requested, addressed (i) to the Limited Partner at the address set forth in this Agreement; (ii) to the Partnership at the principal place of business of the Partnership with a copy of such notice sent simultaneously to the General Partner at 6716 Glenhurst Dr., Dallas, TX 75254; or (iii) to the respective party at such other address or addresses as the party may specify from time to time in a writing given to the Partnership in the manner provided in this Section 6.8 of ARTICLE VI. Notice shall be deemed to have been duly given and received (i) on the date of delivery, if personally delivered, (ii) on the next business day subsequent to sending by overnight express mail as aforesaid, or iii) on the third day subsequent to mailing if mailed as aforesaid; provided that any withdrawal notices shall not be deemed to have been given until actually received by the Partnership.

6.9 General Partner Determinations. Any determinations or calculations made by the General Partner shall, if made in good faith and in the absence of manifest error, be binding upon the Partnership and its Limited Partners.

6.10 Dispute Resolution. The following procedures shall be used to resolve any controversy or claim **("Dispute")** arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation.

(1) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(2) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(3) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(4) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration. If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect **("Arbitration Rules").** In the event of a conflict, the provisions of this document will control.

(1) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act ("FAA"), and resolved by the arbitrators, provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

(2) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.

(3) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code§ 38.001(8), which rights the parties expressly waive.

(4) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty- five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

(5) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.

(6) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

6.11 Successors and Assigns. Subject to the limitations set forth in Section 1.11, this Agreement shall inure to the benefit of and be binding upon the parties and to their respective heirs, executors, administrators, successors and permitted assigns. For the avoidance of doubt, any Limited Partner who becomes a former Limited Partner shall remain bound to all terms and conditions of this Agreement.

6.12 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

6.13 No Third Party Rights. Any Covered Person not being a party to this Agreement, may enforce any rights granted to it pursuant to this Agreement in its own right as if it were a party to this Agreement. Except as expressly provided in the foregoing sentence, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (as amended)

of the Cayman Islands to enforce any term of this Agreement. Notwithstanding any term of this Agreement, the consent of or notice to any person who is not a party to this Agreement shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under this Agreement at any time."

6.14 No Right to Partition. Each of the Partners, on behalf of themselves and their shareholders, partners, principals, members, successors and assigns, if any and as permitted hereunder, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

[Signature Page follows.]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Amended and Restated Exempted Limited Partnership Agreement as a Deed on the day and year first above written.

EXECUTED AS A DEED by Charitable DAF Holdco, Ltd, as Limited Partner:

Duly Authorised Signatory

Name: Mark Patrick

Title: Director

in the presence of:

Signature of Witness

Name: Kasey J. Rose

Address: 16400 Dallas Pkwy, Ste. 300
Dallas, TX 75248

EXECUTED AS A DEED by CDH GP, Ltd. as General Partner:

Duly Authorised Signatory

Name: Mark Patrick

Title: Director

in the presence of:

Signature of Witness

Name: Kasey J. Rose

Address: 16400 Dallas Pkwy, Ste 300
Dallas, TX 75248

EXHIBIT 37

WRITTEN CONSENT
OF THE MANAGING MEMBER
OF
CHARITABLE DAF GP, LLC

March 7, 2024

The undersigned, being the managing member (the "Managing Member") of Charitable DAF GP, LLC, a Delaware limited liability company (the "Company"), does hereby consent to, adopt and approve, ratify and confirm by written consent the following resolutions and directs that this written consent be filed with the minutes of the proceedings of the Company:

WHEREAS, the Company is the sole general partner of Charitable DAF Fund, LP, an exempted Cayman Islands limited partnership (the "Partnership");

WHEREAS, the Managing Member has determined it to be in the best interests of the Company and its member for the Company to transfer its entire general partnership interest in the Partnership to CDH GP, Ltd. (the "Transfer"), pursuant to the terms of that certain Deed of Assignment and Assumption of General Partner Interest, among the Company, CDH GP, Ltd. and Charitable DAF Holdco, Ltd. (the "Deed").

WHEREAS, a section 10 statement relating to the replacement of the general partner of the Partnership from the Company to CDH GP, Ltd., shall be filed with the Registrar of Exempted Limited Partnerships in the Cayman Islands as required under the Exempted Limited Partnership Law (as amended) (the "Section 10 Statements");

NOW, THEREFORE, BE IT RESOLVED, that the Transfer is hereby approved in all respects in accordance with the terms set forth in the Deed; and be it

RESOLVED FURTHER, that the terms, conditions and provisions of the Deed are hereby approved in all respects and the Company is hereby authorized to execute, deliver and perform its obligations under the Deed; and be it

RESOLVED FURTHER, that the Managing Member, acting alone, is hereby authorized, empowered and directed, in the name and on behalf of the Company, to execute and deliver and to cause the Company to perform its obligations under the Deed, with such changes therein and additions thereto as the Managing Member may deem necessary, appropriate, advisable or desirable, and the execution and delivery of the Deed by the Managing Member with any changes thereto shall be conclusive evidence that the Managing Member deemed such changes to meet such standard; and be it

RESOLVED FURTHER, that the Managing Member, acting alone, is hereby authorized, empowered and directed, in the name and on behalf of the Company, to execute and deliver the Section 10 Statements and that the filing of the Section 10 Statements be approved by the Company; and be it

RESOLVED FURTHER, that the Managing Member, acting alone, be, and hereby is, authorized and empowered to execute and deliver in the name and on behalf of the Company and to cause the Company to perform its obligations under, such other and further agreements, instruments or documents (with such changes as the Managing Member deems necessary or advisable, such determination to be conclusively evidenced by the Managing Member's execution thereof) and to take all other actions that the Managing Member deems necessary or advisable to evidence and finalize the Transfer and to carry out the intent and accomplish the purposes of these resolutions; and be it

RESOLVED FURTHER, that all acts of the Managing Member taken prior to the adoption of the foregoing resolutions, which acts are consistent with the purposes of the foregoing resolutions are hereby severally ratified, confirmed, approved and adopted as acts of the Company.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this written consent as of the date first set forth above.

MANAGING MEMBER:

Name: Mark E. Patrick

EXHIBIT 38

STATEMENT IN TERMS OF SECTION 10
OF THE EXEMPTED LIMITED PARTNERSHIP ACT (AS AMENDED)

CHARITABLE DAF FUND, LP
(THE "PARTNERSHIP")

Whereas the general partner of the Partnership was changed on 7 March 2024, the following revisions to the details previously filed in the Section 9 Statement for the Partnership are made and filed:

1. General Partner: CDH GP, Ltd., a Cayman Islands exempted company at Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands

For and on behalf of Charitable DAF GP, LLC
(General Partner of the Partnership)
BY: Mark E. Patrick, Managing Member

Dated: 3/7/2024

EXHIBIT 39

Date of Incorporation: 27 February 2024

REGISTER OF MEMBERS
FOR:
CDH GP, LTD.

Share Class: Ordinary
Voting: Yes
Conditional: No
Nominal Value:

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands	27 February 2024	Allotment	1.00	27 February 2024: Subscriber's share issued by operation of law on registration	No Cert	100	1.00	
		Transfer	(1.00)	27 February 2024: Transfer of 1.00 Ordinary share from WNL Limited to Mark Patrick pursuant to resolution dated 27 February 2024			(1.00) Nil	27 February 2024
Mark Patrick, 6716 Glenhurst Dr., Dallas, Texas, 75254, United States of America	27 February 2024	Transfer	1.00	27 February 2024: Transfer of 1.0 Ordinary share from WNL Limited to Mark Patrick pursuant to resolution dated 27 February 2024	No Cert	100	1.00	

Notes:

29753843.2.C8689.187150

Date of Incorporation: 27 February 2024

REGISTER OF DIRECTORS
FOR:
CDH GP, LTD.

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands	Director	27 February 2024	27 February 2024
Mark Patrick 6716 Glenhurst Dr. Dallas, Texas, 75254, United States of America	Director	27 February 2024	

Date of Incorporation: 27 February 2024

REGISTER OF OFFICERS
FOR:
CDH GP, LTD.

Name & Address	Office Held	Date of Appointment	Date of Resignation

Date of Incorporation: 27 February 2024

REGISTER OF MORTGAGES AND CHARGES
FOR:
CDH GP, LTD.

Entry No.	Date of Charge	Charge Instrument	Description of Property Charged	Amount of Charge Created	Names of Mortgagees or Person entitled to Charge	Date of Discharge

Notes:

EXHIBIT 40

EXHIBIT 4



Registration No.: **249232**

Date of Incorporation: **13 December 2010**

Client No.: **KY057017**

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

Share Class: **Ordinary**
Nominal Value: **USD 1.00**
Voting Rights: Yes
Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	13 Dec 2010	Allotment	1.00	13 Dec 2010 : Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010				
						Nil	**Nil**	17 Dec 2010
Highland Capital Management Partners, Charitable Trust #2 13455 Noel Road Suite 800 Dallas TX 75240 USA	17 Dec 2010	Transfer	1.00	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010	No Cert			
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD				

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 4

intertrust GROUP

Registration No.: 249232
Date of Incorporation: 13 December 2010
Client No.: KY057017

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
				pursuant to Contribution and Transfer Agreement dated 7 Nov 2011				
						Nil	Nil	7 Nov 2011
CHARITABLE DAF FUND, LP Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011	No Cert			
						100	1.00	
CHARITABLE DAF HOLDCO, LTD Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD pursuant to Contribution and Transfer Agreement dated 7 Nov 2011	No Cert			
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011				
						Nil	Nil	7 Nov 2011

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 4



Registration No.: 249232
Date of Incorporation: 13 December 2010
Client No.: KY057017

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

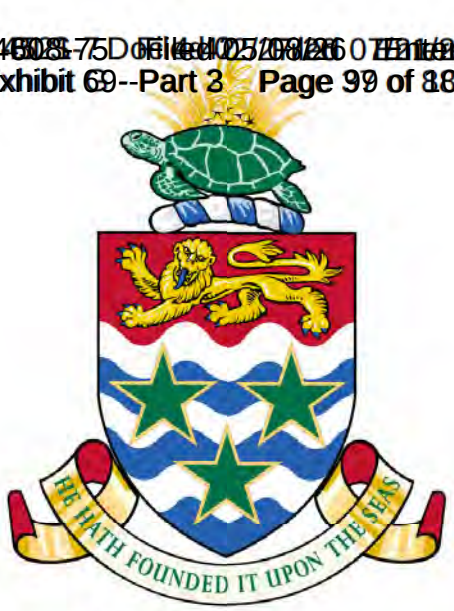
Notes:

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

[3 / 3]

EXHIBIT 41



Search Report

Entity Name :	CLO HoldCo, Ltd.
Jurisdiction :	Cayman Islands
Registration Number :	249232
Registration Date :	13th December 2010
Entity Type :	EXEMPT
Registered Office :	CAMPBELLS CORPORATE SERVICES LIMITED Floor 4 Willow House, Cricket Square Grand Cayman KY1-9010 Cayman Islands

Status :	ACTIVE
Status Date :	13th December 2010

- INFORMATION REGARDING THE CORPORATE RECORDS AND REGISTERS ARE NOT AVAILABLE FOR PUBLIC INSPECTION
- THIS REPORT DOES NOT CONFIRM THE ENTITY IS IN GOOD STANDING

Authorisation Code : 877697100783
www.verify.gov.ky
23 April 2025

EXHIBIT 42

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

CLO HOLDCO, LTD.

WALKERS

Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: VC/CM/99957

REGISTERED AND FILED AS NO. 249232 THIS 13th DAY OF December, 2010
Asst. Registrar of Companies
Cayman Islands

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

CLO HOLDCO, LTD.

1. The name of the company is CLO HoldCo, Ltd. (the "**Company**").

2. The registered office of the Company will be situated at the offices of **Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands** or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is **US$50,000.00** divided into **50,000** shares of a nominal or par value of **US$1.00 each** provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER
Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands	ONE SHARE

(Sgd) Virginia Czarnocki

Virginia Czarnocki
as Authorised Signatory of Walkers Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald
Signature of Witness

Name: Carol MacDonald

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
V. Daphene Whitelocke
Assistant Registrar
Date. 13th December, 2010

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

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COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

CLO HOLDCO, LTD.

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to CLO HoldCo, Ltd. (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time;

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company;

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof;

"**Law**" means the Companies Law (as amended) of the Cayman Islands;

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time;

"**Office**" means the registered office of the Company as required by the Law;

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and

where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed;

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up;

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires;

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law;

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof;

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company;

"**Share**" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share;

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber;

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law;

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means; and

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

2. In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

3. Subject to the last two preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

4. The business of the Company may be commenced at any time after incorporation.

5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

7. The Directors shall keep, or cause to be kept, the Register at such place as the Directors may from time to time determine and, in the absence of any such determination, the Register shall be kept at the Office.

SHARES

8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

(a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

(b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors.

10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.

13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Shares of any Class by the Company.

CERTIFICATES

14. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

15. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or

par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

LIEN

16. The Company has a first and paramount lien on every Share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that Share. The Company also has a first and paramount lien on every Share registered in the name of a Person indebted or under liability to the Company (whether he is the sole registered holder of a Share or one of two or more joint holders) for all amounts owing by him or his estate to the Company (whether or not presently payable). The Directors may at any time declare a Share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a Share extends to any amount payable in respect of it.

17. The Company may sell, in such manner as the Directors in their absolute discretion think fit, any Share on which the Company has a lien, but no sale shall be made unless an amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Persons entitled thereto by reason of his death or bankruptcy.

18. For giving effect to any such sale the Directors may authorise some Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

19. The proceeds of the sale after deduction of expenses, fees and commission incurred by the Company shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the Person entitled to the Shares immediately prior to the sale.

CALLS ON SHARES

20. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares, and each Shareholder shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on such Shares.

21. The joint holders of a Share shall be jointly and severally liable to pay calls in respect thereof.

22. If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the Person from whom the sum is due shall pay interest upon the sum at the rate of eight percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

23. The provisions of these Articles as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a Share,

becomes payable at a fixed time, whether on account of the amount of the Share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of partly paid Shares for a difference between the Shareholders, or the particular Shares, in the amount of calls to be paid and in the times of payment.

25. The Directors may, if they think fit, receive from any Shareholder willing to advance the same all or any part of the moneys uncalled and unpaid upon any partly paid Shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding without the sanction of an Ordinary Resolution, eight percent per annum) as may be agreed upon between the Shareholder paying the sum in advance and the Directors.

FORFEITURE OF SHARES

26. If a Shareholder fails to pay any call or instalment of a call in respect of partly paid Shares on the day appointed for payment, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

27. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.

28. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Directors to that effect.

29. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

30. A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the Shares forfeited, but his liability shall cease if and when the Company receives payment in full of the amount unpaid on the Shares forfeited.

31. A statutory declaration in writing that the declarant is a Director, and that a Share has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts in the declaration as against all Persons claiming to be entitled to the Share.

32. The Company may receive the consideration, if any, given for a Share on any sale or disposition thereof pursuant to the provisions of these Articles as to forfeiture and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of and that Person shall be registered as the holder of the Share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the disposition or sale.

33. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes due and payable, whether on account of the

amount of the Share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

34. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

35. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor.

36. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

37. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

TRANSMISSION OF SHARES

38. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only Person recognised by the Company as having any title to the Share.

39. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

40. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

41. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

42. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

43. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION AND PURCHASE OF SHARES

44. Subject to the Law, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may, before the issue of such Shares, determine;

(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder; and

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law, including out of its capital, profits or the proceeds of a fresh issue of Shares.

45. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

46. The redemption or purchase of any Share shall not be deemed to give rise to the redemption or purchase of any other Share.

47. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

GENERAL MEETINGS

48. The Directors may, whenever they think fit, convene a general meeting of the Company.

49. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later

than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

50. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

51. At least seven days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

52. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

53. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, the appointment and removal of Directors and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

54. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

55. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

56. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

57. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

58. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

59. The chairman may with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

60. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason, upon notice in writing to Shareholders. A postponement may be for a stated period of any length or indefinitely as the Directors may determine.

61. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

62. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

63. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

64. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

65. Subject to any rights and restrictions for the time being attached to any Share, on a show of hands every Shareholder present in person and every Person representing a Shareholder by proxy shall, at a general meeting of the Company, each have one vote and on a poll every Shareholder and every Person representing a Shareholder by proxy shall have one vote for each Share of which he or the Person represented by proxy is the holder.

66. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

67. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

68. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

69. On a poll votes may be given either personally or by proxy.

70. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

71. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

72. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

73. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

74. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

75. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

76. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

77. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

78. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

79. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

80. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

81. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

82. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR OR PROXY

83. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be an officer of the Company. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.

84. Any Director may appoint any Person , whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

85. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

86. The Directors may from time to time appoint any natural person or corporation , whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their

number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

87. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

88. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

89. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

90. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article .

91. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

92. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

93. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

94. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

95. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

96. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

97. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

98. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or

(f) is removed from office pursuant to any other provision of these Articles.

PROCEEDINGS OF DIRECTORS

99. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit . Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

100. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication

equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

101. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.

102. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

103. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

104. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

105. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

106. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

107. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.

108. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

109. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

110. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

111. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

112. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

DIVIDENDS

113. Subject to any rights and restrictions for the time being attached to any Shares, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

114. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

115. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

116. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

117. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

118. Subject to any rights and restrictions for the time being attached to any Shares, all dividends shall be declared and paid according to the amounts paid up on the Shares, but if and for so long as nothing is paid up on any of the Shares dividends may be declared and paid according to the par value of the Shares.

119. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

120. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

121. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

122. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

123. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

124. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

125. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

126. Subject to the Law, the Directors may, with the authority of an Ordinary Resolution:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Shares held by them respectively, or

(ii) paying up in full unissued Shares or debentures of a nominal amount equal to that sum,

and allot the Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Shares,

and any such agreement made under this authority being effective and binding on all those Shareholders; and

(e) generally do all acts and things required to give effect to the resolution.

SHARE PREMIUM ACCOUNT

127. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share .

128. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

129. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the

purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

130. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

131. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

132. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

133. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

INDEMNITY

134. Every Director (including for the purposes of this Article any alternate Director appointed pursuant to the provisions of these Articles), Secretary, assistant Secretary, or other officer for the time being and from time to time of the Company (but not including the Company's auditors) and the personal representatives of the same (each an "**Indemnified Person**") shall be indemnified and

secured harmless against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such Indemnified Person, other than by reason of such Indemnified Person's own dishonesty, wilful default or fraud, in or about the conduct of the Company's business or affairs (including as a result of any mistake of judgment) or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by such Indemnified Person in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Cayman Islands or elsewhere.

135. No Indemnified Person shall be liable:

(a) for the acts, receipts, neglects, defaults or omissions of any other Director or officer or agent of the Company; or

(b) for any loss on account of defect of title to any property of the Company; or

(c) on account of the insufficiency of any security in or upon which any money of the Company shall be invested; or

(d) for any loss incurred through any bank, broker or other similar Person; or

(e) for any loss occasioned by any negligence, default, breach of duty, breach of trust, error of judgement or oversight on such Indemnified Person's part; or

(f) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities, or discretions of such Indemnified Person's office or in relation thereto;

unless the same shall happen through such Indemnified Person's own dishonesty, wilful default or fraud.

NON-RECOGNITION OF TRUSTS

136. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

137. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

138. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in

trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

139. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

140. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

141. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

142. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

143. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

DISCLOSURE

144. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial

authority, or to any stock exchange on which the Shares may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER

Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

(Sgd) Virginia Czarnocki
Virginia Czarnocki
as Authorised Signatory for and on behalf of Walkers Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald
Signature of Witness

Name: Carol MacDonald

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
V. Daphene Whitelocke
Assistant Registrar
Date. 13th December 2010

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

Subject: Articles

Sender: Brandon R. Schaller

Sender Email: bschaller@shieldslegal.com

To: Philip.Aubry@walkersglobal.com, Geoffrey.Sykes@walkersglobal.com

Body: [this message is from an external sender]

Brandon R. Schaller

ATTORNEY

16400 Dallas Parkway, Suite 300

Dallas, TX 75248

Phone | 469.726.3055

Email | bschaller@shieldslegal.com <mailto:bschaller@shieldslegal.com>

Bio <https://url.jer.m.mimecastprotect.com/s/BNWWCnrkQDiM5BoDc9fPTJpv23?domain=shieldslegal.
LinkedIn <https://url.jer.m.mimecastprotect.com/s/E_DACoQIREhx4WzYTzhoTpdotE?domain=linkedin
| vCard <https://url.jer.m.mimecastprotect.com/s/1qXhCpQmwGhXD68oIYiDTG_oVC?domain=shieldsl

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THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

LIBERTY CLO HOLDCO, LTD.

WALKERS

Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: SS/LS/111503

REGISTERED AND FILED
AS NO: 269389 THIS 6th DAY
OF June 2013
Asst. Registrar of Companies
Cayman Islands

THE COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

LIBERTY CLO HOLDCO, LTD.

1. The name of the company is Liberty CLO Holdco, Ltd. (the "**Company**").

2. The registered office of the Company will be situated at the offices of Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.

3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").

4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.

5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.

7. The capital of the Company is **US$50,000.00** divided into **5,000,000** shares of a nominal or par value of **US$0.01** each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.

8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER
Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands	ONE SHARE

(Sgd) Silva Seferian
Silva Seferian
as Authorised Signatory of Walkers Nominees Limited

Dated: 6 June 2012

(Sgd) Laura Scott
Signature of Witness

Name: Laura Scott

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
D. EVADNE EBANKS
Assistant Registrar
Date. 6th June, 2012

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

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REGISTERED AND FILED AS NO: 269389 THIS 6th DAY OF June 2012
Asst. Registrar of Companies Cayman Islands

COMPANIES LAW (AS AMENDED)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

LIBERTY CLO HOLDCO, LTD.

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Liberty CLO Holdco, Ltd. (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.

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"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:

(a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.

"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

(a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders

and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

2. In these Articles, save where the context requires otherwise:

(a) words importing the singular number shall include the plural number and vice versa;

(b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;

(c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;

(d) reference to a dollar or dollars or USD (or $) and to a cent or cents is reference to dollars and cents of the United States of America;

(e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;

(f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and

(g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.

3. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

4. The business of the Company may be commenced at any time after incorporation.

5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.

6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.

7. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

   (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and

   (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

   and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.

11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.

13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation,

allotment or issue of further Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Shares of any Class by the Company.

CERTIFICATES

14. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

15. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

LIEN

16. The Company has a first and paramount lien on every Share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that Share. The Company also has a first and paramount lien on every Share (whether or not fully paid) registered in the name of a Person indebted or under liability to the Company (whether he is the sole registered holder of a Share or one of two or more joint holders) for all amounts owing by him or his estate to the Company (whether or not presently payable). The Directors may at any time declare a Share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a Share extends to any amount payable in respect of it.

17. The Company may sell, in such manner as the Directors in their absolute discretion think fit, any Share on which the Company has a lien, but no sale shall be made unless an amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Persons entitled thereto by reason of his death or bankruptcy.

18. For giving effect to any such sale the Directors may authorise some Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

19. The proceeds of the sale after deduction of expenses, fees and commission incurred by the Company shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the Person entitled to the Shares immediately prior to the sale.

CALLS ON SHARES

20. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares, and each Shareholder shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on such Shares.

21. The joint holders of a Share shall be jointly and severally liable to pay calls in respect thereof.

22. If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the Person from whom the sum is due shall pay interest upon the sum at the rate of eight percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

23. The provisions of these Articles as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time, whether on account of the amount of the Share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of partly paid Shares for a difference between the Shareholders, or the particular Shares, in the amount of calls to be paid and in the times of payment.

25. The Directors may, if they think fit, receive from any Shareholder willing to advance the same all or any part of the moneys uncalled and unpaid upon any partly paid Shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding without the sanction of an Ordinary Resolution, eight percent per annum) as may be agreed upon between the Shareholder paying the sum in advance and the Directors.

FORFEITURE OF SHARES

26. If a Shareholder fails to pay any call or instalment of a call in respect of any Shares on the day appointed for payment, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

27. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.

28. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Directors to that effect.

29. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

30. A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the Shares forfeited, but his liability shall cease if and when the Company receives payment in full of the amount unpaid on the Shares forfeited.

31. A statutory declaration in writing that the declarant is a Director, and that a Share has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts in the declaration as against all Persons claiming to be entitled to the Share.

32. The Company may receive the consideration, if any, given for a Share on any sale or disposition thereof pursuant to the provisions of these Articles as to forfeiture and may execute a transfer of

the Share in favour of the Person to whom the Share is sold or disposed of and that Person shall be registered as the holder of the Share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the disposition or sale.

33. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes due and payable, whether on account of the amount of the Share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

34. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.

35. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor.

36. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

37. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

TRANSMISSION OF SHARES

38. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.

39. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

40. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

41. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.

42. The Company may by Ordinary Resolution:

(a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;

(b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;

(c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and

(d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.

43. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

44. Subject to the Law, the Company may:

(a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;

(b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;

(c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law; and

(d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.

45. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.

46. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.

47. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

48. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Law. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.

49. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.

50. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:

    (a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;

    (b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Law, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.

51. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

52. The Directors may, whenever they think fit, convene a general meeting of the Company.

53. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.

54. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

55. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

56. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.

57. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

58. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.

59. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.

60. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.

61. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

62. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.

63. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.

64. The chairman may adjourn a meeting from time to time and from place to place either:

(a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting); or

(b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:

(i) secure the orderly conduct or proceedings of the meeting; or

(ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

65. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

66. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

67. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

68. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

69. Subject to any rights and restrictions for the time being attached to any Share, on a show of hands every Shareholder present in person and every Person representing a Shareholder by proxy shall, at a general meeting of the Company, each have one vote and on a poll every Shareholder and every Person representing a Shareholder by proxy shall have one vote for each Share of which he or the Person represented by proxy is the holder.

70. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

71. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.

72. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.

73. On a poll votes may be given either personally or by proxy.

74. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.

75. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.

76. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.

77. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

78. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

79. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

80. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.

81. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.

82. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

83. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.

84. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.

85. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.

86. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR

87. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be deemed to be an officer of the Company solely as a result of his appointment as an alternate. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.

88. Any Director may appoint any Person, whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

89. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

90. The Directors may from time to time appoint any natural person or corporation, whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

91. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.

92. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

93. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.

94. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.

95. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.

96. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

97. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

98. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

99. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.

100. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.

101. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

102. The office of Director shall be vacated, if the Director:

(a) becomes bankrupt or makes any arrangement or composition with his creditors;

(b) dies or is found to be or becomes of unsound mind;

(c) resigns his office by notice in writing to the Company;

(d) is removed from office by Ordinary Resolution;

(e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or

(f) is removed from office pursuant to any other provision of these Articles.

PROCEEDINGS OF DIRECTORS

103. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

104. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

105. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.

106. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the

Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

107. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.

108. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

109. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:

(a) all appointments of officers made by the Directors;

(b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and

(c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.

110. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

111. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.

112. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.

113. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

114. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.

115. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.

116. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

DIVIDENDS

117. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Law and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

118. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

119. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

120. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.

121. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.

122. Subject to any rights and restrictions for the time being attached to any Shares, all dividends shall be declared and paid according to the amounts paid up on the Shares, but if and for so long as nothing is paid up on any of the Shares dividends may be declared and paid according to the par value of the Shares.

123. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.

124. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

125. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.

126. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

127. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

128. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.

129. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

130. Subject to the Law and these Articles, the Directors may:

(a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

(b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:

(i) paying up the amounts (if any) for the time being unpaid on Shares held by them respectively, or

(ii) paying up in full unissued Shares or debentures of a nominal amount equal to that sum,

and allot the Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid;

(c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;

(d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:

(i) the allotment to the Shareholders respectively, credited as fully paid, of Shares or debentures to which they may be entitled on the capitalisation, or

(ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Shares,

and any such agreement made under this authority being effective and binding on all those Shareholders; and

(e) generally do all acts and things required to give effect to any of the actions contemplated by this Article.

SHARE PREMIUM ACCOUNT

131. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.

132. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

133. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

134. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.

135. Any notice or other document, if served by:

(a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;

(b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;

(c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or

(d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

136. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.

137. Notice of every general meeting of the Company shall be given to:

(a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and

(b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

INDEMNITY

138. Every Director (including for the purposes of this Article any alternate Director appointed pursuant to the provisions of these Articles), Secretary, assistant Secretary, or other officer for the time being and from time to time of the Company (but not including the Company's auditors) and the personal representatives of the same (each an "**Indemnified Person**") shall be indemnified and secured harmless against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such Indemnified Person, other than by reason of such Indemnified Person's own dishonesty, wilful default or fraud, in or about the conduct of the Company's business or affairs (including as a result of any mistake of judgment) or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by such Indemnified Person in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Cayman Islands or elsewhere.

139. No Indemnified Person shall be liable:

(a) for the acts, receipts, neglects, defaults or omissions of any other Director or officer or agent of the Company; or

(b) for any loss on account of defect of title to any property of the Company; or

(c) on account of the insufficiency of any security in or upon which any money of the Company shall be invested; or

(d) for any loss incurred through any bank, broker or other similar Person; or

(e) for any loss occasioned by any negligence, default, breach of duty, breach of trust, error of judgement or oversight on such Indemnified Person's part; or

(f) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities, or discretions of such Indemnified Person's office or in relation thereto;

unless the same shall happen through such Indemnified Person's own dishonesty, wilful default or fraud.

NON-RECOGNITION OF TRUSTS

140. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

141. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

142. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

143. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

144. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.

145. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of,

attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.

146. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

147. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

148. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Law.

DISCLOSURE

149. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER

Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands

(Sgd) Silva Seferian
Silva Seferian
as Authorised Signatory for and on behalf of Walkers Nominees Limited

Dated: 6 June 2012

(Sgd) Laura Scott
Signature of Witness

Name: Laura Scott

Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG.
D. EVADNE EBANKS
Assistant Registrar
Date. 6th June, 2012

REGISTRAR OF COMPANIES
EXEMPTED
CAYMAN ISLANDS

EXHIBIT 43

I, Shawnalee Henry, a duly admitted Notary Public in and for the Cayman Islands, HEREBY CONFIRM that this is a true and correct copy of the original.

Shawnalee Henry
Notary Public in the Cayman Islands
Floor 4, Willow House, Cricket Square
Grand Cayman, KY1-9010, Cayman Islands
My Commission expires: 31 January, 2024
T: + 1 345 949 2648
E: SHenry@Campbellslegal.com
Date: 24 January 2024

WK–249232

Certificate Of Incorporation

I, V. DAPHENE WHITELOCKE Assistant Registrar of Companies of the Cayman Islands DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said Law in respect of registration were complied with by

CLO HoldCo, Ltd.

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the 13th day of December Two Thousand Ten

Given under my hand and Seal at George Town in the Island of Grand Cayman this 13th day of December Two Thousand Ten

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

Assistant Registrar of Companies, Cayman Islands.

EXHIBIT 44

CHARITABLE DAF HOLDCO, LTD
the ("**Company**")

Unanimous Written Resolutions of all of the Directors of the Company passed on 18 December 2024 in accordance with the Articles of Association of the Company

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1 Declaration of Interests

IT IS NOTED THAT the directors of the Company (each, a "**Director**" and together, the "**Directors**") have declared their respective interests (if any) in the matters contemplated by these resolutions, and any such interest be and is hereby noted, ratified and acknowledged.

2 Transfer of interest in the Partnership

2.1 **IT IS NOTED THAT:**

(a) In connection with a corporate restructure of the Company's group, the Company proposes to transfer, convey, assign or otherwise contribute to CDMCFAD, LLC, a Delaware limited liability company (the "**Transferee**"), 100% of the Company's interests in CHARITABLE DAF FUND, LP, an exempted limited partnership established in the Cayman Islands (the "**Partnership**") in consideration for the contribution by the sole member of the Transferee of 100% of the issued and outstanding limited liablity company interests in the Transferee (the "**Transfer**").

(b) In connection with the Transfer, the Company proposes to enter into a deed of assignment and assumption (the "**Deed**"), substantially in the form that was circulated to and carefully considered by the Directors, to be entered into by and among the Company, the Transferee and CDH GP, LTD, solely in its capacity as general partner (the "**GP**") of the Partnership, under the terms of which the Company will transfer, convey, assign or otherwise contribute all of its Transferred Interest (as defined in the Deed) to the Transferee on the terms and conditions set out therein.

(c) Section 1.11(a) of the amended and restated limited partnership agreement of the Partnership dated as of 7 November 2011 as amended on 26 July 2022 and as further amended and restated as of 11 March 2024 (as further amended, restated and/or supplemented from time to time) (the "**Partnership Agreement**") provides that a Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner (each term as defined in the Partnership Agreement).

(d) Under the terms of the Deed, it is expected that:

(i) the Transferee will make in favour of the GP and the Company, each representation, as was made by the Company in connection with its admission as a Limited Partner;

(ii) the Transferee will undertake to perform all of the obligations of a Limited Partner and be bound by and receive the benefit of all terms of the Partnership Agreement and replace the Company as a Limited Partner and will assume all the duties, liabilities and obligations, whether past (to the extent permitted by law), present or future, under the Partnership Agreement with respect to the Transferred Interest;

(iii) the GP will: (x) consent to the assignment and assumption contemplated thereby; (y) acknowledge that all requirements and conditions for the Transfer and the admission of the Transferee as a Limited Partner of the Partnership have been satisfied or waived; and (z) certify that the Transferee will, in accordance with Section 1.15 of the Partnership Agreement, be listed in the books and records of the Partnership as a Limited Partner and as sole legal owner of the Transferred Interest;

(iv) the GP will agree to admit the Transferee as a Limited Partner in respect of the Transferred Interest and remove, in accordance with Section 1.15 of the Partnership Agreement, the name of the Company from the register of Limited Partners maintained in respect of the Partnership; and

(v) the Company and Transferee will undertake to jointly and severally indemnify the GP and the Partnership from any expense arising from the transactions contemplated by the Deed or any losses arising from the breach of the Deed or the Partnership Agreement.

(e) All the requirements of the transfer provisions contained in the Partnership Agreement have been or will be either satisfied by the Company and Transferee or waived by the GP.

(f) U.S. tax counsel has advised the Company and its Directors that reorganization of the Company and its subsidiaries pursuant to the Transfer generally would provide the following benefits and protections to the Company, the Partnership, and the Company's subsidiaries (collectively, the "**DAF**"):

(i) The Transfer would help insulate the DAF from exposure to James Dondero and his entities (collectively, "**Dondero**"), who may be at risk of causing the Internal Revenue Service (the "**IRS**") to revoke the tax-exempt status of one or more of the participating shareholders/supporting organizations, which could imperil the assets of the DAF;

(A) Each Internal Revenue Code (the "**IRC**") Section 501(c)(3) organization must be organized and operating primarily for charitable purposes;

(B) Treasury Regulation Section 1.501(c)(3)-1(c)(1) provides that an organization will not be compliant with the operational test "if more than

an insubstantial part of its activities is not in furtherance of an exempt purpose"; and

(C) An IRC Section 501(c)(3) organization cannot be operated for the benefit of an individual or entity due to the private benefit/private inurement prohibition.

(ii) The Transfer would help reduce the influence of Dondero and, as such, would broaden the charitable scope of DAF for its benefit and the benefit of the public;

(iii) The IRS would look favorably upon any and all attempts for DAF to maintain its influence from "what seems to be persistent attempts by Dondero and the entities controlled by him to use DAF for his private benefit and private inurement"; and

(iv) Further, due to Dondero's attempts to control the DAF and its assets, DAF runs an increased risk of being embroiled in litigation directed against Dondero and his entities.

(g) Delaware counsel has advised the Company and its Directors that, as a result of the Transfer, the Transferred Interest shall be held by the Transferee, and that certain Limited Liabiltiy Company Agreement of the Transferee (the "**LLC Agreement**"), along with the Transfer generally, shall provide the following benefits and protections to the Company and the Partnership:

(i) Under Delaware law and the Delaware Limited Liability Compay Act (the "**LLC Act**"), there are very few required adminstrative or other requirements for a limited liablity company that cannot be modified or elimintated in a limited liablity company agreement and therefore, the Company and the Partnership will benefit from the contractual freedom and flexbility to provide for its desired terms under the LLC Agreement;

(ii) As a Delaware limited liability company, the Transferee will be governed by the LLC Act, which unlike the statutes in almost every other jurisidction, is updated annually to stay current based on the needs of companies forming in Delaware and the changing markets, as well as any needed changes due to the results of case law;

(iii) Under the LLC Act, the only required filing in Delaware is a certificate of formation that contains only the name of the company and its registered agent and registered office, therefore maintaining the privacy of the members and managers of the company by allowing them to put their business terms into a limited liablity company agreement that is a private document not avialable to the public;

(iv) Under the LLC Act, and the LLC Agreement, the neither the Company nor the Partnership shall be personally liable for the debts, obligations and liabilities of the Transferee, whether such debts, obligations or liabilities arise in contract, tort or otherwise;

(v) As permitted under the LLC Act, the terms of the LLC Agreement eliminate the fiduciary duties of the manager of the Transferee;

(vi) It will be very difficult to dissolve and terminate the Transferee, with any such voluntary decision requiring the consent of the manager of the Transferee;

(vii) The cost to maintain a limited liability company in Delaware is relatively low, with only a $300 annual state franchise tax and minimal expenses to maintain a Delaware registered agent and registered office;

(viii) Any enforcement action with respect to the LLC Agreement will likely occur in the Delaware Chancery Court, which is known as being one of the most respected and sophisticated business courts in the United States.

2.2 **IT IS HEREBY RESOLVED THAT:**

(a) It is in the best interests of the Company to enter into the Transfer and execute and enter into the Deed and consummate the transactions contemplated thereunder.

(b) A draft of the Deed having been provided to the Directors, the form thereof be approved on behalf of the Company, subject to such amendments and additions thereto as any director, officer or attorney of the Company in his absolute discretion and opinion deems appropriate, the signature of any director, officer or attorney of the Company on the Deed being due evidence for all purposes of his approval of any such amendment or addition and the final terms thereof on behalf of the Company.

(c) The Company do give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgments, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of any director, officer or attorney of the Company be considered necessary or desirable for the purpose of compliance with any condition precedent or the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of all or any of the transactions contemplated by or referred to in the Deed and the Company do all other such acts and things as might in the sole opinion and absolute discretion of any director, officer or attorney of the Company be necessary or desirable for the purposes aforesaid.

(d) The Ancillary Documents be in such form as any director, officer or attorney of the Company should in his absolute discretion and sole opinion approve, the signature of any director, officer or attorney of the Company on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company.

(e) The Deed and the Ancillary Documents (where required to be executed by the Company) be executed by the signature thereon of any director, officer or attorney of the Company and the Company deliver and perform the Deed and Ancillary Documents.

(f) Any director, officer or attorney of the Company be and they are hereby authorised to take such further actions as they may consider necessary or convenient to effect the foregoing resolutions.

(g) All prior acts of any of the directors, officers or attorneys of the Company in connection with the foregoing resolutions be and they hereby are confirmed, ratified and approved.

[*Signature Page follows*]

IN WITNESS WHEREOF the undersigned, being all of the Directors of the Company for the time being, hereby adopt and pass the foregoing resolutions as unanimous written resolutions on the date set out above.

Name: **Mark E. Patrick**

Title: Director

Name: **Paul Murphy**

Title: Director

IN WITNESS WHEREOF the undersigned, being all of the Directors of the Company for the time being, hereby adopt and pass the foregoing resolutions as unanimous written resolutions on the date set out above.

_____

Name: **Mark E. Patrick**

Title: Director

_____

Name: **Paul Murphy**

Title: Director

EXHIBIT 45

Deed of Assignment and Assumption

This Deed of Assignment and Assumption (this "**Deed**") is made on the 18th day of December 2024

BY AND AMONG:

(1) **CDH GP, LTD**, a company incorporated under the laws of the Cayman Islands, with registered number 407515, whose registered office is at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands (the "**General Partner**"), in its capacity as general partner of **CHARITABLE DAF FUND, LP**, an exempted limited partnership formed under the laws of the Cayman Islands, with registered number 53083, whose registered office is at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands (the "**Partnership**");

(2) **CHARITABLE DAF HOLDCO, LTD**, a company incorporated under the laws of the Cayman Islands, with registered number 263805, whose registered office is at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands (the "**Transferor**"); and

(3) **CDMCFAD, LLC**, a Delaware limited liability company (the "**Transferee**").

WHEREAS:

(A) The General Partner is the general partner of the Partnership which is governed by an amended and restated limited partnership agreement of the Partnership dated as of 7 November 2011 as amended on 26 July 2022 and as further amended and restated as of 11 March 2024 (as further amended, restated and/or supplemented from time to time) (the "**Partnership Agreement**").

(B) Unless otherwise defined, capitalised terms used in this Deed have the meanings given to them in the Partnership Agreement.

(C) In connection with a corporate restructuring of the Transferor's corporate group, the Transferor now wishes to assign to the Transferee the entirety of its interest in the Partnership, together with the rights and obligations attaching thereto (together, the "**Transferred Interest**") for the Consideration (as defined below) to the Transferor, and the Transferee wishes to assume all of the rights and obligations with respect to the Transferred Interest and be admitted to the Partnership, subject to the terms and conditions of this Deed (the "**Assignment**").

(D) The General Partner, whose consent is required for the purpose of the assignment of any interest in the Partnership, hereby provides its consent, subject to the terms and conditions of this Deed.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 Assignment of Transferred Interest

1.1 Subject to the terms and conditions of this Deed, the Transferor hereby assigns the Transferred Interest to the Transferee with effect on and from the date of this Deed (the "**Transfer Date**") in consideration for the contribution by the sole member of the Transferee of 100% of the issued and outstanding limited liablity company interests in the Transferee (the "**Consideration**") to the Transferor, and without prejudice to its obligations under clause 7 hereof and subject to the remaining terms and conditions of this Deed, the Transferee shall exercise its reasonable best endeavours to facilitate the implementation of the transfer, assignment, conveyance and contribution of the Consideration to the Transferor, with effect as of the date of this Deed.

1.2 Except as expressly provided herein, no further action by any party hereto and no additional document or instrument of transfer shall be required to evidence such assignment, transfer and assumption.

2 Undertaking to be Bound and Power of Attorney

2.1 In accordance with the terms of the Partnership Agreement and upon the General Partner giving its consent to the Assignment, and making appropriate entries for the name and details of the Transferee, including as required by sections 1.11(a) and 1.15 of the Partnership Agreement, into the register of Limited Partners, the Transferee undertakes to the General Partner and the Partnership that it will be bound by and have full benefit of all the terms of the Partnership Agreement and this Deed in the place of and instead of the Transferor in respect of the Transferred Interest and will assume all the duties, liabilities and obligations, whether past (to the extent permitted by law), present or future, of the Transferor under the Partnership Agreement with respect to the Transferred Interest as if the Transferee had been a Limited Partner in the Partnership with respect to the Transferred Interest with effect from the date upon which the Transferor became a Limited Partner pursuant to the terms of the Partnership Agreement and for all other purposes under the Partnership Agreement and any other relevant agreements. Furthermore, the General Partner hereby confirms the satisfaction or due waiver by the General Partner of any and all applicable conditions and restrictions set forth in the Partnership Agreement (or any other relevant agreements) to the proposed Assignment.

2.2 Without limitation to clause 2.1 above, the Transferee hereby constitutes, appoints and grants to the General Partner the power of attorney set out in section 6.4 of the Partnership Agreement with effect on and from the Transfer Date.

2.3 The Transferee hereby makes in favour of the General Partner and the Transferee, each representation, as was made by the Transferor in connection with its admission as a Limited Partner.

3 Distributions and other accrued sums in respect of the Transferred Interest

3.1 The Transferor agrees that:

(a) on and from the Transfer Date, it shall cease to have any further entitlement to allocations of income or distributions whatsoever or any other rights or benefits in respect of the Transferor's interest in the Partnership (including, for the avoidance of doubt, any dividends which may be payable in connection with the Transferred Shares relating to the period up to the Transfer Date but which may be paid after the Transfer Date) (collectively, the "**Distributions**");

(b) all Distributions payable to the Transferor under the terms of the Partnership Agreement in respect of the Transferred Interest transferred and assigned hereunder and which accrue during, or are payable by reference to, any period prior to the Transfer Date shall be payable to the Transferee; and

(c) any sums paid to the Partnership in connection with its admission as a Limited Partner or other costs or expenses paid in connection with the establishment or ongoing administration of the Partnership shall not be reimbursed.

4 Accession

In consideration of the mutual covenants contained herein, the General Partner, Transferor and Transferee hereby agree that, with effect from the Transfer Date, the Transferee shall have the rights and benefits under, and be bound by the provisions of, the Partnership Agreement in respect of the Transferred Interest and all parties, other than the Transferor, shall be bound by the terms of the Partnership Agreement in every way as if the Transferee was named therein in substitution of and for the Transferor.

5 Approval of General Partner and Updates to Register of Limited Partners

5.1 In reliance upon the undertakings, representations and warranties given by the Transferor and Transferee (as applicable) under this Deed, the General Partner:

(a) consents, for the purposes of section 1.11 of the Partnership Agreement and for all other purposes, to the transactions contemplated by this Deed;

(b) acknowledges that all requirements and conditions relating to such transactions have been satisfied or waived; and

(c) certifies that the Transferee will be listed in the books and records of the Partnership as a Limited Partner and as sole legal owner of the Transferred Interest in substitution of and for the Transferor; and

shall, on the Transfer Date, promptly:

(d) record the assignment of the Transferred Interest in accordance with applicable law;

(e) admit the Transferee as a Limited Partner in respect of the Transferred Interest; and

(f) remove the name of the Transferor from the register of Limited Partners.

6 Indemnification

6.1 The Transferor and the Transferee hereby agree to indemnify and hold the General Partner and the Partnership harmless from any damage, loss, claim or expense resulting from:

(a) the transactions contemplated by this Deed; or

(b) any breach of this Deed or the Partnership Agreement by the Transferor or the Transferree, whether such breach occurred prior to, on or after the Transfer Date.

6.2 The liability of the Transferor and the Transferee under clause 6.1 shall be joint and several.

7 Further Assurances

Each of the parties hereto shall, at any time and from time to time, at the request of the other, promptly and duly execute and deliver any and all such further documents and instruments as may be reasonably required for the Transferor and Transferee to obtain the full benefit of the transactions contemplated by this Deed or as may be required pursuant to the Partnership Agreement to complete the substitution of the Transferor by the Transferee as a Limited Partner of the Partnership.

8 Miscellaneous

8.1 All words and terms which are defined in the Partnership Agreement and which are used in this Deed shall (where so used, and save only: (a) where otherwise expressly provided; or (b) where the context otherwise requires) have the same meanings as are given to such words and terms in the Partnership Agreement.

8.2 In this Deed, the clause headings are for convenience only and shall not affect the construction of this Deed, words and terms (including defined terms) denoting the singular shall include the plural and vice versa and words importing any gender shall include all genders.

8.3 The Transferor and the Transferee shall jointly and severally be obligated to reimburse the General Partner and the Partnership for all reasonable expenses (including attorneys' fees and expenses) in connection with the transfer and assignment of the Transferred Interest from the Transferor to the Transferee in accordance with this Deed.

8.4 Neither the Transferor nor the Transferee shall assign all or any part of their rights or obligations under this Deed.

8.5 If any provision of this Deed shall be held to be illegal or unenforceable, the enforceability of the remainder of this Deed shall not be affected.

8.6 This Deed may be signed in any number of counterparts. Any single counterpart or a set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original Deed for all purposes.

8.7 This Deed and the rights of the parties hereto shall be governed by, and interpreted in accordance with, the laws of the Cayman Islands. The parties hereto hereby submit to the non-exclusive jurisdiction of the Cayman Islands courts.

[signature page to follow]

IN WITNESS WHEREOF the parties have executed and delivered this document as a deed on the date first written above.

GENERAL PARTNER

EXECUTED AND DELIVERED AS A DEED by

Name: Mark E Patrick
Title: Director
for and on behalf of
CDH GP, LTD.
as general partner of
CHARITABLE DAF FUND, LP,
in the presence of:

Name: MaryNell Cash
Title: Witness

TRANSFEREE

EXECUTED AND DELIVERED AS A DEED by

Name: Mark E Patrick
Manager
for and on behalf of
CDMCFAD, LLC

in the presence of:

Name: MaryNell Cash
Title: Witness

TRANSFEROR

EXECUTED AND DELIVERED AS A DEED by

Name:
Title: Director
for and on behalf of
CHARITABLE DAF HOLDCO, LTD

EXHIBIT 46

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE DIRECTORS
OF THE COMPANY DATED 2 APRIL 2025

---

1. DECLARATION AND PAYMENT OF DIVIDENDS

1.1 **IT IS NOTED** that:

(a) CDMCFAD, LLC (the "**LLC**"), a Delaware limited liability company, redeemed the Company's entire limited liability company interests in the LLC on 27 March 2025 (the "**CDMCFAD Redemption**") for the aggregate amount of US$1,637,192;

(b) the current Amended and Restated Articles of Association of the Company (the "**Articles**") provide that all dividends shall be declared and paid in such amounts as may be declared by the Directors in their absolute discretion;

(c) following receipt of the proceeds of the CDMCFAD Redemption, the Company wishes to make a payment as at the date hereof of dividends on a pro-rata basis to the Participating Shareholders (but excluding DFW Charitable Foundation; collectively, the "**Shareholders**") in the amount of (i) $528,587.54 with respect to each of Highland Dallas Foundation, Inc., Highland Kansas City Foundation, Inc., and Highland Santa Barbara Foundation, Inc.; and (ii) $26,429.39 with respect to The Community Foundation of North Texas;

(d) the Directors have determined that the sum of **$1,612,192.01** is lawfully available for distribution as profits or share premium of the Company and is distributable in accordance with the Articles and the Companies Act (as amended) (the "**Companies Act**");

(e) the Directors have confirmed no awareness of any subsequent losses by the Company as at the date hereof which would affect the amount of profits or share premium available for distribution; and

(f) a distribution may be unlawful, even where the provisions of the Articles and the Companies Act have been complied with, where the Directors are unable to reasonably conclude that the Company would have sufficient funds to be able to continue to be able to meet its debts as they fall due.

1.2 **IT IS RESOLVED** that:

(a) In the opinion of the Directors, it is reasonable to conclude that following making the payment of the Dividends, the Company will have sufficient funds to be able to continue to be able to meet its debts as they fall due; and

(b) the Directors make a payment of dividends to the Shareholders as set forth in Section 1.1(c) above.

2. GENERAL AUTHORISATION

2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, any Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the

name and on behalf of the Company, to do such further acts and things as any Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of any Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, all the Directors prior to such action being taken.

Mark Patrick
Director

Paul Murphy
Director

State of Texas
County of Dallas

The foregoing instrument was acknowledged before me by means of physical prescence on this day, April 2, 2025 by Mark Patrick. He appeared before me, is personally known to me, has executed the document/instrument, for the purposes and considerations therein expressed.

NATALIE R OLVERA
Notary ID #130890197
My Commission Expires
March 29, 2027

Signature of Notary - State of TX

My commission expires: 3/29/27

name and on behalf of the Company, to do such further acts and things as any Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of any Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, all the Directors prior to such action being taken.

Mark Patrick
Director

Paul Murphy
Director

SIGNED IN THE PRESENCE OF

Amy Altneu
Notary Public in and for The Cayman Islands
Dated this 2 day of April, 20 25
(My commission expires on 31 January 20 26)

EXHIBIT 47

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "CDMCFAD, LLC", FILED IN THIS OFFICE ON THE TWELFTH DAY OF DECEMBER, A.D. 2024, AT 11:33 O`CLOCK A.M.

Jeffrey W. Bullock, Secretary of State

10035168 8100
SR# 20244471736

Authentication: 205115849
Date: 12-12-24

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

CERTIFICATE OF FORMATION

OF

CDMCFAD, LLC

This Certificate of Formation of CDMCFAD, LLC (the "Company"), is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 *Del. C.* § 18-101 *et seq.*) (the "Act").

1. Name. The name of the limited liability company formed hereby is CDMCFAD, LLC.

2. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

3. Registered Agent. The name and address of the registered agent for service of process on the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation in accordance with the Act.

Name: Mark Patrick
Authorized Person

4930-4296-2948\1

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:33 AM 12/12/2024
FILED 11:33 AM 12/12/2024
SR 20244471736 - File Number 10035168

EXHIBIT 48

LIMITED LIABILITY COMPANY AGREEMENT

OF

CDMCFAD, LLC

A DELAWARE LIMITED LIABILITY COMPANY

December 18, 2024

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SCHEDULE A – Member Information

LIMITED LIABILITY COMPANY AGREEMENT

OF

CDMCFAD, LLC

A DELAWARE LIMITED LIABILITY COMPANY

This Limited Liability Company Agreement of CDMCFAD, LLC, a Delaware limited liability company, is entered into as of December 18, 2024 and is hereby made effective as of the Effective Date (as defined below).

SECTION 1

DEFINITIONS

1.1 ***Specific Definitions***. As used in this Agreement:

Act shall mean the Delaware Limited Liability Company Act, Title 6, Delaware Code, Section 18-101 *et seq*.

Adjusted Capital Account Deficit shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) The Capital Account shall be increased by any amounts that such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentences of each of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) The Capital Account shall be decreased by the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

Affiliate shall mean, with respect to any Person, any other Person with regard to which the Person is controlling, controlled or commonly controlled. For purposes of the preceding sentence, "control" shall mean the power to direct the principal business management and activities of a Person, whether through ownership of voting Securities, by agreement, or otherwise.

Agreement shall mean this Limited Liability Company Agreement of CDMCFAD, LLC, a Delaware limited liability company, including all schedules, appendices, and exhibits hereto, as amended in accordance with the terms hereof.

Allocation Percentage shall mean, for each Member, the percentage set forth on Schedule A, which shall be adjusted as necessary to reflect the Members' varying interests in the Company. For the avoidance of doubt, the aggregate Allocation Percentages of all Members shall at all times equal one hundred percent (100%).

Capital Account shall mean, for each Member, a separate account that is:

(a) Increased by: (i) the amount of such Member's Capital Contribution and (ii) allocations of Profits to such Member pursuant to Section 4;

(b) Decreased by: (i) the amount of cash distributed to such Member by the Company; (ii) the Fair Market Value of any other property distributed to such Member by the Company (determined as of the time of distribution and net of liabilities secured by such property that the Member assumes or to which the Member's ownership of the property is subject); and (iii) allocations of Losses to such Member pursuant to Section 4;

(c) Otherwise adjusted in accordance with the provisions of this Agreement; and

(d) Revalued in connection with any event described in paragraph (a) of the definition of "Gross Asset Value" to the extent the Manager determines that a revaluation is necessary to preserve the economic arrangement of the Members. In determining the amount of any liability for purposes of subparagraphs (a) and (b) above, there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and Treasury Regulations.

Capital Accounts shall be maintained in accordance with Treasury Regulations Section 1.704-1(b) and specifically in a manner consistent with the Member's interest in the Company and the provisions of this Agreement shall be interpreted and applied in a manner consistent with such regulations and intent.

Capital Contribution shall mean, for any Member, the sum of the net amount of cash and the Fair Market Value of any other property (determined as of the time of contribution and net of liabilities secured by such property that the Company assumes or to which the Company's ownership of the property is subject) contributed by such Member to the capital of the Company. For purposes of this Agreement, each Capital Contribution shall be deemed to have been made at the later of: (i) the Close of Business on the due date of such Capital Contribution as determined in accordance with this Agreement; or (ii) the Close of Business on the date on which such Capital Contribution is actually received by the Company.

Certificate shall mean the Certificate of Formation of the Company, as amended and/or restated from time to time.

Close of Business shall mean 5:00 p.m., local time, in New York, New York.

Code shall mean the United States Internal Revenue Code of 1986, as amended.

Company shall mean CDMCFAD, LLC, a Delaware limited liability company.

Depreciation shall mean, for each Fiscal Year or other period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year or other period; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such Fiscal Year or other period bears to such beginning adjusted tax basis; and provided further, that if the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

Fair Market Value shall have the meaning set forth in Section 6.9(b).

Fiscal Period shall mean the Fiscal Year or such shorter period as necessary to take into account the Members' varying interests in the Company.

Fiscal Year shall mean the period from January 1 through December 31 of each year (unless otherwise required by law).

Gross Asset Value shall mean, with respect to any asset, such asset's adjusted basis for federal income tax purposes (except that the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of the asset on the date of contribution), except as follows:

(a) The Gross Asset Value of all Company assets shall be adjusted to equal their respective fair market values upon the occurrence of any of the events listed in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5); provided, however, that adjustments pursuant to this clause (a) (other than in a liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)) shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company; and

(b) The Gross Asset Value of any Company asset distributed to any Member shall be the Fair Market Value of such asset on the date of distribution.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraph (a) or paragraph (b) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

Interest shall mean, for each Member, the entirety of such Member's rights, duties and limited liability company interest in respect of the Company in such Member's capacity as such (as distinguished from any other capacity such as employee, debtor or creditor) and shall include such Member's right, if any, to vote on Company matters, bind the Company vis-à-vis third parties, or receive distributions as well as such Member's obligation under this Agreement, if any, to provide services, make Capital Contributions or take any other action.

Manager shall mean the Person designated as the Manager in Section 6.2.

Member shall mean those Persons admitted as members under this Agreement as shown on Schedule A as such schedule may be updated from time to time, each in such Person's capacity as a member of the Company. Except where the context requires otherwise, a reference in this Agreement to "the Members" shall mean all of the Members.

Member Minimum Gain has the same meaning as the term "partner nonrecourse debt minimum gain" in Treasury Regulations Section 1.704-2(i)(2).

Member Nonrecourse Deduction shall mean an item of loss, expense or deduction attributable to a nonrecourse liability of the Company for which a Member bears the economic risk of loss within the meaning of Treasury Regulations Section 1.704-2(i).

Minimum Gain of the Company or ***Company Minimum Gain*** shall, as provided in Treasury Regulations Section 1.704-2, mean the total amount of gain the Company would realize for federal income tax purposes if it disposed of all assets subject to nonrecourse liability for no consideration other than full satisfaction thereof.

Person shall mean an individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture, governmental agency, or other entity, whether domestic or foreign.

Principal Office shall have the meaning set forth in Section 2.4.

Profits and ***Losses*** shall mean, for each Fiscal Year or other Fiscal Period, an amount equal to the Company's taxable income or loss for such Fiscal Year or other Fiscal Period, as applicable, determined in accordance with Section 703(a) of the Code (but including in taxable income or loss, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code), with the following adjustments:

(a) Any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to (or subtracted from, as the case may be) such taxable income or loss;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code (or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from (or added to, as the case may be) such taxable income or loss;

(c) In the event that the Gross Asset Value of any Company asset is adjusted in accordance with paragraphs (a) or (b) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed

by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions that would otherwise be taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other Fiscal Period, computed in accordance with the definition of "Depreciation" above; and

(f) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Sections 4.2 or 4.3 shall not be taken into account in computing Profits or Losses.

Securities shall mean debt, equity and synthetic securities of any type.

Term shall have the meaning set forth in Section 2.2. Where not capitalized, "term" shall mean the entire period of the Company's existence, including any period of winding-up and liquidation following the dissolution of the Company pursuant to Section 8.1.

Title XI 2015 RBA shall have the meaning set forth in Section 6.7(d).

Transfer shall mean any sale, exchange, transfer, gift, encumbrance, assignment, pledge, mortgage, hypothecation or other disposition, whether voluntary or involuntary.

Treasury Regulations shall mean the regulations issued by the United States Treasury Department and relating to a matter arising under the Code.

Updated Capital Account shall mean, with respect to a Member, such Member's Capital Account determined as if, immediately prior to the time of determination, all of the Company's assets had been sold for Fair Market Value and any previously unallocated Profits and Losses had been allocated pursuant to Section 4.

1.2 ***General Usage***. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Except where the context clearly requires to the contrary: (i) each reference in this Agreement to a designated "Section," "Schedule," "Exhibit," or "Appendix" is to the corresponding Section, Schedule, Exhibit, or Appendix of or to this Agreement; (ii) instances of gender or entity-specific usage (*e.g.*, "his," "her," "its," "person" or "individual") shall not be interpreted to preclude the application of any provision of this Agreement to any individual or entity; (iii) the word "or" shall not be applied in its exclusive sense; (iv) "including" shall mean "including, without limitation"; (v) references to laws, regulations and other governmental rules, as well as to contracts, agreements and other instruments, shall mean such rules and instruments as in effect at the time of determination (taking into account any amendments thereto effective at such time without regard to whether such amendments were enacted or adopted after the effective date of this Agreement) and shall include all successor rules and instruments thereto; (vi) references to any specific statute or similar codification of law shall mean such statute or other codification as construed, modified, extended or enabled by any applicable binding governmental rules or regulations; (vii) references to "law" shall mean any applicable law, whether embodied in statute, governmental rule or regulation, case law or other legally binding format; (viii) references to "$" or "dollars" shall mean the lawful

currency of the United States; (ix) references to "federal" shall be to laws, agencies or other attributes of the United States (and not to any State or locality thereof); (x) the meaning of the terms "domestic" and "foreign" shall be determined by reference to the United States; (xi) references to "days" shall mean calendar days and references to "business days" shall mean all days other than Saturdays, Sundays and days that are legal holidays in the State of New York; (xii) references to months or years shall be to the actual calendar months or years at issue (taking into account the actual number of days in any such month or year); (xiii) days, business days and times of day shall be determined by reference to local time in New York, New York; and (xiv) the English language version of this Agreement shall govern all questions of interpretation relating to this Agreement, notwithstanding that this Agreement may have been translated into, and executed in, other languages.

SECTION 2

FORMATION

2.1 ***Formation and Name***.

(a) The Members hereby enter into this Agreement and form the Company as a limited liability company in accordance with the Act. Mark Patrick is hereby designated as an "authorized person" of the Company within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects and the time at which the initial Certificate of Formation is filed with the Secretary of State of the State of Delaware, the "**Effective Date**"). Upon the filing of the Certificate of Formation of the Company with the Secretary of State of the State of Delaware, his powers as an "authorized person" of the Company ceased, and the Manager thereupon became the designated "authorized person" of the Company and shall continue as the designated "authorized person" of the Company within the meaning of the Act. The Manager, as an "authorized person" of the Company within the meaning of the Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the Act to be filed with the Secretary of State of the State of Delaware. The Member shall execute, deliver and file, or cause the execution, delivery and filing of any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

(b) The name of the Company shall be "CDMCFAD, LLC."

2.2 ***Term***. The "Term" of the Company commenced as of the filing of the Certificate with the Secretary of State of the State of Delaware and shall continue until the Company is dissolved and then wound up pursuant to Section 8.1. Except as provided in Section 8.1, the Company shall not be dissolved.

2.3 ***Purpose and Scope***. Within the meaning and for purposes of the Act, the purpose and scope of the Company shall include any lawful action or activity permitted to a limited liability company under the Act, as determined by the Manager.

2.4 ***Principal Office***. The Company shall have a single "Principal Office" which shall at all times be located within the United States. The Principal Office shall be located at such location as may hereafter be determined by the Manager.

2.5 ***Delaware Office and Agent***. The Company shall maintain a Delaware registered office and agent for service of process as required by the Act. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be, each in accordance with the Act.

2.6 ***Admission of Members***. Each Person as of the date hereof that has executed this Agreement and whose name is listed under Name and Contact Information on Schedule A, as such Schedule A may be updated from time to time by the Manager, is hereby admitted as a member of the Company. With the consent of the Manager, additional Members may be admitted to the Company from time to time upon each such Person's execution of a counterpart signature page to this Agreement or other joinder agreeing to be bound by the terms of this Agreement.

2.7 ***Contact Information of the Members***. Set forth below the name of each Member on Schedule A shall be appropriate contact information for such Member. Each Member shall promptly provide the Company with the information required to be set forth for such Member on Schedule A and shall thereafter promptly notify the Company of any change to such information.

2.8 ***Additional Documents***. The Manager shall cause to be executed, filed, recorded, published, or amended any documents, as the Manager in its reasonable discretion determines to be necessary or advisable: (x) in connection with the formation, operation, dissolution, winding-up, or termination of the Company pursuant to applicable law; or (y) to otherwise give effect to the terms of this Agreement. The terms and provisions of each document described in the preceding sentence shall be initially established and shall be amended as necessary to cause such terms and provisions to be consistent with the terms and provisions of this Agreement.

2.9 ***Title to Property***. Title to all Company property shall be held in the name of the Company; provided, however, that publicly traded Securities may be held in "street name" or through a similar arrangement with a reputable financial institution.

SECTION 3

CAPITALIZATION

3.1 ***Capital Contributions***.

(a) ***Initial Capital Contributions***. Each Member has contributed (or is deemed to have contributed) such capital to the Company as set forth on the books and records of the Company. Except to the extent set forth on the books and records of the Company or agreed to by the Manager, all Capital Contributions shall be in cash and/or cash equivalents.

(b) ***Increased Capital Contributions***. The Members may make additional Capital Contributions to the Company at such times and in such amounts as shall be determined by the Manager and the Member making such additional Capital Contribution.

(c) ***Adjustment of Member Allocation Percentages***. Upon (i) the admission of a Member following the date hereof or (ii) the acceptance of Capital Contributions by the Company from a Member following contribution of such Member's initial Capital Contribution, the Manager shall adjust the Allocation Percentage of each Member, and shall accordingly update Schedule A hereto, so that the Allocation Percentages of the Members represent their Interest in the Company taking into account a revaluation of the Company's assets, if any, and in accordance with the economic arrangement of the Members.

3.2 ***Limitation on Capital Contributions***. Except as specifically provided in this Section 3, no Person shall be permitted or required to make a contribution to the capital of the Company.

3.3 ***Withdrawal and Return of Capital***. Except as provided in Section 5 and Section 8 or as otherwise agreed to by the Manager, no Member shall be entitled to the return of such Member's Capital Contribution, a distribution in respect of such Member's Capital Account balance, or any other distribution in respect of such Member's Interest.

3.4 ***Loans to the Company***. No Member shall be required to lend any money to the Company or to guaranty any Company indebtedness.

3.5 ***Interest on Capital***. No Member shall be entitled to interest on such Member's Capital Contribution, Capital Account balance, or share of unallocated Profits.

3.6 ***Limitation of Liability; Return/Withholding of Certain Distributions***.

(a) Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member or Manager shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member or manager of the Company.

(b) A Member that receives a distribution (i) in violation of this Agreement or (ii) that is required to be returned to the Company under applicable law shall return such distribution within thirty (30) days after demand therefor by the Manager. The Company may elect to withhold from any distributions otherwise payable to a Member amounts due to the Company from such Member.

(c) Nothing in this Section 3.6 shall be applied to release any Member from (i) its obligation to make Capital Contributions or other payments specifically required under this Agreement or (ii) its obligations pursuant to any relationship between the Company and such Member acting in a capacity other than as a Member (including, for example, as a borrower, employee or independent contractor).

SECTION 4

PROFITS AND LOSSES

4.1 ***Allocations of Company Profits and Losses***. Except as otherwise provided in this Agreement, Profits and Losses for each Fiscal Period shall be allocated as follows:

(a) Profits shall be allocated among the Members in the following order of priority:

(i) First, among the Members on a pro rata basis so as to reverse prior allocations of Losses for prior Fiscal Periods under Section 4.1(b)(ii) until cumulative Profit allocated under this Section 4.1(a)(i) equals the cumulative Losses allocated under Section 4.1(b)(ii); and

(ii) Second, among the Members in proportion to their Allocation Percentages.

(b) Losses shall be allocated among the Members in the following order of priority:

(i) First, among the Members on a pro rata basis so as to reverse allocations of Profits for prior Fiscal Periods under Sections 4.1(a)(i) and 4.1(a)(ii), in reverse order, until Losses allocated under this Section 4.1(b)(i) equal the cumulative Profit previously allocated under Sections 4.1(a)(i) and 4.1(a)(ii); and

(ii) Second, among the Members in proportion to their Allocation Percentages.

4.2 ***Allocation Adjustments Required to Comply With Section 704(b) of the Code***.

(a) ***Limitation on Allocation of Losses***. If an item of Losses otherwise allocable to a Member under Section 4.1(b) would cause such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year (or increase the amount of such Member Adjusted Capital Account Deficit), the item shall not be allocated to such Member, but shall instead be specially allocated as follows:

(i) To the Members in proportion to their respective positive Capital Account balances, until the Capital Account balance of each Member has been reduced to (but not less than) zero; and

(ii) Next, to the Members as a group in proportion to their respective Allocation Percentages as determined in the reasonable discretion of the Manager.

To the extent that there have been special allocations of Losses away from a Member under this Section 4.2(a) that have not subsequently been reversed pursuant to this sentence or Sections 4.2(f)

or 4.3(e), the next available items of Profits otherwise allocable to such Member pursuant to Section 4.1(a) shall be specially allocated to the Members to whom such items of Losses had been specially allocated under this Section 4.2(a) so as to first offset in reverse order such special allocations of Losses.

(b) ***Qualified Income Offset***. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 4.2(b) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 4 have been tentatively made as if this Section 4.2(b) were not in this Agreement.

(c) ***Gross Income Allocation***. In the event any Member has an Adjusted Capital Account Deficit at the end of any Fiscal Year, that Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 4.2(c) shall be made only if and to the extent that the Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 4 have been made, as if Section 4.2(b) and this Section 4.2(c) were not in this Agreement.

(d) ***Member Nonrecourse Deductions***. In accordance with the provisions of Treasury Regulations Section 1.704-2(i), each item of Member Nonrecourse Deduction shall be allocated among the Members in proportion to the economic risk of loss that the Members bear with respect to the nonrecourse liability of the Company to which such item of Member Nonrecourse Deduction is attributable.

(e) ***Minimum Gain Chargeback***. This Section 4.2(e) hereby incorporates by reference the "minimum gain chargeback" provisions of Treasury Regulations Section 1.704-2. In general, upon a reduction of Company Minimum Gain or Member Minimum Gain, the preceding sentence shall require that items of income and gain be allocated among the Members in a manner that reverses prior allocations of deductions attributable to liabilities giving rise to Company Minimum Gain or Member Nonrecourse Deductions as well as reductions in the Members' Capital Account balances resulting from distributions that, notwithstanding Section 4.4, are allocable to increases in the Company Minimum Gain. Subject to the provisions of Section 704 of the Code and the Treasury Regulations thereunder, if the Manager determines in its reasonable discretion at any time that operation of such "minimum gain chargeback" provisions likely will not achieve such a reversal by the conclusion of the liquidation of the Company, the Manager shall adjust the allocation provisions of this Section 4 as necessary to accomplish that result.

(f) ***Intent of Regulatory Allocations***. The allocations set forth in Sections 4.2(a) through 4.2(e) are intended to comply with certain regulatory requirements under the Code. The Members intend that, to the extent possible, all allocations made pursuant to such Sections will, over the term of the Company, be offset either with other allocations pursuant to Sections 4.2(a) through 4.2(e) or with special allocations of other items of Company income, gain,

loss or deduction pursuant to this Section 4.2(f). Accordingly, the Manager is hereby authorized and directed to make offsetting allocations of Company income, gain, loss or deduction under this Section 4.2(f) in whatever manner the Manager determines is appropriate so that, after such offsetting special allocations are made, the Capital Accounts of the Members are, to the extent possible, equal to the Capital Accounts each would have if the provisions of Sections 4.2(a) through 4.2(e) were not contained in this Agreement and all Company income, gain, loss, and deduction were instead allocated in accordance with the provisions of Section 4.1.

4.3 ***General Allocation and Capital Account Maintenance Provisions***.

(a) ***Book - Tax Accounting Disparities***. If Company property is reflected in the Capital Accounts of the Members at a value that differs from the adjusted tax basis of such property (whether because such property was contributed to the Company by a Member or because of a revaluation of the Members' Capital Accounts under Treasury Regulations Section 1.704-1(b)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner which takes such difference into account in accordance with Code Section 704(c) and the Treasury Regulations issued thereunder using a method determined in the reasonable discretion of the Manager.

(b) ***Allocations in Event of Transfer***. If an Interest in the Company is Transferred in accordance with this Agreement, allocations of Profits and Losses as between the transferor and transferee shall be made using any method selected by the Manager and permitted under Section 706 of the Code.

(c) ***Adjustment to Capital Accounts for Distributions of Property***. If property distributed in kind is reflected in the Capital Accounts of the Members at a value that differs from the Fair Market Value of such property at the time of distribution, the difference shall be treated as Profit or Loss on the sale of the property and shall be allocated among the Members in accordance with the provisions of Section 4.

(d) ***Tax Credits and Similar Items***. Any tax credits or similar items not allocable pursuant to Sections 4.1, 4.2 and 4.3(a) through 4.3(c) shall be allocated to the Members in proportion to their respective Allocation Percentages. Notwithstanding the preceding sentence, if Company expenditures that give rise to tax credits also give rise to Member Nonrecourse Deductions, the tax credits attributable to such expenditures shall be allocated in accordance with Treasury Regulations Section 1.704-1(b)(4)(ii).

(e) ***Reallocation of Certain Losses***. To the extent that: (i) Losses which otherwise would have been allocated to a Member under this Section 4.3 were allocated to one or more other Members pursuant to Section 4.2(a) or any other provision of this Agreement that prohibits the allocation to a Member of Losses which would reduce such Member's Capital Account (or Updated Capital Account) balance below a specified amount; (ii) such allocation has not been reversed pursuant to the subsequent operation of Section 4.2(a) or this Section 4.3(e); and (iii) the Member thereafter returns a distributed amount as required under Section 3.6(b) or otherwise makes a contribution to the capital of the Company, the Capital Accounts of the Members shall be adjusted in connection with such return or contribution (to the extent of the value thereof) to effect a reallocation, in reverse order, of such Losses to the Member.

(f) ***Tax Allocations***. It is intended that items of Company income, gain, loss, deduction or credit recognized for federal income tax purposes shall be allocated among the Members for federal income tax purposes in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 4.1 and 4.2 hereof, to the extent consistent with the requirements of the Code and the Treasury Regulations.

4.4 ***Nonallocation of Distributions to Increases in Minimum Gain***. To the extent permitted under Treasury Regulations Section 1.704-2(h), distributions to Members shall not be allocable to increases in the Company Minimum Gain. In general, and except as provided in such Treasury Regulations, the preceding sentence is intended to ensure that reductions in a Member's Capital Account balance resulting from distributions of money or other property to that Member are not reversed by the minimum gain chargeback provisions of Section 4.2(e).

4.5 ***Allocation of Liabilities***. Solely for purposes of determining the Members' respective shares of the nonrecourse liabilities of the Company within the meaning of Treasury Regulations Section 1.752-3(a)(3), each Member's interest in Company Profits shall be equal to the ratio that such Member's Allocation Percentage bears to the aggregate Allocation Percentages of the Members.

4.6 ***Modifications to Preserve Underlying Economic Objectives***. In the event that (i) there is a change in the federal income tax law, (ii) the Company borrows money or property, or (iii) the Company makes an election to adjust the basis of the Company's assets under Section 754 of the Code, the Manager, acting in his reasonable discretion after consultation with tax counsel to the Company, shall make the minimum modifications to the allocation provisions of this Agreement necessary to preserve the underlying economic objectives of the Members as reflected in this Agreement and, in the case of such a borrowing or election, to properly allocate the tax items relating to such borrowing or election in accordance with the Code and the Treasury Regulations.

4.7 ***Withholding Taxes***.

(a) The Company shall be permitted to withhold taxes from distributions to, and allocations among, the Members to the extent required by law (as determined by the Manager in the Manager's sole discretion). Except as otherwise provided in this Section 4.7, any amount so withheld by the Company with regard to a Member shall be treated for purposes of this Agreement as an amount actually distributed to such Member pursuant to Section 5.1. An amount shall be considered withheld by the Company if, and at the time, remitted to a governmental agency without regard to whether such remittance occurs at the same time as the distribution or allocation to which it relates; provided, however, that an amount actually withheld from a specific distribution or designated by the Manager as withheld from a specific allocation shall be treated as if distributed at the time such distribution or allocation occurs. Nothing in this Section 4.7(a) shall have any bearing on amounts withheld from a Member in respect of compensation paid or payable to such Member in such Member's capacity as an employee of the Company or pursuant to a bona fide written employment agreement between such Member and the Company.

(b) If, pursuant to Section 4.7(a), an amount withheld with regard to a Member is treated for purposes of this Agreement as an amount distributed to such Member pursuant to

Section 5.1, subsequent actual distributions to such Member pursuant to Section 5.1 shall be reduced as necessary to, as quickly as possible, cause the aggregate distributions to such Member over the term of the Company (including actual distributions and distributions deemed to have occurred pursuant to Section 4.7(a)) to equal the actual distributions that would have been made to such Member if Section 4.7(a) were not part of this Agreement.

(c) To the extent that operation of Section 4.7(a) would create a negative balance in a Member's Updated Capital Account or increase the amount by which such Updated Capital Account balance is negative, the amount of the deemed distribution shall instead be treated as a loan by the Company to such Member, which loan shall be payable upon demand by the Company and shall bear interest at a floating rate equal to the prime rate as announced from time to time by the Wall Street Journal, compounded daily.

(d) In the event that the Manager determines in its discretion that the Company lacks sufficient cash available to pay withholding taxes in respect of a Member, the Manager may, in its sole and absolute discretion, make a loan to the Company to enable the Company to pay such taxes. Any such loan shall be full-recourse to the Company and shall bear interest at a floating rate equal to the prime rate as published from time to time by The Wall Street Journal, compounded daily. Notwithstanding any provision of this Agreement to the contrary, any loan (including interest accrued thereon) made to the Company by a Member or the Manager pursuant to this Section 4.7(d) shall be repaid or returned as promptly as is reasonably possible.

(e) Each Member hereby agrees to indemnify the Company and the other Members for (i) any liability they may incur for failure to properly withhold taxes in respect of such Member, and (ii) any tax liabilities imposed on the Company with respect to such Member; moreover, each Member hereby agrees that neither the Company nor any other Member shall be liable for any excess taxes withheld in respect of such Member's Interest and that, in the event of overwithholding, a Member's sole recourse shall be to apply for a refund from the appropriate governmental authority. The obligations of a Member set forth in this Section 4.7 shall survive the resignation of any Member from the Company or any Transfer of a Member's Interest.

4.8 ***Intent of Allocations/Cash Savings Clause***. The parties intend that the foregoing allocation provisions of this Section 4 shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final Capital Account balances under Section 8.2(d) hereof to be made in a manner identical to the order of priorities set forth in Section 5.1(b). To the extent that the allocation provisions of this Section 4 would fail to produce such final Capital Account balances, (i) such provisions shall be amended by the Manager without the consent of any Member or other Person, if and to the extent necessary to produce such result and (ii) income and loss of the Company for prior open years (including items of gross income and deduction of the Company for such years) shall be reallocated by the Manager among the Members to the extent it is not possible to achieve such result with allocations of items of income (including gross income) and deduction for the current year and future years, as approved by the Manager. This Section 4.8 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service ("**IRS**") or any other taxing authority. The Manager shall have the power to amend this Agreement without the consent of the Members, as it reasonably considers advisable, to make the allocations and adjustments described in this Section 4.8. To the extent that after making the allocations and

adjustments described in this Section 4.8, the distributions that any Member will receive under this Agreement are less than the amount of the distributions such Member would receive if all such distributions were made pursuant to the order of priority set forth in Section 5.1(b), the Company may make a guaranteed payment (within the meaning of Section 707(c) of the Code) to such Member (to be made at the time such Member would otherwise receive the distributions that have been reduced) to the extent such payment does not violate the requirements of Sections 704(b) and 514(c)(9)(E) of the Code or may take such other action as reasonably determined by the Manager to offset such reduction.

SECTION 5

DISTRIBUTIONS

5.1 ***Distributions***.

(a) ***General***. Except as otherwise provided in this Agreement, distributions prior to the dissolution of the Company shall be made in accordance with this Section 5.1 and each Member actually receiving amounts pursuant to a specific distribution by the Company shall receive a pro rata share of each item of cash or property of which such distribution is constituted (based upon such Member's share under this Agreement of the total amount to be included in such distribution).

(b) ***Discretionary Distributions***. The Manager may at any time in its sole discretion to the extent the Company has cash and any property available for distribution taking into account current and anticipated needs (including without limitation operating expenses, debt service, guaranteed payments and a reserve for future operating costs), distribute such excess cash and any property available for distributions to the Members in accordance with their respective Allocation Percentages.

(c) ***Tax Distributions.***

(i) Notwithstanding the foregoing, the Company shall distribute to each Member, not later than ninety (90) days after the close of each Fiscal Year, or as soon as reasonably practicable thereafter, an amount of cash equal to the product of the Tax Percentage for such Fiscal Year and such Member's allocated share of the Company's net taxable income and gain for such Fiscal Year as shown on the Company's federal income tax return. The Manager may, in its sole discretion and determination, make distributions pursuant to this Section 5.1(c) on a quarterly basis so as to permit the Members to make quarterly estimated tax payments.

(ii) For purposes of this Section 5.1(c), the "Tax Percentage" shall equal the highest combined federal, state and local marginal tax rate for an individual resident of the State of Texas with respect to net taxable income or net short term capital gains or with respect to net long term capital gains, as applicable. The Manager may adjust the determination of the Tax Percentage to reflect a change in law or rates.

(iii) For purposes of determining whether the Company has satisfied its distribution obligation under Section 5.1(c)(i), all cash distributions made during a Fiscal Year shall be treated as distributions made to satisfy Section 5.1(c)(i) in respect of such Fiscal Year (except to the extent that such distributions were made to satisfy the obligations of the Company under Section 5.1(c)(i) in respect of one or more prior Fiscal Years, in which case such distributions shall be treated as having been made pursuant to Section 5.1(c)(i) in respect of such prior Fiscal Year(s)). Further, distributions made in respect of this Section 5.1(c) during any Fiscal Year shall be treated as satisfying the distribution requirement of Section 5.1(b) hereof with respect to such Fiscal Year (except to the extent that such distributions were made in respect of a prior Fiscal Year, in which case such distribution shall be treated as having been made in respect of such prior Fiscal Year(s)).

(iv) At the election of the Manager, no distribution shall be required pursuant to Section 5.1(c)(i) in respect of any Fiscal Year if the total net taxable income and gain of the Company for such Fiscal Year is less than or equal to One Hundred Thousand Dollars ($100,000).

(v) No distribution shall be required to be made pursuant to this Section 5.1(c) to a Member to the extent such Member has a cumulative net loss with respect to such Member's allocable share of the taxable income or gain, as the case may be, after taking into account allocations for the current and all prior taxable periods.

(vi) The Company shall not make a distribution under this Section 5.1(c) to a Member to the extent such Member is allocated net taxable income and gain solely in connection with (A) redemption of such Member's Interest or (B) a liquidation of the Company.

(d) ***Source of Items Available for Distribution***. In the event that, at the time of a distribution, items available for distribution include items from more than one source, the source of those items actually distributed shall be determined by the Manager in its sole discretion.

5.2 ***Limitation on Distributions***. No distribution shall be made to a Member pursuant to Section 5.1 if and to the extent that such distribution would: (i) create a negative balance in the Updated Capital Account of such Member or increase the amount by which such Updated Capital Account balance is negative; (ii) cause the Company to be insolvent; or (iii) render the Member liable for a return of such distribution under applicable law. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to a Member on account of its interest in the Company if such distribution would violate the Act or other applicable law.

SECTION 6

ADMINISTRATION; MANAGEMENT

6.1 ***Management Powers and Authority of the Manager***. Except as otherwise specifically provided in this Agreement, the Company and its business shall be managed, controlled and operated exclusively by the Manager, which shall be the "manager" of the Company

within the meaning of Section 18-101 of the Act and shall have all of the powers and authority in respect of the Company permitted to managers under the Act.

6.2 ***Designation of Manager***. The initial Manager shall be Mark Patrick. In the event that Mark Patrick dies or is unable to serve as such, the will or other testamentary documentation for Mark Patrick shall designate a successor Manager. To the extent that the will or other related documentation for Mark Patrick fails to provide for a successor Manager or if any such designated individual shall be unable or is unwilling to fill such position, the managing shareholder of Charitable DAF HoldCo, Ltd., shall appoint a successor Manager. To the extent that Mark Patrick desires to resign as Manager, he shall appoint his successor.

6.3 ***Manager's Power to Bind the Company***.

(a) Notwithstanding any provision of this Agreement to the contrary, any contract agreement, deed, lease, note or other document or instrument executed on behalf of the Company by a Manager shall be deemed to have been duly executed by the Company; no Member's signature shall be required in connection with the foregoing and third parties shall be entitled to rely upon the Manager's power to bind the Company without otherwise ascertaining that the requirements of this Agreement have been satisfied.

(b) The Manager is hereby authorized to file with any governmental entity, on behalf of the Company and the Members, a certificate or similar instrument that evidences the Manager's power to bind the Company as set forth in the preceding paragraph (a).

(c) To the fullest extent permitted by law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Agreement the Manager is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Manager shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, or (ii) in its "good faith" or under another express standard, the Manager shall act under such express standard and shall not be subject to any other or different standard.

6.4 ***Action by Members***. Except as set forth in Section 6.2, no Member shall have any right to vote with respect to any Company action.

6.5 ***No Duties to the Company***. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that the Manager shall owe no fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing.

6.6 ***Manager and Member Expenses***.

(a) ***General***. Except as otherwise provided in this Section 6.6, no Manager or Member shall be reimbursed for expenses incurred on behalf of, or otherwise in connection with,

the Company. Any reimbursement paid by a third party for expenses actually reimbursed by the Company shall be retained by (or paid over by the recipient thereof to) the Company.

(b) ***Manager***. The Manager shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred by the Manager on behalf of the Company.

(c) ***Member***. A Member shall be reimbursed for expenses incurred on behalf of the Company only with the approval of the Manager, which approval may be withheld by the Manager in its sole and absolute discretion.

6.7 ***Tax Matters; Partnership Representative***.

(a) ***Partnership Classification for Tax Purposes***. Except to the extent otherwise required by applicable law (disregarding for this purpose any requirement that can be avoided through the filing of an election or similar administrative procedure), the Manager shall cause the Company to take the position that the Company is a "partnership" or disregarded entity, as applicable, for federal, state and local income tax purposes and shall cause to be filed with the appropriate tax authorities any elections or other documents necessary to give due legal effect to such position. A Member shall not file (and each Member hereby represents that it has not filed) any income tax election or other document that is inconsistent with the Company's position regarding its classification as a "partnership" for applicable federal, state and local income tax purposes.

(b) ***Notice of Inconsistent Treatment of Company Item***. No Member shall file a notice with the IRS under Section 6222(b) of the Code in connection with such Member's intention to treat an item on such Member's federal income tax return in a manner which is inconsistent with the treatment of such item on the Company's federal income tax return.

(c) ***Notice of Settlement Agreement***. Any Member entering into a settlement agreement with the United States Department of the Treasury which concerns a Company item shall notify the Manager of such settlement agreement and its terms within sixty (60) days after the date thereof.

(d) ***Partnership Representative and Audits***.

(i) The Manager shall be the "partnership representative" of the Company (the "**Partnership Representative**") pursuant to and to the extent permitted by Section 6223 of Title XI of the Bipartisan Budget Act of 2015 ("**Title XI 2015 BBA**"). In the event of any pending tax action, investigation, claim or controversy at the Company level that may result in a "partnership adjustment," within the meaning of Section 6241(2) of Title XI 2015 BBA (a "**Partnership Adjustment**"), to any item reported on a federal tax return of any Member(s), the Partnership Representative, shall keep such Member(s) fully and timely informed by written notice of any audit, administrative or judicial proceedings, meetings or conferences with the IRS or other similar material matters that come to its attention in its capacity as Partnership Representative. The Partnership Representative will give the Members not less than fifteen (15) days' prior written notice as to any action to be taken or of any decision not to take action with respect to any such material matter. The Partnership Representative shall act in any similar capacity under applicable state, local or foreign law, subject to similar restrictions and obligations.

The Company shall reimburse the Partnership Representative for its reasonable expenses in connection with the performance of his duties hereunder.

(ii) For any Partnership Adjustment or proposed Partnership Adjustment to the federal income tax returns of the Company for which an "imputed underpayment," within the meaning of Section 6225(b) of Title XI 2015 BBA would arise, then either, (1) the Partnership Representative may require that the Member(s) affected by such Partnership Adjustment file amended returns that take into account such Partnership Adjustments and pay any additional tax due pursuant to Section 6225(c) of Title XI 2015 BBA or (2) if the Partnership Representative does not require the affected Member(s) to file such amended returns as provided in clause (1), and the affected Member(s) do not otherwise file such amended returns, the Partnership Representative may elect application of Section 6226 of Title XI 2015 BBA. In any case, the affected Member(s) shall keep the Partnership Representative fully and timely informed by written notice of any administrative or judicial proceedings, meetings or conferences with the IRS or other similar matters with respect to the Partnership Adjustment, and the Partnership Representative shall have the right to review and comment on any submissions to the IRS, and attend and jointly participate in any meetings or conferences with the IRS.

(iii) This Section 6.7(d) is intended to comply with certain provisions under Title XI 2015 BBA that may be subject to change or further interpretation by the U.S. Treasury or IRS. In the event of such change or further interpretation, the Manager is hereby authorized to amend this Agreement consistent with the provisions of Sections 6.7(d)(i) and 6.7(d)(ii) above.

6.8 ***Records and Financial Statements***.

(a) The Company shall maintain true and proper books, records, reports, and accounts in which shall be entered all transactions of the Company. The Company shall also maintain all schedules to this Agreement and shall update such schedules promptly upon receipt of new information relating thereto. Notwithstanding anything in Section 18-305 of the Act, except as provided in Section 6.8(b), no Member shall have any right to review or inspect any of the books or records of the Company or receive any other Company information.

(b) Within ninety (90) days after the end of each Fiscal Year, or as soon as reasonably practicable thereafter, the Company shall supply to each Member such Member's IRS Schedule K-1 for such Fiscal Year.

6.9 ***Valuation of Company Assets***.

(a) ***General***. The Manager shall make a good faith determination of the value of the Company's assets in connection with any distribution pursuant to Section 8.1(b), as required under Section 4.3(c), upon the dissolution of the Company, and whenever otherwise required by this Agreement or determined by the Manager.

(b) ***Binding Effect***. The value of any Company asset or Interest determined pursuant to this Section 6.9 shall be binding upon the Company and the Members and shall establish the "Fair Market Value" of such asset or Interest for all purposes under this Agreement.

6.10 ***Officers***. The Manager may, from time to time as it deems advisable, select natural persons who are employees or agents of the Company and designate them as officers of the Company (the "**Officers**") and assign titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such person. Unless the Manager decides otherwise, if the title given to an Officer is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 6.10 may be revoked at any time by the Manager. An Officer may be removed with or without cause by the Manager.

SECTION 7

TRANSFERS AND RESIGNATIONS

7.1 ***Transfers of Interests***. To the fullest extent permitted by law, a Member shall not Transfer all or any portion of its Interest without the prior written consent of the Manager, which consent may be granted or withheld in the Manager's sole discretion.

7.2 ***Resignation/Removal of a Member***. No Member shall resign from the Company or otherwise cease to be a Member without the consent of the Manager, which consent may be granted or withheld in the Manager's sole discretion.

7.3 ***Redemption***. The Manager, in its sole discretion, may cause any Member's Interest to be redeemed by the Company for any reason. Any Interest of a Member to be redeemed by the Company shall be redeemed for the Fair Market Value of such Interest, as determined by the Manager in its sole discretion. Such payment to the Member shall either be made in cash or pursuant to a promissory note. Such promissory note shall: (i) provide for interest at the lowest rate necessary to avoid the imputation of additional interest under the Code; and (ii) have a stated principal amount of the Fair Market Value of such Member's Interest being redeemed, as determined by the Manager in its sole discretion.

SECTION 8

DISSOLUTION AND LIQUIDATION

8.1 ***Dissolving Events***. The Company shall be Dissolved upon the occurrence of any of the following events:

(a) An election in writing by the Manager to dissolve the Company;

(b) Any time there are no members of the Company, unless the Company is continued in accordance with the Act; or

(c) The entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act.

To the maximum extent permitted by the Act, the Members hereby waive their rights to seek a judicial dissolution of the Company.

8.2 ***Winding Up and Liquidation***.

(a) Upon dissolution of the Company, the Manager shall promptly wind up the affairs of, and liquidate the Company. In furtherance thereof, the Manager, as the "liquidating trustee" of the Company within the meaning of the Act shall: (i) continue to have all of the administrative and management rights and powers of the Manager (including the power to bind the Company); and (ii) be reimbursed for Company expenses it incurs. Following dissolution, the Company shall sell or otherwise dispose of assets determined by the Manager to be unsuitable for distribution to the Members, but shall engage in no other business activities except as may be necessary to preserve the value of the Company's assets during the period of winding-up and liquidation. At the conclusion of the winding-up and liquidation of the Company, the Manager shall: (i) hold the books and records of the Company for not less than six years following the termination of the Company under the Act; and (ii) execute, file and record, as necessary, a certificate of cancellation or similar document to effect the termination of the Company under the Act and other applicable laws.

(b) Distributions to the Members in liquidation may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Manager. Distributions in kind shall be valued at Fair Market Value as determined in accordance with the provisions of Section 6.9 and shall be subject to such conditions and restrictions as may be necessary or advisable to preserve the value of the property so distributed or to comply with applicable law. Each Member actually receiving amounts pursuant to a specific distribution shall receive a pro rata share of each item of cash or property of which such distribution is constituted (based upon such Member's share of the total amount to be included in such distribution).

(c) The Profits and Losses of the Company during the period of winding-up and liquidation shall be allocated among the Members in accordance with the provisions of Section 4. If any property is to be distributed in kind, the Capital Accounts of the Members shall be adjusted with regard to such property in accordance with the provisions of Section 4.3(c).

(d) The assets of the Company (including proceeds from the sale or other disposition of any assets during the period of winding-up and liquidation) shall be applied as follows:

(i) First, to repay any claims and obligations of the Company, whether to third parties or the Members, in the order of priority required by law and to the creation of any reserves which the Manager, or the liquidating trustee, as applicable, reasonably deems necessary for all contingent, conditional or unmatured claims or obligations of the Company (which reserves when they become unnecessary in accordance with the Act, shall be distributed in accordance with the provisions of clause (i), below); and

(ii) Next, to the Members in proportion to their respective positive Capital Account balances (after taking into account all adjustments to the Members' Capital Accounts required under Section 8.2(c)).

8.3 ***Deficit Restoration/Liability***. Except as otherwise specifically provided in this Agreement, a Member shall have no obligation to restore a negative balance in such Member's Capital Account at the time of dissolution of the Company and no liability to the Company or to any other Member in respect of a negative balance in such Member's Capital Account during the term of the Company or at the conclusion of the Company's termination.

SECTION 9

EXCULPATION; INDEMNIFICATION

9.1 ***Exculpation***. To the fullest extent permitted by applicable law, neither the Manager, Partnership Representative nor any Officer or Member nor any officer, director, employee, agent or Affiliate of the foregoing (collectively, the "**Covered Persons**"), shall be liable to the Company, or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Person's gross negligence or willful misconduct.

9.2 ***Indemnification***.

(a) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 9.2 by the Company shall be provided out of and to the extent of Company assets only, and no Member nor the Manager shall have personal liability on account thereof.

(b) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon the receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 9.2.

(c) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to

the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

(d) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(e) The foregoing provisions of this Section 9.2 shall survive any termination of this Agreement.

SECTION 10

GENERAL PROVISIONS

10.1 ***Meetings***. There shall be no requirement of annual or periodic meetings of the Company's members or managers within the meaning of the Act.

10.2 ***Action Without a Meeting***. Any action of the Manager may be taken by written consent of the Manager. Any consent or approval required by this Agreement to be "written" may also be made by the use of electronic transmission.

10.3 ***Entire Agreement***. This Agreement and the other agreements referred to herein, including any employment, services, granting or other similar agreements, contain the entire understanding among the Members, and supersede any prior written or oral agreement between them, with respect to the Company. There are no representations, agreements, arrangements, or understandings, oral or written, among the Members relating to the Company which are not fully expressed in this Agreement (or any employment, services, granting or other similar agreements).

10.4 ***Amendments***. This Agreement may be amended, in whole or in part, only through a written amendment executed by the Manager.

10.5 ***Counterparts; Binding upon Members***. This Agreement may be executed in any number of counterparts and, when so executed, all of such counterparts shall constitute a single instrument binding upon all parties notwithstanding the fact that all parties are not signatory to the original or to the same counterpart.

10.6 ***No Third Party Beneficiaries***. The provisions of this Agreement are not intended to be for the benefit of or enforceable by any third party and shall not give rise to a right on the part of any third party to require a Member to make a Capital Contribution, return distributions, or make other payments to the Company as set forth in this Agreement.

10.7 ***Notices, Consents, Elections, Etc***. All notices, consents, agreements, elections, amendments, demands and approvals provided for or permitted by this Agreement or otherwise relating to the Company shall be in writing and signed copies thereof shall be retained with the books of the Company. For purposes of the following provisions of this Section 10.7, the term "notice" shall be deemed to include any notice, statement, report, consent or similar item required or permitted to be provided to one or more Persons under this Agreement or applicable law.

10.8 ***Severability***. In the event that any provision of this Agreement is determined to be invalid or unenforceable, such provision shall be deemed severed from the remainder of this Agreement and replaced with a valid and enforceable provision as similar in intent as reasonably possible to the provision so severed, and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

10.9 ***Governing Law***. The interpretation and enforceability of this Agreement and the rights and liabilities of the Members and the Manager as such shall be governed by the laws of the State of Delaware. To the extent permitted by the Act and other applicable law, the provisions of this Agreement shall supersede any contrary provisions of the Act or other applicable law.

10.10 ***Status Under the Act***. This Agreement is the "limited liability company agreement" of the Company within the meaning of Section 18-101 of the Act.

10.11 ***Partnership for Tax Purposes Only***. As set forth in Section 2.1, the Members hereby form the Company as a limited liability company under the Act. The Members expressly do not intend hereby to form a partnership except insofar as the Company may be treated as a partnership solely for tax purposes.

10.12 ***Miscellaneous***. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof or by reason of the status of the respective parties. Each Member hereby specifically consents to the selection of all other Members admitted to the Company pursuant to the terms of this Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Limited Liability Company Agreement of CDMCFAD, LLC, a Delaware limited liability company, as of the date first above written.

MEMBERS:

CHARITABLE DAF HOLDCO, LTD.

By: _____
Name: Mark Patrick
Title: Director

MANAGER:

_____
Name: Mark Patrick

CDMCFAD, LLC

LIMITED LIABILITY COMPANY AGREEMENT

SCHEDULE A

MEMBER INFORMATION

Revised: December 18, 2024

Name and Contact Information	Allocation Percentage
Charitable DAF Holdco, Ltd. Floor 4, Willow House, Cricket Square Grand Cayman KY1-9010 Cayman Islands Attention: Mark Patrick	100%

EXHIBIT 49

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "DFW CHARITABLE FOUNDATION", FILED IN THIS OFFICE ON THE NINTH DAY OF DECEMBER, A.D. 2024, AT 4:06 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

10030937 8100
SR# 20244432762

Authentication: 205075905
Date: 12-09-24

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

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:06 PM 12/09/2024
FILED 04:06 PM 12/09/2024
SR 20244432762 - File Number 10030937

CERTIFICATE OF INCORPORATION
OF
DFW CHARITABLE FOUNDATION
a nonprofit nonstock corporation

I.

The name of the Corporation is DFW Charitable Foundation.

II.

The name of the incorporator is Douglas Mancino. The address of the incorporator is 2029 Century Park East, Suite 3500, Los Angeles, CA 90067.

III.

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

IV.

A. The Corporation is a nonprofit nonstock corporation and is not organized for the private gain of any person. It is organized under the General Corporation Law of the State of Delaware ("DGCL") exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law (the "Code").

B. In furtherance of its purposes, the Corporation shall have all the general powers and privileges of a corporation granted by the DGCL, as now in effect or as may hereafter be amended, including the power to solicit grants and contributions to further its charitable purposes.

V.

The Corporation shall not have any capital stock and the Corporation is not authorized . The member of the corporation is Mark Patrick. The rights and privileges of the member shall be set forth in the Corporation's bylaws, provided that the member shall not have a "membership interest" in the Corporation within the meaning of section 114(d)(2) of the DGCL.

VI.

A. No part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation. The Corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

B. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from Federal income taxation as a corporation described in section 501(c)(3) of the Code, or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation, contributions to which are deductible under section 170(c)(2) of the Code.

VII.

The property of the Corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of the Corporation shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under section 501(c)(3) of the Code.

VIII.

A director or officer of the Corporation shall not be liable to the Corporation for monetary damages for breach of fiduciary duty as a director or officer, except for liability: (a) for any breach of the director's or officer's duty of loyalty to the Corporation or its members, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or (c) for any transaction from which the director or officer derived any improper personal benefit. If the DGCL is amended after adoption of this Article VIII to authorize Corporation action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of the foregoing provisions of this Article VIII shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time, or increase the liability of any director or officer of the Corporation with respect to any acts or omissions of such director or officer occurring prior to such repeal or modification.

IX.

The Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a member or director or officer of the Corporation, or while the person is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, limited liability company, partnership, joint venture, trust or other entity, against expenses (including reasonable attorneys' fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend, or defense of such action, suit, proceeding or claim; provided however that: (a) the foregoing shall not require the Corporation to indemnify, or advance expenses to, any member or director or officer in connection with any

action, suit, proceeding or claim initiated by or on behalf of such member or director or officer, or any against the Corporation initiated by or on behalf of such member or director or officer; and (b) a member or director or officer seeking indemnification under this Article IX shall execute a written undertaking (reasonably acceptable to the Corporation) to repay the Corporation any expense or other amounts advanced and/or paid to such member or director or officer under this Article IX in the event that it is ultimately determined that such member or director or officer is not entitled to be indemnified by the Corporation. Such indemnification shall not be exclusive of other indemnification rights arising under any bylaw, agreement, vote of directors or member or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking such indemnification under this Article IX shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection of a member or director or officer of the Corporation with respect to any acts or omissions of such member or director or officer occurring prior to such repeal or modification.

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed by its incorporator this 9th day of December, 2024.

/s/ Douglas Mancino
Douglas Mancino, Incorporator

EXHIBIT 50

VALUATION ANALYSIS OF
CERTAIN PARTICIPATION SHARES OF
CHARITABLE DAF HOLDCO, LTD

AS OF
MARCH 25, 2025

Prepared for:

Mr. Bart F. Higgins
Attorney
Shields Legal Group

VALUESCOPE
a marshall + stevens company

PM-1/300

VALUESCOPE
a marshall + stevens company

March 26, 2025

Mr. Bart F. Higgins
Attorney
Shields Legal Group
16400 Dallas Parkway
Dallas, Texas 75248

RE: Valuation Analysis of Certain Participation Shares of Charitable DAF HoldCo, Ltd

Dear Mr. Higgins:

Pursuant to your request, we were retained to perform an independent valuation analysis to determine the fair market value of following participation shares (the "Subject Interest" or the "Participation Shares") of Charitable DAF HoldCo, Ltd ("DAF" or the "Company") as of March 25, 2025 (the "Valuation Date").[1]

- 100 Participation Shares of DAF held by *Highland Dallas Foundation, Inc.*
- 100 Participation Shares of DAF held by *Highland Kansas City Foundation, Inc.*
- 100 Participation Shares of DAF held by *Highland Santa Barbara Foundation, Inc.*
- 5 Participation Shares of DAF held by *The Community Foundation of North Texas*

This valuation analysis was conducted for internal reporting, transaction support (including the issuance and redemption of shares), dispute resolution, regulatory compliance, or any other context where a fair market valuation is required.

DEFINITION AND PREMISE OF VALUE

The standard of value is fair market value. Fair market value is defined by IRS Revenue Ruling 59-60, 1959-1 C.B. 237 as the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.

To develop our conclusion of value for the Subject Interest, we considered all of the factors listed in Revenue Ruling 59-60. These factors include:

1. The nature of the business and its history from inception.

[1] Our analysis assumes that the Company's financial position remains materially consistent between September 30, 2024 and the Valuation Date.

2. The economic outlook in general and the condition and outlook of the specific industry in which it operates.
3. The book value and the financial condition of the business.
4. The earning capacity of the business.
5. The dividend-paying capacity of the business.
6. Whether the enterprise had goodwill or other intangible value.
7. The market prices of the stocks of corporations engaged in the same or similar line of business having their stocks actively traded on an exchange or over the counter.
8. The marketability, or lack thereof, of the securities.

The valuation is conducted under the assumption that the DAF will continue as a going concern.[2] The liquidation premise of value was considered but deemed inapplicable, as the going-concern premise reflects the "highest and best use" of the Participation Shares.

SCOPE OF WORK

To gain an understanding of DAF's operations, we reviewed the Company's financial and operational data and spoke with the Company's management shareholder ("Management"). To understand the environment in which DAF operates, we researched relevant information concerning the US private equity, hedge funds & investment vehicles industry. We also studied economic conditions as of the Valuation Date and their impact on DAF and the industry.

We valued the Company in accordance with generally accepted valuation standards and included such valuation tests and procedures that we considered necessary under the circumstances. Our conclusion of value reflects these findings, our judgment and knowledge of the marketplace, and our expertise in valuation.

In performing our work, we were provided with and/or relied upon various sources of information, including (but not limited to):

- Balance sheet for CLO HoldCo, Ltd. as of September 30, 2024
- The Memorandum and Articles of Association of Charitable DAF HoldCo, Ltd, amended and restated as of January 24, 2024

[2] The *International Glossary of Business Valuation Terms* defines "Going Concern" as "an ongoing operating business enterprise," and "Going Concern Value" as "the value of a business enterprise that is expected to continue to operate into the future. The intangible elements of going concern value result from factors such as having a trained workforce, an operational plant, and the necessary licenses, systems, and procedures in place."

- Information regarding the Company's history and current operations
- Historical distributions paid to the holders of the Subject Interest
- The organizational structure chart for Charitable DAF HoldCo, Ltd
- Discussions with the Company's Management
- Pepperdine 2024 Private Capital Markets Report, dated June 10, 2024
- IBISWorld Industry Report 52599, *Private Equity, Hedge Funds & Investment Vehicles in the US*, October 2024

The procedures employed in valuing the Subject Interest included such steps that we considered necessary, including (but not limited to):

- An analysis of the general economic environment and industry as of the Valuation Date
- An interview with Management regarding expectations for future distributions
- An application of appropriate valuation techniques and procedures, including the income approach
- An analysis of other pertinent facts and data influencing our conclusion of value

We relied on information received as indicative of the Company as of the Valuation Date. We made limited investigation as to the accuracy and completeness of such information and did not verify this information as part of our valuation. Therefore, we express no opinion or other form of assurance regarding the accuracy of the source data. Our analysis was based in part on this information, as well as on other data we developed.

CONCLUSION OF VALUE

Based on the procedures outlined herein and the corresponding analysis, it is our opinion that the fair market value of the Subject Interest as of the Valuation Date can be reasonably stated as:

$1,637,192
ONE MILLION SIX HUNDRED THIRTY-SEVEN THOUSAND ONE HUNDRED NINETY-TWO DOLLARS

Fair Market Value Summary			
		Value	Reference
Income Approach			
Value of Subject Interest, Minority, Marketable		$2,045,531	*Schedule B.1*
Less: Discount for Lack of Marketability	*20.0%*	($408,339)	*Schedule C.4*
Value of Subject Interest, Minority, Non-Marketable		$1,637,192	
Total Subject Interest Shares		305	
Fair Market Value per Share		**$5,368**	

Subject Interest Valuation Breakout		
	Shares	Fair Market Value
Highland Dallas Foundation, Inc.	100	$536,784
Highland Kansas City Foundation, Inc.	100	$536,784
Highland Santa Barbara Foundation, Inc.	100	$536,784
The Community Foundation of North Texas	5	$26,839
Total Subject Interest	305	$1,637,192

We are independent of DAF and have no current or prospective economic interest in the assets that are the subject of this analysis. Our fee for these valuation services was in no way influenced by the results of our analysis. The content of this valuation report is subject to the Assumptions and Limiting Conditions and the Appraisal Certification at the end of this report. If you have any questions concerning this report, please contact Steven C. Hastings, CPA/ABV/CFF, CGMA, ASA, CVA.

Very truly yours,

ValueScope

ValueScope, LLC

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ENGAGEMENT OVERVIEW

DESCRIPTION OF THE ASSIGNMENT

We were retained to perform an independent valuation analysis to determine the fair market value of following participation shares (the "Subject Interest" or the "Participation Shares") of Charitable DAF HoldCo, Ltd ("DAF" or the "Company") as of March 25, 2025 (the "Valuation Date").[3]

- 100 Participation Shares of DAF held by *Highland Dallas Foundation, Inc.*
- 100 Participation Shares of DAF held by *Highland Kansas City Foundation, Inc.*
- 100 Participation Shares of DAF held by *Highland Santa Barbara Foundation, Inc.*
- 5 Participation Shares of DAF held by *The Community Foundation of North Texas*

This valuation analysis was conducted for internal reporting, transaction support (including the issuance and redemption of shares), dispute resolution, regulatory compliance, or any other context where a fair market valuation is required.

SCOPE

This report provides a detailed discussion of the valuation analysis we performed and is divided into six major sections. The first section outlines the description, scope, and procedures of our analysis. The second section provides a brief description of the Company and the Subject Interest. The third section includes a discussion of the national economy and the industry in which the Company operates. The fourth section details a discussion of valuation theory and methodology. The fifth section presents our valuation analysis, and the sixth section presents our conclusion of the fair market value of the Subject Interest.

PROCEDURES

This valuation analysis was conducted in accordance with generally accepted valuation procedures. These procedures included such substantive valuation tests that we considered necessary and appropriate under the circumstances. We relied upon information received regarding the Company's operations and we made limited investigation as to the accuracy and completeness of such information. Our analysis was based in part on this information, as well as on other data obtained through additional research. A full discussion of the methodologies employed appears in the following sections of this report.

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[3] Our analysis assumes that the Company's financial position remains materially consistent between September 30, 2024 and the Valuation Date.

DAF OVERVIEW

COMPANY OVERVIEW[4]

Charitable DAF HoldCo, Ltd is a Cayman Islands "company limited by shares" formed in October 2011. Upon the shareholders' acceptance of shares, the shareholders agreed to the provisions of the Memorandum and Articles of Association of Charitable DAF HoldCo, Ltd (as amended from time to time in accordance with the provisions thereof, the "DAF Agreement") and the Companies Law of the Cayman Islands (as amended from time to time, the "Law"). As a holding company, DAF's predominant assets were historically interests in the equity tranches of Collateralized Loan Obligations ("CLOs"), the ownership of which is held through tiered entities that function as unrelated trade or business income tax blocker entities. In recent periods, however, the DAF's underlying assets have been allocated across a broader and more diverse range of asset classes, including but not limited to cash and cash equivalents, public equity, private equity, private credit, real estate, and other alternative investments.

CAPITALIZATION TABLE

On February 7, 2025, the Company issued 318 participation shares to *DFW Charitable Foundation*, increasing the total number of participation shares to 623, composed of:

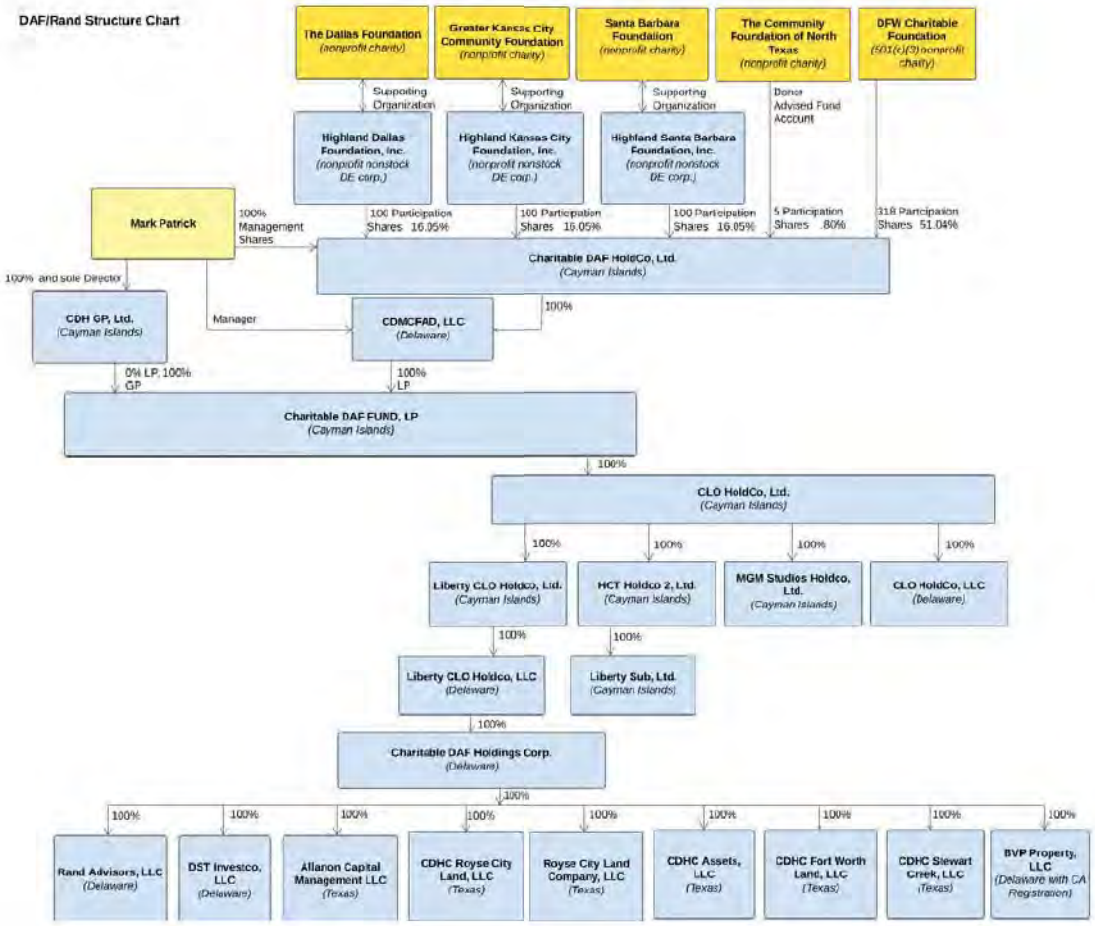
- 318 participation shares held by *DFW Charitable Foundation*
- 100 participation shares held by *Highland Dallas Foundation, Inc.*
- 100 participation shares held by *Highland Kansas City Foundation, Inc.*
- 100 participation shares held by *Highland Santa Barbara Foundation, Inc.*
- 5 participation shares held by *The Community Foundation of North Texas*

All the Company's management shares are held by Mark Patrick.

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4 Based on the Company's memorandum and articles of association and information from Management.

COMPANY STRUCTURE CHART



FINANCIAL POSITION

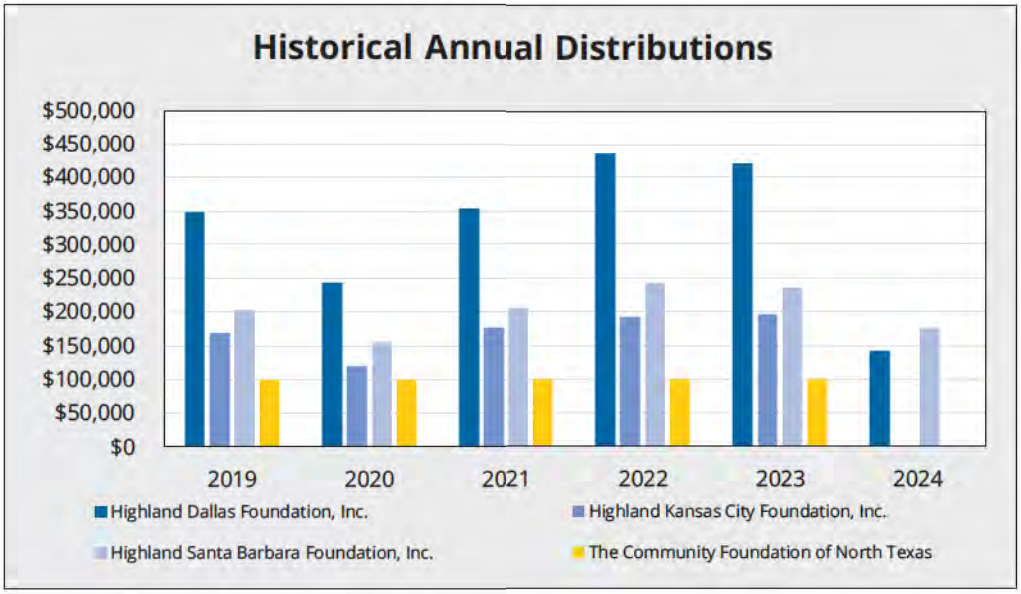
The Company's only asset stems from its indirect interest in CLO HoldCo, Ltd ("CLO HoldCo"). The Company provided an unaudited balance sheet (the "Balance Sheet") for CLO HoldCo as of September 30, 2024. Based on a review of the Balance Sheet, CLO HoldCo reported total assets of $316.3 million, including $138.4 million of cash & cash equivalents, $175.3 million of other investments, and $2.5 million of other assets. CLO HoldCo reported total liabilities of $47.2 million. CLO HoldCo has net assets of $269.1 million on its books as of September 30, 2024. The Balance Sheet is presented below and in Schedule A.3.

CLO HoldCo, Ltd - Summary Balance Sheet

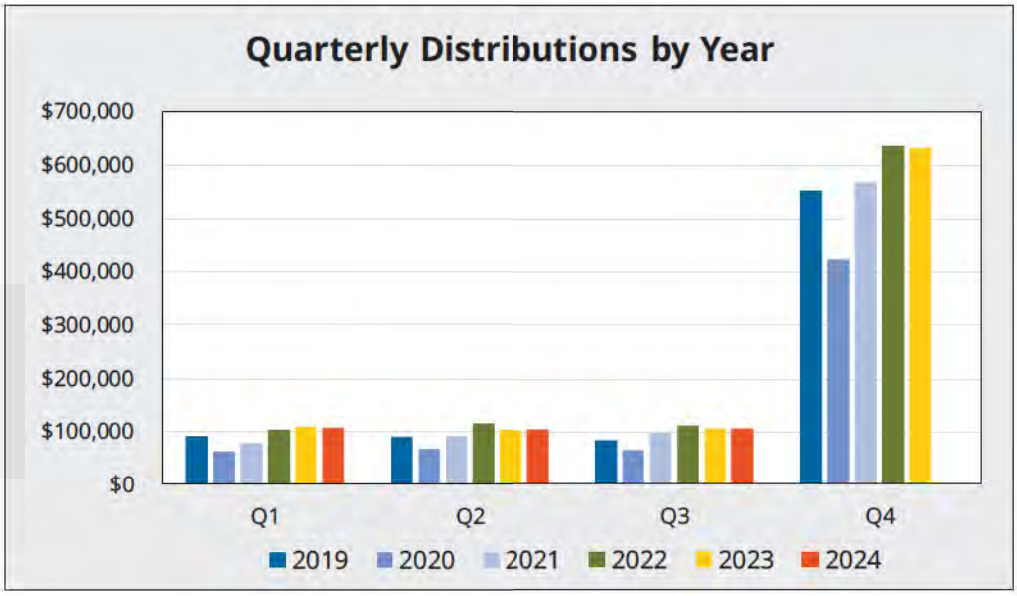
	Balance Sheet as of: 9/30/2024	
	Actual	%
Current Assets		
Cash & Equivalents	$138,419,315	43.8%
Total Current Assets	138,419,315	43.8%
Other Assets		
Other Investments	175,328,461	55.4%
Cash Collateral	81,419	0.0%
Interest Receivable	0	0.0%
Dividends Receivable	0	0.0%
Note Receivable	1,321,109	0.4%
Due from Affiliate	470,000	0.1%
Due from Broker	637,419	0.2%
Total Assets	316,257,723	100.0%
Total Liabilities	47,204,916	14.9%
Total Equity	269,052,808	85.1%
Total Liabilities & Equity	316,257,723	100.0%

The Company paid distributions to the Participation Shareholders of $819,050 in 2019, $619,050 in 2020, $834,450 in 2021, $968,950 in 2022, $950,881 in 2023, and $317,796 in the first three quarters of 2024. Fourth quarter distributions were historically larger than in the first three quarters.[5] Historical Distributions are presented in the following charts and in Schedules A.1 and A.2.

[5] Distributions are typically paid a few months following the end of a quarter. As a result, fourth quarter distributions may be paid in the first or second quarter of the following calendar year.



Note: Q4 2024 distributions have not yet been paid.



SUBJECT INTEREST OVERVIEW

The Subject Interest consists of participation shares, which from time to time may receive discretionary cash distributions intended to support the charitable and expense goals of the holders. The rights and limitations of the participation shares are defined by the DAF Agreement and are directly influenced by the discretion and actions of the Company's Management and directors.

The DAF Agreement grants the directors substantial discretion over distributions, share issuances, governance, and financial transparency, leaving participation shareholders with little influence over corporate decisions. They are subject to potential dilutions, transfer restrictions, and limited access to information, with limited voting rights and no ability to amend governing documents. Given these extensive limitations, the participation shares represent a highly restricted and passive financial interest with limited control or enforceable rights.

Limited Rights Over Distributions

Participation shareholders do not have:

- The right to cause, vote on, or receive pro-rata distributions.
- The right to annual, timed, or guaranteed distributions.
- The right to receive notice of distributions made to other participation shareholders.
- The ability to amend the DAF Agreement to modify distribution rights.

Governance and Voting Limitations

Participation shareholders do not have:

- The right to remove or appoint directors.
- The right to vote on the issuance of additional participation shares, receive notice of such issuance, or exercise pre-emption rights.
- The right to vote on or receive notice of share redemptions.

The appointed directors and Management have full control over the management, operations, and affairs of the Company (subject to requiring a two-thirds majority of the participation shareholders for any material adverse variation or abrogation of rights attached to the participation shares), including the issuance and purchase of shares on terms they determine. Since participation shareholders do not have voting or approval rights over further issuances, additional participation shares may be issued at any time, potentially impacting the economic interests associated with existing shares (noting that

the purchase of participation shares, or issuance of further shares ranking pari passu or subsequent to the participation shares, is not regarded as causing a material adverse variation or abrogation of the rights of the participation shareholders). Additionally, the transfer of participation shares requires director approval, and directors may reject transfer at their discretion.

Restrictions on Meetings and Information Access

Participation shareholders do not have:

- The right to receive notice of, attend, speak at, or vote at general meetings.
- The right to inspect company records, accounts, or documents, except at the director's sole discretion (or in the very limited circumstances conferred by law).
- The ability to modify or amend the DAF Agreement in any capacity.

Restricted Persons Clause

Certain individuals or entities may be classified as Restricted Persons, including:

- Any holder of participation shares in breach of applicable laws.
- Any holder that is not exempt from taxation under Section 501(c)(3).
- Any holder whose participation, in the opinion of the directors, could cause the Company to incur tax, legal, regulatory, administrative, or pecuniary liabilities that it would not otherwise face.

If the directors become aware that any participation shares are held by a Restricted Person, they may, by written notice, require the transfer of such shares in accordance with the DAF Agreement.

For further details, refer to Appendix A for key provisions of the DAF Agreement.

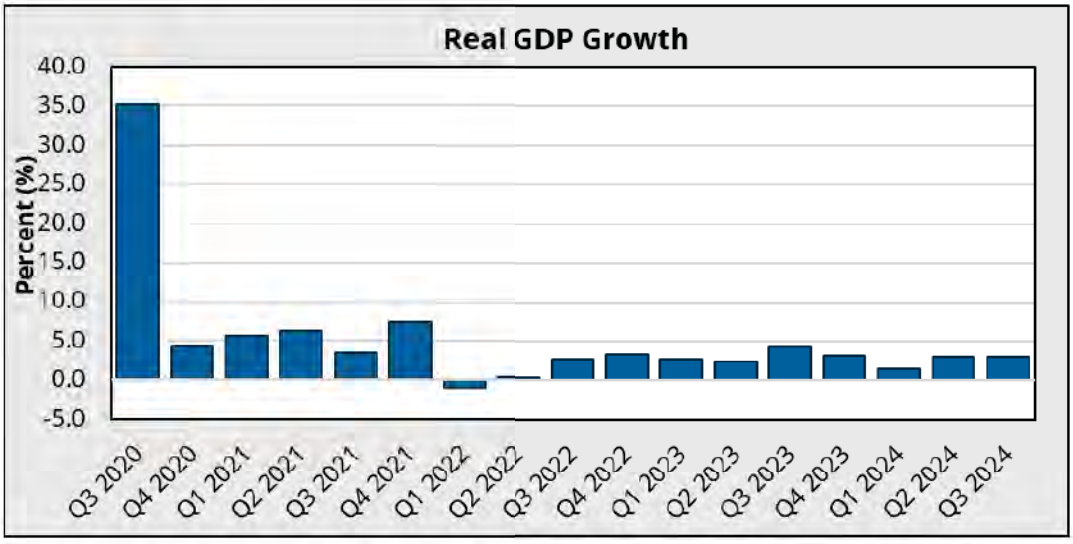
ECONOMIC AND INDUSTRY OVERVIEW

OVERVIEW OF THE U.S. ECONOMY

In the third quarter of 2024, the US economy expanded at a faster pace than in the second quarter. Inflation, which peaked at 8.99% in June 2022, declined to 2.73% by November 2024, reflecting progress toward the Federal Reserve's target. After a prolonged period of elevated interest rates to curb inflation, signs of a cooling labor market and stable prices led the Fed to cut rates by 25 basis points in December. The rate hikes that began in 2023 initially resulted in an inverted yield curve, signaling investor concerns about an economic slowdown, but the curve has since normalized following the presidential election. Meanwhile, US equity markets gained momentum, with major indices ending the year higher, supported by easing inflation and expectations of further monetary policy accommodation.

Gross Domestic Product[6]

Real gross domestic product (GDP) increased at an annual rate of 3.1 percent in the third quarter of 2024, following an increase of 3.0 percent in the second quarter. The acceleration in real GDP in the third quarter primarily reflected accelerations in exports, consumer spending, and federal government spending. These movements were partly offset by a downturn in private inventory investment and a larger decrease in residential fixed investment.

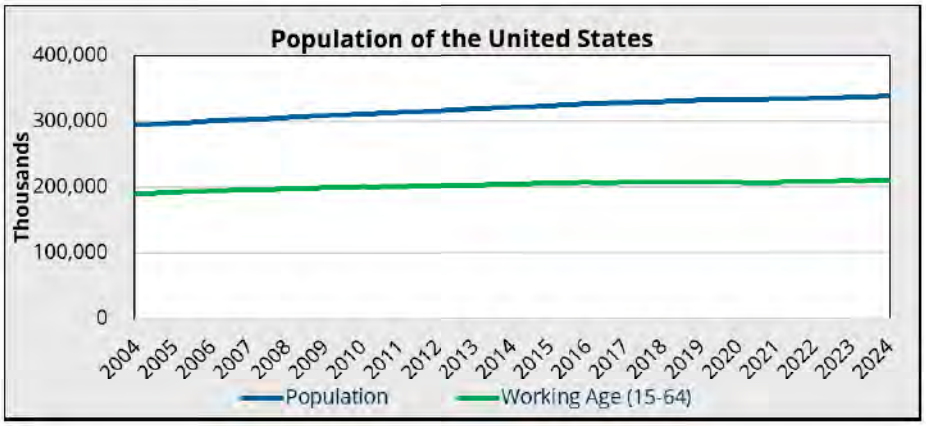


6 U.S. Department of Commerce, Bureau of Economic Analysis, Gross Domestic Product (Third Estimate), Corporate Profits (Revised Estimate), and GDP by Industry, Third Quarter 2024. (Release Date: 12/19/2024).

Population

Population growth is an important driver of long-term growth in an economy. The total population increased from 335.9 million in November 2023 to 337.7 million in November 2024.[7] The working-age population (15-64) increased from 208.9 million in November 2023 to 209.0 million in November 2024.[8]

Labor force participation had a sharp decline at the onset of the COVID-19 pandemic. It partially recovered in just several months and has been trending upward/flat. In November 2023, the civilian labor force participation rate was 62.8% and stands at 62.5% as of November 2024.[9]





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7 U.S. Bureau of Economic Analysis, Population [POPTHM], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

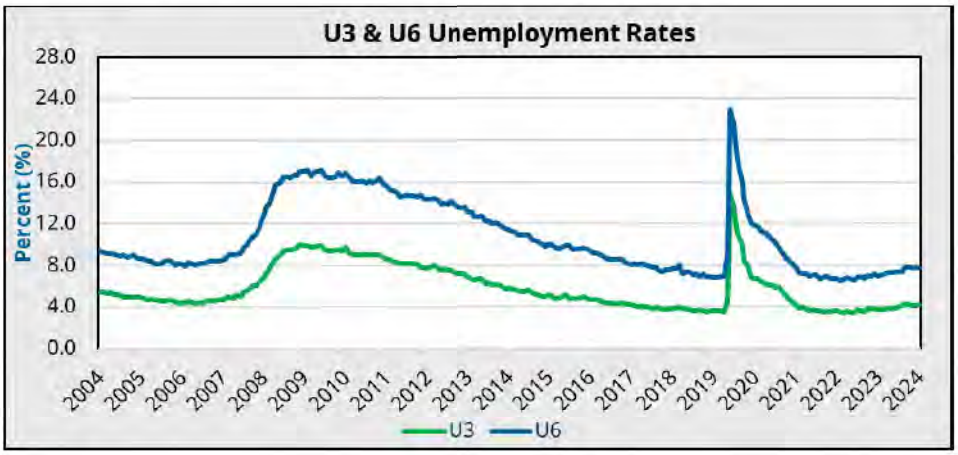
8 Organization for Economic Co-operation and Development, Working Age Population: Aged 15-64: All Persons for the United States [LFWA64TTUSM647N], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

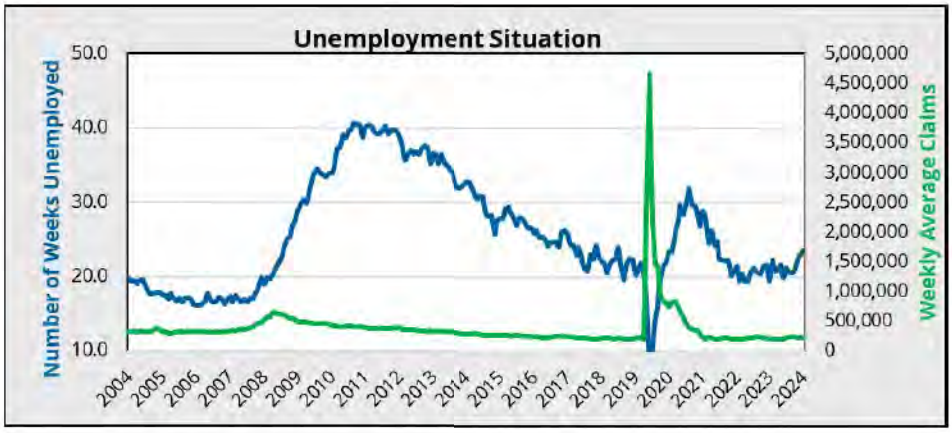
9 U.S. Bureau of Labor Statistics, Civilian Labor Force Participation Rate [CIVPART], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

Employment

Nonfarm payroll employment, according to the Bureau of Labor Statistics (BLS), rose by 227,000 in November 2024 and the unemployment rate changed little at 4.2 percent. Employment trended up in health care, leisure and hospitality, government, and social assistance. Retail trade lost jobs.

The U6 unemployment rate, which includes all marginally attached workers and those employed part-time for economic reasons, increased from 7.0% in November 2023 to 7.7% in November 2024.[10]





Forecasters surveyed by the Federal Reserve Bank of Philadelphia predicted the unemployment rate will increase from 4.0 percent in 2024 to 4.3 percent in 2025 and then decrease to 4.1 percent in 2027.

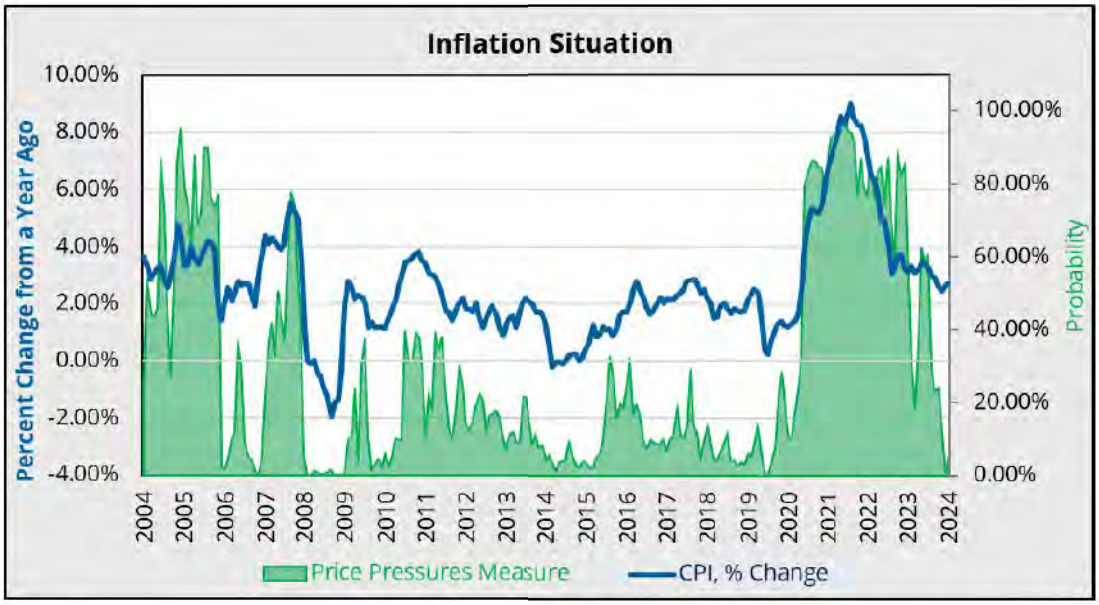
[10] U.S. Bureau of Labor Statistics, Total unemployed, plus all marginally attached workers plus total employed part time for economic reasons [U6RATE], Civilian Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

Inflation

According to the BLS, The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.3 percent in November on a seasonally adjusted basis, after rising 0.2 percent in each of the following 4 months. Over the last 12 months, the all-items index increased 2.7 percent before seasonal adjustment.[11]

The index for shelter rose 0.3 percent in November and was the main factor in the all items increase. The food index increased 0.4 percent in November. The index for food away from home rose 0.5 percent over the month, while the index for food at home rose 0.3 percent. The energy index fell 0.2 percent over the month, after being unchanged in the preceding month.

The price pressures measure estimates the probability that the personal consumption expenditures price index inflation rate will exceed 2.5% over the next twelve months. This price pressures measure has declined significantly since a year ago, November 2023, declining from 53.20% to 5.10% in November 2024[12].The forecasters predict current-quarter headline CPI inflation will average 2.2 percent at an annual rate, down from the prediction of 2.5 percent in the previous survey[13].



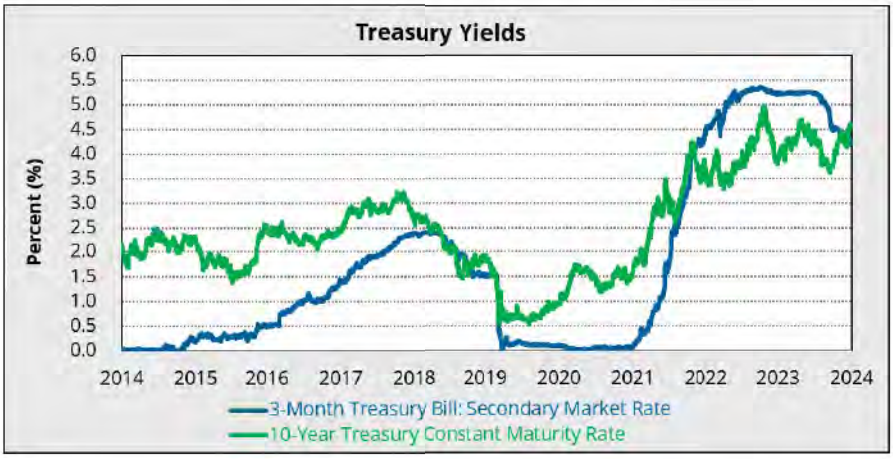
11 Federal Reserve Bank of St. Louis, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

12 Federal Reserve Bank of St. Louis, Price Pressures Measure [STLPPM], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

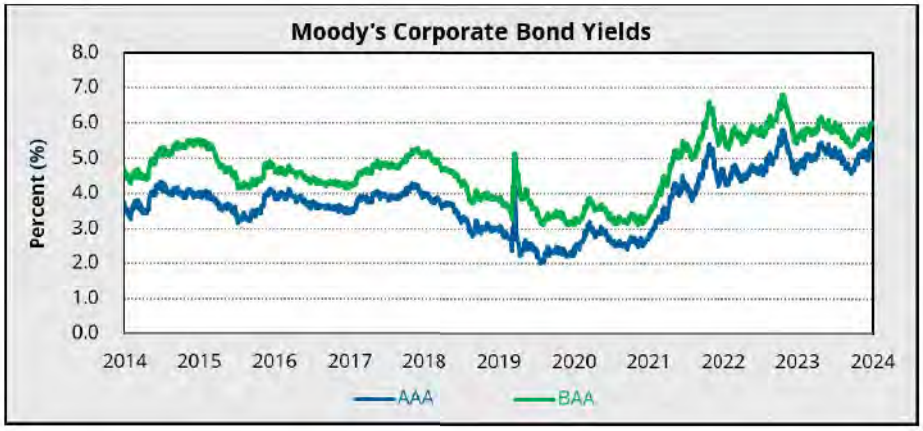
13 Federal Reserve Bank of Philadelphia, *Survey of Professional Forecasters,* November 15, 2024.

Interest Rates

The interest rate on the three-month Treasury bill declined from 5.20% as of December 29, 2023, to 4.23% as of December 31, 2024.[14] The interest rate on the ten-year Treasury note increased from 3.88% as of December 29, 2023, to 4.58% as of December 31, 2024.[15]



The interest rate on Moody's Aaa-rated corporate bonds increased from 4.65% as of December 29, 2023, to 5.40% as of December 31, 2024.[16] The interest rate on the Moody's Baa-rated corporate bonds increased from 5.49% to 6.00% over the same time.[17]



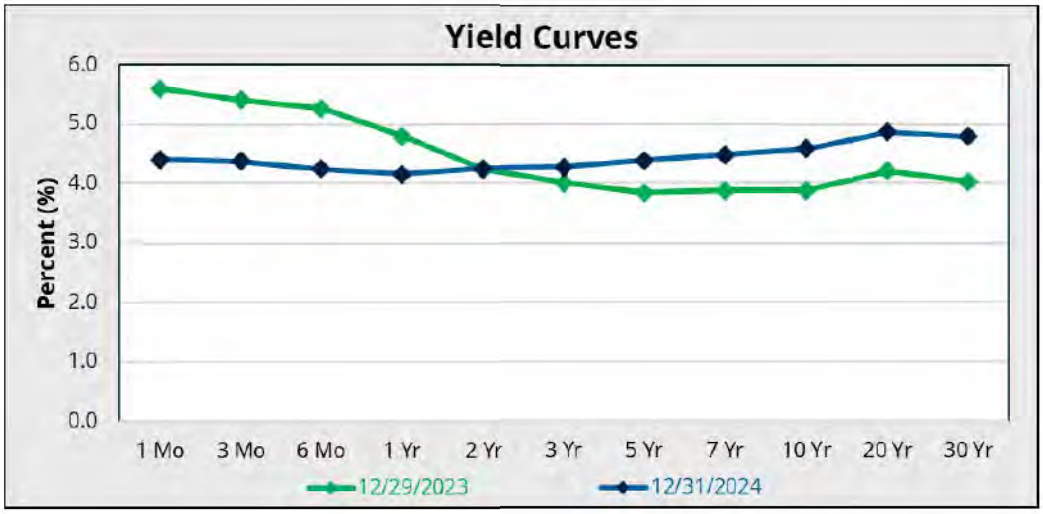
[14] Board of Governors Federal Reserve System, 3-Month Treasury Bill: Secondary Market Rate [DTB3MS], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

[15] Board of Governors Federal Reserve System, 10-Year Treasury Constant Maturity Rate [DGS10], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

[16] Moody's, Moody's Seasoned Aaa Corporate Bond Yield© [DAAA], Moody's Seasoned Aaa Corporate Bond Yield© [DAAA], retrieved from FRED, Federal Reserve Bank of St. Louis, last January 10, 2025.

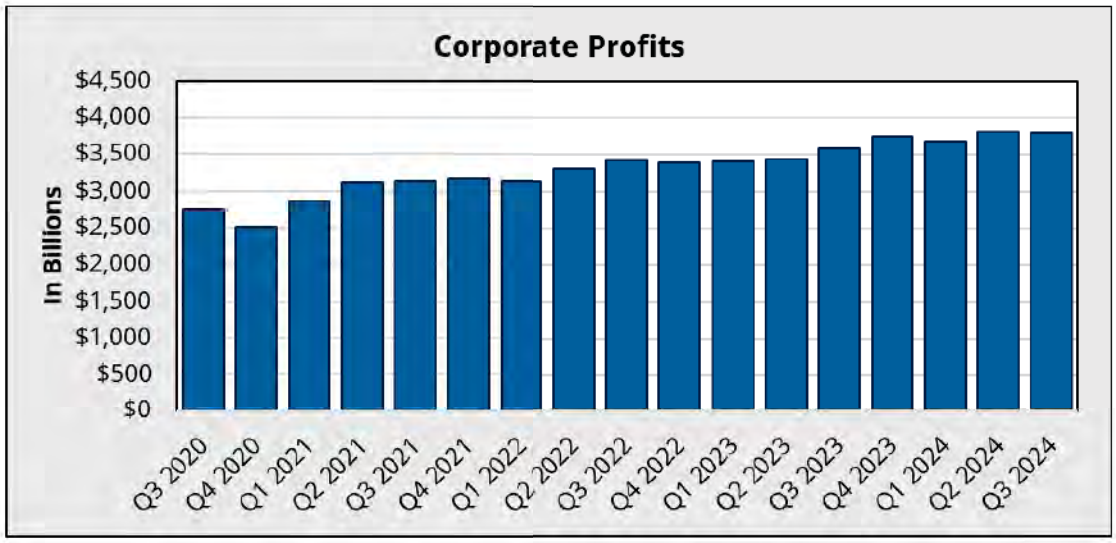
[17] Moody's, Moody's Seasoned Baa Corporate Bond Yield© [DBAA], Moody's Seasoned Baa Corporate Bond Yield© [DBAA], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

In the last twelve months, the yield curve transitioned from being inverted to normal, with the spread between the twenty-year Treasury Bond and the one-year Treasury Bill increasing between December 29, 2023, to December 31,2024 from -0.59% to a positive 0.70%.[18]



Corporate Profits

Profits from current production (corporate profits with inventory valuation and capital consumption adjustments) decreased slightly by 15 billion in the third quarter of 2024 from the second quarter of 2024.



[18] U.S. Department of the Treasury, *Daily Treasury Yield Curve Rates*, last accessed January 10, 2025.

Stock Markets[19]

The stock markets gained momentum from December 29, 2023, to December 31, 2024. The S&P 500 Index (SPY) closed at 475.31 on December 29, 2023, and closed higher at 586.08 on December 31, 2024. The Dow Jones Industrial Average Index (DIA) closed at 376.87 on December 29, 2023, and closed higher at 425.50 on December 31, 2024. The NASDAQ Composite Index (QQQ) closed at 409.52 on December 29, 2023, and closed higher at 511.23 on December 31, 2024. In the graph below, the December 30, 2022, values were set to 100.



Construction & Housing Starts

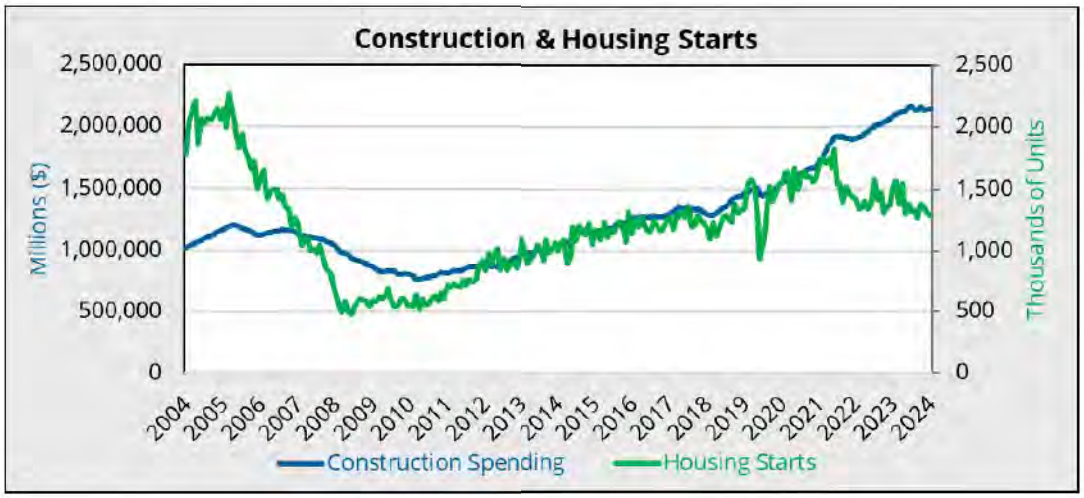
Construction spending and housing starts are two other important indicators for the economy. Construction spending may indicate the sentiment in real estate markets and the soundness of the economy while housing starts are an alternative indicator of consumer sentiment. Increases in demand for newly constructed homes can lead to job growth in the construction industry, increased demand for appliances and furniture, and have ripple effects throughout the economy. Housing starts decreased from 1.510 million units in November 2023 to 1.289 million units in November 2024.[20] Construction spending, a seasonally adjusted annual figure, increased from $2.09 trillion in November 2023 to $2.15 trillion in November 2024.[21]

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19 CapIQ Database, last accessed January 10, 2025.

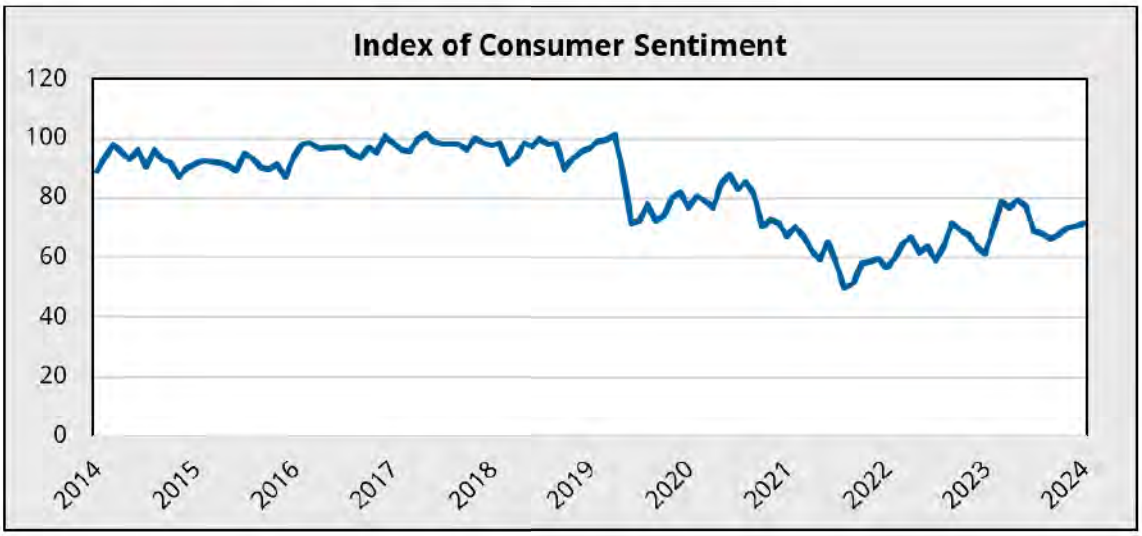
20 U.S. Census Bureau and U.S. Department of Housing and Urban Development, Housing Starts, New Privately-Owned Housing Units Started [HOUST], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

21 U.S. Census Bureau, Total Construction Spending, Seasonally Adjusted Annual Rate [TTLCONS], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.



Consumer Sentiment

The University of Michigan Survey of Consumers reported that the Index of Consumer Sentiment has increased from 61.30 a year ago in November 2023 to 71.80 in November 2024. Although it has increased significantly from a year ago, the index is still well below the pre-COVID high of 101.0 in February 2020.[22] The index is based on a survey of consumer perceptions of present economic conditions and expectations of future conditions. The survey is based on a sample of 500 phone interviews consisting of 50 core questions conducted across the continental U.S. This is considered a leading indicator of future consumer expenditures and economic activity.



22 University of Michigan, *Surveys of Consumers*, November 2024

OVERVIEW OF THE PRIVATE EQUITY, HEDGE FUNDS & INVESTMENT VEHICLES INDUSTRY[23]

This industry is composed of private equity funds, hedge funds, closed-end funds, unit investment trusts and other financial vehicles. Entities in this industry manage securities or other assets on behalf of shareholders, unit holders or other beneficiaries to achieve high returns on targeted investments. This industry excludes insurance and employee-benefit funds, open-end investment funds and trusts, estates and agency accounts.

Executive Summary

In recent years, industry assets have become increasingly integral to institutional investors' portfolios and the larger asset management market. Institutional investors are individuals or organizations that trade securities in such substantial volumes that they qualify for lower commissions and fewer protective regulations since it's assumed that they're knowledgeable enough to protect themselves. Increasing demand from institutional investors has contributed to the surge in the industry's assets under management (AUM) and revenue during the current period.

In recent years, the industry has continued to enmesh itself more deeply within the broader financial ecosystem despite the challenges posed at the onset of the period. The pandemic, mainly in the first quarter of 2020, contributed to revenue declines for many operators. Many portfolios, previously thought to be sound investments, were reevaluated and businesses pivoted their strategies due to the unprecedented nature of the crisis. However, as inflation was rampant in the latter part of the period, the FED increased interest rates to control high inflation, although as inflationary pressures eased in 2024, the FED cut interest rates, which will increase liquidity in financial markets. The Fed is anticipated to cut rates further in 2025, increasing liquidity and driving the shift of investments into equities from fixed-income securities. Overall, over the past five years, industry revenue grew at a CAGR of 4.2% to $310.1 billion, including an increase of 2.5% in 2025 alone. Industry profit has climbed significantly and will comprise 49.6% of revenue in the current year.

Industry revenue will grow at a CAGR of 2.7% to $353.7 billion over the five years to 2030. The Federal Reserve is anticipated to cut interest rates as inflationary pressures continue to ease. These declining interest rates will increase liquidity in the markets. Private equity firms and hedge funds will have less difficulty raising capital for investments. As characteristics of the financial system change in light of post-financial crisis banking regulations and regulators' recognition of the importance of hedge funds within the financial system, hedge funds will likely experience heightened oversight.

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[23] IBISWorld Industry Report 52599, March 2025, *Private Equity, Hedge Funds & Investment Vehicles in the U.S.*

VALUATION METHODOLOGY

There are three conceptually distinct methodologies that can be applied to estimate indications of value of a business or asset: (a) the income approach, (b) the market approach, and (c) the cost approach.

VALUATION APPROACHES

Income Approach

The income approach quantifies the present value of anticipated future income generated by a business or an asset. Forecasts of future income require analyses of variables that influence income, such as revenues, expenses, and taxes. One form of the income approach, the discounted cash flow (DCF) analysis, defines future economic income as net cash flow and takes into account not only the profit-generating abilities of a business but also the investment in capital equipment and working capital required to sustain the projected net cash flow. The forecasted net cash flow is then discounted to present value using an appropriate rate of return or discount rate. The income approach is unique in its ability to account for the specific contribution to the overall value of various factors of production.

Market Approach

The market approach considers the implied pricing in third-party transactions of comparable businesses or assets. Transactions are analyzed in order to identify pricing patterns or trends that can be used to infer value on the subject business or asset. Adjustments are made to the transaction data to account for relative differences between the subject and the comparable transactions. The primary strength of the market approach is that it offers relatively objective pricing evidence from the market at large and, aside from certain adjustments to the transaction data, requires few assumptions to be made.

Asset-Based (Cost) Approach

The asset-based approach considers the value of a business or security based on the value of its assets net of its liabilities. Replacement cost is often a primary indicator of the value of a business' assets. The asset-based approach is based on the reasoning that a prudent investor would not pay more for a business or asset than the cost to the investor to replace or re-create it. Historical cost data and reported book values are often used as initial indications of value, with certain adjustments made for physical deterioration, obsolescence, input costs, appreciation, or other factors. The asset-based approach makes fewer assumptions than the income approach, but its primary limitation is its inability to capture the value of many categories of intangible assets.

VALUATION METHODS

The following are common valuation methods used under the three approaches:

A. Income Approach
1. Discounted Cash Flow Method (multi-period model)
2. Direct Capitalization Method (single period model)
3. Excess Earnings Method

B. Market Approach
1. Guideline Public Company Method
2. Merger and Acquisition Method

C. Asset-Based Approach
1. Reproduction Cost Method
2. Replacement Cost Method
3. Net Asset Value Method

SUMMARY OF THE VALUATION APPROACHES AND METHODS

For the valuation of non-controlling interests in holding companies such as DAF, the asset-based approach is most commonly used. When applied to such companies, the approach consists of measuring the underlying net asset value (NAV) of an entity (the fair market value of the entity's assets less the fair market value of its liabilities). The NAV is then discounted as appropriate to determine the fair market value of the fractional interest in the entity.

However, in the case of the participation shares under consideration, the asset-based approach is not applicable. These shares do not confer control and only have a claim in respect of the underlying assets in a winding up. Unlike equity interests that derive value from an allocable portion of the entity's net assets, the economic benefits of these shares are contingent upon discretionary distributions by the director. As such, their value is not directly tied to the entity's NAV, and an alternative valuation approach is required to appropriately reflect their characteristics and economic reality.[24]

Given the nature of the participation shares, the income approach, specifically the discounted cash flow (DCF) method, is the most appropriate valuation methodology.[25]

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[24] Previous valuations conducted by ValueScope did not account for the rights of the participation shares under the applicable law, specifically that these shares confer an extremely limited enforceable claim to the entity's underlying NAV.

[25] The market approach was considered but deemed inapplicable due to the absence of comparable transactions involving securities with characteristics similar to the participation shares.

This approach estimates the present value of expected future distributions, if any, based on reasonable assumptions regarding the manager's discretion in making such distributions. If no future distributions are expected, the value of the Subject Interest would be nominal. The DCF method captures the time value of money and the risk associated with the uncertainty of future distributions, providing a more accurate measure of the fair market value of the Participation Shares.

VALUATION ANALYSIS

INCOME APPROACH ANALYSIS

The income approach estimates the fair market value of an interest based on the present value of expected future economic benefits. In the case of the Participation Shares, these economic benefits are exclusively tied to discretionary distributions made by the director, rather than earnings or cash flows of the DAF's underlying assets. The approach involves forecasting expected future distributions and discounting them to present value using a rate of return that reflects the risk associated with the uncertainty and discretionary nature of these payments. The resulting present value represents the fair market value of the Subject Interest.

Discounted Cash Flow Method

We developed a DCF model to determine the fair market value of the Subject Interest as of the Valuation Date. The DCF method projects the distributions that the Participation Shareholders are expected to receive. Each projected distribution is discounted to present value using a rate that reflects the risk associated with the uncertainty and discretionary nature of these payments.

Projected Distributions

Distributions to the holders of the Subject Interest were projected based on discussions with Management and a review of historical distributions. Management indicated that the timing and size of future distributions will be discretionary, and that DAF does not intend to establish reserves for distributions.

Despite this discretion, Management currently intends to maintain distributions to the holders of the Subject Interest at levels consistent with those paid over the past 12 to 24 months. We projected distributions to occur quarterly, with the next four quarters reflecting the average distribution of the corresponding quarters from the prior two years, totaling approximately $950,000. Beyond this period, distributions were assumed to grow at an annual rate of 2.5%, consistent with expected inflation, in perpetuity.

Cost of Equity

A cost of equity of 68.3% was applied to discount the expected discretionary distributions to the holders of the Subject Interest, reflecting their high-risk profile, extremely limited claim on underlying NAV, and absence of control over distributions. This rate was selected based on the third quartile of required returns for pre-seed venture capital investments from the Pepperdine 2024 private capital markets report, aligning with the speculative nature of potential cash flows, significant legal and governance risks, and the

inability to force a sale or liquidity event. The Subject Interest exhibits characteristics similar to early-stage equity investments, where cash flows are highly uncertain, illiquidity risks are substantial, and investor returns are largely dependent on discretionary managerial decisions. Given these factors, a higher-end venture capital return benchmark was deemed appropriate.

Conclusion – Income Approach Analysis

Based on the forecasts and methodologies presented in this analysis, the income approach indicated a minority and marketable value of the Subject Interest of $2,045,531 as of the Valuation Date.

This conclusion of value implies a discount for lack of control (DLOC) of 99.2%, calculated as the concluded marketable value of the Subject Interest divided by the NAV of CLO HoldCo.[26]

To assess the impact of the discount rate, a sensitivity analysis was performed under the hypothetical assumption that projected distributions followed the risk profile of a risk-free perpetual bond with identical expected cash flows. In this scenario, a 4.65% discount rate, equivalent to the 30-year US Treasury yield as of the Valuation Date, was applied. Under this assumption, the minority, marketable value of the Subject Interest would be $44.7 million, resulting in an implied DLOC of 83.4%. However, this analysis does not reflect the substantial risks associated with the Subject Interest.

[26] Discounts for lack of control are applied based on the premise that an asset or interest in an entity in which an owner lacks decision making control would sell for less to a hypothetical buyer than an identical asset or interest which the same owner controls. Lack of control removes the investor's ability to make key decisions, including how to best manage the business, whether and how much cash to distribute to shareholders, or whether to pursue an acquisition or sale of the business.

CONCLUSION OF VALUE - SUBJECT INTEREST

Based on the methodologies presented in this analysis, it is our opinion that the value of the Subject Interest on a minority and marketable basis, as of the Valuation Date, can reasonably be stated as $2,045,531.

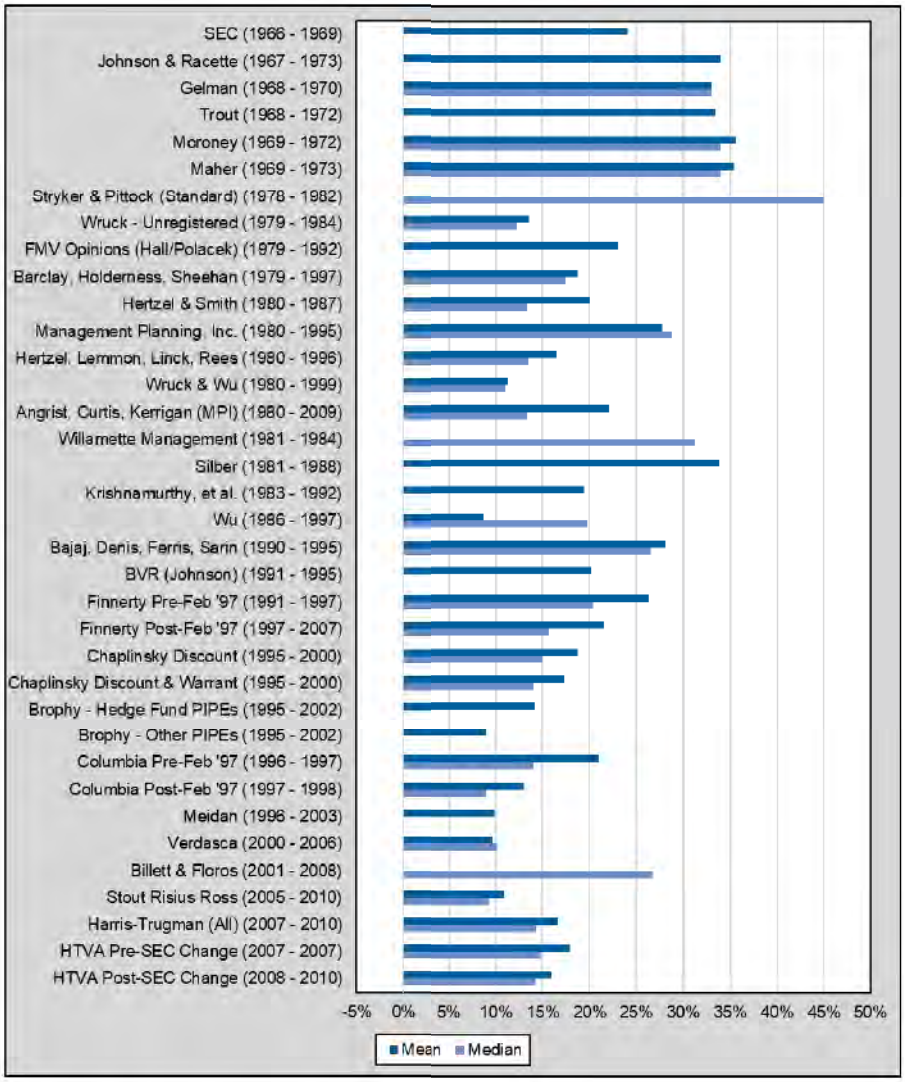
DISCOUNT FOR LACK OF MARKETABILITY

A discount for lack of marketability (DLOM) is necessary to determine the fair market value of the Subject Interest, as it cannot be readily sold or liquidated in an active market. The absence of a public exchange and transfer restrictions further constrain liquidity. A review of restricted stock studies was conducted to support the DLOM, examining the price differences between freely traded shares and comparable shares with resale restrictions. These studies provide empirical evidence of the impact of illiquidity on value, reinforcing the rationale for applying a marketability discount.

Restricted Stock Studies

The restricted stock studies reviewed included data from 1966 through 2010. The studies analyzed the difference in prices between publicly traded stock and restricted stocks of the same entity. The restricted stocks were identical to the traded stock except for marketability. A summary of the mean and median discounts of the restricted stock studies is presented in the following figure.

Summary of Restricted Stock Studies



SEC Institutional Investor Study[27]

The SEC Institutional Investor Study is a comprehensive restricted stock study with 398 transactions from January 1, 1966, through October 22, 1969. The study analyzed differences in discounts based on the following categories: trading market, type of institution purchasing the security, transaction size, sales of the issuer, and earnings of the issuer. The study found significant differences in discounts for type of exchange, sales, and earnings of the issuer. Stocks listed on the major exchanges had lower

[27] U.S. Securities and Exchange Commission, "Institutional Investor Report," 92nd Congress, 1st Session, House Documents No. 92-4, Part 5, 1971.

discounts than smaller exchanges and over-the-counter stocks. The study found higher discounts for companies with smaller sales and lower earnings.

Johnson & Racette Study[28]

Richard Johnson and George Racette performed a study on restricted securities purchased by registered investment companies between 1967 and 1973. The study included 86 observations sent from 75 investment companies that met the selection criteria. Johnson and Racette's analysis indicated an average marketability discount of 34%, in line with the range with the most common observations of 30-40%.

Gelman Study[29]

Milton Gelman of National Economic Research Associates, Inc. conducted a study of 89 restricted stock transactions executed by four investment companies from 1968 to 1970. The investment companies were formed in 1968 to specialize in restricted securities. A significant portion of the funds of the investment companies were invested in restricted stock transactions consisting of shares of large and small companies listed on large and small exchanges, over the counter, purchased directly from the companies, or from selling stockholders. Gelman's analysis found mean and median discounts of approximately 33%. In addition, 59% of the transactions had discounts of 30% or more and 36% of the transactions had discounts of 40% or more.

Trout Study[30]

Robert R. Trout, a principal of Trout, Shulman & Associates, analyzed 60 transactions involving the purchase of restricted stock by mutual funds from 1968 to 1972. Trout performed a regression analysis to determine the relationship between discounts and certain variables such as exchange listing, number of shares outstanding, and transaction size relative to total outstanding shares. Trout's findings suggested an intercept or implied mean and median discount of 43.5%.

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28 Richard D. Johnson and George A. Racette, "Discounts on Letter Stock Do Not Appear to Be a Good Base on Which to Estimate Discounts for Lack of Marketability on Closely Held Stocks," *Taxes—The Tax Magazine*, August 1981, 574-581.

29 Milton Gelman, "An Economist-Financial Analyst's Approach to Valuing Stock of a Closely-Held Company, "*The Journal of Taxation*, June 1972, 353-354.

30 Robert R. Trout, "Estimation of the Discount Associated With the Transfer of Restricted Securities," *Taxes—The Tax Magazine*, June 1977, 381-385.

Moroney Study[31]

Robert E. Moroney of Moroney, Beissner & Co. in Houston presented his restricted stock study to the Texas CPA Tax Institute in November 1972. The study was subsequently published in 1973. The analysis focused on 146 transactions in restricted securities by 10 registered investment companies. The discounts ranged from a 30% premium to a 90% discount with a mean and median discount of 35.8% and 32.8%, respectively.

Maher Study[32]

Michael Maher, a former estate and gift tax agent with the Internal Revenue Service, published his study results in 1976. The study observed discounts for 34 restricted stock transactions from 1966 to 1973. The results of his study suggested a mean discount for his total and adjusted analyses of 35.4% and 34.7%, respectively.

Standard Research Consultants Study[33]

A 1983 study by two Standard Research consultants, William F. Pittock and Charles H. Stryker, CPA, observed discounts relating to 28 private placements of common stock from October 1978 to June 1982. The discounts varied from 7% to 91% with a median of 45%. The results of the study tend to suggest higher discounts for companies with smaller revenues.

Wruck Study[34]

Karen Wruck's Harvard University study on firm value analyzed 83 sales of unregistered securities from 1979 to 1984, 37 of which were observable and included in the study's sample. On average, the offering price of the unregistered securities was set at 86.5% of the market price of the stock on the day before the announcement, indicating a discount of 13.5%. The median discount indicated was similar at 12.2%.

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31 Robert E. Moroney, "Most Courts Overvalue Closely Held Stocks," *Taxes—The Tax Magazine*, March 1973, 144-155.

32 J. Michael Maher, "Discounts for Lack of Marketability for Closely Held Business Interests," *Taxes—The Tax Magazine*, September 1976, 562-570.

33 William F. Pittock and Charles H. Stryker, "Revenue Ruling 77-287 Revisited," *SRC Quarterly Reports*, Spring 1983, 1-3, cited in Quantifying Marketability Discounts by Z. Christopher Mercer, 63.

34 Karen H. Wruck, "Equity Ownership Concentration and Firm Value, Evidence From Private Equity Financings," *Journal of Financial Economics*, Vol. 23. 1989, 3-1.

FMV Opinions Study[35]

The FMV Study included over 230 transactions from 1980 through April 1997, the date of the most recent amendment of Rule 144. The mean and median discounts were 22.3% and 20.1%, respectively. The authors of the study made the following generalization regarding their analysis:

- Companies with higher revenues resulted in lower discounts and vice versa
- Companies with unrestricted stock traded on exchanges exhibited lower discounts
- Discounts were higher for blocks exceeding 10% of ownership
- Discounts for companies with capitalization under $50 million ranged from 30% to 40%

Barclay, Holderness, Sheehan Study[36]

Michael J. Barclay, Clifford G. Holderness, and Dennis P. Sheehan's study observed private placements of large-percentage blocks of stock from 1980 to 1996. Specifically, the study analyzed private placements to a variety of different types of investors, namely active investors, passive investors, and management. Active investors were found to be willing to pay higher prices in their placements, indicating lower discounts, while management placements had the highest discounts, although they were found to not have a statistically significant difference from private placements. In total, the average discount across all private placements was 18.7% while the median discount was 17.4%.

Hertzel & Smith Study[37]

A 1993 study by Michael Hertzel and Richard L. Smith analyzed private placements between 1980 between 1987. The study's sample included private placements of 106 companies listed on the NYSE and AMEX exchanges as well as OTC firms. While the mean and median indicated discounts were 20% and 13%, respectively, more than 35% of the private placements observed had discounts greater than 25%.

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35 Hall, Lance S., and Timothy C. Polacek, "Strategies for Obtaining the Largest Valuation Discounts," *Estate Planning*, January/February 1994. pp. 38-44.

36 Michael J. Barclay, Clifford G. Holderness, and Dennis P. Sheehan, "Private Placements and Managerial Entrenchment," *The Journal of Corporate Finance*, 2007, Vol. 13, Issue 4, 461-484.

37 Michael Hertzel and Richard L. Smith, "Market Discounts and Shareholder Gains for Placing Equity Privately," *The Journal of Finance*, Vol. 48, No. 2. June 1993, 459-485.

Management Planning Study[38]

Management Planning, Inc. published the results of a study performed from 1980-1996 by Robert P. Oliver, ASA and Roy H. Meyers, ASA, CFA. They started with a base on 231 transactions and looked at discounts from the total sample, discounts from 53 transactions without registration rights, and discounts from 27 transactions with registration rights. A summary of the mean and median discounts from their study is presented in the following table.

Results of Management Planning Study

Discount	Entire Sample of 231 Transactions	53 Transactions without Registration Rights	27 Transactions with Registration Rights
Low	N/A	3.0%	N/A
Mean	29.0%	27.0%	12.8%
Median	28.0%	25.0%	9.1%
High	N/A	58.0%	N/A

The authors cite the difference between discounts with and without registration rights as evidence of the lack of marketability on an investment. Certain factors were also cited by the authors as the most influential in determining discounts. The factors include:

- Companies with higher revenues tend to have lower discounts
- Companies with higher earnings tend to have lower discounts
- Higher per share prices tend to have lower discounts
- Lower price volatility tends to result in lower discounts
- Block sizes representing a higher percentage of average trading volume tend to have higher discounts
- Large dollar blocks tend to have lower discounts

Hertzel, Lemmon, Linck, Rees Study[39]

A 2001 study by Michael Hertzel, Michael Lemmon, James Linck, and Lynn Rees analyzed private placements from 1980 to 1996. A total of 619 private placements were ultimately selected for the sample, which primarily consisted of small-cap, technology companies as 79% of the sample companies were traded on the NASDAQ exchange and the mean market value of equity for the companies was $188 million. Of the 619 private

[38] A Study by Management Planning Inc. published in Z. Christopher Mercer, "Analysis of Restricted Stocks of Public Companies 1980-1995," *Quantifying Marketability Discounts*, Peabody Publishing, 1997, Chapter 12, 345-370. Retrieved from John J. Stockdale Sr., *BVR's Guide to Discounts for Lack of Marketability*. 5th ed. Vol. 1. Portland, OR: Business Valuation Resources, LLC, 2013.

[39] Michael Hertzel, Michael Lemmon, James S. Linck, and Lynn L. Rees, "Long-Run Performance Following Private Placements of Equity," workpaper, Dec. 21, 2001.

placements in the sample, 404 had sufficient information and disclosures to determine relevant discounts. The study indicated a mean discount of 16.5% and a median discount of 13.4%.

Wruck & Wu Study[40]

A study by Karen Wruck and YiLin Wu in 2008 supplemented Ms. Wruck's 1989 study and analyzed private placements of companies between 1980 and 1999. 1,976 private placements were selected in the sample. Of these, 1,854 had data for observed discounts. The study found a mean discount of 11.33% and a median discount of 10.96%.

Angrist, Curtis, Kerrigan (MPI) Study[41]

A study by Ezra Angrist, Harry Curtis, III, CFA, ASA, and Daniel Kerrigan, CFA in 2011 grouped a total of 402 transactions of unregistered stock into four groups based on the timing of the issuances in respect to the changes in holding period restrictions per Rule 144 as follows:

Results of Angrist, Curtis, Kerrigan (MPI) Study

Period	Observations	Mean Discount	Median Discount
Pre-1990	79	30.5%	32.3%
1990 - Apr 1997	110	25.1%	22.5%
May '97 - Feb '08	164	20.8%	16.6%
Feb '08 - Dec '08	49	5.9%	5.0%
Total	402	22.1%	19.6%

Results of the study show that as restriction periods have declined, so have discounts.

Willamette Management Associates Study[42]

Willamette performed an analysis of 33 private placements of restricted stock from January 1, 1981 through May 27, 1984. There was a brief overlap in the latter part of the period included in the Standard Research Consultants Study. The Willamette study resulted in a mean discount of 31.2%.

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40 Karen H. Wruck and Yi Lin Wu, "Business Relationships, Corporate Governance, and Performance: Evidence From Private Placements of Common Stock," *Journal of Corporate Finance*, 15, 2009, 30-47.

41 Ezra Angrist, Harry Curtis III, and Daniel Kerrigan, "Regression Analysis and Discounts for Lack of Marketability," *Business Valuation Review*, Vol. 30, No. 1 Spring 2011, 36-48.

42 Shannon Pratt, Robert F. Reilly, and Robert P. Schweihs, *Valuing a Business*, 2nd edition, 247.

Silber Study[43]

William L. Silber, a professor of finance and economics at the Stern School of Business at New York University analyzed 69 private placements from 1981 through 1989. Silber's study results ranged from a 12.7% premium to an 84% discount with a mean discount of 33.8%. Silber also cited in his findings that discounts are larger when the block of restricted stock is large relative to the total shares outstanding and the dollar size is inversely related to the discount.

Krishnamurthy, et al. Study[44]

Srinivasan Krishnamurthy, Pual Spindt, Venkat Subramaniam, and Tracie Woidtke's 2001 study analyzed private placements from 1983 to 1992. The study performed different discount calculations for the following classifications: 1) restricted shares, 2) shares with registration pending, 3) shares not known to be restricted, and 4) shares with pending registration or not known to be restricted (groups 2 and 3 combined). The mean discounts for Groups 1-4 were 34.0%, 23.3%, 15.4%, and 16.0%, respectively. The overall mean discount was 19.4%.

Wu Study[45]

YiLin Wu's study on private placements was published in the Journal of Financial Economics in 2004. The study analyzed 301 private placements taking place from 1986 to 1997. Mean and median discounts of 8.7% and 19.8%, respectively, were observed.

Bajaj Study[46]

The Bajaj study expands on previous restricted stock studies, namely by Wruck and by Hertzel and Smith. This study analyzed 88 private placements occurring between 1990 and 1995. The 88 observations revealed results ranging from a premium of approximately 14% to a discount of 68%, with mean and discounts of 22% and 21%, respectively. The authors note four characteristics to consider regarding the target firm and private placement itself when analyzing discounts: the percentage of total shares offered, business risk, financial distress, and total proceeds.

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43 William L. Silber, "Discounts on Restricted Stock: The Impact of Illiquidity on Stock Prices," *Financial Analysts Journal*, July-August 1991, 60-64.

44 Srinivasan Krishnamurthy, Paul Spindt, Venkat Subramaniam, and Tracie Woidtke, "Does Investor Identity Matter in Equity Issues? Evidence From Private Placements," *Journal of Financial Intermediation*, 14, 2005, 210–238.

45 Yi Lin Wu, "The Choice of Equity Selling Mechanisms," *Journal of Financial Economics*, 74, 2004, 93-119.

46 Mukesh Bajaj, David J. Denis, Stephen P. Ferris, and Atulya Sarin, "Firm Value and Marketability Discounts," *Journal of Corporation Law*, Vol. 27, Fall 2001, 89-115.

Johnson Study (Business Valuation Review)[47]

Bruce A. Johnson, ASA of Munroe, Park & Johnson conducted a restricted stock study from 1991 to 1995. The study included 72 private placements with results varying from a 10% premium to a 60% discount with a mean discount of 20%. Johnson also cited four important factors to consider when evaluating potential discounts: positive net income, sales volume, transaction value, and net income strength.

Finnerty Study[48]

John D. Finnerty, professor of finance at Fordham University, performed two studies to compare the impact of the changes in law regarding restriction periods for private placements that occurred in 1997 and 2008. The first study focused on private placements from 1991 to 1997 and resulted in mean and median discounts of 26% and 20%, respectively. The second study focused on private placements from 1997 to 2008 and resulted in mean and median discounts of 22% and 16%, respectively.

Chaplinsky Purchase Discount and Warrant Study[49]

Susan Chaplinsky's and David Haushalter's 2010 study analyzed private placements with a concentration on contract terms. The study asserts that companies that are riskier and have poorer performance more commonly have private placement contracts with contingency terms rather than just offering a pure discount. The indicated mean discount considering only the purchase discount was 19%, and the median was 15%. The indicated mean discount considering purchase discounts as well as warrants was 17%, and the median was 14%.

Brophy PIPE Study[50]

David J. Brophy, Paige P. Ouimet, and Clemens Sialm of the University of Michigan performed a 2006 study that compared the effects of issuing private placements to hedge fund investors versus other investors. The study indicated a mean discount of 14% when private placements were issued to hedge funds, but the mean discount when the issuance involved other investors was just 9%.

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47 Bruce A. Johnson, "Quantitative Support for Discounts for Lack of Marketability," *Business Valuation Review*, Vol. 18, No. 4, December 1999, 152-155.

48 John D. Finnerty, "An Average-Strike Put Option Model of the Marketability Discount," *The Journal of Derivatives*, April 19, 2012, 53-69.

49 Susan Chaplinsky and David Haushalter, "Financing Under Extreme Risk: Contract Terms and Returns to Private Investments in Public Equity," *Review of Financial Studies*, 2010, 23 (7), 2,789-2,820.

50 David Brophy, Paige Ouimet, and Clemens Sialm, "Hedge Funds as Investors of Last Resort?" workpaper, 2006, papers.ssrn.com/sol3/papers.cfm?abstract_id=782791.

Columbia Financial Advisors Study[51]

This study focused on the effect of the Rule 144 holding period reduction to one year. The study considered two periods: January 1, 1996, to April 30, 1997, and May 1, 1997, to December 31, 1998. The one-year holding period became effective April 29, 1997. A summary of the study results is presented in the following table.

Summary of Columbia Financial Advisors Study

	January 1, 1996 to April 30, 1997	May 1, 1997 to December 31, 1998
Number of Transactions	23	15
Low	0.8%	0.0%
Mean	21.0%	13.0%
Median	N/A	9.0%
High	67.5%	30.0%

Meidan Study[52]

Danny Meidan's 2006 study observed PIPE transactions between 1996 and 2003. The study categorized a total of 1,726 total private placement transactions into three groups: placements issued at discounts greater than 30%, placements issued between a 30% discount and 5% premium, and placements issued at a premium greater than 5%. The majority of these transactions fell into the 30% discount to 5% premium category at 1,278 placements, or roughly 74% of the total sample. The weighted average of the mean discounts was calculated as 9.8%.

Verdasca Study[53]

Andrew Verdasca of the Leonard N. Stern School of Business of New York University performed a 2007 study on a sample of 771 private placement transactions. The study found a discount range from a 78% discount to a 93% premium, but both the mean and median results indicated discounts of approximately 10%.

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51 Kathryn F. Aschwald, "Restricted Stock Discounts Decline as Result of 1-Year Holding Period," *Shannon Pratt's Business Valuation Update*, Vol. 6, No. 5, May 2000, 1-5.

52 Danny Meidan , "The Informativeness of Offer Characteristics Versus Investor Identity in PIPE Transactions," April 2, 2006, papers.ssrn.com/sol3/papers.cfm?abstract_id=894689.

53 Andrew Verdasca , "Common Stock PIPE Discounts and Long-Term Performance," April 2, 2007, www.stern.nyu.edu/cons/groups/content/documents/webasset/uat_024319.pdf.

Billett & Floros Study[54]

Matthew T. Billett and Ioannis V. Floros' 2012 study focuses on two key features of financial relationships, contract terms and investor identity, in regard to private placements between 2001 and 2008. These factors were found to both complement and substitute for the other depending on individual circumstances. By analyzing 12,004 transactions in the PlacementTracker and PrivateRaise databases, the study concluded a median discount of 26.7%.

Stout Risius Ross Study[55]

Aaron M. Stumpf, CPA/ABV, Robert L. Martinez, and Christopher T. Stallman of the valuation firm Stout Risius Ross performed a study of restricted stock transactions from September 2005 through May 2010, focusing on discounts associated with shorter holding periods. The chosen time period includes transactions both before and after Rule 144 implementation. The study found that for all transactions considered, the average and median discounts were 10.9% and 9.3%, respectively. Stout Risius Ross also found that the most significant and reliable factors influencing discounts were subject company volatility, block size, dividends, profitability, growth, and size.

Harris-Trugman Study[56]

William Harris, AM of Trugman Valuation Associates, Inc.'s study was performed to analyze the impact of the economic recession on implied restricted stock discounts and the statistical relationships between implied restricted stock discounts and various company-specific variables. The study originally included 80 transactions of restricted stock sales that took place in 2007-2008. Due to the volatility of the Rule 144 holding period implementation, an additional 56 transactions were included in 2011. For the 47 transactions that took place prior to Rule 144 implementation, the average and median discounts were 17.9% and 14.8%, respectively. The 89 transactions analyzed after the rule implantation had average and median discounts of 15.9% and 14.3%, respectively. The overall group indicated mean and median discounts of 16.6% and 14.3%, respectively. The Harris-Trugman study noted that the only company-specific variable that had a notable statistical relationship with the implied discounts was volatility.

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54 Matthew Billett and Ioannis Floros, "Do Investor Identity and Contract Terms Interact? Evidence From the Wealth Effects of Private Placements," workpaper, April 2012, papers.ssrn.com/sol3/papers.cfm?abstract_id=1784498.

55 Aaron Stumpf, Robert Martinez, and Christopher Stallman, "The Stout Risius Ross Restricted Stock Study: A Recent Examination of Private Placement Transactions From September 2005 Through May 2010," *Business Valuation Review*, Vol. 30, No. 1, Spring 2011, 36-48.

56 William Harris, "Trugman Associates, Inc. (TVA) Restricted Stock Study—An Update," *Business Valuation Review*, Vol. 30, No. 4, Winter 2011, 132-139.

Summary of Restricted Stock Studies

The restricted stock studies previously mentioned were performed based on data from 1966 to 2010. Reported mean discounts range from 8.7% to 35.6%. The average of reported mean discounts was 20.8%, while the median was 19.4%. Reported median discounts range from 9.0% to 45.0%. The average of reported median discounts was 19.9%, while the median was 15.3%.

Some of the variation in the studies has to do with the specific periods analyzed. Prior to April 1997, the SEC-required holding period for restricted stocks was two years. That was decreased to one year on April 29, 1997. Similarly, the holding period was reduced from one year to six months effective February 15, 2008.

The following table shows the summary statistics for studies based upon the period studied.

Analysis of Restricted Stock Studies for Different Periods

Descriptive Statistics for Reported Mean and Median Discounts		
	Mean	Median
All Studies		
Low	8.7%	9.0%
Median	19.4%	15.3%
Mean	**20.8%**	19.8%
High	35.6%	45.0%
Standard Deviation	8.2%	9.4%
All Studies Prior to Feb 1997		
Low	8.7%	12.2%
Median	23.3%	23.4%
Mean	24.4%	24.4%
High	35.6%	45.0%
Standard Deviation	7.9%	10.1%
All Studies after 1997 and before 2008		
Low	9.7%	9.0%
Median	15.5%	14.8%
Mean	15.5%	15.2%
High	21.5%	26.7%
Standard Deviation	5.2%	7.0%
All Studies Encompassing 1997		
Low	9.0%	11.0%
Median	14.1%	14.5%
Mean	14.6%	14.9%
High	22.1%	19.6%
Standard Deviation	4.9%	3.6%
All Studies Encompassing 2008		
Low	10.9%	9.3%
Median	13.8%	11.8%
Mean	13.8%	11.8%
High	16.6%	14.3%
Standard Deviation	4.0%	3.5%
Indicated Discount for Lack of Marketability	**20.8%**	

The studies also cited several company and security specific factors in determining the estimated discount.

PRE-IPO STUDIES

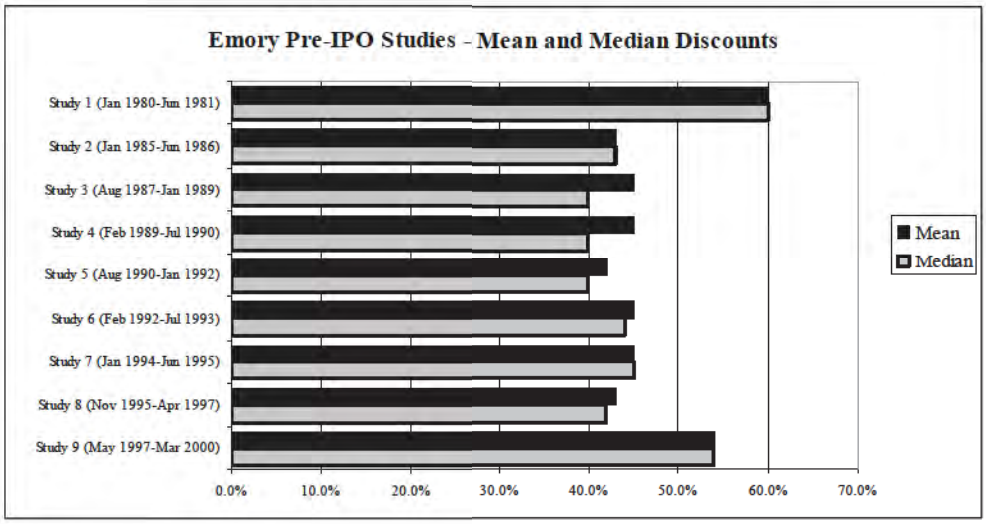
In recent years, a number of pre-IPO studies were performed to support marketability discounts. The methodology applied in these studies is based on the initial offering price (the price prior to public trading). This price is reduced by the price per share at the time of the last private transaction (which must be less than five months prior to the initial offering to qualify for the study) and adjusted by an appropriate index to account for related market or sector movements over the five-month period. The resulting amount is divided by the initial offering price to arrive at the appropriate discount. The pre-IPO methodology of determining marketability discounts is a relevant method as private stockholders experience an inability to freely sell their stock in the open market, similar to restricted stockholders. Furthermore, private stockholders differ from unrestricted public stockholders, much like restricted stockholders, because there is not a public forum in which investments can be easily liquidated (which is only one of the differences between private and public stockholders).

Emory Studies

John Emory, Sr., ASA began his pre-IPO studies with Baird & Co. and continued his studies with his own firm, Emory Business Valuation, LLC. Emory has completed nine studies with the original published in June 1986. The first eight studies eliminated development-stage companies, companies with historical operating losses and companies with IPO prices less than $5 per share. The ninth study deviated from the previous studies as follows:

- Included only companies with "com" in their names
- Review period was increased from 18 months in the previous studies to 35 months
- All transactions were actual sales as opposed to the previous studies that included options
- Most of the companies did not have earnings

The study consisted of 53 transactions. The mean and median discounts by study are presented in the following chart.



Willamette Management Associates Pre-IPO Study

This study observed 556 companies and 1,007 transactions from 1975 through 1997. The adjusted mean discount[57] for each time period varied from 28.9% to 56.8%. The mean for the entire review period was 44.2%. The median discount range was from 31.8% to 73.1% with the overall median at 50.4%. The Willamette study found the standard mean discount was greater than 35% for all but three of the 14 periods in the study and that median discounts exceeded 40% in all but one year.

Valuation Advisors Pre-IPO Study

Two studies were conducted by Valuation Advisors for the calendar years of 1999 and 2000. The mean discount of these studies was 48.9%. The key feature of this study was the inclusion of holding period based upon the length of time between the private transaction and the IPO. The study confirmed the author's initial hypothesis that higher discounts accompany longer holding periods.

APPLICATION OF RESTRICTED STOCK STUDIES TO THE SUBJECT INTEREST

While there are potential application problems associated with various studies, especially the pre-IPO studies, a review of these studies is helpful in assessing a reasonable marketability discount for the Subject Interest. The mean and median discounts from the restricted stock studies ranged from 9% to 45%. The findings of the restricted stock studies as well as additional private placement studies by Hertzel and Smith suggest discounts can vary greatly depending on size, profitability and other company or security specific factors.

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57 Excluded highest and lowest deciles of indicated discounts

The latest restricted stock studies indicate mean and median marketability discounts in 14% range. We view the latest restricted stock studies as shorter term and therefore have taken the full sample of restricted stock studies into account in our analysis. Our analysis compares these interests to the comparable transactions and makes adjustments from the baseline discounts noted in the comparable transactions. Since the latest one-year study does not measure restricted securities with similar hold periods relative to the vast majority of other discount studies and since it has a relatively small sample size, we relied upon all the restricted stock studies' findings as the basis for our comparison.

The pre-IPO studies may be less indicative of appropriate marketability discounts, as much of the differences in the transaction prices between pre-IPO and IPO may include event premiums, such as the securing of additional capital which promotes the viability of the company. We did not use these studies for our analysis.

Factors Affecting Marketability

Based on the SEC Study, we noticed that as company size and profitability decreases, the marketability discount associated with restricted stock in these companies increase. We also note that various other factors affected discounts observed in the other studies. Most notably, the following affect marketability discounts:

- Increase in dividend payment decreases marketability discounts
- Increase in the size of interest and amount of control decreases discounts
- Increase in financial strength of the company decreases discounts
- Increase in restrictions increases marketability discounts

Given the characteristics of size, lack of distribution history, etc., we concluded a 20.8% marketability discount, with a standard deviation of 8.2%, as the baseline observed from all the restricted stock studies we reviewed.

DISCOUNT ADJUSTMENT DISCUSSION

In the following sections, we adjust the marketability discount to reflect the attributes of the Subject Interest.

The analysis originates with the baseline discount concluded in the previous section. Then, our analysis reviews several factors that affect marketability for both the interests being valued and the comparable interest which provides the base of comparison. Each interest is assigned a ranking from 1 to 5 (from Poor to Strong) based upon the respective feature. Then, the feature ranking for the Subject Interest is subtracted from the feature ranking from the comparable interest. This results in a range of outputs from -4 to +4

(from significantly worse to significantly better). The output is then multiplied by the standard deviation of the restricted stock studies (lack of marketability) to give an indication as to the adjustment necessary to the baseline discount based upon this feature. An importance factor (from low to high) is also attributed to each feature to provide a final scaling factor for the specific feature.

Once the individual feature scaling factors are computed, the baseline discounts are adjusted upward and downward by multiplying the baseline discount by the product of all relevant feature scaling factors.

SUBJECT INTEREST DISCOUNT CALCULATION

Adjustment Analysis – Marketability

The Subject Interest is characterized by a lack of rights and, is therefore, somewhat riskier and more volatile. The Participation Shares have restrictions on the transfer of their shares and only have a claim in respect of the underlying assets in a winding up.

The 20.8% baseline lack of marketability discount of the comparable investments reflects the discount that would apply to the Subject Interest if it had illiquidity features similar to restricted stock. Since the Subject Interest did not exhibit these exact characteristics, further adjustments were necessary to conclude fair market value.

Schedule C.3 summarizes the differences between the Subject Interest and the comparable investments used in our analysis. Overall, these factors resulted in a modest decrease in the discount from the baseline.

Based on the analyses and procedures outlined herein, we concluded that a lack of marketability discount of 20.0% is appropriate for the Subject Interest.

FAIR MARKET VALUE CONCLUSION

Based on the procedures outlined herein and the corresponding analysis, it is our opinion that the fair market value of the Subject Interest as of the Valuation Date can be reasonably stated as:

$1,637,192
ONE MILLION SIX HUNDRED THIRTY-SEVEN THOUSAND ONE HUNDRED NINETY-TWO DOLLARS

Fair Market Value Summary			
		Value	Reference
Income Approach			
Value of Subject Interest, Minority, Marketable		$2,045,531	*Schedule B.1*
Less: Discount for Lack of Marketability	*20.0%*	($408,339)	*Schedule C.4*
Value of Subject Interest, Minority, Non-Marketable		$1,637,192	
Total Subject Interest Shares		305	
Fair Market Value per Share		**$5,368**	

Subject Interest Valuation Breakout		
	Shares	Fair Market Value
Highland Dallas Foundation, Inc.	100	$536,784
Highland Kansas City Foundation, Inc.	100	$536,784
Highland Santa Barbara Foundation, Inc.	100	$536,784
The Community Foundation of North Texas	5	$26,839
Total Subject Interest	305	$1,637,192

Our conclusion of value implies an expected payback period of 1.27 years for the Subject Interest. Our conclusion of value is presented in the Summary Schedule as well as in the chart above.

This conclusion is subject to the Assumptions and Limiting Conditions and to the Appraisal Certification found at the end of this report. We relied on information received as indicative of the Company as of the Valuation Date. We made limited investigation as to the accuracy and completeness of such information and did not verify this information as part of our valuation. Therefore, we express no opinion or other form of assurance regarding the accuracy of the source data. Our analysis was based in part on this information as well as on other data we developed. We have no obligation to update this report or our conclusion of value for information that comes to our attention after the date of this report.

ASSUMPTIONS AND LIMITING CONDITIONS

This valuation by ValueScope, LLC is subject to and governed by the following Assumptions and Limiting Conditions and other terms, assumptions and conditions contained in the engagement letter.

LIMITATION ON DISTRIBUTION AND USE

The report, the final estimate of value, and the prospective financial analyses included therein are intended solely for the information of the person or persons to whom they are addressed and solely for the purposes stated. They should not be relied upon for any other purpose, and no party other than the Company may rely on them for any purpose whatsoever. Notwithstanding the foregoing, the valuation report and its contents may be disclosed to third parties, including potential investors, acquirers, and advisors, to establish the fair market value of the Company or in connection with transactions involving the Company, without requiring prior written consent from ValueScope, LLC. Additionally, the Company may distribute this report to outside professional accounting and legal advisors, and to the Company's shareholders and their professional accounting and legal advisors.

No change of any item in this report shall be made by anyone other than ValueScope, LLC, and we shall have no responsibility for any such unauthorized change.

The valuation report has been prepared based on specific assumptions, methodologies, and data outlined herein. This report may be used alongside other appraisals or studies for comparative or analytical purposes. The value conclusion(s) stated in this appraisal is based on the program of utilization described in the report and may not be separated into parts. The report may not be reproduced, in whole or in part, and the findings of the report may not be utilized by a third party for any purpose, other than as expressly permitted herein, without the express written consent of ValueScope, LLC.

NOT A FAIRNESS OPINION

Neither our opinion nor our report are to be construed as an opinion of the fairness of an actual or proposed transaction, a solvency opinion, or an investment recommendation but, instead, are the expression of our determination of value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, including our analysis whether impairment of goodwill exists.

OPERATIONAL ASSUMPTIONS

Unless stated otherwise, our analysis (i) assumes that as of the valuation date, the Company and its assets will continue to operate as configured as a going concern, (ii) is based on the past, present, and future projected financial condition of the Company and its assets as of the valuation date, and (iii) assumes that the Company has no undisclosed real or contingent assets or liabilities, other than in the ordinary course of business, that would have a material effect on our analysis.

We did not make an onsite visit to Company facilities.

COMPETENT MANAGEMENT ASSUMED

It should be specifically noted that the valuation assumes the property will be competently managed and maintained over the expected period of ownership. This appraisal engagement does not entail an evaluation of management's effectiveness, nor are we responsible for future marketing efforts and other management or ownership actions upon which actual results will depend.

NO OBLIGATION TO PROVIDE SERVICES AFTER COMPLETION

Valuation assignments are accepted with the understanding that there is no obligation to furnish services after completion of this engagement. If the need for subsequent services related to a valuation assignment (e.g., including testimony, preparation for testimony, other activity compelled by legal process, updates, conferences, reprint or copy services, document production or interrogatory response preparation, whether by request of the Company or by subpoena or other legal process initiated by a party other than the Company) is requested, special arrangements for such services acceptable to ValueScope, LLC must be made in advance. ValueScope, LLC reserves the right to make adjustments to the analysis, opinion, and conclusion set forth in the report as we deem reasonably necessary based upon consideration of additional or more reliable data that may become available.

In all matters that may be potentially challenged by a Court or other party, we do not take responsibility for the degree of reasonableness of contrary positions that others may choose to take nor for the costs or fees that may be incurred in the defense of our recommendations against challenge(s). We will, however, retain our supporting work papers for your matter(s) and will be available to assist in defending our professional positions taken, at our then current rates plus direct expenses at actual and according to our then current Standard Professional Agreement.

NO OPINION IS RENDERED AS TO LEGAL FEE OR PROPERTY TITLE

No opinion is rendered as to legal fee or property title. No opinion is intended in matters that require legal, engineering, or other professional advice that has been or will be obtained from professional sources.

LIENS AND ENCUMBRANCES

ValueScope will give no consideration to liens or encumbrances except as specifically stated. We will assume that all required licenses and permits are in full force and effect, and we make no independent on-site tests to identify the presence of any potential environmental risks. We assume no responsibility for the acceptability of the valuation approaches used in our report as legal evidence in any particular court or jurisdiction.

INFORMATION PROVIDED BY OTHERS

Information furnished by others is presumed to be reliable; no responsibility, whether legal or otherwise, is assumed for its accuracy and cannot be guaranteed as being certain. All financial data, operating histories, and other data relating to income and expenses attributed to the business have been provided by management or its representatives and have been accepted without further verification except as specifically stated in the report.

PROSPECTIVE FINANCIAL INFORMATION

Valuation reports may contain prospective financial information, estimates, or opinions that represent reasonable expectations at a particular point in time, but such information, estimates, or opinions are not offered as forecasts, prospective financial statements or opinions, predictions or as assurances that a particular level of income or profit will be achieved, that events will occur, or that a particular price will be offered or accepted. Actual results achieved during the period covered by our prospective financial analysis will vary from those described in our report, and the variations may be material.

Any use of management's projections or forecasts in our analysis will not constitute an examination, review, or compilation of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants (AICPA). We will not express an opinion or any other form of assurance on the reasonableness of the underlying assumptions or whether any of the prospective financial statements, if used, are presented in conformity with AICPA presentation guidelines.

REGULATORY AND ENVIRONMENTAL CONSIDERATIONS

The report assumes all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any local, state or national government, or private entity or organization have been or can be obtained or reviewed for any use on which the opinion contained in the report are based.

ValueScope is not an environmental consultant or auditor, and it takes no responsibility for any actual or potential environmental liabilities. Any person entitled to rely on this report, wishing to know whether such liabilities exist or the scope and their effect on the value of the property, is encouraged to obtain a professional environmental assessment. ValueScope does not conduct or provide environmental assessments and has not performed one for the subject property.

ValueScope has not determined independently whether the Company is subject to any present or future liability relating to environmental matters (including but not limited to CERCLA/Superfund liability) or the scope of any such liabilities. ValueScope's valuation takes no such liabilities into account, except as they have been reported to ValueScope by the Company or by an environmental consultant working for the Company, and then only to the extent that the liability was reported to us in an actual or estimated dollar amount. Such matters, if any, are noted in the report. To the extent such information has been reported to us, ValueScope has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.

Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.

ValueScope has not made a specific compliance survey or analysis of the subject property to determine whether it is subject to, or in compliance with, the American Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.

ValueScope expresses no opinion for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by business appraisers.

POTENTIAL FUTURE SALES

Any decisions to purchase, sell, or transfer any interest in the subject company or its subsidiaries shall be your sole responsibility, as well as the structure to be utilized and the price to be accepted.

The selection of the price to be accepted requires consideration of factors beyond the information we will provide or have provided. An actual transaction involving the subject business might be concluded at a higher value or at a lower value, depending upon the circumstances of the transaction and the business and the knowledge and motivations of the buyers and sellers at that time. Due to the economic and individual motivational influences which may affect the sale of a business interest, the appraiser assumes no responsibility for the actual price of any subject business interest if sold or transferred.

INDEMNIFICATION BY THE COMPANY

The following indemnifications apply only to the extent that any losses, claims, damages, judgments, or liabilities are not caused by fraud, bad faith, gross negligence, or willful malfeasance on the part of ValueScope.

The Company agrees to indemnify and hold harmless ValueScope and its respective principals, affiliate, agents, and employees ("Indemnified Party") against any losses, claims, damages, judgments, or liabilities arising out of or based upon any professional advisory services rendered pursuant to this agreement. Furthermore, the Company agrees to indemnify ValueScope and any Indemnified Party against any losses, claims, damages, judgments, or liabilities incurred as a result of a third party initiating a lawsuit against any Indemnified Party based upon any consulting services rendered to the Company pursuant to this agreement. In consideration for this indemnification agreement, ValueScope will provide professional advisory services.

The Company agrees to reimburse ValueScope and any Indemnified Party for any necessary and reasonable expenses, attorneys' fees, or costs incurred in the enforcement of any part of the indemnity agreement 30 days after receiving written notice from ValueScope.

The obligations of ValueScope under this agreement are solely corporate obligations, and no officer, director, employee, agent, shareholder, or controlling person in ValueScope shall be subjected to any personal liability whatsoever to any person, nor will any such claim be asserted by or on behalf of you or your affiliates.

APPRAISAL CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. We have not inspected certain assets, properties, or business interests encompassed by this appraisal.
2. We have no present or prospective future interest in the assets, properties, or business interests that are the subject of this appraisal report.
3. We have no personal interest or bias with respect to the subject matter of this report or the parties involved.
4. Our compensation for conducting the appraisal is in no way contingent upon the value reported or on any predetermined value.
5. To the best of our knowledge and belief, the statements of facts contained in this report, on which the analyses, conclusions, and opinions expressed herein are based, are true and correct.
6. No persons other than us have provided significant professional assistance regarding the analyses, opinions, and conclusions set forth in this report.
7. The reported analyses, opinions, and conclusions are limited only by the reported contingent and limiting conditions, and they represent our unbiased professional analyses, opinions, and conclusions.
8. This report and analysis were prepared under the direction of Steven C. Hastings.
9. I am in compliance with all professional appraisal certifications and licensing.
10. The National Association of Certified Valuators and Analysts (NACVA) has a mandatory recertification program for its accredited members and I am in compliance with that program.

By: ValueScope, LLC



Steven C. Hastings, CPA/ABV/CFF, CGMA, ASA, CVA
Principal
ValueScope, LLC

APPENDIX A
KEY DAF AGREEMENT PROVISIONS

1. The capital of the Company is US$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US$0.01 each 100 Management Shares of a nominal or par value of US$0.01 each provided always that subject to the Act and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restriction whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided. [Paragraph 7, Memorandum]

2. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:

    a. issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine;

    b. and grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

    and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued. [Article 7]

3. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Participating Shares into any number of Classes and the different Classes shall be authorised, establishing and designated (or re-designated as the case may be) and the variations in the relative rights (including without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligation as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution. [Article 8]

4. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether

absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerages as may be lawful on any issue of Shares. [Article 9]

5. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason. [Article 10]

6. Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote in general meetings of the Company but may be entitled to vote at a separate class meeting in relation to a modification of rights pursuant to the immediately following Article. The Participating Shares shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles. [Article 12]

7. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Participating Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that the variation or abrogation of the rights attached to such Classes proposed for consideration is the same variation or abrogation for all such relevant Classes, but in any other case shall treat them as separate Classes. [Article 13]

8. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares raking *pari passu* with or subsequent to them or the redemption of purchase of any Participating Shares of any Class by the Company. [Article 14]

9. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor including any purported transfer that does not comply with applicable securities or tax laws. [Article 18]

10. If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles. [Article 21]

11. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution. [Article 65]

12. Subject to the Act, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed. [Article 72]

13. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article. [Article 77]

14. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Act and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor. [Article 100]

15. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors. [Article 101]

16. Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rate basis as to the paid-up or par value of the Shares. [Article 105]

17. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors of by Ordinary Resolution. [Article 110]

APPENDIX B
QUALIFICATIONS OF THE APPRAISER

Steven C. Hastings, MBA, CPA/ABV/CFF, CGMA, ASA, CVA
Principal
shastings@valuescopeinc.com, 817-481-4901

Mr. Hastings has conducted valuations of common and preferred stock, other equity, and debt instruments of banks and privately held companies.

EMPLOYMENT HISTORY

2006 – Present *ValueScope, LLC*

Principal
Mr. Hastings joined the company as a principal to provide valuation and financial modeling and expert advisory services to a select group of clients that expect a high level of accurate financial analysis. As a CPA with significant valuation and financial reporting experience, Mr. Hastings bridges the gap between deal structuring, valuation and the requirements of financial reporting.

2001 – 2006 *Value Capital, LLC*

Principal
Mr. Hastings served as a principal with Value Capital, LLC. During his tenure at Value Capital Mr. Hastings gained extensive experience in business financings, as well as the analysis of market dynamics in various industries. He provided services to clients in several transactions involving mergers and acquisitions and consulted on and was party to several creative financing transactions. His clients include: health care providers; software development, India outsource services, pre-media print services, and e-learning; video productions and TV show producers; finance companies; restaurant development companies; and other service industries.

Public Service - 1994 to 2000 *Finance Commission of Texas*

Director
The Commission provides overall policy and supervisory control for three key state agencies: the Banking Department, the Savings and Loan Department and the Office of Consumer Credit Commissioner. As the CPA member of the Finance Commission, Mr. Hastings was responsible for testifying to the Texas Senate on the validity and achievability of bi-annual budgets. Mr. Hastings served as chairman of the Audit Committee for the Texas Department of Banking, which provided the guidance and oversight for compliance with Texas's banking rules and regulations. He was

instrumental in assisting the Savings and Loan Department in writing new Mortgage Broker regulations and worked closely with the Consumer Credit Commissioner in clarifying the Texas payday lending regulations.

1994 – 2001 *MedCare Financial Solutions, Inc.*

President
Mr. Hastings served as an officer of MedCare Financial Solutions, Inc. and MedCapital Funding Corporation. MedCapital provided Medicare, Medicaid and private pay receivable financing to health care providers. MedCare Financial Solutions provided other financial and operational services to health care providers. These services included: divestitures; mergers and acquisitions; claims processing; educational/training; financial consulting; and financing advice regarding working capital, subordinated debt and equity lending. Mr. Hastings developed several reimbursement and financing training courses and is an accomplished speaker on topics related to health care reimbursement and financing systems.

1986 – 1994 *H.D. Vest Financial Services*

Executive Vice President and CFO
As executive vice president and CFO of H.D. Vest Financial Services, Mr. Hastings assisted in placing over $1.5 billion annually in investment. Responsible for day-to-day financial operations and capital structuring, Mr. Hastings gained experience in a wide variety of industries and gained strategic relationships with other investment bankers and business brokers. Mr. Hastings was instrumental in taking HD Vest public.

As a general securities principal, Mr. Hastings supervised stockbrokers' and investment advisors' day-to-day activities. As a securities financial and operations principal, he was responsible for filing net capital reports and other types of certifications with the NASD, SIPIC and other state and federal regulating bodies. Being licensed in life, disability, health, property and casualty insurance, Mr. Hasting was instrumental in implementing this line of business at HD Vest.

1979 – 1986 *Arthur Andersen & Co.*

Senior Manager
Mr. Hastings served as a senior manager with significant responsibilities in the several industries. He consulted on accounting, finance, tax, operations, and systems issues.

FORMAL EDUCATION

Master of Business Administration - Arizona State University, Tempe, Arizona

Bachelor of Science - Indiana University, Bloomington, Indiana

CERTIFICATIONS AND LICENSES

Certified Public Accountant (CPA)
Accredited Senior Appraiser (ASA)
Certified Valuation Analyst (CVA)
Accredited in Business Valuations, AICPA (ABV)
Certified in Financial Forensics, AICPA (CFF)
Chartered Global Management Accountant, AICPA (CGMA)
Former, Certified Health Insurance Claims Professional (NACAP)
Former, Securities Financial and Operations Principal
Former, General Securities Principal
Former, Registered Investment Advisor Principal
Former, Life, Disability, Health, Property and Casualty Licenses

ORGANIZATIONS AND PROFESSIONAL ASSOCIATIONS

American Institute of CPAs (CPA license, ABV and CFF credential)
Texas Society of CPAs (CPA license)
Dallas Society of CPAs (Past: Secretary, Ethic Committee Chairman, Financial Planning Committee Chairman)
American Society of Appraisers (ASA credential)
National Association of Certified Valuation Analysts (CVA credential)
AICPA Business Valuation & Forensic Litigation Support (CFF Credential)
Financial Executive Institute

RECENT IRS CASES - OFFICE OF CHIEF COUNSEL

Expert Witness – United States Tax Court (New York) 2018, Consolidated T.C. Docket No. 23516-16, Marc Chrem & Esther Chrem v. Commissioner of Internal Revenue, Economic interest in a corporation for gift tax purposes.

- Expert Report April 2018

Expert Witness – United States Tax Court (Nashville) 2009, T.C. Docket No. 30515-09, Nancy Sue Hawk, Transferee, Petitioner v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report April 2016
- Testimony June 2016
- Court Opinion November 2017

Expert Witness – United States Tax Court (Dallas) 2016, T.C. Docket No. 3030-14, Red River Ventures, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report September 2015
- Stipulated Tax Court Opinion December 2016

Expert Witness – United States Tax Court (Washington DC) 2016, T.C. Docket No. 1045-13, Estate of Jinana M. Bowey, et al, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report September 2015
- Stipulated Tax Court Opinion December 2016

Expert Witness – United States Tax Court (Boston) 2014, T.C. Docket No. 8401-13, Estate of Edward S. Redstone, Petitioner, v. Commissioner of Internal Revenue, Respondent. Economic interest in a corporation for gift tax purposes.

- Expert Report June 2014
- Testimony August 2014
- Tax Court Opinion October 2015

Expert Witness – United States Tax Court (Washington DC) 2014, T.C. Docket No. 223630-12, Michael Tricarichi, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report April 2014
- Testimony June 2014
- Tax Court Opinion October 2015

Expert Witness - United States Tax Court (Chicago, IL) 2014, T.C. Docket No. 6936-10, et al, John M. Alterman, et al, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report March 2014
- Testimony May 2014
- Tax Court Opinion December 2015

Expert Witness – United States Tax Court (Los Angeles), 2013 - 2014, Docket No. 8097-13, *Sumner Redstone, Petitioner, v. Commissioner of Internal Revenue, Respondent. Economic interest in a corporation for gift tax purposes.*

- Expert Report January 2014
- Testimony March 2014
- Tax Court Opinion December 2015

Expert Witness – IRS & DOJ, United States Tax Court (Houston) 2013, Docket No. 20177-11, *Richard H. Cullifer, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.*

- Expert Report August 2013
- Testimony November 2013
- Tax Court Opinion October 2014

RECENT IRS CASES – LMSB AUDIT DIVISION

Expert Witness for the IRS LSMB Audit Division – Plantation, FL, 2016, International debt transactions subject to IRC Sections 163(a) and 385.

- Federal Tax Appeals Testimony – Houston, TX, November 2016.

Expert Witness for the IRS LSMB Audit Division – Houston, TX, 2016, International financing transactions subject to IRC Section 482.

- Federal Tax Fast Track Appeals Testimony – Houston, TX, January 2016.

Expert Witness for the IRS LSMB Audit Division – Houston, TX, 2015, Split-dollar life insurance policy dealing with IRC Sections 1.7872, 1.61-22 and 20.2031.

- Federal Tax Appeals Testimony – Houston, TX, August 2015.

Expert Witness for the IRS LSMB Audit Division – Detroit, MI, 2015, International Inversion Case dealing with IRC Section 7874.

- Federal Tax Appeals Testimony – Detroit, MI, June 2015.

RECENT DEPARTMENT OF JUSTICE CASE

Expert Witness – United States District Court for the Northern District of Texas, Civil Cause No. 3:17-cv-0609-B, Tony and Mii's, Inc, et al, v. United States of America. Fraudulent valuation issues report, October 2018.

Expert Witness – United States District Court for the Southern District of Texas, Civil Action No. 4:16-cv-03302, ALPC Services of Texas, Inc. v. United States of America and Internal Revenue Service. Valuation issues report, 2017.

- Stipulated Settlement, 2017

Expert Witness – Federal Court, Case No. 12-844, *The Estate of David W. Longaberger v. The United States.* Valuation issues report, 2014.

RECENT CIVIL COURT REPORTS, TESTIMONY AND DEPOSITIONS

Expert Witness – The U.S. District Court for the District of Delaware, C.A. No. 06-451-SLR, Alcoa v. Alcan, Century Aluminum, Pechiney, et al. Deferred tax benefits and the improper recording of revenue and expenses for federal tax purposes.

- Expert Report June 2018
- Deposition Testimony May 2019

Expert Witness - Dallas County District Court, Texas, Cause No. DC-15-00923, Enterprise Financial Group, Inc. v. NAVISS, LLC et al. Fraudulent transfer, solvency and economic damages.

- Expert Report April 2018
- Daubert Hearing Testimony May 2018 (Report and Testimony Accepted by Court)

Expert Witness – Dallas County District Court, Texas, Cause No. DC-16-00270, Victor Bernal, et al v. DK8, LLC, et al (Honda of Burleson). Shareholder buyout dispute.

- Expert Report November 2016

Expert Witness – Dallas County, Texas, Cause No. CC-14-06294-C, Caden Clark v. Columbia Medical Center of Arlington et al. Economic damages related to lost wages.

- Expert Report February 2016
- Deposition May 2016
- Jury Trial August 2016

Expert Witness – State of Louisiana Division of Administrative Law, Docket No. 2015-4059-HH, Department of Health and Hospitals in the Matter of General Medicine. Medicaid claims coding issues.

- Expert Report February 2016
- Trial Testimony March 2016

Expert Witness – Federal Magistrate, Washington D.C., Case No. 14-671C. Always at Market, Inc. v. United States of America (DOD/DOJ). Army & Air Force Exchange Service economic damages.

- Expert Report September 2015
- Deposition February 2016
- Stipulated Settlement August 2016

Expert Witness – Circuit Court of Jefferson County, Alabama, Civil Action No. CV-05-1483, General Medicine, PC v. Healthsouth Corporation v. General Medicine, PC. Economic damages related to contract dispute.

- Expert Report April 2014
- Deposition June 2014
- Jury Trial February 2015

SPEAKING ENGAGEMENTS

"How to Finance Your Company" – National Med Trade

"Employee Stock Ownership Plans – When They Make Sense" – TAHC

"Documentation Linking Systems" – Oklahoma Healthcare Association

"CORF – What You Need to Know to Run A Successful Business" – PT Association

"Surviving a Prospective Payment System" – TAHC

"Diversification Strategies for Healthcare Providers" – Missouri Healthcare Association

"Diversification Strategies" – NAHC

"Cost Reporting Under IPS and PPS" –TAHC

"Key Survival Strategies under the Balanced Budget Act of 1997" – NAHC

"Financing Receivables" – Kitchens, Lambert & Associates

"Getting Paid" – NAHC

"The Cost Reimbursement System – Achieving Your Goals" – Amedisys Corporation Annual Client Seminar

"Cost Reporting – What You Need to Know to Run A Successful Business" – The Southwest Region AHH

"The Political Process and Your Business" – The Dallas/Fort Worth Association of Mortgage Brokers

"Underwater Stock Options: A Drag on the Company's Financial Performance" – Polaris International

"Estate & Gift Tax Discount Issues – Case Studies" – Internal Revenue Service

"Discounted Cash Flow Analysis: The Four-Step Process" – Internal Revenue Service

"Purchase Price Allocation: Valuation Challenges During Due Diligence" – Strafford Publications

"What's It Worth" – Financial Executives International

WHITE PAPERS

Attaining Reasonable Certainty in Economic Damages Calculations
Healthcare Compensation Arrangements at Risk - OIG Issues Alert on Physician Compensation
An Easy Tool for Determination of Personal v. Enterprise Goodwill
Common Transfer Pricing Mistakes
Possible Changes to Valuation Discount Rules is Unlikely
Common Transfer Pricing Mistakes
Audit Risk for Captive Insurance Companies

SCHEDULES

Charitable DAF HoldCo, Ltd
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Charitable DAF HoldCo, Ltd
Valuation Summary and Conclusion

Summary Schedule
Valuation Date: March 25, 2025

Synthesis of Fair Market Value

Fair Market Value Summary			
		Value	**Reference**
Income Approach			
Value of Subject Interest, Minority, Marketable		$2,045,531	*Schedule B.1*
Less: Discount for Lack of Marketability	*20.0%*	($408,339)	*Schedule C.4*
Value of Subject Interest, Minority, Non-Marketable		$1,637,192	
Total Subject Interest Shares		305	
Fair Market Value per Share		**$5,368**	

Subject Interest Valuation Breakout		
	Shares	**Fair Market Value**
Highland Dallas Foundation, Inc.	100	$536,784
Highland Kansas City Foundation, Inc.	100	$536,784
Highland Santa Barbara Foundation, Inc.	100	$536,784
The Community Foundation of North Texas	5	$26,839
Total Subject Interest	305	$1,637,192

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Charitable DAF HoldCo, Ltd
Historical Financial Analysis

Schedule A.1
Valuation Date: March 25, 2025

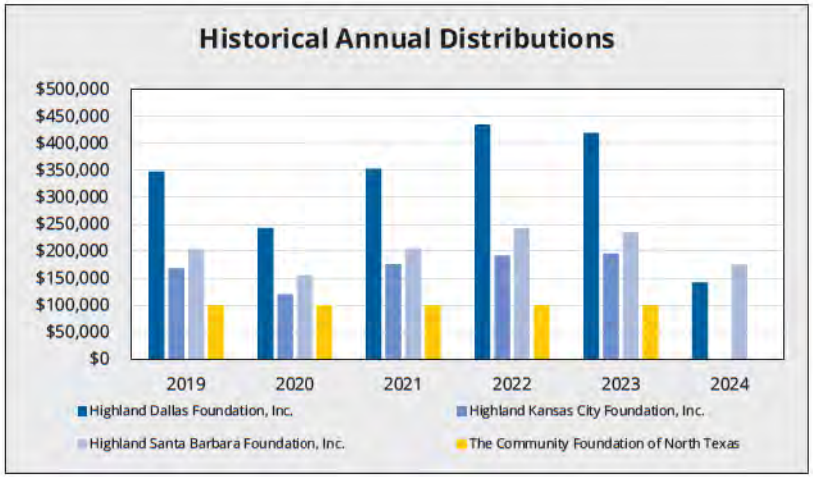
Historical Distributions Table

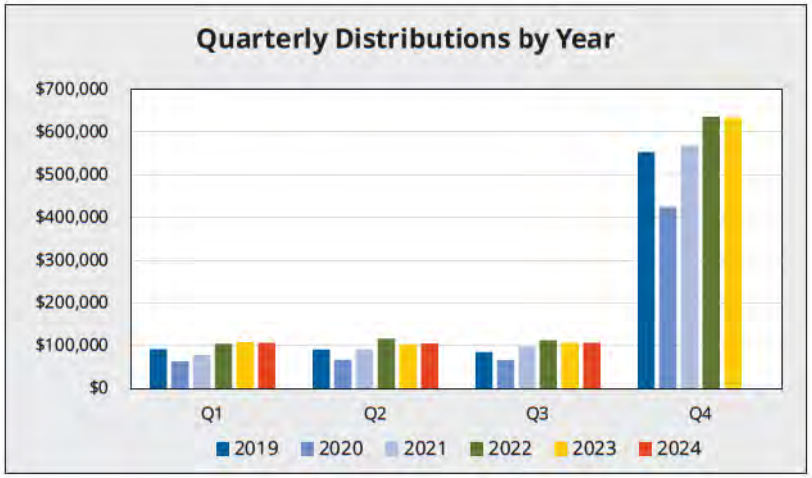
Quarterly Distributions - Previous 5 Years					
Organization	Highland Dallas Foundation, Inc.	Highland Kansas City Foundation, Inc.	Highland Santa Barbara Foundation, Inc.	The Community Foundation of North Texas	Total
Holding	100 Participation Shares	100 Participation Shares	100 Participation Shares	5 Participation Shares	305 Participation Shares
31-Mar-19	39,750	-	$51,000	-	$90,750
30-Jun-19	39,438	-	50,688	-	90,125
30-Sep-19	36,813	-	48,063	-	84,875
31-Dec-19	231,738	-	53,313	-	553,300
2019 Subtotal	**$347,738**	**$168,250**	**$203,063**	**$100,000**	**$819,050**
31-Mar-20	25,750	-	37,000	-	62,750
30-Jun-20	27,625	-	38,875	-	66,500
30-Sep-20	27,125	-	38,375	-	65,500
31-Dec-20	162,738	120,250	41,313	100,000	424,300
2020 Subtotal	**$243,238**	**$120,250**	**$155,563**	**$100,000**	**$619,050**
31-Mar-21	33,188	-	44,438	-	77,625
30-Jun-21	40,063	-	51,313	-	91,375
30-Sep-21	43,063	-	54,313	-	97,375
31-Dec-21	236,513	176,250	55,313	100,000	568,075
2021 Subtotal	**$352,825**	**$176,250**	**$205,375**	**$100,000**	**$834,450**
31-Mar-22	46,438	-	57,688	-	104,125
30-Jun-22	52,438	-	63,688	-	116,125
30-Sep-22	50,750	-	62,000	-	112,750
31-Dec-22	285,013	191,750	59,188	100,000	635,950
2022 Subtotal	**$434,638**	**$191,750**	**$242,563**	**$100,000**	**$968,950**
31-Mar-23	48,313	-	59,563	-	107,875
30-Jun-23	45,750	-	57,000	-	102,750
30-Sep-23	47,688	-	58,938	-	106,625
31-Dec-23	277,741	195,712	60,178	100,000	633,631
2023 Subtotal	**$419,491**	**$195,712**	**$235,678**	**$100,000**	**$950,881**
31-Mar-24	47,608	-	58,858	-	106,467
30-Jun-24	46,939	-	58,189	-	105,127
30-Sep-24	47,476	-	58,726	-	106,202
31-Dec-24	TBD	TBD	TBD	TBD	TBD
2024 Subtotal	**$142,023**	**$0**	**$175,773**	**$0**	**$317,796**
Grand Total (2019 - 2024)	**$1,939,952**	**$852,212**	**$1,218,013**	**$500,000**	**$4,510,177**

Note: Payments are typically made a few months following the end of each period.

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Historical Distributions Charts





Note: Q4 2024 distributions have not yet been paid.

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Charitable DAF HoldCo, Ltd Historical Financial Analysis	Schedule A.3 Valuation Date: March 25, 2025

CLO HoldCo, Ltd - Summary Balance Sheet

	Balance Sheet as of: 9/30/2024	
	Actual	%
Current Assets		
Cash & Equivalents	$138,419,315	43.8%
Total Current Assets	138,419,315	43.8%
Other Assets		
Other Investments	175,328,461	55.4%
Cash Collateral	81,419	0.0%
Interest Receivable	0	0.0%
Dividends Receivable	0	0.0%
Note Receivable	1,321,109	0.4%
Due from Affiliate	470,000	0.1%
Due from Broker	637,419	0.2%
Total Assets	316,257,723	100.0%
Total Liabilities	47,204,916	14.9%
Total Equity	269,052,808	85.1%
Total Liabilities & Equity	316,257,723	100.0%

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Charitable DAF HoldCo, Ltd
Income Approach

Schedule B.1
Valuation Date: March 25, 2025

Discounted Cash Flow (DCF) Analysis

		For the Projected Period Ending:												
		18-Apr-25	30-Jun-25	30-Sep-25	31-Dec-25	31-Mar-26	30-Jun-26	30-Sep-26	31-Dec-26	31-Mar-27	30-Jun-27	30-Sep-27	31-Dec-27	Residual (Annual)
Projected Distributions		$634,791	$107,171	$103,939	$106,413	$650,660	$109,850	$106,537	$109,074	$666,927	$112,596	$109,200	$111,801	$1,025,537
Period		0.07	0.32	0.57	0.82	1.07	1.32	1.57	1.82	2.07	2.32	2.57	2.82	
PV Factor @ WACC =	68.3%	*0.9663*	*0.8484*	*0.7449*	*0.6540*	*0.5742*	*0.5041*	*0.4426*	*0.3886*	*0.3412*	*0.2995*	*0.2630*	*0.2309*	
Present Value (PV) Net Cash Flow		**$613,430**	**$90,926**	**$77,423**	**$69,593**	**$373,598**	**$55,377**	**$47,153**	**$42,384**	**$227,533**	**$33,726**	**$28,718**	**$25,813**	

PV net cash flow	$1,685,675
PV residual value	$359,856
Value of Subject Interest, Minority, Marketable	**$2,045,531**
Less: Discount for Lack of Marketability *(see schedule C.4)*	20.0%
Value of Subject Interest, Minority, Non-Marketable	**$1,637,192**
Number of Subject Interest Participation Shares	305
Value per Share, Minority, Non-Marketable	**$5,368**

Key Valuation Statistics	
CLO HoldCo Net Asset Value	$269,052,808
Implied Discount for Lack of Control	99.2%
Valuation as a % of NAV	0.6%
Estimated Payback Period (Years)	1.27

Residual Value - Gordon Growth Model

Residual annual net cash flow :	$1,025,537
Residual discount rate (k) :	68.3%
Residual growth rate (g) :	2.5%
x Gordon multiple [1 / (k-g)] :	1.5x
Residual value :	$1,558,568
x PV factor :	*0.2309*
PV residual value :	$359,856

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Charitable DAF HoldCo, Ltd
Income Approach

Schedule B.2
Valuation Date: March 25, 2025

Sensitivity Analysis - Hypothetical Risk-Free Bond

		For the Projected Period Ending:												
		18-Apr-25	30-Jun-25	30-Sep-25	31-Dec-25	31-Mar-26	30-Jun-26	30-Sep-26	31-Dec-26	31-Mar-27	30-Jun-27	30-Sep-27	31-Dec-27	Residual (Annual)
Projected Distributions		$634,791	$107,171	$103,939	$106,413	$650,660	$109,850	$106,537	$109,074	$666,927	$112,596	$109,200	$111,801	$1,025,537
Period		0.07	0.32	0.57	0.82	1.07	1.32	1.57	1.82	2.07	2.32	2.57	2.82	
PV Factor @ Risk Free Rate =	4.7%	*0.9970*	*0.9858*	*0.9746*	*0.9636*	*0.9527*	*0.9420*	*0.9313*	*0.9208*	*0.9104*	*0.9001*	*0.8899*	*0.8799*	
Present Value (PV) Net Cash Flow		**$632,896**	**$105,644**	**$101,300**	**$102,540**	**$619,894**	**$103,473**	**$99,219**	**$100,433**	**$607,158**	**$101,348**	**$97,180**	**$98,370**	

PV net cash flow	$2,769,456
PV residual value	$41,969,350
Value of Subject Interest, Minority, Marketable	**$44,738,806**
Less: Discount for Lack of Marketability *(see schedule C.4)*	20.0%
Value of Subject Interest, Minority, Non-Marketable	**$35,807,821**
Number of Subject Interest Participation Shares	305
Value per Share, Minority, Non-Marketable	**$117,403**

Key Valuation Statistics	
CLO HoldCo Net Asset Value	$269,052,808
Implied Discount for Lack of Control	83.4%
Valuation as a % of NAV	13.3%
Estimated Payback Period (Years)	26.53

Residual Value - Gordon Growth Model

Residual annual net cash flow :	$1,025,537
Residual discount rate (k) :	4.7%
Residual growth rate (g) :	2.5%
x Gordon multiple [1 / (k-g)] :	46.5x
Residual value :	$47,699,415
x PV factor :	*0.8799*
PV residual value :	$41,969,350

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Charitable DAF HoldCo, Ltd — **Schedule C.1**
Discount for Lack of Marketability (DLOM) Analysis — **Valuation Date: March 25, 2025**

DLOM Determination - Restricted Stock Studies

Restricted Stock Studies								
	Name of Study	Study Date	Period Covered From	To	Sub-Sample	Observations	Reported Mean	Reported Median
1	SEC Overall Average	1971	1966	1969	Prior to Feb 1997	338	24.0%	NA
2	Johnson and Racette	1981	1967	1973	Prior to Feb 1997	86	34.0%	NA
3	Milton Gelman	1972	1968	1970	Prior to Feb 1997	89	33.0%	33.0%
4	Robert R. Trout	1977	1968	1972	Prior to Feb 1997	60	33.5%	NA
5	Robert E. Moroney	1973	1969	1972	Prior to Feb 1997	146	35.6%	33.0%
6	J. Michael Maher	1976	1969	1973	Prior to Feb 1997	34	35.4%	34.0%
7	Stryker and Pittock (Standard Research Consultants)	1983	1978	1982	Prior to Feb 1997	28	NA	45.0%
8	Wruck, Karen H. (Unregistered only)	1989	1979	1985	Prior to Feb 1997	37	13.5%	12.2%
9	FMV Opinions (Hall/Polacek)	1994	1979	1992	Prior to Feb 1997	>100	23.0%	NA
10	Barclay, Holderness, and Sheehan	2006	1979	1997	Prior to Feb 1997	594	18.7%	17.4%
11	Hertzel and Smith	1993	1980	1987	Prior to Feb 1997	106	20.1%	13.3%
12	Management Planning, Inc.	1997	1980	1995	Prior to Feb 1997	49	27.7%	28.9%
13	Hertzel, Lemmon, Linck, and Rees	2001	1980	1996	Prior to Feb 1997	404	16.5%	13.4%
14	Wruck and Wu	2008	1980	1999	Encompassing 1997	1,854	11.3%	11.0%
15	Angrist, Curtis, and Kerrigan (MPI) (Unregistered only)	2011	1980	2009	Spanning 1997	402	22.1%	19.6%
16	Willamette Management Associates	1989	1981	1984	Prior to Feb 1997	33	NA	31.2%
17	Silber (1981-1988)	1991	1981	1988	Prior to Feb 1997	69	33.8%	NA
18	Krishnamurthy, Spindt, Subramanium, and Woidtke:	2001						
	All		1983	1992	Prior to Feb 1997	391	19.4%	NA
	Restricted Shares		1983	1992	Prior to Feb 1997	75	34.0%	NA
	Shares with Registration Pending		1983	1992	Prior to Feb 1997	23	23.3%	NA
	Shares Not Known to Be Restricted		1983	1992	Prior to Feb 1997	293	15.4%	NA
	Shares with Pending Registration or Not Known		1983	1992	Prior to Feb 1997	316	16.0%	NA
19	Wu	2003	1986	1997	Prior to Feb 1997	301	8.7%	19.8%
20	Bajaj, Denis, Ferris, Sarin (Unregistered only)	2001	1990	1995	Prior to Feb 1997	51	28.1%	26.5%
21	BVR (Johnson)	1999	1991	1995	Prior to Feb 1997	72	20.2%	NA
22	Finnerty:	2012						
	Pre-February 1997		1991	1997	Prior to Feb 1997	41	26.3%	20.3%
	Post-February 1997		1997	2007	After 1997 & Before 2008	176	21.5%	15.6%
23	Chaplinsky and Haushalter:	2010	1995	2000				
	Purchase Discount Only				Encompassing 1997	382	18.7%	15.0%
	Purchase Discount and Warrant				Encompassing 1997	235	17.3%	14.0%
24	Brophy, Ouimet, and Sialm:	2006						
	Hedge Funds - Traditional PIPEs		1995	2002	Encompassing 1997	586	14.1%	NA
	Other Investors - Traditional PIPEs		1995	2002	Encompassing 1997	1,559	9.0%	NA
25	Columbia Financial Advisors:	2000						
	Pre-February 1997		1996	1997		23	21.0%	14.0%
	Post-February 1997		1997	1998	After 1997 & Before 2008	15	13.0%	9.0%
26	Meidan	2006	1996	2003	Encompassing 1997	1,726	9.8%	NA
27	Verdasca	2007	2000	2006	After 1997 & Before 2008	711	9.7%	10.1%
28	Billett and Floros	2012	2001	2008	After 1997 & Before 2008	12,004	NA	26.7%
29	Stout Risius Ross	2011	2005	2010	Encompassing 2008	98	10.9%	9.3%
30	Harris-Trugman Valuation Associates:	2011						
	All		2007	2010	Encompassing 2008	136	16.6%	14.3%
	Pre-SEC Rule Change		2007	2007	After 1997 & Before 2008	47	17.9%	14.8%
	Post-SEC Rule Change		2008	2010	Post 2008	89	15.9%	14.3%

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Charitable DAF HoldCo, Ltd	Schedule C.2
Discount for Lack of Marketability (DLOM) Analysis	Valuation Date: March 25, 2025

DLOM Determination - Restricted Stock Studies Summary Statistics

Descriptive Statistics for Reported Mean and Median Discounts		
	Mean	**Median**
All Studies		
Low	8.7%	9.0%
Median	19.4%	15.3%
Mean	**20.8%**	19.8%
High	35.6%	45.0%
Standard Deviation	8.2%	9.4%
All Studies Prior to Feb 1997		
Low	8.7%	12.2%
Median	23.3%	23.4%
Mean	24.4%	24.4%
High	35.6%	45.0%
Standard Deviation	7.9%	10.1%
All Studies after 1997 and before 2008		
Low	9.7%	9.0%
Median	15.5%	14.8%
Mean	15.5%	15.2%
High	21.5%	26.7%
Standard Deviation	5.2%	7.0%
All Studies Encompassing 1997		
Low	9.0%	11.0%
Median	14.1%	14.5%
Mean	14.6%	14.9%
High	22.1%	19.6%
Standard Deviation	4.9%	3.6%
All Studies Encompassing 2008		
Low	10.9%	9.3%
Median	13.8%	11.8%
Mean	13.8%	11.8%
High	16.6%	14.3%
Standard Deviation	4.0%	3.5%
Indicated Discount for Lack of Marketability	**20.8%**	

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Charitable DAF HoldCo, Ltd | **Schedule C.3**
Discount for Lack of Marketability (DLOM) Analysis | **Valuation Date: March 25, 2025**

DLOM Qualitative Scoring

Feature	Restricted Stock	Rating	Discount for Lack of Marketability (DLOM) Analysis	Rating	Advantage
Asset liquidity	Securities examined in marketability studies often are of smaller industrial operating companies, often with poor cash flows.	Fair	A majority of investments are in illiquid securities with poor cash flows. However, CLO HoldCo has approximately $91 million in net cash, representing approximately 34% of net asset value.	Strong	Better
Cash flow expectations	Restricted securities typically have a lower likelihood of paying dividends since they are associated with emerging companies.	Fair	Distributions are entirely dependent on director discretion as to the timing and amount. Distributions are not required. Howevever, regular distributions have been made over the last five years.	Good	Slightly better
Contingent liabilities	Moderate probability of contingent liabilities depending on type of company and size. Smaller companies can fall prey to securities litigation.	Fair	Higher probability of contingent liabilities. The Company and CLO HoldCo has been engaged in numerous litigation matters.	Weak	Slightly worse
Debt capacity	Company leverage is usually on the higher side, as they are typically in the emerging stage.	Weak	CLO HoldCo has a small amount of debt representing 15% of net asset value.	Good	Better
Redemption/ withdrawal	No redemption rights.	Poor	No redemption rights.	Poor	Equal
Transfer restrictions	Transfer restrictions are limited to securities laws, with holding periods of two years. Holding period was shortened to one year in 1997, but studies generally relate to two year holds. Once the restriction time period is complete, no restrictions on transfer exist. Markets are liquid for non-restricted shares.	Fair	Transfers must be approved by the directors.	Poor	Worse
Value of entity	Companies range in size, however, restricted securities are more commonly utilized by smaller companies in the development stage. Approximately 50 percent of the companies issuing restricted stock included in the Silber study had sales less than $40 million.	Fair	Participating shareholders have no direct rights to the underlying net asset value other than in a winding up. CLO HoldCo is expected to generate revenue well in excess of the expected distributions.	Good	Slightly better
Value of interest	Purchasers of restricted securities tend to be institutional or private investors that are active in the public markets. The analysis associated with these types of securities precludes small holders from purchasing. Size of interests tend to be moderate.	Fair	Participation shareholders are small, private foundations. The foundations must be 501c3 non-profit organizations. At the director's discretion, participating shareholders may be diluted through the issuance of additional participation shares to non-existing participating shareholders.	Poor	Worse

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Charitable DAF HoldCo, Ltd — **Schedule C.4**
Discount for Lack of Marketability (DLOM) Analysis — **Valuation Date: March 25, 2025**

Calculation of Marketability Discount

Feature	Net Advantage	Gross Adjustment	Importance	Weight	Adjustment	Scaling Adjustment	Final Adjustment
	A (Schedules B)	B = F(A)	C	D = F(C)	E = B x D	F = 1+E or 1/(1-E)	
Marketability Factors							
Asset liquidity	Better	-16%	High	100%	-16%	86%	-2.9%
Cash flow expectations	Slightly better	-8%	High	100%	-8%	92%	-1.4%
Contingent liabilities	Slightly worse	8%	High	100%	8%	108%	1.4%
Debt capacity	Better	-16%	Low	25%	-4%	96%	-0.7%
Redemption/ withdrawal	Equal	0%	High	100%	0%	100%	0.0%
Transfer restrictions	Worse	16%	High	100%	16%	116%	2.8%
Value of entity	Slightly better	-8%	Medium	50%	-4%	96%	-0.8%
Value of interest	Worse	16%	Low	25%	4%	104%	0.8%
Net Scaling Adjustment	**G = Product (F_i), i = 1 to n**					**96%**	**-0.8%**
Marketability Discount							
Unadjusted discount	I (See Report)				20.8%		
Scaling adjustment	G (See above)				96%		
Concluded Marketability Discount	**J = G x I**					**20.0%**	

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DLOM Footnotes and Comments

A) Our comparison matrix ranks the features of the Subject Interest and the comparable interests on a scale from 1 to 5.
1 = Poor 2 = Weak 3 = Fair 4 = Good 5 = Excellent
We then subtract the Subject Interest feature score from the comparable feature score to determine the advantage.
0 = Equal 1 = Slightly Better 2 = Better 3 = Much Better 4 = Significantly Better
-1 = Slightly Worse -2 = Worse -3 = Much Worse -4 = Significantly Worse

B) B is calculated as the weighted average standard deviation of the comparable investments in closed end funds multiplied by the Advantage Score.

C) The importance of the feature is assessed.
1 = Low 2 = Medium 3 = High

D) Weights are allocated as follows:
Low = 25% Medium = 50% High = 100%

E) To compute the adjustment, B is multiplied by D.

F) The scaling adjustment is computed as 1+E if E > 0 or 1/(1-E) if E < 0 for the particular feature.

G) The net scaling adjustment for marketability factors is the product of all marketability features' scaling adjustments.

H) The net scaling adjustment for control factors is the product of all control features' scaling adjustments.

I) This is the concluded baseline marketability discount determined for comparable investments.

J) This is the baseline marketability discount multiplied by the scaling factor.

K) This is the concluded baseline minority interest discount determined for comparable investments.

L) This is the baseline minority interest discount multiplied by the scaling factor.

M) This is the combined discount of both marketability and minority interest discounts.

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EXHIBIT 51

VALUATION ANALYSIS OF
100 PARTICIPATION SHARES OF
CHARITABLE DAF HOLDCO, LTD

AS OF
SEPTEMBER 30, 2024

Prepared for:

Mr. Mark Patrick
Director
Charitable DAF HoldCo, Ltd

VALUESCOPE
a marshall + stevens company

VALUESCOPE
a marshall + stevens company

January 7, 2025

Mr. Mark Patrick
Director
Charitable DAF HoldCo, Ltd
2101 Cedar Springs Road, Suite 1200
Dallas, Texas 75201

RE: Valuation Analysis of 100 Participation Shares of Charitable DAF HoldCo, Ltd

Dear Mr. Patrick:

Pursuant to your request, we were retained to perform an independent valuation analysis to determine the fair market value of 100 participation shares (the "Subject Interest") out of an assumed 305 participation shares of Charitable DAF HoldCo, Ltd ("DAF" or the "Company") as of September 30, 2024 (the "Valuation Date"). ValueScope has not independently verified the total number of participation shares outstanding.[1] This valuation analysis was conducted for internal reporting purposes. No other use for this analysis is intended or should be inferred.

DEFINITION AND PREMISE OF VALUE

The standard of value is fair market value. Fair market value is defined by IRS Revenue Ruling 59-60, 1959-1 C.B. 237 as the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.

To develop our conclusion of value for the Subject Interest, we considered all of the factors listed in Revenue Ruling 59-60. These factors include:

1. The nature of the business and its history from inception.
2. The economic outlook in general and the condition and outlook of the specific industry in which it operates.
3. The book value and the financial condition of the business.
4. The earning capacity of the business.
5. The dividend-paying capacity of the business.
6. Whether the enterprise had goodwill or other intangible value.

[1] The Subject Interest is assumed to effectively represent approximately 32.8% of all participation shares.

7. The market prices of the stocks of corporations engaged in the same or similar line of business having their stocks actively traded on an exchange or over the counter.
8. The marketability, or lack thereof, of the securities.

The premise of value followed herein is going concern.[2] The liquidation premise of value was considered and rejected as not applicable because the going-concern value results in a "highest and best use" value for the interest.

SCOPE OF WORK

To gain an understanding of DAF's operations, we reviewed the Company's financial and operational data and spoke with the Company's advisors. To understand the environment in which DAF operates, we researched relevant information concerning the collateralized debt industry. We also studied economic conditions as of the Valuation Date and their impact on DAF and the industry.

We valued the Company in accordance with generally accepted valuation standards and included such valuation tests and procedures that we considered necessary under the circumstances. Our conclusion of value reflects these findings, our judgment and knowledge of the marketplace, and our expertise in valuation.

In performing our work, we were provided with and/or relied upon various sources of information, including (but not limited to):

- Financial statements for the Company as of September 30, 2024
- The Memorandum and Articles of Association of Charitable DAF HoldCo, Ltd
- Information regarding the Company's history and current operations

We relied on information received as indicative of the Company as of the Valuation Date. We made limited investigation as to the accuracy and completeness of such information and did not verify this information as part of our valuation. Therefore, we express no opinion or other form of assurance regarding the accuracy of the source data. Our analysis was based in part on this information, as well as on other data we developed.

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[2] The *International Glossary of Business Valuation Terms* defines "Going Concern" as "an ongoing operating business enterprise," and "Going Concern Value" as "the value of a business enterprise that is expected to continue to operate into the future. The intangible elements of going concern value result from factors such as having a trained workforce, an operational plant, and the necessary licenses, systems, and procedures in place."

CONCLUSION OF VALUE

Based on the procedures outlined herein and the corresponding analysis, it is our opinion that the fair market value of the Subject Interest as of the Valuation Date can be reasonably stated as:

$75,961,370
SEVENTY-FIVE MILLION NINE HUNDRED SIXTY-ONE THOUSAND THREE HUNDRED SEVENTY DOLLARS

FMV Summary			
Company Net Asset Value (NAV)		$269,052,808	*Schedule A.2*
Shares Outstanding		305	
NAV Per Share		**$882,140**	
Applicable Discounts			
Discount for Lack of Control	8.1%		*Schedule B.3*
Discount for Lack of Marketability	6.3%		*Schedule C.5*
Combined Discount	13.9%	($122,527)	
FMV Per Share		**$759,614**	
Subject Shares		100	
FMV of Subject Interest		**$75,961,370**	

We are independent of DAF and have no current or prospective economic interest in the assets that are the subject of this analysis. Our fee for these valuation services was in no way influenced by the results of our analysis. The content of this valuation report is subject to the Assumptions and Limiting Conditions and the Appraisal Certification at the end of this report. If you have any questions concerning this report, please contact Steven C. Hastings, CPA/ABV/CFF, CGMA, ASA, CVA.

Very truly yours,

ValueScope, Inc.

ValueScope, Inc.

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ENGAGEMENT OVERVIEW

DESCRIPTION OF THE ASSIGNMENT

We were retained to perform an independent valuation analysis to determine the fair market value of 100 participation shares (the "Subject Interest") out of an assumed 305 participation shares of Charitable DAF HoldCo, Ltd ("DAF" or the "Company") as of September 30, 2024 (the "Valuation Date"). ValueScope has not independently verified the total number of participation shares outstanding.[3] This valuation analysis was conducted for internal reporting purposes. No other use for this analysis is intended or should be inferred.

SCOPE

This report provides a detailed discussion of the valuation analysis we performed and is divided into six major sections. The first section outlines the description, scope, and procedures of our analysis. The second section provides a brief description of the Company and the Company's financial position. The third section includes a discussion of the national economy and the industry in which the Company operates. The fourth section details a discussion of valuation theory and methodology. The fifth section presents our valuation analysis, and the sixth section presents our conclusion and reconciliation of the fair market value of the Subject Interest.

PROCEDURES

This valuation analysis was conducted in accordance with generally accepted valuation procedures. These procedures included such substantive valuation tests that we considered necessary and appropriate under the circumstances. We relied upon information received regarding the Company's operations and we made limited investigation as to the accuracy and completeness of such information. Our analysis was based in part on this information, as well as on other data obtained through additional research. A full discussion of the methodologies employed appears in the following sections of this report.

[3] The Subject Interest is assumed to effectively represent approximately 32.8% of all participation shares.

DAF OVERVIEW[4]

COMPANY OVERVIEW

Charitable DAF HoldCo, Ltd is a Cayman Islands "company limited by shares" formed in October 2011. Upon the shareholders' acceptance of shares, the shareholders agreed to the provisions of the Memorandum and Articles of Association of Charitable DAF HoldCo, Ltd (as amended from time to time in accordance with the provisions thereof, the "DAF Agreement") and the Companies Law of the Cayman Islands (as amended from time to time, the "Law"). As a holding company, DAF's predominant assets were historically interests in the equity tranches of Collateralized Loan Obligations ("CLOs"), the ownership of which is held through tiered entities that function as unrelated trade or business income tax blocker entities.

SUBJECT INTEREST OVERVIEW

Based on information provided by the Company's management ("Management"), the Subject Interest shares are participation shares that from time to time are expected to receive cash distributions to fulfill certain charitable and expense goals of the owners of the participation shares. The Subject Interest shares are directly affected by the terms of the DAF Agreement and the actions of DAF's directors. According to the DAF Agreement, the appointed directors control the business, affairs, and power of the Company (Sections 72 and 77), including the issuance and purchase of shares on such terms and in such manner as the director determines (Sections 7-10). Director consent is also required for shareholders to transfer their interests in DAF (Section 18). Finally, although shareholders may determine the timing and amounts of dividends (Section 100), no dividend can exceed an amount approved by the directors (Section 101).

HISTORICAL FINANCIAL ANALYSIS

We were provided with the Company's balance sheet as of September 30, 2024. These financial statements reflect various professional valuations of DAF's ultimate underlying assets.

As reported as of the Valuation Date, DAF's sole asset consisted of 100% of the equity of CLO HoldCo, Ltd ("CLO HoldCo"). CLO HoldCo is a holding company which invests in CLOs and other various investments. The net asset value for CLO HoldCo was reported as

[4] Based on the Company's memorandum and articles of association and information from management.

$269.1 million. DAF reported no liabilities as of the Valuation Date. As a result, DAF's book equity as of the Valuation Date was determined to equal $269.1 million.

DAF's balance sheet as of the Valuation Date is presented in Schedule A.2.

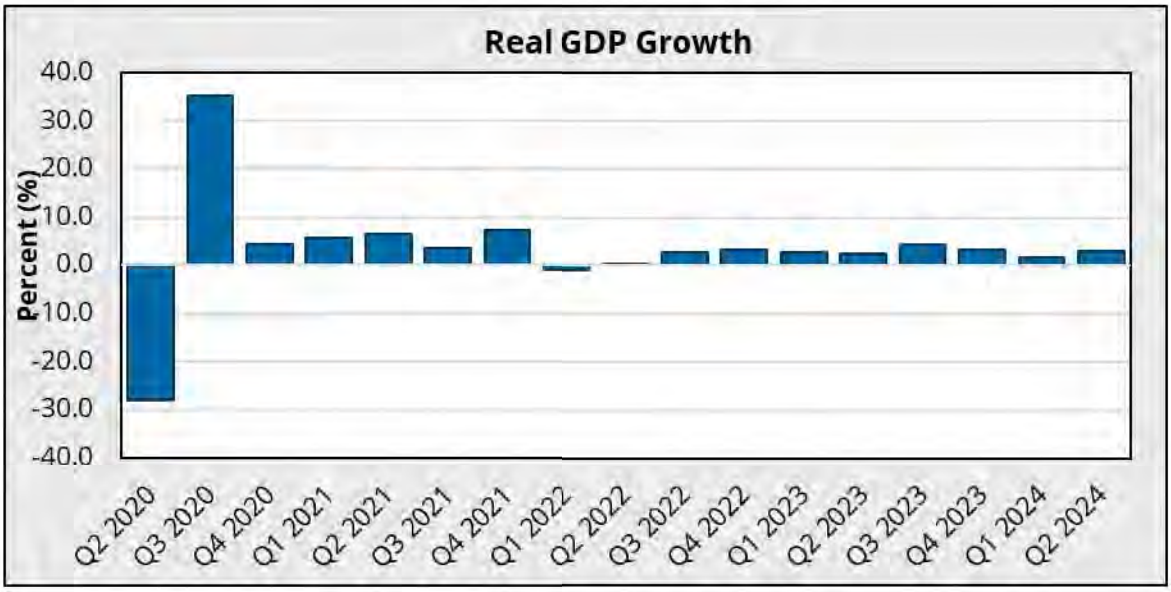
ECONOMIC AND INDUSTRY OVERVIEW

OVERVIEW OF THE U.S. ECONOMY

In the second quarter of 2024, the US economy experienced positive growth that surpassed the pace of the first quarter. Inflation has moderated significantly from its peak of 8.99% in June 2022 to 2.59% by August 2024, reflecting progress toward the Federal Reserve's inflation target. After an extended period of elevated interest rates to curb inflation, recent data pointed to a cooling labor market and continued price stability, prompting the Fed to cut rates by 50 basis points. The steady rate hikes initiated in 2023 led to an inverted yield curve, suggesting investor expectations of an economic slowdown. Nevertheless, US stock markets have gained momentum, with indices closing higher year-over-year, supported by declining inflation and anticipated further monetary easing.

Gross Domestic Product[5]

Real gross domestic product (GDP) increased at an annual rate of 3.0 percent in the second quarter of 2024, following an increase of 1.6 percent in the first quarter. The acceleration in real GDP in the second quarter primarily reflected accelerations in consumer spending, private inventory investment, and nonresidential fixed investment. These movements were partly offset by a deceleration in residential fixed investment. Imports increased.

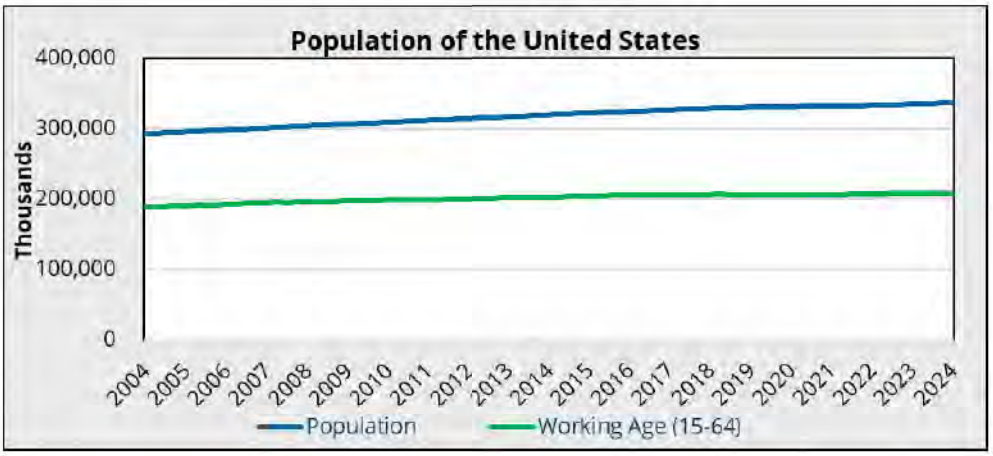


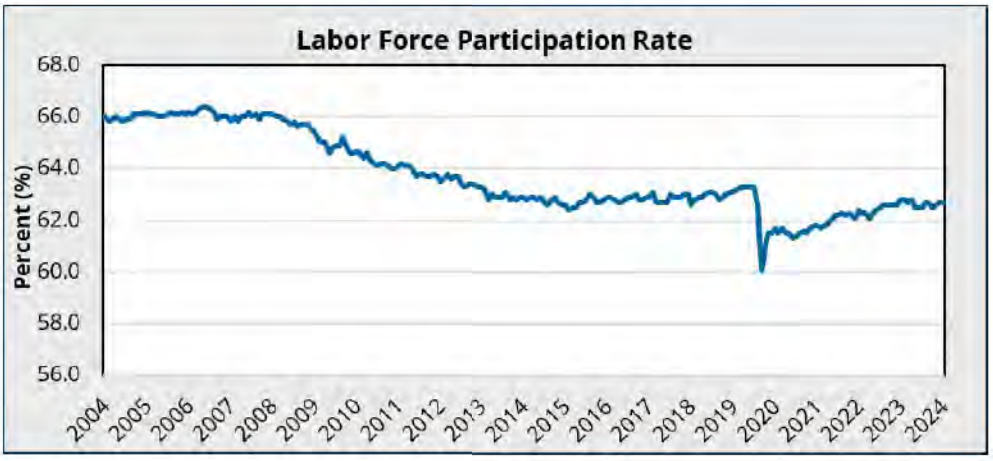
[5] U.S. Department of Commerce, Bureau of Economic Analysis, Gross Domestic Product (Third Estimate), Corporate Profits (Revised Estimate), and GDP by Industry, Second Quarter 2024. (Release Date: 9/26/2024).

Population

Population growth is an important driver of long-term growth in an economy. The total population increased from 335.4 million in August 2023 to 337.2 million in August 2024.[6] The working-age population (15-64) increased from 208.7 million in August 2023 to 208.9 million in August 2024.[7]

Labor force participation had a sharp decline at the onset of the COVID-19 pandemic. It partially recovered in just several months and has been trending upward/flat. In August 2023, the civilian labor force participation rate was 62.8% and stands at 62.7% as of August 2024.[8]





6 U.S. Bureau of Economic Analysis, Population [POPTHM], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

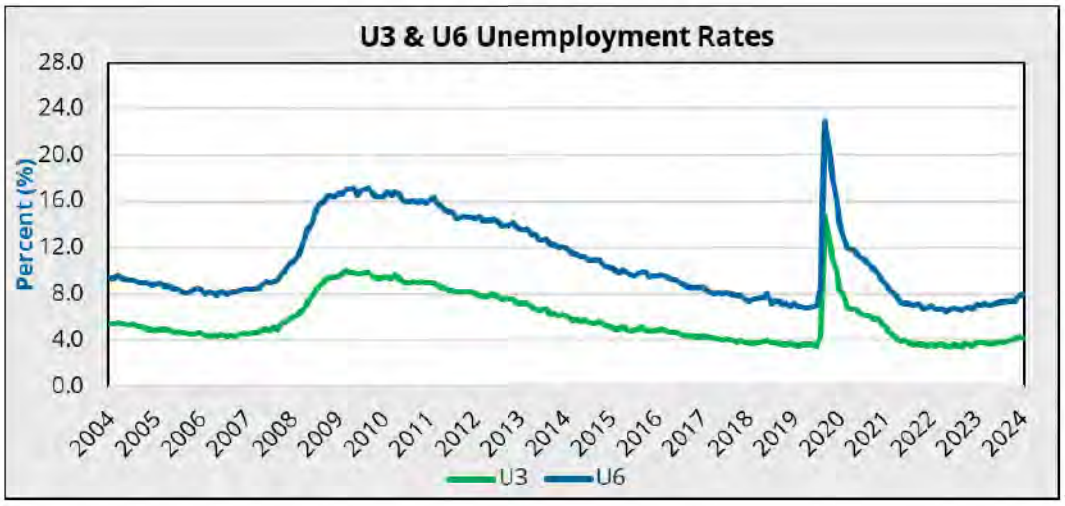
7 Organization for Economic Co-operation and Development, Working Age Population: Aged 15-64: All Persons for the United States [LFWA64TTUSM647N], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

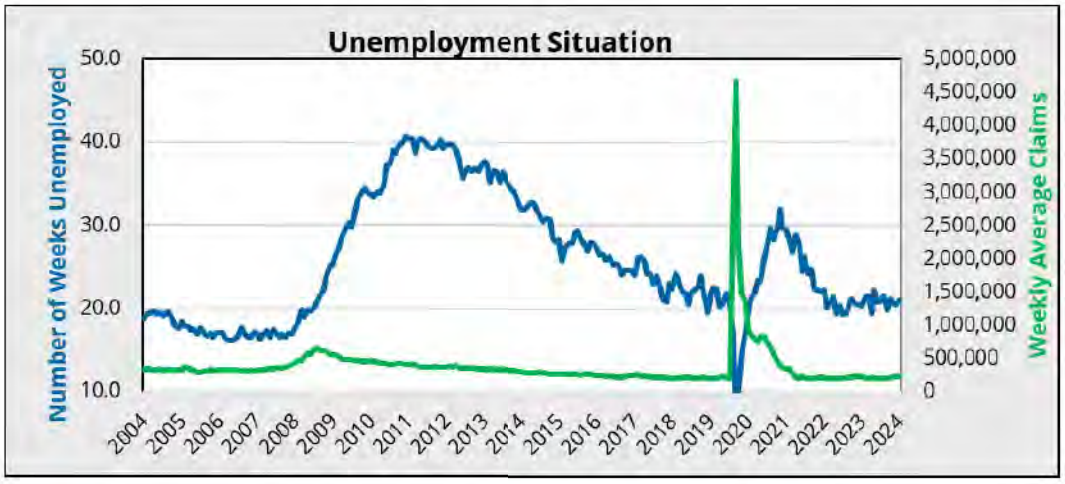
8 U.S. Bureau of Labor Statistics, Civilian Labor Force Participation Rate [CIVPART], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

Employment

Nonfarm payroll employment, according to the Bureau of Labor Statistics (BLS), rose by 142,000 in August 2024 and the unemployment rate increased slightly to 4.2 percent. Job gains occurred in construction and healthcare.

The U6 unemployment rate, which includes all marginally attached workers and those employed part-time for economic reasons, increased from 7.1% in August 2023 to 7.9% in August 2024.[9]





Forecasters surveyed by the Federal Reserve Bank of Philadelphia predicted the unemployment rate will be 4.2% for both 2026 and 2027.

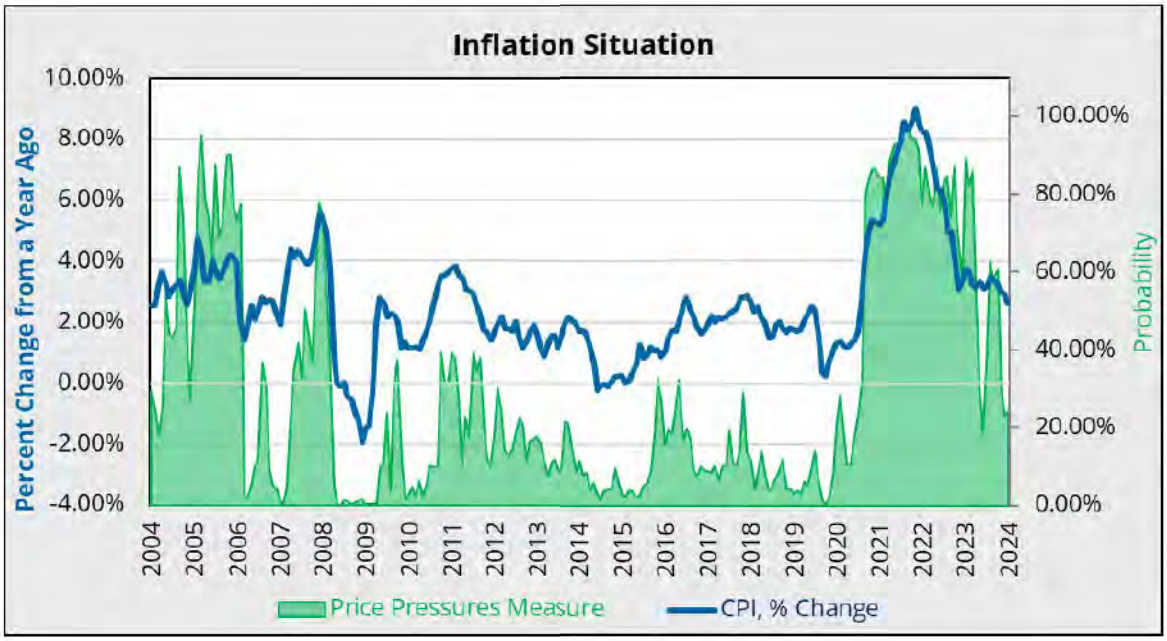
[9] U.S. Bureau of Labor Statistics, Total unemployed, plus all marginally attached workers plus total employed part time for economic reasons [U6RATE], Civilian Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

Inflation

According to the BLS, The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.2 percent in August on a seasonally adjusted basis, after the same increase in July. Over the last 12 months, the all-items index increased 2.5 percent before seasonal adjustment.[10]

The index for shelter rose 0.5 percent in August and was the main factor in the all items increase. The food index increased 0.1 percent in August, after rising 0.2 percent in July. The index for food away from home rose 0.3 percent over the month, while the index for food at home was unchanged. The energy index fell 0.8 percent over the month, after being unchanged in the preceding month.

The price pressures measure estimates the probability that the personal consumption expenditures price index inflation rate will exceed 2.5% over the next twelve months. This price pressures measure has declined significantly since a year ago, August 2023, declining from 88.97% to 24.05% in August 2024[11].The forecasters predict current-quarter headline CPI inflation will average 2.3 percent at an annual rate, down from the prediction of 2.8 percent in the previous survey[12].



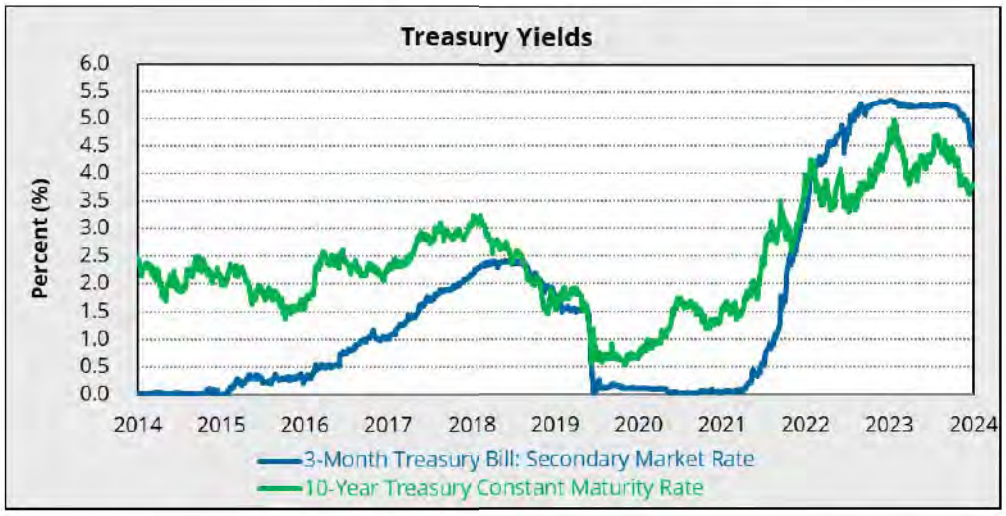
10 Federal Reserve Bank of St. Louis, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

11 Federal Reserve Bank of St. Louis, Price Pressures Measure [STLPPM], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

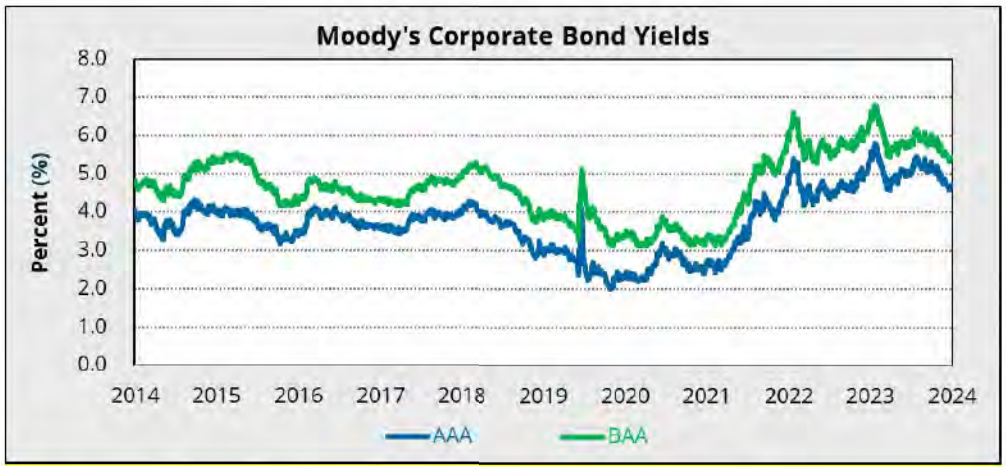
12 Federal Reserve Bank of Philadelphia, *Survey of Professional Forecasters,* August 9, 2024.

Interest Rates

The interest rate on the three-month Treasury bill declined from 5.32% as of September 29, 2023, to 4.52% as of September 30, 2024.[13] The interest rate on the ten-year Treasury note declined from 4.59% as of September 29, 2023, to 3.81% as of September 30, 2024.[14]



The interest rate on Moody's Aaa-rated corporate bonds declined from 5.36% as of September 29, 2023, to 4.72% as of September 30, 2024.[15] The interest rate on the Moody's Baa-rated corporate bonds declined from 6.37% to 5.44% over the same time.[16]



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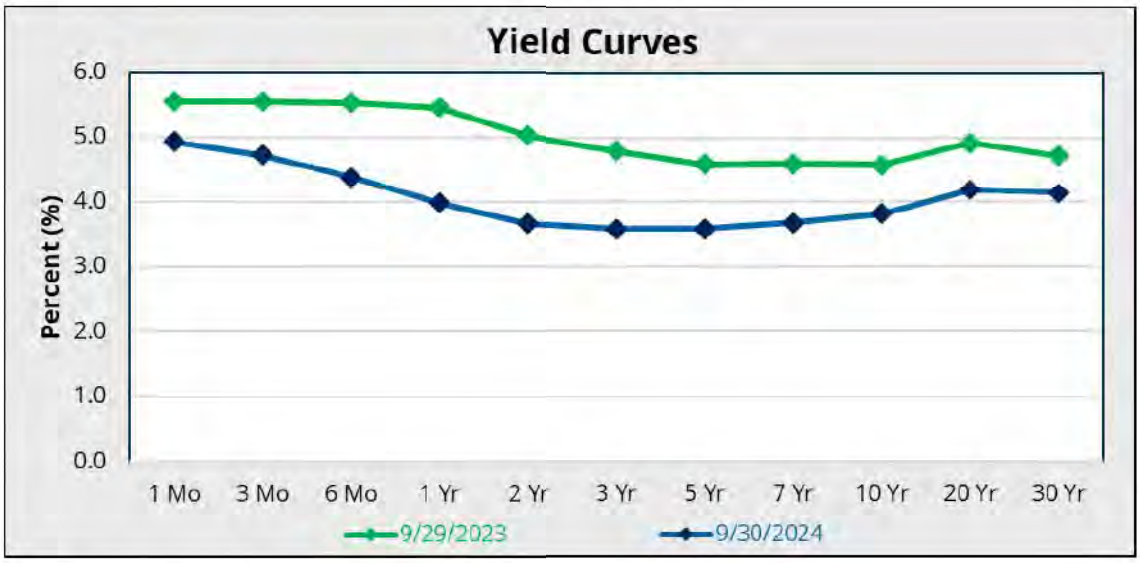
13 Board of Governors Federal Reserve System, 3-Month Treasury Bill: Secondary Market Rate [DTB3MS], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

14 Board of Governors Federal Reserve System, 10-Year Treasury Constant Maturity Rate [DGS10], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

15 Moody's, Moody's Seasoned Aaa Corporate Bond Yield© [DAAA], Moody's Seasoned Aaa Corporate Bond Yield© [DAAA], retrieved from FRED, Federal Reserve Bank of St. Louis, last October 7, 2024.

16 Moody's, Moody's Seasoned Baa Corporate Bond Yield© [DBAA], Moody's Seasoned Baa Corporate Bond Yield© [DBAA], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

In the last twelve months, the yield curve remained inverted, with the spread between the twenty-year Treasury Bond and the one-year Treasury Bill increasing/flattening between September 29, 2023, to September 30,2024 from -0.54% to 0.21%.[17]



Corporate Profits

Profits from current production (corporate profits with inventory valuation and capital consumption adjustments) increased $132.4 billion in the second quarter of 2024 from the first quarter of 2024.



[17] U.S. Department of the Treasury, *Daily Treasury Yield Curve Rates*, last accessed October 7, 2024.

Stock Markets[18]

The stock markets gained momentum from September 29, 2023, to September 30, 2024. The S&P 500 Index (SPY) closed at 427.48 on September 29, 2023, and closed higher at 573.76 on September 30, 2024. The NASDAQ Composite Index (QQQ) closed at 334.95 on September 29, 2023, and closed higher at 423.12 on September 30, 2024. The Dow Jones Industrial Average Index (DIA) closed at 358.27 on September 29, 2023 and closed higher at 488.07 on September 30, 2024. In the graph below, the September 30, 2022, values were set to 100.



Construction & Housing Starts

Construction spending and housing starts are two other important indicators for the economy. Construction spending may indicate the sentiment in real estate markets and the soundness of the economy while housing starts are an alternative indicator of consumer sentiment. Increases in demand for newly constructed homes can lead to job growth in the construction industry, increased demand for appliances and furniture, and have ripple effects throughout the economy. Housing starts increased from 1.305 million units in August 2023 to 1.356 million units in August 2024.[19] Construction spending, a seasonally adjusted annual figure, increased from $2.05 trillion in August 2023 to $2.13 trillion in August 2024.[20]

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18 CapIQ Database, last accessed October 7, 2024.

19 U.S. Census Bureau and U.S. Department of Housing and Urban Development, Housing Starts, New Privately-Owned Housing Units Started [HOUST], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.

20 U.S. Census Bureau, Total Construction Spending, Seasonally Adjusted Annual Rate [TTLCONS], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed October 7, 2024.



Consumer Confidence

The University of Michigan Survey of Consumers reported that the Index of Consumer Sentiment has decreased from 69.40 a year ago in August 2023 to 67.90 in August 2024. Although it has declined slightly from a year ago, the index is still well below the pre-COVID high of 101.0 in February 2020.[21] The index is based on a survey of consumer perceptions of present economic conditions and expectations of future conditions. The survey is based on a sample of 500 phone interviews consisting of 50 core questions conducted across the continental U.S. This is considered a leading indicator of future consumer expenditures and economic activity.



[21] University of Michigan, *Surveys of Consumers*, September 2024

OVERVIEW OF THE PRIVATE EQUITY, HEDGE FUNDS & INVESTMENT VEHICLES INDUSTRY[22]

This industry is composed of private equity funds, hedge funds, closed-end funds, unit investment trusts and other financial vehicles. Entities in this industry manage securities or other assets on behalf of shareholders, unit holders or other beneficiaries to achieve high returns on targeted investments. This industry excludes insurance and employee-benefit funds, open-end investment funds and trusts, estates and agency accounts.

Executive Summary

In recent years, industry assets have become increasingly integral to institutional investors' portfolios and the larger asset-management market. Institutional investors are individuals or organizations that trade securities in such substantial volumes that they qualify for lower commissions and fewer protective regulations since it's assumed that they're knowledgeable enough to protect themselves. Increasing demand from institutional investors has contributed to the surge in the industry's assets under management (AUM) and revenue during the current period.

In recent years, the industry has continued to enmesh itself more deeply within the broader financial ecosystem despite challenges posed by the COVID-19 pandemic in 2020 and 2021. The pandemic, mainly in the first quarter of 2020, contributed to revenue declines for many operators. Many portfolios, previously thought to be sound investments, were reevaluated, and businesses pivoted their strategies due to the unprecedented nature of the crisis. In the past five years, industry revenue grew at a CAGR of 4.0% to $312.2 billion, including 5.2% in 2024 alone, when profit will increase to 48.9%.

Industry revenue will grow at a CAGR of 4.2% to $383.6 billion over the five years to 2029, when profit will rise to 50.5%. The Federal Reserve is increasing interest rates to quell historically high inflation. These higher interest rates are reducing liquidity in the markets. Private equity firms and hedge funds will have more difficulty raising capital for investments. As characteristics of the financial system change in light of post-financial crisis banking regulations and regulators' recognition of the importance of hedge funds within the financial system, hedge funds will likely experience heightened oversight.

Industry Performance

The Federal Reserve has increased interest rates to combat rampant inflation, which has surged due to persistent supply chain issues and a global energy crisis. After lowering

[22] IBISWorld Industry Report 52599, July 2024, *Private Equity, Hedge Funds & Investment Vehicles in the U.S.*

rates to historic lows in response to the COVID-19 pandemic, the Fed began raising them in 2022, with the current target rate ranging from 5.25% to 5.50%. These higher rates are reducing liquidity in financial markets, compelling private equity and hedge funds to seek new methods of raising capital, while those unable to adapt are exiting the industry. The previous decade's low-interest-rate environment had been advantageous for these investment vehicles, as it led investors to shift away from fixed-income and credit securities in favor of potentially higher returns. With more accessible funds during that period, fundraising activity surged, and those who capitalized on lower rates are currently benefiting from reduced interest payments and enhanced returns.

Simultaneously, there is a growing interest in Environmental, Social, and Governance (ESG) factors among investors who wish to align their investments with their values. This shift has led private equity firms and hedge fund managers to increasingly incorporate ESG considerations into their investment strategies. For instance, investments are now evaluated for their long-term environmental impact. Investors are also demanding that companies disclose information about their environmental and social performance. In response, private equity firms and hedge funds are diversifying their workforces and integrating ESG principles into their organizational frameworks.

Moreover, minority stakes are becoming more common in private equity firms. As internal competition intensifies, firms are diversifying their investments and establishing smaller, targeted funds, driven by a decrease in liquidity. The significant volatility in prominent markets like the S&P 500 during the COVID-19 pandemic encouraged companies to acquire minority stakes either in other companies or investments. There is a trend towards large private equity groups acquiring minority stakes in one another, as firms seek creative strategies to unlock potential investments. Changes in management types, with CEOs preferring to retain control while leveraging private equity expertise for growth, have also contributed to this trend.

Finally, technology and data analytics are increasingly being utilized by private equity firms and hedge funds to enhance their investment processes. These firms are employing machine learning algorithms to analyze vast amounts of data—such as financial statements, news articles, and social media posts—to uncover trends and insights not immediately visible to human analysts. Additionally, some are automating back-office functions like accounting and compliance using artificial intelligence (AI), which improves task processing and operational efficiency.

Industry Outlook

The Federal Reserve's ongoing battle against inflation is likely to result in volatile interest rates in the near future. As inflation continues to affect the U.S. economy, the Fed has signaled that it may maintain or further increase interest rates if necessary. These higher rates will reduce market liquidity, making it more challenging for hedge funds and private

equity firms to raise capital. Firms that cannot adapt may be forced out of the industry. Typically, investors turn to lower-risk investments, such as bonds, when interest rates are high, which will pose significant obstacles for the industry due to decreased liquidity and shifting investor preferences. Consequently, hedge funds and private equity firms will need to be more strategic and innovative in finding profitable investments as liquidity tightens.

At the same time, there is a sustained interest in Environmental, Social, and Governance (ESG) factors. Investors are increasingly concerned about the impact of their investments on the environment and society, seeking to align their portfolios with their values. Private equity firms and hedge fund managers are expected to continue integrating ESG considerations into their investment strategies, with climate change effects increasingly influencing investment decisions across various sectors. As environmental conditions worsen, the importance of selecting investments that contribute positively to the environment will grow. Additionally, as the population becomes more diverse, there is an expectation for hedge funds and private equity firms to reflect this diversity in their operations.

The use of technology and data analytics by private equity firms and hedge funds is expected to expand further. These firms will increasingly rely on advanced technology to identify and evaluate potential investments, and to manage and monitor existing portfolios. With the growing dependence on technology, cybersecurity will become increasingly critical, prompting firms to invest more in securing their technological networks. As artificial intelligence (AI) evolves, it will enable hedge funds and private equity firms to analyze extensive data sets in real-time, facilitating more informed trading and investment decisions. Given that data is now considered a crucial asset, industry players will use improved tools to access and analyze data, aiming to discover new investment opportunities.

Moreover, fintech is emerging as an attractive investment area for private equity, hedge funds, and investment vehicles. The rapidly growing fintech and biotechnology sectors, though currently constrained, are poised for future expansion and will likely attract increased investment. The proximity of Silicon Valley and Wall Street offers industry players easy access to cutting-edge technological innovations and robust financial networks, enhancing their ability to invest in promising new ideas. As the distinction between Silicon Valley and Wall Street continues to blur, private equity firms and hedge funds that can sift through the hype to find valuable opportunities will be well-positioned in the evolving fintech landscape.

VALUATION METHODOLOGY

There are three conceptually distinct methodologies that can be applied to estimate indications of value of a business or asset: (a) the income approach, (b) the market approach, and (c) the cost approach.

VALUATION APPROACHES

Income Approach

The income approach quantifies the present value of anticipated future income generated by a business or an asset. Forecasts of future income require analyses of variables that influence income, such as revenues, expenses, and taxes. One form of the income approach, the discounted cash flow (DCF) analysis, defines future economic income as net cash flow and takes into account not only the profit-generating abilities of a business but also the investment in capital equipment and working capital required to sustain the projected net cash flow. The forecasted net cash flow is then discounted to present value using an appropriate rate of return or discount rate. The income approach is unique in its ability to account for the specific contribution to the overall value of various factors of production.

Market Approach

The market approach considers the implied pricing in third-party transactions of comparable businesses or assets. Transactions are analyzed in order to identify pricing patterns or trends that can be used to infer value on the subject business or asset. Adjustments are made to the transaction data to account for relative differences between the subject and the comparable transactions. The primary strength of the market approach is that it offers relatively objective pricing evidence from the market at large and, aside from certain adjustments to the transaction data, requires few assumptions to be made.

Asset-Based (Cost) Approach

The asset-based approach considers the value of a business or security based on the value of its assets net of its liabilities. Replacement cost is often a primary indicator of the value of a business' assets. The asset-based approach is based on the reasoning that a prudent investor would not pay more for a business or asset than the cost to the investor to replace or re-create it. Historical cost data and reported book values are often used as initial indications of value, with certain adjustments made for physical deterioration, obsolescence, input costs, appreciation, or other factors. The asset-based approach makes fewer assumptions than the income approach, but its primary limitation is its inability to capture the value of many categories of intangible assets.

VALUATION METHODS

The following are common valuation methods used under the three approaches:

A. Income Approach
1. Discounted Cash Flow Method (multi-period model)
2. Direct Capitalization Method (single period model)
3. Excess Earnings Method

B. Market Approach
1. Guideline Public Company Method
2. Merger and Acquisition Method

C. Asset-Based Approach
1. Reproduction Cost Method
2. Replacement Cost Method
3. Net Asset Value Method

SUMMARY OF THE VALUATION APPROACHES AND METHODS

For the valuation of non-controlling interests in holding companies such as DAF, the asset-based approach is most commonly used. When applied to such companies, the approach consists of measuring the underlying net asset value (NAV) of an entity (the fair market value of the entity's assets less the fair market value of its liabilities). The NAV is then discounted as appropriate to determine the fair market value of the fractional interest in the entity.

VALUATION ANALYSIS

ASSET-BASED APPROACH ANALYSIS - NET ASSET VALUE

DAF's ultimate holdings are interests in various investment assets. DAF's sole asset reported as of the Valuation Date consisted of 100% of the equity of CLO HoldCo. CLO HoldCo is a holding company which invests in CLOs and other investments. We relied upon DAF management's determination of CLO HoldCo's NAV based on the values of its various underlying investments and assets. CLO HoldCo's balance sheet as of the Valuation Date is shown in the following charts and in Schedule A.1.

As shown below, CLO HoldCo's primary assets consist of cash & cash equivalents and other investment investments[23]. CLO HoldCo reported $316.3 million in total assets. CLO HoldCo also reported $47.2 million in total liabilities as of the Valuation Date. Therefore, CLO HoldCo's equity can be reasonably stated as $269.1 million.

CLO HoldCo, Ltd - Summary Balance Sheet

	Balance Sheet as of: 9/30/2024	
	Actual	%
Current Assets		
Cash & Equivalents	$138,419,315	43.8%
Total Current Assets	138,419,315	43.8%
Other Assets		
Other Investments	175,328,461	55.4%
Cash Collateral	81,419	0.0%
Interest Receivable	0	0.0%
Dividends Receivable	0	0.0%
Note Receivable	1,321,109	0.4%
Due from Affiliate	470,000	0.1%
Due from Broker	637,419	0.2%
Total Assets	316,257,723	100.0%
Total Liabilities	47,204,916	14.9%
Total Equity	269,052,808	85.1%
Total Liabilities & Equity	316,257,723	100.0%

[23] Other investments consist of investments in approximately 39 entities.

DAF NAV Conclusion

As of the Valuation Date, DAF's balance sheet consisted solely of a 100% ownership interest in CLO HoldCo's equity. Therefore, DAF's NAV can be reasonably stated as $269.1 million (rounded). This analysis is summarized in the following table and in Schedule A.2.

	Balance Sheet as of: 9/30/2024	
	Actual	%
Assets		
CLO HoldCo, LTD	$269,052,808	100.0%
Total Assets	$269,052,808	100.0%
Total Liabilities	$0	0.0%
Total Equity	$269,052,808	100.0%
Total Liabilities & Equity	$269,052,808	100.0%

CONCLUSION OF VALUE - SUBJECT INTEREST

DAF's NAV was determined to equal $269.1 million as of the Valuation Date. Dividing this NAV by the 305 total participation shares outstanding results in a NAV per share of $882,140. However, sellers of fractional interests in holding companies rarely receive a price equal to the NAV of their investment. This is because the interest holders do not have direct control over the entity's assets and have a limited market for their interests. Therefore, in order to arrive at the fair market value of the Subject Interest shares that are the subject of this analysis, we applied relevant discounts (control and marketability).

DISCOUNT FOR LACK OF CONTROL

Discounts for lack of control are applied based on the premise that an asset or interest in an entity in which an owner lacks decision making control would sell for less to a hypothetical buyer than an identical asset or interest which the same owner controls. Lack of control removes the investor's ability to make key decisions, including how to best manage the business, whether and how much cash to distribute to shareholders, or whether to pursue an acquisition or sale of the business.

Due to the Company's ultimate holdings in debt and equity investments, the Company exhibits some of the characteristics of a closed-end fund. Closed-end funds, like open-ended mutual funds, are asset holding companies that typically hold a portfolio of publicly traded securities. However, unlike unit holders in open-ended funds, closed-end fund unit holders who wish to liquidate their investment cannot look to the fund to repurchase their shares. Rather, they must sell them on the open market. The price they receive is not usually equal to the fundamental or net asset value of the investment. Therefore, the fair market value of closed-end funds is generally described in terms of a discount or premium to net asset value.

To align with the Company's holdings, we selected closed-end fund data from investment grade bond funds and general equity funds. The investment grade bond fund data shown in Schedule B.1 indicated mean and median discounts of 2.9% and 2.5%, respectively. The general equity fund data shown in Schedule B.2 indicated mean and median discounts of 12.1% and 13.6%, respectively. Based on these indications, we selected a discount for lack of control of 8.1% to be applicable to the Subject Interest, as shown in Schedule B.3.

DISCOUNT FOR LACK OF MARKETABILITY

Discounts for lack of marketability (DLOMs) are applied to the shares of private companies based on the premise that an asset or interest in an entity without a readily available market would sell for less to a hypothetical buyer than an identical asset or interest that is readily marketable. Several factors are widely recognized to affect

marketability, such as distributions or dividends, investment performance, holding period to complete a sale, and management performance, among others. We utilized two methods of quantifying a relevant DLOM: the put option approach and an analysis of restricted stock studies.

Put Option Approach

The price of a contract providing the right to sell a number of shares (a put option) represents the difference between the non-marketable and marketable price of an asset. For example, if a holder of restricted or non-marketable stock purchases a put option on the underlying asset, the holder would be purchasing marketability. The price of the put determines the size of the DLOM.

In order to determine the price of such a put, we utilized the Black-Scholes put option model.[24] Based on our analysis, we determined that an appropriate volatility for investment grade bond funds and general equity bond funds such as DAF is approximately 12.3% (Schedule C.2) and between one half and one year (averaged to 0.75 years) would be required to sell the Subject Interest in an orderly transaction. As a result of these inputs, the put option approach indicated a discount for lack of marketability of 2.8%. This DLOM indication is presented in Schedule C.1.

Restricted Stock Study Analysis

There are several studies that attempt to measure discounts for lack of marketability, and a review of these studies is helpful in assessing a reasonable marketability discount for the Subject Interest.[25] As mentioned, we would expect between six months and one year to be required to sell the Subject Interest in an orderly transaction.

Schedule C.4 presents a summary of restricted stock studies performed involving issuances of shares during the time period 1997 through 2008, which is when the SEC-mandated lock-up period for restricted stocks was one year. Based on a range of low discounts of 9.0%-10.9%, we selected a 9.7% DLOM utilizing the findings of the restricted stock studies.

DLOM Conclusion

The put option approach in Schedule C.1 indicated a DLOM of 2.8%. The restricted stock study analysis in Schedule C.4 indicated a DLOM of 9.7%. Based on these indications, we

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24 Black, F. and M. Scholes, "The Pricing of Options and Corporate Liabilities," *Journal of Political Economy*, May 1973

25 See Schedule C.3

concluded a discount for lack of marketability of 6.3%. This conclusion is presented in Schedule C.5.

CONCLUSION - SUBJECT INTEREST VALUE

Based on the procedures outlined herein and the corresponding analysis, it is our opinion that the fair market value of the Subject Interest as of the Valuation Date can be reasonably stated as:

$75,961,370
SEVENTY-FIVE MILLION NINE HUNDRED SIXTY-ONE THOUSAND THREE HUNDRED SEVENTY DOLLARS

FMV Summary			
Company Net Asset Value (NAV)		$269,052,808	*Schedule A.2*
Shares Outstanding		305	
NAV Per Share		**$882,140**	
Applicable Discounts			
Discount for Lack of Control	8.1%		*Schedule B.3*
Discount for Lack of Marketability	6.3%		*Schedule C.5*
Combined Discount	13.9%	($122,527)	
FMV Per Share		**$759,614**	
Subject Shares		100	
FMV of Subject Interest		**$75,961,370**	

Our conclusion of value is presented in Summary Schedule 2 as well as in the chart above.

This conclusion is subject to the Assumptions and Limiting Conditions and to the Appraisal Certification found at the end of this report. We relied on information received as indicative of the Company as of the Valuation Date. We made limited investigation as to the accuracy and completeness of such information and did not verify this information as part of our valuation. Therefore, we express no opinion or other form of assurance regarding the accuracy of the source data. Our analysis was based in part on this information as well as on other data we developed. We have no obligation to update this

report or our conclusion of value for information that comes to our attention after the date of this report.

ASSUMPTIONS AND LIMITING CONDITIONS

This valuation by ValueScope, Inc. is subject to and governed by the following Assumptions and Limiting Conditions and other terms, assumptions and conditions contained in the engagement letter.

LIMITATION ON DISTRIBUTION AND USE

The report, the final estimate of value, and the prospective financial analyses included therein are intended solely for the information of the person or persons to whom they are addressed and solely for the purposes stated; they should not be relied upon for any other purpose, and no party other than the Company may rely on them for any purpose whatsoever. Neither the valuation report, nor its contents, nor any reference to the appraiser or ValueScope, Inc. may be referred to or quoted in any registration statement, prospectus, offering memorandum, sales brochure, other appraisal, loan or other agreement or document given to third parties without our prior written consent. In addition, except as set forth in the report, our analysis and report are not intended for general circulation or publication, nor are they to be reproduced or distributed to third parties without our prior written consent. Notwithstanding the foregoing, ValueScope, Inc. permits the Company to distribute this Report to outside professional accounting and legal advisors, and to the Company's shareholders and their professional accounting and legal advisors.

No change of any item in this report shall be made by anyone other than ValueScope, and we shall have no responsibility for any such unauthorized change.

The valuation may not be used in conjunction with any other appraisal or study. The value conclusion(s) stated in this appraisal is based on the program of utilization described in the report and may not be separated into parts. The appraisal was prepared solely for the purpose, function, and party so identified in the report. The report may not be reproduced, in whole or in part, and the findings of the report may not be utilized by a third party for any purpose, without the express written consent of ValueScope, Inc.

NOT A FAIRNESS OPINION

Neither our opinion nor our report are to be construed as an opinion of the fairness of an actual or proposed transaction, a solvency opinion, or an investment recommendation but, instead, are the expression of our determination of value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, including our analysis whether impairment of goodwill exists.

OPERATIONAL ASSUMPTIONS

Unless stated otherwise, our analysis (i) assumes that as of the valuation date, the Company and its assets will continue to operate as configured as a going concern, (ii) is based on the past, present, and future projected financial condition of the Company and its assets as of the valuation date, and (iii) assumes that the Company has no undisclosed real or contingent assets or liabilities, other than in the ordinary course of business, that would have a material effect on our analysis.

We did not make an onsite visit to Company facilities.

COMPETENT MANAGEMENT ASSUMED

It should be specifically noted that the valuation assumes the property will be competently managed and maintained over the expected period of ownership. This appraisal engagement does not entail an evaluation of management's effectiveness, nor are we responsible for future marketing efforts and other management or ownership actions upon which actual results will depend.

NO OBLIGATION TO PROVIDE SERVICES AFTER COMPLETION

Valuation assignments are accepted with the understanding that there is no obligation to furnish services after completion of this engagement. If the need for subsequent services related to a valuation assignment (e.g., including testimony, preparation for testimony, other activity compelled by legal process, updates, conferences, reprint or copy services, document production or interrogatory response preparation, whether by request of the Company or by subpoena or other legal process initiated by a party other than the Company) is requested, special arrangements for such services acceptable to ValueScope, Inc. must be made in advance. ValueScope, Inc. reserves the right to make adjustments to the analysis, opinion, and conclusion set forth in the report as we deem reasonably necessary based upon consideration of additional or more reliable data that may become available.

In all matters that may be potentially challenged by a Court or other party, we do not take responsibility for the degree of reasonableness of contrary positions that others may choose to take nor for the costs or fees that may be incurred in the defense of our recommendations against challenge(s). We will, however, retain our supporting work papers for your matter(s) and will be available to assist in defending our professional positions taken, at our then current rates plus direct expenses at actual and according to our then current Standard Professional Agreement.

NO CONSIDERATION IS RENDERED AS TO THE LAW OF THE CAYMAN ISLANDS

No consideration is rendered as to the law of the Cayman Islands. Implications of Cayman Island jurisdiction are not considered.

NO OPINION IS RENDERED AS TO LEGAL FEE OR PROPERTY TITLE

No opinion is rendered as to legal fee or property title. No opinion is intended in matters that require legal, engineering, or other professional advice that has been or will be obtained from professional sources.

LIENS AND ENCUMBRANCES

ValueScope will give no consideration to liens or encumbrances except as specifically stated. We will assume that all required licenses and permits are in full force and effect, and we make no independent on-site tests to identify the presence of any potential environmental risks. We assume no responsibility for the acceptability of the valuation approaches used in our report as legal evidence in any particular court or jurisdiction.

INFORMATION PROVIDED BY OTHERS

Information furnished by others is presumed to be reliable; no responsibility, whether legal or otherwise, is assumed for its accuracy and cannot be guaranteed as being certain. All financial data, operating histories, and other data relating to income and expenses attributed to the business have been provided by management or its representatives and have been accepted without further verification except as specifically stated in the report.

PROSPECTIVE FINANCIAL INFORMATION

Valuation reports may contain prospective financial information, estimates, or opinions that represent reasonable expectations at a particular point in time, but such information, estimates, or opinions are not offered as forecasts, prospective financial statements or opinions, predictions or as assurances that a particular level of income or profit will be achieved, that events will occur, or that a particular price will be offered or accepted. Actual results achieved during the period covered by our prospective financial analysis will vary from those described in our report, and the variations may be material.

Any use of management's projections or forecasts in our analysis will not constitute an examination, review, or compilation of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants (AICPA). We will not express an opinion or any other form of assurance on the reasonableness of the underlying assumptions or whether any of the prospective financial statements, if used, are presented in conformity with AICPA presentation

guidelines.

REGULATORY AND ENVIRONMENTAL CONSIDERATIONS

The report assumes all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any local, state or national government, or private entity or organization have been or can be obtained or reviewed for any use on which the opinion contained in the report are based.

ValueScope is not an environmental consultant or auditor, and it takes no responsibility for any actual or potential environmental liabilities. Any person entitled to rely on this report, wishing to know whether such liabilities exist or the scope and their effect on the value of the property, is encouraged to obtain a professional environmental assessment. ValueScope does not conduct or provide environmental assessments and has not performed one for the subject property.

ValueScope has not determined independently whether the Company is subject to any present or future liability relating to environmental matters (including but not limited to CERCLA/Superfund liability) or the scope of any such liabilities. ValueScope's valuation takes no such liabilities into account, except as they have been reported to ValueScope by the Company or by an environmental consultant working for the Company, and then only to the extent that the liability was reported to us in an actual or estimated dollar amount. Such matters, if any, are noted in the report. To the extent such information has been reported to us, ValueScope has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.

Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.

ValueScope has not made a specific compliance survey or analysis of the subject property to determine whether it is subject to, or in compliance with, the American Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.

ValueScope expresses no opinion for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by business appraisers.

POTENTIAL FUTURE SALES

Any decisions to purchase, sell, or transfer any interest in the subject company or its subsidiaries shall be your sole responsibility, as well as the structure to be utilized and the price to be accepted.

The selection of the price to be accepted requires consideration of factors beyond the information we will provide or have provided. An actual transaction involving the subject business might be concluded at a higher value or at a lower value, depending upon the circumstances of the transaction and the business and the knowledge and motivations of the buyers and sellers at that time. Due to the economic and individual motivational influences which may affect the sale of a business interest, the appraiser assumes no responsibility for the actual price of any subject business interest if sold or transferred.

INDEMNIFICATION BY THE COMPANY

The following indemnifications apply only to the extent that any losses, claims, damages, judgments, or liabilities are not caused by fraud, bad faith, gross negligence, or willful malfeasance on the part of ValueScope.

The Company agrees to indemnify and hold harmless ValueScope and its respective principals, affiliate, agents, and employees ("Indemnified Party") against any losses, claims, damages, judgments, or liabilities arising out of or based upon any professional advisory services rendered pursuant to this agreement. Furthermore, the Company agrees to indemnify ValueScope and any Indemnified Party against any losses, claims, damages, judgments, or liabilities incurred as a result of a third party initiating a lawsuit against any Indemnified Party based upon any consulting services rendered to the Company pursuant to this agreement. In consideration for this indemnification agreement, ValueScope will provide professional advisory services.

The Company agrees to reimburse ValueScope and any Indemnified Party for any necessary and reasonable expenses, attorneys' fees, or costs incurred in the enforcement of any part of the indemnity agreement 30 days after receiving written notice from ValueScope.

The obligations of ValueScope under this agreement are solely corporate obligations, and no officer, director, employee, agent, shareholder, or controlling person in ValueScope shall be subjected to any personal liability whatsoever to any person, nor will any such claim be asserted by or on behalf of you or your affiliates.

APPRAISAL CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. We have not inspected certain assets, properties, or business interests encompassed by this appraisal.
2. We have no present or prospective future interest in the assets, properties, or business interests that are the subject of this appraisal report.
3. We have no personal interest or bias with respect to the subject matter of this report or the parties involved.
4. Our compensation for conducting the appraisal is in no way contingent upon the value reported or on any predetermined value.
5. To the best of our knowledge and belief, the statements of facts contained in this report, on which the analyses, conclusions, and opinions expressed herein are based, are true and correct.
6. No persons other than us have provided significant professional assistance regarding the analyses, opinions, and conclusions set forth in this report.
7. The reported analyses, opinions, and conclusions are limited only by the reported contingent and limiting conditions, and they represent our unbiased professional analyses, opinions, and conclusions.
8. This report and analysis were prepared under the direction of Steven C. Hastings.
9. I am in compliance with all professional appraisal certifications and licensing.
10. The National Association of Certified Valuators and Analysts (NACVA) has a mandatory recertification program for its accredited members and I am in compliance with that program.

By: ValueScope, Inc.



Steven C. Hastings, CPA/ABV/CFF, CGMA, ASA, CVA
Principal
ValueScope, Inc.

APPENDIX: QUALIFICATIONS OF THE APPRAISER

Steven C. Hastings, MBA, CPA/ABV/CFF, CGMA, ASA, CVA
Principal
shastings@valuescopeinc.com, 817-481-4901

Mr. Hastings has conducted valuations of common and preferred stock, other equity, and debt instruments of banks and privately held companies.

EMPLOYMENT HISTORY

2006 – Present *ValueScope, Inc.*

Principal
Mr. Hastings joined the company as a principal to provide valuation and financial modeling and expert advisory services to a select group of clients that expect a high level of accurate financial analysis. As a CPA with significant valuation and financial reporting experience, Mr. Hastings bridges the gap between deal structuring, valuation and the requirements of financial reporting.

2001 – 2006 *Value Capital, LLC*

Principal
Mr. Hastings served as a principal with Value Capital, LLC. During his tenure at Value Capital Mr. Hastings gained extensive experience in business financings, as well as the analysis of market dynamics in various industries. He provided services to clients in several transactions involving mergers and acquisitions and consulted on and was party to several creative financing transactions. His clients include: health care providers; software development, India outsource services, pre-media print services, and e-learning; video productions and TV show producers; finance companies; restaurant development companies; and other service industries.

Public Service - 1994 to 2000 *Finance Commission of Texas*

Director
The Commission provides overall policy and supervisory control for three key state agencies: the Banking Department, the Savings and Loan Department and the Office of Consumer Credit Commissioner. As the CPA member of the Finance Commission, Mr. Hastings was responsible for testifying to the Texas Senate on the validity and achievability of bi-annual budgets. Mr. Hastings served as chairman of the Audit Committee for the Texas Department of Banking, which provided the guidance and oversight for compliance with Texas's banking rules and regulations. He was instrumental in assisting the Savings and Loan Department in writing new Mortgage

Broker regulations and worked closely with the Consumer Credit Commissioner in clarifying the Texas payday lending regulations.

1994 – 2001 *MedCare Financial Solutions, Inc.*

President
Mr. Hastings served as an officer of MedCare Financial Solutions, Inc. and MedCapital Funding Corporation. MedCapital provided Medicare, Medicaid and private pay receivable financing to health care providers. MedCare Financial Solutions provided other financial and operational services to health care providers. These services included: divestitures; mergers and acquisitions; claims processing; educational/training; financial consulting; and financing advice regarding working capital, subordinated debt and equity lending. Mr. Hastings developed several reimbursement and financing training courses and is an accomplished speaker on topics related to health care reimbursement and financing systems.

1986 – 1994 *H.D. Vest Financial Services*

Executive Vice President and CFO
As executive vice president and CFO of H.D. Vest Financial Services, Mr. Hastings assisted in placing over $1.5 billion annually in investment. Responsible for day-to-day financial operations and capital structuring, Mr. Hastings gained experience in a wide variety of industries and gained strategic relationships with other investment bankers and business brokers. Mr. Hastings was instrumental in taking HD Vest public.

As a general securities principal, Mr. Hastings supervised stockbrokers' and investment advisors' day-to-day activities. As a securities financial and operations principal, he was responsible for filing net capital reports and other types of certifications with the NASD, SIPIC and other state and federal regulating bodies. Being licensed in life, disability, health, property and casualty insurance, Mr. Hasting was instrumental in implementing this line of business at HD Vest.

1979 – 1986 *Arthur Andersen & Co.*

Senior Manager
Mr. Hastings served as a senior manager with significant responsibilities in the several industries. He consulted on accounting, finance, tax, operations, and systems issues.

FORMAL EDUCATION

Master of Business Administration - Arizona State University, Tempe, Arizona
Bachelor of Science - Indiana University, Bloomington, Indiana

CERTIFICATIONS AND LICENSES

Certified Public Accountant (CPA)
Accredited Senior Appraiser (ASA)
Certified Valuation Analyst (CVA)
Accredited in Business Valuations, AICPA (ABV)
Certified in Financial Forensics, AICPA (CFF)
Chartered Global Management Accountant, AICPA (CGMA)
Former, Certified Health Insurance Claims Professional (NACAP)
Former, Securities Financial and Operations Principal
Former, General Securities Principal
Former, Registered Investment Advisor Principal
Former, Life, Disability, Health, Property and Casualty Licenses

ORGANIZATIONS AND PROFESSIONAL ASSOCIATIONS

American Institute of CPAs (CPA license, ABV and CFF credential)
Texas Society of CPAs (CPA license)
Dallas Society of CPAs (Past: Secretary, Ethic Committee Chairman, Financial Planning Committee Chairman)
American Society of Appraisers (ASA credential)
National Association of Certified Valuation Analysts (CVA credential)
AICPA Business Valuation & Forensic Litigation Support (CFF Credential)
Financial Executive Institute

RECENT IRS CASES - OFFICE OF CHIEF COUNSEL

Expert Witness – United States Tax Court (New York) 2018, Consolidated T.C. Docket No. 23516-16, Marc Chrem & Esther Chrem v. Commissioner of Internal Revenue, Economic interest in a corporation for gift tax purposes.

- Expert Report April 2018

Expert Witness – United States Tax Court (Nashville) 2009, T.C. Docket No. 30515-09, Nancy Sue Hawk, Transferee, Petitioner v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report April 2016
- Testimony June 2016
- Court Opinion November 2017

Expert Witness – United States Tax Court (Dallas) 2016, T.C. Docket No. 3030-14, Red River Ventures, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report September 2015

- Stipulated Tax Court Opinion December 2016

Expert Witness – United States Tax Court (Washington DC) 2016, T.C. Docket No. 1045-13, Estate of Jinana M. Bowey, et al, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report September 2015
- Stipulated Tax Court Opinion December 2016

Expert Witness – United States Tax Court (Boston) 2014, T.C. Docket No. 8401-13, Estate of Edward S. Redstone, Petitioner, v. Commissioner of Internal Revenue, Respondent. Economic interest in a corporation for gift tax purposes.

- Expert Report June 2014
- Testimony August 2014
- Tax Court Opinion October 2015

Expert Witness – United States Tax Court (Washington DC) 2014, T.C. Docket No. 223630-12, Michael Tricarichi, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report April 2014
- Testimony June 2014
- Tax Court Opinion October 2015

Expert Witness - United States Tax Court (Chicago, IL) 2014, T.C. Docket No. 6936-10, et al, John M. Alterman, et al, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report March 2014
- Testimony May 2014
- Tax Court Opinion December 2015

Expert Witness – United States Tax Court (Los Angeles), 2013 - 2014, Docket No. 8097-13, *Sumner Redstone, Petitioner, v. Commissioner of Internal Revenue, Respondent. Economic interest in a corporation for gift tax purposes.*

- Expert Report January 2014
- Testimony March 2014
- Tax Court Opinion December 2015

Expert Witness – IRS & DOJ, United States Tax Court (Houston) 2013, Docket No. 20177-11, *Richard H. Cullifer, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.*

- Expert Report August 2013
- Testimony November 2013
- Tax Court Opinion October 2014

RECENT IRS CASES – LMSB AUDIT DIVISION

Expert Witness for the IRS LSMB Audit Division – Plantation, FL, 2016, International debt transactions subject to IRC Sections 163(a) and 385.

- Federal Tax Appeals Testimony – Houston, TX, November 2016.

Expert Witness for the IRS LSMB Audit Division – Houston, TX, 2016, International financing transactions subject to IRC Section 482.

- Federal Tax Fast Track Appeals Testimony – Houston, TX, January 2016.

Expert Witness for the IRS LSMB Audit Division – Houston, TX, 2015, Split-dollar life insurance policy dealing with IRC Sections 1.7872, 1.61-22 and 20.2031.

- Federal Tax Appeals Testimony – Houston, TX, August 2015.

Expert Witness for the IRS LSMB Audit Division – Detroit, MI, 2015, International Inversion Case dealing with IRC Section 7874.

- Federal Tax Appeals Testimony – Detroit, MI, June 2015.

RECENT DEPARTMENT OF JUSTICE CASE

Expert Witness – United States District Court for the Northern District of Texas, Civil Cause No. 3:17-cv-0609-B, Tony and Mii's, Inc, et al, v. United States of America. Fraudulent valuation issues report, October 2018.

Expert Witness – United States District Court for the Southern District of Texas, Civil Action No. 4:16-cv-03302, ALPC Services of Texas, Inc. v. United States of America and Internal Revenue Service. Valuation issues report, 2017.

- Stipulated Settlement, 2017

Expert Witness – Federal Court, Case No. 12-844, *The Estate of David W. Longaberger v. The United States.* Valuation issues report, 2014.

RECENT CIVIL COURT REPORTS, TESTIMONY AND DEPOSITIONS

Expert Witness – The U.S. District Court for the District of Delaware, C.A. No. 06-451-SLR, Alcoa v. Alcan, Century Aluminum, Pechiney, et al. Deferred tax benefits and the improper recording of revenue and expenses for federal tax purposes.

- Expert Report June 2018
- Deposition Testimony May 2019

Expert Witness - Dallas County District Court, Texas, Cause No. DC-15-00923, Enterprise Financial Group, Inc. v. NAVISS, LLC et al. Fraudulent transfer, solvency and economic damages.

- Expert Report April 2018
- Daubert Hearing Testimony May 2018 (Report and Testimony Accepted by Court)

Expert Witness – Dallas County District Court, Texas, Cause No. DC-16-00270, Victor Bernal, et al v. DK8, LLC, et al (Honda of Burleson). Shareholder buyout dispute.

- Expert Report November 2016

Expert Witness – Dallas County, Texas, Cause No. CC-14-06294-C, Caden Clark v. Columbia Medical Center of Arlington et al. Economic damages related to lost wages.

- Expert Report February 2016
- Deposition May 2016
- Jury Trial August 2016

Expert Witness – State of Louisiana Division of Administrative Law, Docket No. 2015-4059-HH, Department of Health and Hospitals in the Matter of General Medicine. Medicaid claims coding issues.

- Expert Report February 2016
- Trial Testimony March 2016

Expert Witness – Federal Magistrate, Washington D.C., Case No. 14-671C. Always at Market, Inc. v. United States of America (DOD/DOJ). Army & Air Force Exchange Service economic damages.

- Expert Report September 2015
- Deposition February 2016
- Stipulated Settlement August 2016

Expert Witness – Circuit Court of Jefferson County, Alabama, Civil Action No. CV-05-1483, General Medicine, PC v. Healthsouth Corporation v. General Medicine, PC. Economic damages related to contract dispute.

- Expert Report April 2014
- Deposition June 2014
- Jury Trial February 2015

SPEAKING ENGAGEMENTS

"How to Finance Your Company" – National Med Trade

"Employee Stock Ownership Plans – When They Make Sense" – TAHC

"Documentation Linking Systems" – Oklahoma Healthcare Association

"CORF – What You Need to Know to Run A Successful Business" – PT Association

"Surviving a Prospective Payment System" – TAHC

"Diversification Strategies for Healthcare Providers" – Missouri Healthcare Association

"Diversification Strategies" – NAHC

"Cost Reporting Under IPS and PPS" –TAHC

"Key Survival Strategies under the Balanced Budget Act of 1997" – NAHC

"Financing Receivables" – Kitchens, Lambert & Associates

"Getting Paid" – NAHC

"The Cost Reimbursement System – Achieving Your Goals" – Amedisys Corporation Annual Client Seminar

"Cost Reporting – What You Need to Know to Run A Successful Business" – The Southwest Region AHH

"The Political Process and Your Business" – The Dallas/Fort Worth Association of Mortgage Brokers

"Underwater Stock Options: A Drag on the Company's Financial Performance" – Polaris International

"Estate & Gift Tax Discount Issues – Case Studies" – Internal Revenue Service

"Discounted Cash Flow Analysis: The Four-Step Process" – Internal Revenue Service

"Purchase Price Allocation: Valuation Challenges During Due Diligence" – Strafford Publications

"What's It Worth" – Financial Executives International

WHITE PAPERS

Attaining Reasonable Certainty in Economic Damages Calculations
Healthcare Compensation Arrangements at Risk - OIG Issues Alert on Physician Compensation
An Easy Tool for Determination of Personal v. Enterprise Goodwill
Common Transfer Pricing Mistakes
Possible Changes to Valuation Discount Rules is Unlikely
Common Transfer Pricing Mistakes
Audit Risk for Captive Insurance Companies

SCHEDULES

Charitable DAF HoldCo, Ltd
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Charitable DAF HoldCo, Ltd
Historical Valuation Summary

Summary Schedule 1
Valuation Date: September 30, 2024

	For the Quarter Ended:								
	9/30/2022	12/31/2022	3/31/2023	6/30/2023	9/30/2023	12/31/2023	3/31/2024	6/30/2024	9/30/2024
Company Net Asset Value (NAV)	$289,502,301	$276,241,856	$275,227,939	$270,414,002	$288,884,011	$277,573,090	$272,449,558	$270,432,538	**$269,052,808**
Discount for Lack of Control	8.0%	8.7%	7.8%	11.6%	13.9%	8.0%	8.7%	9.7%	8.1%
Discount for Lack of Marketability	7.0%	7.3%	7.1%	6.6%	6.4%	6.5%	6.6%	6.2%	6.3%
Combined Discount	14.4%	15.4%	14.3%	17.4%	19.4%	14.0%	14.7%	15.3%	13.9%
FMV of Subject Interest (Per 100 Shares)	$81,212,514	$76,654,941	$77,292,849	$73,202,932	$76,331,301	$78,284,712	$76,173,502	$75,101,687	**$75,961,370**

Charitable DAF HoldCo, Ltd Current Valuation Summary		Summary Schedule 2 Valuation Date: September 30, 2024	
FMV Summary			
Company Net Asset Value (NAV)		$269,052,808	*Schedule A.2*
Shares Outstanding		305	
NAV Per Share		**$882,140**	
Applicable Discounts			
Discount for Lack of Control	8.1%		*Schedule B.3*
Discount for Lack of Marketability	6.3%		*Schedule C.5*
Combined Discount	13.9%	($122,527)	
FMV Per Share		**$759,614**	
Subject Shares		100	
FMV of Subject Interest		**$75,961,370**	

Charitable DAF HoldCo, Ltd DAF Net Asset Value Analysis	Schedule A.1 Valuation Date: September 30, 2024

CLO HoldCo, Ltd - Summary Balance Sheet

	Balance Sheet as of: 9/30/2024	
	Actual	%
Current Assets		
Cash & Equivalents	$138,419,315	43.8%
Total Current Assets	138,419,315	43.8%
Other Assets		
Highland CLO Funding, Ltd.	10,002,234	3.2%
Highland CLO Funding, Ltd. (Participation Rights)	69,385	0.0%
MidWave Common	1,640,571	0.5%
MidWave - Term Loan A	85,552,571	27.1%
MidWave - Term Loan C	40,174	0.0%
NexPoint Capital, Inc. (BDC)	14,223,433	4.5%
NexPoint Real Estate Strategies Fund Z	8,487,030	2.7%
NexPoint Real Estate Finance (NREF)	6,174,381	2.0%
NexPoint Residential (NXRT)	2,338,207	0.7%
NexPoint Diversified Real Estate (NXDT)	2,331,025	0.7%
Small Bay II (Class I)	3,770,609	1.2%
Small Bay II (Class II)	4,047,276	1.3%
Small Bay II (Class III)	2,357,682	0.7%
Polo Glen	678,545	0.2%
NHT Holdco	109,056	0.0%
ACHC	158,525	0.1%
COLL	115,804	0.0%
HRTX	10,945	0.0%
ACRG/AU	3,267	0.0%
ACRG/BU	1,409	0.0%
TGTX	333,308	0.1%
TMO	282,686	0.1%
BIO	111,081	0.0%
iHeart Communications	365	0.0%
Multi Strat	107,324	0.0%
Crusader Fund II, Ltd.	38,131	0.0%
BVP Property	94,000	0.0%
NCI Apache Trail	1,104,000	0.3%
NCI Fort Worth Land	874,200	0.3%
NCI Royse City Land	11,448,367	3.6%
NCI Stewart Creek	1,250,000	0.4%
NLA Assets	1,766,000	0.6%
FFWM	2,541,184	0.8%
SRG	139,500	0.0%
SRTY	2,380,529	0.8%
SQQQ	1,818,805	0.6%
SPXU	2,174,013	0.7%
Serengetti	2,951,678	0.9%
Conservation Equity Fund	3,253,139	1.0%
MMPQ	527,460	0.2%
Total Wire Convertible Promissory Note	20,560	0.0%
Sable Permian Resources	2	0.0%
Other Investments	175,328,461	55.4%
Cash Collateral	81,419	0.0%
Interest Receivable	0	0.0%
Dividends Receivable	0	0.0%
Note Receivable	1,321,109	0.4%
Due from Affiliate	470,000	0.1%
Due from Broker	637,419	0.2%
Total Assets	316,257,723	100.0%
Total Liabilities	47,204,916	14.9%
Total Equity	269,052,808	85.1%
Total Liabilities & Equity	316,257,723	100.0%

Charitable DAF HoldCo, Ltd — **Schedule A.2**
DAF Net Asset Value Analysis — **Valuation Date: September 30, 2024**

Charitable DAF HoldCo, Ltd - Summary Balance Sheet

	Balance Sheet as of: 9/30/2024	
	Actual	%
Assets		
CLO HoldCo, LTD	$269,052,808	100.0%
Total Assets	$269,052,808	100.0%
Total Liabilities	$0	0.0%
Total Equity	$269,052,808	100.0%
Total Liabilities & Equity	$269,052,808	100.0%

Charitable DAF HoldCo, Ltd — **Schedule B.1**
Discount for Lack of Control (DLOC) Analysis — **Valuation Date: September 30, 2024**

Closed-End Fund Data - Investment Grade Bond Funds

Closed-End Fund Data - Investment Grade Bond Funds				
Fund Ticker	**Fund Name**	**Net Asset Value**	**Market Price**	**Premium (Discount)**
BKT	BlackRock Income Trust, Inc.	$12.65	$12.43	(1.7%)
FMY	First Trust Mortgage Income Fund	$13.05	$12.49	(4.3%)
VBF	Invesco Bond Fund	$16.87	$17.01	0.8%
VLT	Invesco High Income Trust II	$11.74	$11.53	(1.8%)
JLS	Nuveen Mortgage and Income Fund	$19.54	$18.43	(5.7%)
JMM	Nuveen Multi-Market Income Fund	$6.68	$6.36	(4.8%)
DMO	Western Asset Mortgage Opportunity Fund Inc.	$12.28	$11.97	(2.5%)

Summary Statistics	
Mean Premium (Discount)	**(2.9%)**
Median Premium (Discount)	**(2.5%)**
Standard Deviation	**2.2%**

Sources: CEF Connect as of market close September 30, 2024

Charitable DAF HoldCo, Ltd
Discount for Lack of Control (DLOC) Analysis

Schedule B.2
Valuation Date: September 30, 2024

Closed-End Fund Data - US General Equity Funds

Closed-End Fund Data - US General Equity Funds				
Fund Ticker	**Fund Name**	**Net Asset Value**	**Market Price**	**Premium (Discount)**
ADX	Adams Diversified Equity Fund, Inc.	$24.31	$21.56	(11.3%)
BIGZ	BlackRock Innovat and Growth Term Trust	$8.54	$7.55	(11.6%)
CET	Central Securities Corp.	$56.17	$45.84	(18.4%)
CRF	Cornerstone Total Return Fund	$6.85	$8.09	18.1%
GRF	Eagle Capital Growth	$12.03	$9.88	(17.9%)
FXBY	FOXBY Corp	$27.70	$16.00	(42.2%)
GDV	Gabelli Dividend & Income	$28.46	$24.45	(14.1%)
GAM	General American Investors	$62.92	$53.61	(14.8%)
USA	Liberty All-Star Equity	$7.17	$7.10	(1.0%)
ASG	Liberty All-Star Growth	$6.03	$5.61	(7.0%)
JCE	Nuveen Core Equity Alpha	$15.21	$15.37	1.1%
RMT	Royce Micro-Cap Trust	$10.84	$9.61	(11.3%)
STEW	SRH Total Return Fund	$20.51	$15.80	(23.0%)
SPE	Special Opportunities	$16.37	$13.91	(15.0%)
FUND	Sprott Focus Trust	$8.91	$7.70	(13.6%)

Summary Statistics	
Mean Premium (Discount)	**(12.1%)**
Median Premium (Discount)	**(13.6%)**
Standard Deviation	**13.0%**

Sources: CEF Connect as of market close September 30, 2024

Charitable DAF HoldCo, Ltd	Schedule B.3
Discount for Lack of Control (DLOC) Analysis	Valuation Date: September 30, 2024

DLOC Conclusion

Discount for Lack of Control Conclusion		
DLOC Determination - Closed End Bond Funds (Mean)	2.9%	*Schedule B.1*
DLOC Determination - Closed End Bond Funds (Median)	2.5%	*Schedule B.1*
DLOC Determination - Closed End Equity Funds (Mean)	12.1%	*Schedule B.2*
DLOC Determination - Closed End Equity Funds (Median)	13.6%	*Schedule B.2*
Concluded Discount for Lack of Control	**8.1%**	

Charitable DAF HoldCo, Ltd — **Schedule C.1**
Discount for Lack of Marketability (DLOM) Analysis — **Valuation Date: September 30, 2024**

DLOM Determination - Put Option Approach

Discount for Lack of Marketability - Put Option Approach

Option-Pricing Inputs:			
Stock Price	**S**	$1.00	
Strike Price	**X**	$1.00	*(Set to same as stock price)*
Expected Life	**T**	0.75	*(Years)*
Volatility	**s**	12.3%	*Schedule C.2*
Risk-free rate	**R**	4.18%	*US Treasury Implied Yield for Expected Life*
Dividend Yield	**Q**	0.00%	*

Intermediate Calculations:		*Intermediate Calculations:*	
d1	*0.34756838*	*-d1*	*-0.34756838*
d2	*0.24104726*	*-d2*	*-0.24104726*
N(d1)	*0.63591782*	*N(d1)*	*0.36408218*
N(d2)	*0.59524076*	*N(d2)*	*0.40475924*

Black-Scholes Call Option Price	$0.06

Black-Scholes Put Option Price	$0.03

Implied Discount for Lack of Marketability (DLOM)	**2.8%**

** Distributions not expected in the near future*

Charitable DAF HoldCo, Ltd — **Schedule C.2**
Discount for Lack of Marketability (DLOM) Analysis — **Valuation Date: September 30, 2024**

Put Option Approach - Historical Guideline Company Volatility Summary

Historical Volatility Term	Bond Funds					Equity Funds				
	BKT	FMY	JMM	JLS	VBF	FXBY	GRF	EQS	SPE	RVT
0.5 Years	10.1%	10.8%	9.5%	9.0%	8.3%	20.9%	16.6%	43.0%	11.6%	20.3%
1 Year	12.3%	13.7%	9.9%	12.0%	13.0%	20.7%	20.2%	41.7%	11.4%	20.1%
1.5 Years	11.5%	13.2%	10.3%	11.0%	12.3%	25.9%	23.0%	42.1%	10.7%	19.3%
2 Years	11.8%	15.3%	12.5%	11.0%	14.4%	25.6%	28.6%	48.3%	12.3%	21.7%
2.5 Years	12.7%	15.1%	13.3%	11.3%	14.8%	25.8%	32.2%	48.6%	13.6%	23.8%
3 Years	12.6%	14.8%	13.4%	11.2%	14.2%	27.4%	32.2%	47.4%	13.6%	23.8%
3.5 Years	12.3%	14.1%	12.8%	10.8%	13.8%	113.1%	30.2%	45.4%	13.3%	22.9%
4 Years	11.8%	13.9%	12.6%	10.6%	13.7%	106.5%	29.2%	51.4%	13.4%	22.7%
4.5 Years	11.5%	13.8%	14.2%	12.3%	14.0%	101.9%	29.4%	52.7%	15.9%	24.1%
5.0 Years	11.8%	14.5%	16.6%	15.9%	15.5%	97.5%	30.1%	53.5%	22.0%	27.6%

Historical Volatility Term	Statistical Summary					
	Low	25th %	Median	Mean	75th %	High
0.5 Years	8.3%	9.6%	**11.2%**	16.0%	19.4%	43.0%
1 Year	9.9%	12.0%	**13.3%**	17.5%	20.1%	41.7%
1.5 Years	10.3%	11.1%	12.8%	17.9%	22.1%	42.1%
2 Years	11.0%	12.3%	14.8%	20.1%	24.6%	48.3%
2.5 Years	11.3%	13.4%	15.0%	21.1%	25.3%	48.6%
3 Years	11.2%	13.5%	14.5%	21.1%	26.5%	47.4%
3.5 Years	10.8%	13.0%	14.0%	28.9%	28.3%	113.1%
4 Years	10.6%	12.8%	13.8%	28.6%	27.6%	106.5%
4.5 Years	11.5%	13.9%	15.0%	29.0%	28.1%	101.9%
5.0 Years	11.8%	15.6%	19.3%	30.5%	29.5%	97.5%

Concluded Volatility	12.3%

Source: Yahoo Finance

Charitable DAF HoldCo, Ltd — **Schedule C.3**
Discount for Lack of Marketability (DLOM) Analysis — **Valuation Date: September 30, 2024**

DLOM Determination - Restricted Stock Studies

Restricted Stock Studies

	Name of Study	Study Date	Period Covered From	To	Sub-Sample	Observations	Reported Mean	Reported Median
1	SEC Overall Average	1971	1966	1969	Prior to Feb 1997	338	24.0%	NA
2	Johnson and Racette	1981	1967	1973	Prior to Feb 1997	86	34.0%	NA
3	Milton Gelman	1972	1968	1970	Prior to Feb 1997	89	33.0%	33.0%
4	Robert R. Trout	1977	1968	1972	Prior to Feb 1997	60	33.5%	NA
5	Robert E. Moroney	1973	1969	1972	Prior to Feb 1997	146	35.6%	33.0%
6	J. Michael Maher	1976	1969	1973	Prior to Feb 1997	34	35.4%	34.0%
7	Stryker and Pittock (Standard Research Consultants)	1983	1978	1982	Prior to Feb 1997	28	NA	45.0%
8	Wruck, Karen H. (Unregistered only)	1989	1979	1985	Prior to Feb 1997	37	13.5%	12.2%
9	FMV Opinions (Hall/Polacek)	1994	1979	1992	Prior to Feb 1997	>100	23.0%	NA
10	Barclay, Holderness, and Sheehan	2006	1979	1997	Prior to Feb 1997	594	18.7%	17.4%
11	Hertzel and Smith	1993	1980	1987	Prior to Feb 1997	106	20.1%	13.3%
12	Management Planning, Inc.	1997	1980	1995	Prior to Feb 1997	49	27.7%	28.9%
13	Hertzel, Lemmon, Linck, and Rees	2001	1980	1996	Prior to Feb 1997	404	16.5%	13.4%
14	Wruck and Wu	2008	1980	1999	Encompassing 1997	1,854	11.3%	11.0%
15	Angrist, Curtis, and Kerrigan (MPI) (Unregistered only)	2011	1980	2009	Spanning 1997	402	22.1%	19.6%
16	Willamette Management Associates	1989	1981	1984	Prior to Feb 1997	33	NA	31.2%
17	Silber (1981-1988)	1991	1981	1988	Prior to Feb 1997	69	33.8%	NA
18	Krishnamurthy, Spindt, Subramanium, and Woidtke:	2001						
	All		1983	1992	Prior to Feb 1997	391	19.4%	NA
	Restricted Shares		1983	1992	Prior to Feb 1997	75	34.0%	NA
	Shares with Registration Pending		1983	1992	Prior to Feb 1997	23	23.3%	NA
	Shares Not Known to Be Restricted		1983	1992	Prior to Feb 1997	293	15.4%	NA
	Shares with Pending Registration or Not Known		1983	1992	Prior to Feb 1997	316	16.0%	NA
19	Wu	2003	1986	1997	Prior to Feb 1997	301	8.7%	19.8%
20	Bajaj, Denis, Ferris, Sarin (Unregistered only)	2001	1990	1995	Prior to Feb 1997	51	28.1%	26.5%
21	BVR (Johnson)	1999	1991	1995	Prior to Feb 1997	72	20.2%	NA
22	Finnerty:	2012						
	Pre-February 1997		1991	1997	Prior to Feb 1997	41	26.3%	20.3%
	Post-February 1997		1997	2007	After 1997 & Before 2008	176	21.5%	15.6%
23	Chaplinsky and Haushalter:	2010	1995	2000				
	Purchase Discount Only				Encompassing 1997	382	18.7%	15.0%
	Purchase Discount and Warrant				Encompassing 1997	235	17.3%	14.0%
24	Brophy, Ouimet, and Sialm:	2006						
	Hedge Funds - Traditional PIPEs		1995	2002	Encompassing 1997	586	14.1%	NA
	Other Investors - Traditional PIPEs		1995	2002	Encompassing 1997	1,559	9.0%	NA
25	Columbia Financial Advisors:	2000						
	Pre-February 1997		1996	1997		23	21.0%	14.0%
	Post-February 1997		1997	1998	After 1997 & Before 2008	15	13.0%	9.0%
26	Meidan	2006	1996	2003	Encompassing 1997	1,726	9.8%	NA
27	Verdasca	2007	2000	2006	After 1997 & Before 2008	711	9.7%	10.1%
28	Billett and Floros	2012	2001	2008	After 1997 & Before 2008	12,004	NA	26.7%
29	Stout Risius Ross	2011	2005	2010	Encompassing 2008	98	10.9%	9.3%
30	Harris-Trugman Valuation Associates:	2011						
	All		2007	2010	Encompassing 2008	136	16.6%	14.3%
	Pre-SEC Rule Change		2007	2007	After 1997 & Before 2008	47	17.9%	14.8%
	Post-SEC Rule Change		2008	2010	Post 2008	89	15.9%	14.3%

Charitable DAF HoldCo, Ltd — **Schedule C.4**
Discount for Lack of Marketability (DLOM) Analysis — **Valuation Date: September 30, 2024**

DLOM Determination - Restricted Stock Studies Summary Statistics

Descriptive Statistics for Reported Mean and Median Discounts		
	Mean	**Median**
All Studies after 1997 and before 2008		
Low	**9.7%**	**9.0%**
Median	15.5%	14.8%
Mean	15.5%	15.2%
High	21.5%	26.7%
Standard Deviation	5.2%	7.0%
All Studies Encompassing 2008		
Low	**10.9%**	**9.3%**
Median	13.8%	11.8%
Mean	13.8%	11.8%
High	16.6%	14.3%
Standard Deviation	4.0%	3.5%
Indicated Discount for Lack of Marketability	**9.7%**	

Charitable DAF HoldCo, Ltd	Schedule C.5
Discount for Lack of Marketability (DLOM) Analysis	Valuation Date: September 30, 2024

DLOM Conclusion

Discount for Lack of Marketability		
DLOM Determination - Put Option Approach	2.8%	*Schedule C.1*
DLOM Determination - Restricted Stock Studies	9.7%	*Schedule C.4*
Concluded Discount for Lack of Marketability	**6.3%**	

EXHIBIT 52

March 27, 2025

Re: Letter Agreement re: Assignment of Undertakings

To whom it may concern:

This letter agreement (this "Agreement") is to confirm in writing an agreement made by Charitable DAF HoldCo, Ltd., a Cayman Islands limited company ("Holdco") and CDMCFAD, LLC, a Delaware limited liability company ("DAF"). Each party hereto may be referred to generically as a "Party" or collectively as the "Parties" in this Agreement.

WHEREAS, DAF completed a restructuring on March 27, 2025, that (i) issued new membership interests in DAF to DFW Charitable Foundation, a Delaware 501(c)(3) non-profit organization and (ii) redeemed the membership interests in DAF owned by Holdco (collectively, the "Issuance and Redemption Transaction");

WHEREAS, Mark Patrick and Paul Murphy, the Directors of Holdco intend to wind up the affairs of Holdco and engage liquidators to complete that process; and

WHEREAS, in connection with the Issuance and Redemption Transaction, Holdco and DAF have mutually agreed to assign all of the contracts and agreements listed on Schedule A hereto (collectively, the "Assigned Contracts") from Holdco to DAF.

NOW, THEREFORE, as material inducement to each Party entering this Agreement, and in consideration of the mutual representations and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Assignment of Undertakings. Subject to the terms hereof, Holdco hereby assigns the Assigned Contracts to DAF with effect on and from the date first written above in consideration for the assumption of liabilities set forth herein (the "Assignment of Undertakings").

2. Assumption of Liabilities. In connection with the Assignment of Undertakings, DAF has agreed to assume all responsibilities and risks in any manner connected with the Assigned Contracts, whether now existing or hereafter arising.

3. Further Assurances. Until such time as Holdco completes its liquidation, Holdco agrees to cooperate (at DAF's sole expense) with DAF to take any further actions requested by DAF in connection with this Assignment of Undertakings, including executing assignment or similar agreements necessary to cause DAF to enter into the Assigned Contracts and obtain consent from counterparties. Notwithstanding anything to the contrary set forth herein, DAF shall not be responsible for funding any litigation of adverse actions relating to Holdco arising after the date hereof.

4. Representations and Warranties. By its execution and delivery hereof, each of the Parties represents and warrants to the other Party that, as of the date hereof and after giving effect to this Agreement:

(a) (i) such Party has all requisite power and authority to execute and deliver this Agreement, (ii) this Agreement has been duly executed and delivered by each Party to the other, and (iii) this Agreement constitutes the legal, valid, and binding obligations of such Party, enforceable in accordance with its respective terms;

(b) neither the execution, delivery, and performance of this Agreement, nor the consummation of any transactions contemplated herein or therein, will (i) contravene the terms of the trust agreement, limited liability company agreement, or other governing documents as applicable to such Party hereto; (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any lien under, or require any payment to be made under (a) any contractual obligation to which such Party is bound or affecting such Party or its respective properties or (b) any order, injunction, writ or decree of any governmental authority or any arbitral award to which such Party or such Party's property is subject; or (iii) violate any applicable law; and

(c) no approval, consent, exemption, authorization, or other action by, notice to, or filing with, any governmental authority or other person not previously obtained is necessary or required in connection with the execution, delivery, or performance by, or enforcement against, such Party to this Agreement.

5. Assignment. Neither Party may assign this Agreement without the other Party's prior written consent.

6. Governing Law; Venue. The Parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Texas and to the jurisdiction of the federal courts with jurisdiction covering Dallas, Texas, for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Texas or the federal courts with jurisdiction covering Dallas, Texas, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

7. Further Assurances. Each Party agrees to execute, acknowledge, and deliver such further instruments and to do all such other acts as may be reasonably necessary or appropriate in order to carry out the purposes and intent of this Letter.

8. Notices. All notices or requests required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when hand delivered or sent by certified mail, return receipt requested, or by reputable overnight courier, in each case with receipt verified in writing, addressed in accordance with the respective Parties' signature on the signature pages hereto.

9. Signature; Counterparts. This Agreement may be executed electronically, or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

10. Enforceability. If one or more provisions of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable in whole or in part, the remaining terms and provisions of this Agreement shall remain in full force and effect disregarding such illegal, invalid, or unenforceable portion and such court shall be empowered to modify, if possible, such illegal, invalid, or unenforceable provision to the extent necessary to make it enforceable in accordance with the intent and purposes of the Parties expressed herein to the fullest extent permitted by applicable law.

11. WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF

THIS AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

12. Merger; Amendment. This Agreement (i) is the only agreement between the Parties concerning the subject matter hereof and supersedes, terminates and cancels any prior statements, representations or agreements between the Parties concerning the subject matter hereof, (ii) is being executed by the Parties without reliance upon any representation, warranty, or other statement of any kind whatsoever, whether oral or written, which is not expressly set forth herein, and (iii) may not be changed orally, but only in a writing signed by duly authorized representatives of each of the Parties.

[*Remainder of Page Intentionally Blank*]

The undersigned have executed this Agreement as of the date first written above.

Agreed and Accepted:

Charitable DAF HoldCo, Ltd.,
a Cayman Islands limited company

By: _____
Name: Mark Patrick
Title: Director

By: _____
Name: Paul Murphy
Title: Director

Address for Notices:
Email: mpatrick@dafholdco.com
Email: pmurphy@dafholdco.com

CDMCFAD, LLC,
a Delaware limited liability company

By: _____
Name: Mark Patrick
Title: Manager

Address for Notices:
Email: mpatrick@dafholdco.com

Schedule A

Assigned Contracts and Agreements

1. Engagement Letter between Stone Hilton PLLC and Charitable DAF HoldCo, Ltd. dated February 27, 2025
2. Engagement Letter between Shields Legal Group, P.C. and Charitable DAF HoldCo, Ltd. (among others) dated September 27, 2023
3. Terms of Engagement by Walkers (Cayman) LLP to Charitable DAF HoldCo, Ltd.
4. Firestarter Proposal between Firestarter and Charitable DAF HoldCo, Ltd. dated January 15, 2025
5. Various ValueScope agreements, which we do not have
6. Engagement Letter between Seyfarth Shaw LLP and Charitable DAF HoldCo, Ltd. dated October 23, 2023
7. Engagement Letter between Deloitte Tax LLP and Charitable DAF HoldCo, Ltd. dated January 17, 2023
    a. Engagement Letter between Deloitte Tax LLP and Charitable DAF HoldCo, Ltd. dated February 7, 2022
8. Acknowledgment and Ratification Agreement among Grant James Scott, Charitable DAF HoldCo, Ltd., Charitable DAF GP, LLC, and Charitable DAF Fund, LP dated July 1, 2024
9. Engagement Letter among Charitable DAF HoldCo, Ltd. (and other DAF entities) and Carrington Coleman dated March 22, 2024
10. Engagement Letter among Charitable DAF HoldCo, Ltd., Charitable DAF GP, LLC, and Hueston Hennigan LLP dated January 26, 2024
11. In DAF's sole discretion, any other contract which they deem necessary to achieve a voluntary and solvent liquidation of Holdco

EXHIBIT 53

ADMISSION AND AMENDMENT NO. 1 AGREEMENT

This Admission and Amendment No. 1 Agreement (this "**Agreement**"), is entered into by the undersigned on March 27, 2025 (the "**Effective Date**"). Capitalized terms used herein and not otherwise defined shall have the meanings for such terms set forth in the LLC Agreement (as defined below).

RECITALS

WHEREAS, CDMCFAD, LLC, a Delaware limited liability company (the "**Company**") is currently governed by that certain Limited Liability Company Agreement of the Company, dated as of December 18, 2024 (the "**LLC Agreement**");

WHEREAS, in accordance with the terms of the LLC Agreement, the parties hereto desire to: (i) admit the undersigned new Member (the "**New Member**") as an additional Member of the Company with the capital contribution of $1,637,192 (the "**Capital Contribution**") and Allocation Percentage set forth in Exhibit A hereto and (ii) amend Schedule A to the LLC Agreement as set forth in Exhibit A hereto to reflect the foregoing, as of the Effective Date; and

WHEREAS, the Manager hereby consents to and approves of the admission of the New Member and the amendments to Schedule A to the LLC Agreement as contemplated herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENTS

I. Admission. Each of the parties hereto hereby consents to the admission of the undersigned New Member as an additional Member of the Company. In exchange for the payment to the Company of the Capital Contribution, the New Member is hereby issued a limited liability company interest in the Company with an Allocation Percentage as set forth on Exhibit A attached hereto as of the Effective Date. Upon the execution of this Agreement, the undersigned New Member is hereby admitted as an additional Member of the Company as of the Effective Date and in such capacity, hereby agrees to and shall be bound by the terms of the LLC Agreement commencing as of the Effective Date. For the avoidance of doubt, the execution and delivery of this Agreement by the undersigned New Member shall constitute the execution and delivery of a counterpart signature page to the LLC Agreement as required under Section 2.6 of the LLC Agreement.

II. Amendments.

A. Schedule A of the LLC Agreement is hereby amended and restated in its entirety and replaced with Exhibit A attached hereto.

III. Miscellaneous.

A. Agreement in Effect. Except as otherwise hereby amended, the LLC Agreement shall remain in full force and effect.

B. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws.

C. Counterparts. This Agreement may be executed in counterparts (including by facsimile or other electronic transmission), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

D. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the parties to this Agreement and their successors and assigns.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

MANAGER:

Name: Mark Patrick

NEW MEMBER:

DFW CHARITABLE FOUNDATION

By: _____
Name: Mark Patrick
Title: President

[Signature Page to Admission and Amendment No. 1 Agreement – CDMCFAD, LLC]

EXHIBIT A

LIMITED LIABILITY COMPANY AGREEMENT

SCHEDULE A

MEMBER INFORMATION

Revised: March 27, 2025

Name and Contact Information	Allocation Percentage
Charitable DAF Holdco, Ltd. Floor 4, Willow House, Cricket Square Grand Cayman KY1-9010 Cayman Islands Attention: Mark Patrick	50%
DFW Charitable Foundation Floor 4, Willow House, Cricket Square Grand Cayman KY1-9010 Cayman Islands Attention: Mark Patrick	50%

EXHIBIT 54

REDEMPTION AND AMENDMENT NO. 2 AGREEMENT

This Redemption and Amendment No. 2 Agreement (this "**Agreement**"), is entered into by the undersigned on March 27, 2025 (the "**Effective Date**"). Capitalized terms used herein and not otherwise defined shall have the meanings for such terms set forth in the LLC Agreement (as defined below).

RECITALS

WHEREAS, CDMCFAD, LLC, a Delaware limited liability company (the "**Company**") is currently governed by that certain Limited Liability Company Agreement of the Company, dated as of December 18, 2024 (as heretofore amended, the "**LLC Agreement**"); and

WHEREAS, in accordance with the terms of the LLC Agreement, Manager desires to: (i) redeem the entire limited liability company interest in the Company currently held by Charitable DAF HoldCo, Ltd. (the "**Redeemed Member**") effective as of the Effective Date for $1,637,192 (the "**Redemption Price**"), such amount being the Fair Market Value for the Redeemed Member's Interest as determined by the Manager, and (ii) amend Schedule A to the LLC Agreement as set forth in Exhibit A hereto to reflect the foregoing, as of the Effective Date.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENTS

I. Redemption. The Manager hereby approves and as of the Effective Date, the Redeemed Member's entire Interest in the Company is hereby redeemed by the Company for the payment of the Redemption Price. As of the redemption contemplated by this Section I, the Redeemed Member shall cease to be a member of the Company and shall thereupon cease to have any rights or obligations as a member of the Company under the LLC Agreement, the Act or otherwise.

II. Amendments.

A. Schedule A of the LLC Agreement is hereby amended and restated in its entirety and replaced with Exhibit A attached hereto.

III. Miscellaneous.

A. Agreement in Effect. Except as otherwise hereby amended, the LLC Agreement shall remain in full force and effect.

B. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws.

C. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the parties to this Agreement and their successors and assigns.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Manager executed this Agreement as of the day and date first above written.

MANAGER:

Name: Mark Patrick

EXHIBIT A

LIMITED LIABILITY COMPANY AGREEMENT

SCHEDULE A

MEMBER INFORMATION

Revised: March 27, 2025

Name and Contact Information	Allocation Percentage
DFW Charitable Foundation Floor 4, Willow House, Cricket Square Grand Cayman KY1-9010 Cayman Islands Attention: Mark Patrick	100%

EXHIBIT 55

WRITTEN CONSENT
OF THE MANAGER
OF
CDMCFAD, LLC

March 27, 2025

The undersigned, being the manager (the "Manager") of CDMCFAD, LLC, a Delaware limited liability company (the "Company"), does hereby consent to, adopt and approve, ratify and confirm by written consent the following resolutions and directs that this written consent be filed with the minutes of the proceedings of the Company:

WHEREAS, the current sole member of the Company is Charitable DAF Holdco, Ltd. (the "Current Member");

WHEREAS, the Company is currently governed by that certain Limited Liability Company Agreement of the Company, dated December 18, 2024 (the "LLC Agreement");

WHEREAS, the Company is part of a larger group of entities that include the Current Member (collectively the "DAF"), and the mission statement of the Current Member (which is representative of DAF as a whole) is as follows: "*Charitable DAF makes investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference*" (the "Mission Statement");

WHEREAS, the Highland Dallas Foundation, Inc., the Highland Kansas City Foundation, Inc., and the Highland Santa Barbara Foundation, Inc. (collectively, the "Highland Foundations") are Participating Shareholders in the Current Member and may be entitled to discretionary dividends if declared by the current Directors of the Current Member;

WHEREAS, the Manager has formed the view that the Current Member, by virtue of being a member of the Company and having as Participating Shareholders the Highland Foundations, poses a material risk to the Company, its assets, and the Mission Statement of DAF due to, among other things, (i) officers and directors of the Highland Foundations seeking to assert dominion and control over the assets of DAF (through the Current Member), despite no legal ability to do so under the Current Member's organizational documents and despite the potential illegality (as demonstrated by tax counsel to DAF—see Exhibits C and D) of doing so, (ii) the potential loss of the non-profit status of the Highland Foundations due to their actions, among others, described in clause (i), and (iii) the potential loss of the tax-exempt status which the Highland Foundations currently enjoy and which is central to the mission of DAF, as a result of the factors including those described in clauses (i) and (ii);

WHEREAS, and in connection therewith, the Manager desires to cause the Company to (i) admit DFW Charitable Foundation as an additional member of the Company and to amend the LLC Agreement to reflect the same, each pursuant to the terms of that certain Admission and Amendment No. 1 Agreement, a form of which is attached hereto as Exhibit A (the "Admission Agreement") and (ii) redeem the entire limited liability company interests in the Company held by the Current Member and to amend the LLC Agreement to reflect the same, each pursuant to the terms of that certain Redemption and Amendment No. 2 Agreement, a form of which is attached hereto as Exhibit B (the "Redemption Agreement" and together with the Admission Agreement, jointly, the "Restructure Agreements");

WHEREAS, in connection with the Restructure Agreements and the transactions contemplated thereby, the Manager (on behalf of the Company) obtained a valuation report of the membership interests

of the Company from ValueScope and (ii) FTI Consulting, copies of which are attached hereto as Exhibit E, which valuation reports have informed the Manager the fair market value of the membership interests;

WHEREAS, for the foregoing reasons, and others, the Manager has determined it to be in the best interests of the Company and its members for the Company to take all steps necessary to complete the transactions contemplated by the Restructure Agreements (such transactions collectively, the "Member Reorganization") so that the Company and DAF can again fulfill its Mission Statement and charitable purpose.

NOW, THEREFORE, BE IT RESOLVED, that the Member Reorganization is hereby approved in all respects in accordance with the terms set forth in the Restructure Agreements; and be it

RESOLVED FURTHER, that the terms, conditions and provisions of each of the Restructure Agreements are hereby approved in all respects; and be it

RESOLVED FURTHER, that the Manager, acting alone, be, and hereby is, authorized and empowered to execute and deliver in the name and on behalf of the Company and to cause the Company to perform its obligations under, such other and further agreements, instruments or documents (with such changes as the Manager deems necessary or advisable, such determination to be conclusively evidenced by the Manager's execution thereof) and to take all other actions that the Manager deems necessary or advisable to evidence and finalize the Member Reorganization and to carry out the intent and accomplish the purposes of these resolutions; and be it

RESOLVED FURTHER, that all acts of the Manager taken prior to the adoption of the foregoing resolutions, which acts are consistent with the purposes of the foregoing resolutions are hereby severally ratified, confirmed, approved and adopted as acts of the Company.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this written consent as of the date first set forth above.

MANAGER:

Name: Mark E. Patrick

EXHIBIT 56

Confidential Treatment Requested by the Highland Claimant Trust Pursuant to Rule 408 of the Federal Rules of Evidence and Subject to Protective Order Entered by the Bankruptcy Court in Confidence

Total Annual Expenses ($)

Expense	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023	6/30/2024
Legal Fee Expense	66,797.39	116,173.18	398,091.82	4,346,447.57	4,337,827.65	8,044,320.10	6,184,744.91
Investment Expense	-	-	-	-	-	3,044,078.13	6,179,478.60
Directors fees	-	-	-	49,000.00	40,250.00	599,473.64	2,257,660.66
Professional fees expense	104,844.77	93,255.12	537,769.44	1,100,599.17	626,856.17	1,197,513.69	995,497.60
Interest expense	5,105,931.21	6,886,101.21	3,928,638.85	2,747,813.34	2,072,787.45	1,667,391.35	811,866.58
Valuation services expense	-	-	48,072.72	286,599.05	181,516.46	2,044,488.51	701,556.14
Administration fees	179,215.18	149,110.70	122,603.91	895,861.24	1,180,146.01	1,181,933.45	589,608.35
Other expense	344,897.87	1,062,261.79	679,023.69	388,462.74	449,838.72	805,068.65	571,048.05
Dividend expense	-	131,955.82	7,468.07	12,996.55	4,988,446.12	21,739.62	52,534.35
Government fees	46,343.20	52,782.23	30,765.73	251.20	4,647.69	7,076.35	1,468.44
Management Fees	5,472,982.35	4,468,290.73	3,576,464.98	230,460.41	-	-	-
Trustee fees	158,025.00	246,150.00	290,407.53	145,000.00	-	-	-
Deferred Loan Fees Expense	(4,986.97)	16,095.79	8,870.28	-	523.67	-	-
Other Income	-	-	-	(2,400,000.00)	(12,768.67)	-	-
	11,474,050.00	13,222,176.57	9,628,177.02	7,803,491.27	13,870,071.27	18,613,083.49	18,345,463.68

*Item flowing through other income as an expense was a true-up/correction of an item that had been booked incorrectly by the fund administrator

Percentage of Total Expenses

Expense	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023	6/30/2024
Legal Fee Expense	0.58%	0.88%	4.13%	55.70%	31.27%	43.22%	33.71%
Investment Expense	0.00%	0.00%	0.00%	0.00%	0.00%	16.35%	33.68%
Directors fees	0.00%	0.00%	0.00%	0.63%	0.29%	3.22%	12.31%
Professional fees expense	0.91%	0.71%	5.59%	14.10%	4.52%	6.43%	5.43%
Interest expense	44.50%	52.08%	40.80%	35.21%	14.94%	8.96%	4.43%
Valuation services expense	0.00%	0.00%	0.50%	3.67%	1.31%	10.98%	3.82%
Administration fees	1.56%	1.13%	1.27%	11.48%	8.51%	6.35%	3.21%
Other expense	3.01%	8.03%	7.05%	4.98%	3.24%	4.33%	3.11%
Dividend expense	0.00%	1.00%	0.08%	0.17%	35.97%	0.12%	0.29%
Government fees	0.40%	0.40%	0.32%	0.00%	0.03%	0.04%	0.01%
Management Fees	47.70%	33.79%	37.15%	2.95%	0.00%	0.00%	0.00%
Trustee fees	1.38%	1.86%	3.02%	1.86%	0.00%	0.00%	0.00%
Deferred Loan Fees Expense	-0.04%	0.12%	0.09%	0.00%	0.00%	0.00%	0.00%
Other Income	0.00%	0.00%	0.00%	-30.76%	-0.09%	0.00%	0.00%
	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Percentage change Y/Y

Expense	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023	6/30/2024
Legal Fee Expense	-	73.92%	242.67%	991.82%	-0.20%	85.45%	-23.12%
Investment Expense	-	0.00%	0.00%	0.00%	0.00%	0.00%	103.00%
Directors fees	-	0.00%	0.00%	0.00%	-17.86%	1389.38%	276.61%
Professional fees expense	-	-11.05%	476.66%	104.66%	-43.04%	91.03%	-16.87%
Interest expense	-	34.86%	-42.95%	-30.06%	-24.57%	-19.56%	-51.31%
Valuation services expense	-	0.00%	0.00%	496.18%	-36.67%	1026.34%	-65.69%
Administration fees	-	-16.80%	-17.78%	630.70%	31.73%	0.15%	-50.11%
Other expense	-	207.99%	-36.08%	-42.79%	15.80%	78.97%	-29.07%
Dividend expense	-	0.00%	-94.34%	74.03%	38282.85%	-99.56%	141.65%
Government fees	-	13.89%	-41.71%	-99.18%	1750.20%	52.26%	-79.25%
Management Fees	-	-18.36%	-19.96%	-93.56%	-100.00%	0.00%	0.00%
Trustee fees	-	55.77%	17.98%	-50.07%	-100.00%	0.00%	0.00%
Deferred Loan Fees Expense	-	-422.76%	-44.89%	-100.00%	0.00%	-100.00%	0.00%
Other Income	-	0.00%	0.00%	0.00%	-99.47%	-100.00%	0.00%

EXHIBIT 57

CHARITABLE DAF HOLDCO, LTD.
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE DIRECTORS OF THE COMPANY

MADE ON 13th September 2024

The undersigned, being all of the Directors of the Company, hereby resolve, pursuant to the Articles of Association of the Company, the following directors' resolutions.

1. REVIEW AND APPROVAL OF COMPENSATION FOR MARK PATRICK.

1.1 **NOTED THAT:**

(a) Since 24 March 2021, Mr. Mark Patrick has been appointed as President, Chief Investment Officer and General Counsel of the Company, and appointed as President and Chief Investment Officer for seven subsidiaries/affiliated entities.

(b) In or about March 2024, the Company, including Charitable DAF Fund LP, engaged Mercer LLP to conduct an independent compensation review of Mr. Mark Patrick's duties as President, Chief Investment Officer and General Counsel of the Company, and as President and Chief Investment Officer for seven subsidiaries/affiliated entities.

(c) Mercer LLP prepared an independent report dated 26 August 2024 ("Mercer Report") which contains a summary of Mr. Patrick's roles and responsibilities and their methodology for calculating market comparables. At page 5 of that report, Mercer recommended that Mr Patrick's compensation be structured as follows:

a. Base salary: USD $850,000 or USD $750,000 if general partner liability insurance can be acquired to mitigate Mr Patrick's personal risk exposure.

b. Long-term incentive ("LTI") tied to DAF LP returns: 7.5% of annualized net fund returns in excess of 10% (capped at 25% annualized return).

(d) The Mercer report raised two issue for the Company to consider::

a. Whether performance for the LTI compensation be calculated based on 2021 performance or start for the 2022 cycle; and

b. Whether the LTI calculation should be calculated net of all Company expenses or new of fund expenses only.

(e) On 12th September 2024, Mr. Paul Murphy, a co-director of the Company, spoke to Heidi O'Brien, a Partner at Mercer, to discuss the issues identified in 1, 1.1 (d) a. and b. Following this conversation and based on the fact that (i) Ms. O'Brien confirmed that it was not uncommon for similar companies to award employees for the complete fiscal year when starting part way through the year, and (ii) Mr. Patrick was appointed in March 2021, the Directors have concluded that Mr. Patrick's LTI compensation should be calculated on the basis of the 2021 cycle.

(f) In addition, the Directors have concluded that the Company should assess the legal expenses

attributable to investments which impact the LTI compensation and, after that assessment, determine whether the LTI compensation should be increased.

(g) Based on the knowledge of the Directors of Mr. Patrick's roles and responsibilities, the Mercer LLP report and fact that Mr. Patrick is considered a key employee, the Directors have concluded that Mr. Patrick's compensation should be set in accordance with the recommendation in the Mercer report with the additional caveat that Mercer identified that CEOs and CIOs are often compensated on the basis of a base salary, annual incentive and LTI and an annual incentive is not included in the Mercer report. The Directors have concluded that it is in the Company's interest to determine whether an annual incentive should also be included as part of Mr. Patrick's compensation and, if so, how this is to be assessed.

(h) Mr. Patrick has declared his interests to the Company in relation to the matters the subject of this resolution, being that Mr Patrick is Director of the Company, and also employed by the Company as President, Chief Investment Officer, and General Counsel of the Company.

1.2 **IT IS RESOLVED** by unanimous written resolution that:

(a) Mr. Patrick's compensation be fixed, in accordance with recommendation of the Mercer LLP report, as follows:

a. Base salary: USD $850,000, provided that, 100% of the base salary for calendar year 2024 may be paid on or about the date of these resolutions.

b. Long-term incentive tied to DAF LP returns: 7.5% of annualized net fund returns in excess of 10% (capped at 25% annualized return), less any amounts previously advanced to Mr. Patrick.

(b) The Directors will assess:

a. Whether any adjustment should be made to the LTI calculation based on whether the calculation should be made net of all expenses or net of fund expenses; and

b. Whether Mr. Patrick should receive an annual bonus and the basis of that annual bonus.

Executed by the Directors comprising the entire Board of Directors of the Company:

BY _____

Paul Murphy - Director
CHARITABLE DAF HOLDCO, LTD.

BY _____

Mark Patrick - Director
CHARITABLE DAF HOLDCO, LTD.

EXHIBIT 58

CHARITABLE DAF HOLDCO, LTD.
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE
DIRECTORS OF THE COMPANY

MADE ON 1 October 2024

The undersigned, being all of the Directors of the Company, hereby resolve, pursuant to the Articles of Association of the Company, the following directors' resolutions. Any capitalized terms not defined herein are taken from the Directors' Resolution dated 12th September 2024.

1. ESTABLISHMENT OF COMPENSATION COMMITTEE/GUIDELINES AND APPOINTMENT OF MEMBERS OF COMPENSATION COMMITTEE.

1.1 **NOTED THAT:**

(a) The Company does not presently have a compensation committee and the Directors believe it is in the best interest of the Company to establish a compensation committee which will be guided and governed by compensation committee guidelines established by the Directors.

(b) Given the Directors knowledge and experience of the Company, the initial appointments to the compensation committee will be Mark Patrick and Paul Murphy.

1.2 **IT IS RESOLVED THAT:**

(a) The Company establish a compensation committee (**"Compensation Committee"**) and adopt the guidelines in the form substantially contained in Appendix 1 to these resolutions (**"Compensation Committee Guidelines"**).

(b) Mark Patrick and Paul Murphy be appointed to the Compensation Committee.

(c) The Company empowers the Compensation Committee to make recommendations to the Directors on all matters outlined in the Compensation Committee Guidelines, provided that, all recommendations by the Compensation Committee are subject to review and approval by the Directors.

(d) The Compensation Committee shall not make any recommendations in relation to Mark Patrick's compensation arising from the resolution passed by the Directors on 12th September 2024, in particular, the LTI payment and annual bonus resolution passed in these Directors' Resolutions paragraph number 2.

2. FURTHER REVIEW AND APPROVAL OF COMPENSATION FOR MARK PATRICK AND EMPLOYMENT AGREEMENT.

2.1 **NOTED THAT:**

(a) On 12 September 2024, the Directors passed a directors' resolution addressing Mark Patrick's compensation as a Director, President/CEO, Chief Investment Officer and General Counsel of the Company. The Directors approved compensation in the following amounts:

a. Base salary: USD $850,000.

b. LTI tied to Charitable DAF Fund LP ("DAF LP") returns: 7.5% of annualized net fund returns in excess of 10% (capped at 25% annualized return).

(b) In addition, the Directors resolved that they would assess:

a. Whether any adjustment should be made to the LTI calculation based on whether the calculation should be made net of all expenses or net of fund expenses; and

b. Whether Mr. Patrick should receive an annual bonus and the basis of that annual bonus.

LTI

(c) Paul Murphy noted that the return of the Company is impacted by whether legal expenses should be included as an operational expense of the Company (in which case the LTI payment would be lower) or whether legal expenses have been incurred not as an operational expense but as an expense to preserve, protect and maximize returns to the Company (in which case it is appropriate to exclude these expenses when assessing the Company's return thereby raising the LTI payment, in whole or in part).

(d) Paul Murphy, having a detailed and working knowledge of the Company's legal issues, and having commissioned Shawn Raver, legal advisor to the Company, to provide a breakdown of legal fees (i) which are attributable to the normal operation of the Company's investment portfolio, and (ii) which have been incurred to preserve, protect and maximize returns to the Company, who has assessed that 75% of those legal fees have been incurred to preserve, protect and maximize returns to the Company.

(e) Accordingly, the LTI calculation should be adjusted to award 75% of the difference between the figures noted in page 9 of the Mercer Report which is $975,000.[1]

Annual Bonus

(f) Paul Murphy conducted an independent assessment of whether Mark Patrick should receive an annual bonus and the basis of that annual bonus having regard to the Mercer Report, further discussions with Heidi O'Brien (Partner at Mercer), further review of industry comparables with CEO/CIO roles in complex structured finance senior positions, and assessment of other charitable organisations/structures (acknowledging that the Company and its subsidiaries are not subject to United States of America regulations).

(g) Having (i) reviewed the Compensation Committee Guidelines and, (ii) a detailed working knowledge of the Company and Mark Patrick's roles and responsibilities, Paul Murphy assessed that Mark Patrick is eligible for an annual bonus in the amount of 2.5 times his base salary for the year 2023 and payable immediately for, inter alia, the following reasons:

a. CEOs and CIOs in comparable positions are typically awarded a base salary, annual bonus and form of long term incentive plan which is designed to compensate senior executives for their performance and value to a company on an annual and long term basis (see Mercer Report page 17, which is consistent with and supported by Paul Murphy's

[1] The calculation net of all expense is $4,459,000 and net of fund expenses is $5,759,000 leaving a difference of $1.3m of which $975,000 is 75%.

knowledge of US based asset managers).

b. The Company, in the absence of a senior executive willing to undertake the roles and responsibilities of a CEO, CIO and general counsel would, in the US, have to incur annual expenses of at least $3-4m at the median range and $5-6m at the upper range[2] to appropriately staff these positions.[3] By undertaking the roles of CEO, CIO and General Counsel, Mark Patrick would be undercompensated if the Company were only to award a base salary and LTI.

c. The Company has faced/is facing significant and complex legal issues in Texas, New York, the Cayman Islands and, until recently, Guernsey, which it has had to manage on a reactive and proactive basis and which Mark Patrick has been instrumental in the prosecution and defence of. These include sophisticated parties including US Bank, UBS and a Trustee in Bankruptcy.

d. Mark Patrick was instrumental in 2023/2024 defeating an action by UBS against the Company in New York which significantly reduced the Company's potential liabilities.

e. The risk profile to Mark Patrick as a director, CEO and CIO is high and his decision making will and is likely to be scrutinized which may lead to personal liability. He is undertaking these positions without the benefit of directors' and officers' insurance.

f. Mark Patrick has been instrumental in implementing and driving forward policies that will bring rigorous scrutiny and governance to the Company.

g. The Company's investments over the past three years have outperformed the S&P 500 significantly where the average returns for the S&P 500 over the same period returned 11.49% compared to 16.46% for the Company.

h. To date, Mark Patrick has not been awarded an annual bonus during his tenure at the Company nor has he received benefits which a CEO/CIO would typically enjoy.

(h) These are not a comprehensive list of factors Paul Murphy took into account but form the basis of his independent conclusion that the Directors should (i) enter into an employment agreement in a form drafted by the Company's US and Cayman Islands counsel which reflects the on-going compensation package, and (ii) award an annual discretionary bonus for 2023 at an amount of 2.5 times his base salary.

(i) Mr. Patrick has declared his interests to the Company in relation to the matters the subject of this resolution, being that Mr Patrick is Director of the Company, and also employed by the Company as President, Chief Investment Officer, and General Counsel of the Company.

2.2 **IT IS RESOLVED** by unanimous written resolution that:

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[2] Per Mercer Report at page 7 and adjusted to account for base compensation and annual bonus/long term incentive for general counsel.

[3] It is noted that the basis for these figures includes assessment of charities and foundations in the US which the Company is not. Whilst useful guidance, the Company must be mindful of the fact that the Company is a Cayman Islands company that holds complex structured financial products through Cayman Islands companies and is not bound by the same provisions that relate to US charities and foundations.

(a) Mark Patrick be awarded:

a. An adjustment to the LTI incentive payment in the amount of $975,000.

b. An annual bonus for the year 2023, payable immediately, of 2.5 times his base salary.

c. No annual bonus for the years 2021 and 2022 given the entirety of the compensation package provided to Mark Patrick as of 12th September 2024 and the date of this resolution.

Executed by the Directors comprising the entire Board of Directors of the Company:

BY _____

Paul Murphy - Director

CHARITABLE DAF HOLDCO, LTD.

BY _____

Mark Patrick - Director

CHARITABLE DAF HOLDCO, LTD.

APPENDIX 1
COMPENSATION COMMITTEE GUIDELINES

Compensation Policy for Executives and Directors

As adopted on October 1, 2024

1. **Overview and Objectives**

This document sets forth the Compensation Policy for Executives and Directors of Charitable DAF HoldCo, Ltd., its subsidiaries, and CDH GP, Ltd. (collectively, "**Company**").

Compensation is a key component of the Company's overall human capital strategy to attract, retain, reward, and motivate highly skilled individuals that will enhance the Company's value and otherwise assist the Company's to reach its long-term goals. Accordingly, the structure of this Policy is established to tie the compensation of each officer to the Company's goals and performance.

For purposes of this Policy, "Executive Officers" shall mean the Company's Chief Executive Officer, Chief Investment Officer, Chief Company Officer, and Chief Operating Officer, and such other executive officers as appointed by the Company from time to time.

For purposes of this Policy, "Directors" shall mean the Directors as defined in the organizational and governing documents of the Company.

This Policy is subject to applicable law and is not intended, and should not be interpreted as limiting or derogating from, provisions of applicable law to the extent not permitted.

This Policy shall apply to compensation agreements and arrangements which will be approved after the date on which this Policy is adopted and shall serve as Company's Compensation Policy for five (5) years, commencing as of its adoption, unless amended earlier.

The Compensation Committee and the Board of Directors of the Company (the "**Compensation Committee**" and the "**Board**", respectively) shall review and reassess the adequacy of this Policy from time to time.

The Compensation Committee and Board shall have regard to the fact that Charitable DAF HoldCo, Ltd. and its subsidiaries are incorporated and subject to Cayman Islands law (**"Cayman Islands Entities"**). Accordingly, whilst US law, regulation and industry standards (**"US Practices"**) may be taken into account when considering the Objectives (as defined below), the US Practices are not binding on the Cayman Islands Entities, the Cayman Islands Entities having been purposely established as non-US entities, and the Compensation Committee will have regard to all factors which, in its discretion, achieve the Objectives (as defined below).

2. **Objectives**

Company's objectives and goals in setting this Policy are to attract, motivate and retain highly experienced leaders who will contribute to Company's success and enhance shareholder value, while demonstrating professionalism in a highly achievement-oriented culture that is based on merit and rewards excellent performance in the long term, and embedding Company's core values as part of a motivated behavior (**"Objectives"**). To that end, this Policy is designed, among others:

2.1. To closely align the interests of the Executive Officers and Directors with those of Company's shareholders in order to enhance shareholder value;

2.2. To align a significant portion of the Executive Officers' and Directors' compensation with Company's short and long-term goals and performance;

2.3. To provide the Executive Officers and Directors with a structured compensation package, including competitive salaries, performance-motivating cash and equity incentive programs and benefits;

2.4. To strengthen the retention and the motivation of Executive Officers and Directors in the long term; and

2.5. To provide appropriate awards in order to incentivize superior individual excellency and corporate performance.

3. **Compensation Instruments**

3.1 Compensation instruments under this Policy may include, but need not be limited to, the following:

3.1.1 Base salary;

3.1.2 Benefits;

3.1.3 Annual cash bonuses;

3.1.4 Change of control terms;

3.1.5 Retirement and termination terms; and

3.1.6 Long-term and short-term incentive payments

3.2 When fixing compensation instruments the Company may have regard to any matter which, in the Company's complete discretion, is commensurate with the Objectives. Without limitation, this may include:

3.2.1 Assessing an Executive Officer and Director's performance with regard to their contribution to and management of any assets or investments the Company sources or owns from time to time;

3.2.2 Assessing the performance of assets or investments of the Company in relation to overall returns to the Company;

3.2.3 Mitigation of Company liabilities;

3.2.4 Ensuring sound and prudent corporate governance including compliance with all legal, regulatory and industry standards;

3.2.5 Efficient management of service providers;

3.2.6 Risk the Executive Officer and/or the Director is exposed to;

3.2.7 Responsibilities the Executive Officer and/or the Director undertakes; and

3.2.8 Achieving the Company's business and charitable objectives

4. **Benefits**

4.1 The following benefits may be granted to the Executive Officers and Directors in order, among other things, to comply with legal requirements:

4.1.1 Vacation days in accordance with market practice;

4.1.2 Sick days in accordance with market practice;

4.1.3 Convalescence pay according to applicable law;

4.1.4 Company may contribute on behalf of the Executive Officer or Director to an insurance policy (including, without limitation, split-dollar life insurance) or a pension fund, as allowed by applicable law and with reference to Company's policies and procedures and the practice in peer group companies (including contributions on bonus payments); and

4.1.5 Company may contribute on behalf of the Executive Officer or Director towards work disability insurance, as allowed by applicable law and with reference to Company's policies and procedures and to the practice in peer group companies.

4.2 In events of relocation or repatriation of an Executive Officer or Director to another geography, such Executive Officer or Director may receive other similar, comparable or customary benefits as applicable in the relevant jurisdiction in which he or she is employed or additional payments to reflect adjustments in cost of living. Such benefits may include reimbursement for out of pocket one-time payments and other ongoing expenses, such as housing allowance, car allowance, and home leave visit, etc.

4.3 Company may offer additional benefits to its Executive Officers and Directors, which will be comparable to customary market practices, such as, but not limited to: cellular and land line phone benefits, company car and travel benefits, reimbursement of business travel including a daily stipend when traveling and other business related expenses, insurances, other benefits (such as newspaper subscriptions, academic and professional studies), etc., provided, however, that such additional benefits shall be determined in accordance with Company's policies and procedures.

5. **Miscellaneous**

5.1 Nothing in this Policy shall be deemed to grant to any of Company's Executive Officers, employees, directors, or any third party any right or privilege in connection with their employment by or service to the Company, nor deemed to require Company to provide any compensation or benefits to any person. Such rights and privileges shall be governed by applicable personal

employment agreements or other separate compensation arrangements entered into between Company and the recipient of such compensation or benefits. The Board may determine that none or only part of the payments, benefits and perquisites detailed in this Policy shall be granted, and is authorized to cancel or suspend a compensation package or any part of it.

5.2 In the event that new regulations or law amendment in connection with Executive Officers' and Directors' compensation will be enacted following the adoption of this Policy, Company may follow such new regulations or law amendments, even if such new regulations are in contradiction to the compensation terms set forth herein.

****

This Policy is designed solely for the benefit of Company and none of the provisions thereof are intended to provide any rights or remedies to any person other than Company.

EXHIBIT 59



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

WRIT OF SUMMONS

TO: (1) **MARK ERIC PATRICK** of 6716 Glenhurst Drive, Dallas, Texas, 72554, United States of America

THIS WRIT was issued by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83527361)

(2) **PAUL MURPHY** of Windsor Village #24, South Church Street, Grand Cayman, Cayman Islands

(3) **CDMCFAD, LLC** of c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 1980, United States of America

(4) **DFW CHARITABLE FOUNDATION** of c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 1980, United States of America

(5) **CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER** of c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands

(6) **CLO HOLDCO, LTD.** of c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, or, if you are served out of the jurisdiction, within such other period of time as the Court may order, you must either satisfy the claim or return to the Registrar of the Financial Services Division, Court Office, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 15th day of July 2025

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

STATEMENT OF CLAIM

INTRODUCTION

1 The Plaintiff, Charitable DAF HoldCo, Ltd (in Official Liquidation) (the "**Company**"), is a Cayman Islands exempted company, incorporated on 27 October 2011, having its registered office at HSM Corporate Services Ltd, 68 Fort Street, George Town, PO Box 31726, Grand

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

Cayman KY1-1207. The authorised and issued share capital of the Company is divided into Participating Shares and Management Shares.

2 The Company was placed into court supervised liquidation and Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Limited were appointed as joint official liquidators (the "**JOLs**") pursuant to an order of this Honourable Court dated 6 May 2025.

3 The Company was, between November 2011 and 18 December 2024, the sole limited partner of Charitable DAF Fund, LP (the "**Fund**"). At all relevant times, the net asset value of the Fund's assets was c. US$270million.

4 The Fund is a Cayman Islands exempted limited partnership formed to invest and manage assets for the benefit or ultimate benefit of certain registered charitable organisations in the U.S. namely The Dallas Foundation; the Greater Kansas City Community Foundation; the Santa Barbara Foundation and The Community Foundation of North Texas (the "**Charities**"). These charities are the owners or the ultimate beneficial owners of Participating Shares in the Company.

5 In March 2021, Mark Patrick (the "**First Defendant**") was appointed the sole director and registered as the sole Management Shareholder of the Company. In April 2021, Paul Murphy (the "**Second Defendant**") was appointed by the First Defendant as a second director of Holdco.

6 By virtue of a series of transactions or purported transactions between March 2024 and March 2025, unbeknownst to the holders of the Participating Shares (the "**Participating Shareholders**") of the Company, Mr Patrick caused:

6.1 the Company, with the agreement and concurrence of Mr Murphy, to assign its interest in the Fund to the Third Defendant, a Delaware limited liability company, formed in

December 2024 and controlled by Mr Patrick, in exchange for a membership interest in that entity;

6.2 the Company, with the agreement and concurrence of Mr Murphy, to issue and allot further Participating Shares (representing a majority of the issued participating share capital) to the Fourth Defendant, a Delaware company, incorporated in December 2024 and controlled by Mr Patrick;

6.3 the Third Defendant to redeem the Company's membership interest in the Third Defendant for a consideration of c. US$1.6 million, representing approximately 0.59% of the total net asset value of the assets held by the Fund; and

6.4 the Company, with the agreement and concurrence of Mr Murphy, to be placed into voluntary liquidation after having made a final distribution to all Original Participating Shareholders (defined below) in the Company of the proceeds of redemption,

collectively the "**Impugned Transactions**".

7 The First and Second Defendants effected the Impugned Transactions in breach of their fiduciary and other duties to the Company in order to bring ownership of the Fund and its assets, with a net value of c. US$270 million (as assessed at 30 September 2024), under Mr Patrick's effective control to the exclusion of the interests of the Charities. The Charities, as the original, and rightful, ultimate beneficiaries of the Fund, have been left with nothing.

8 Further, during the period March 2021 to June 2024, the First and Second Defendants, in breach of fiduciary duty, caused the Company to pay excessive fees and expenses to Mr Patrick.

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

THE PARTIES

The Company

9 The Company is a Cayman Islands exempted company, incorporated on 27 October 2011, having its registered office at HSM Corporate Services Limited, Ltd, 68 Fort Street, George Town, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands.

10 The directors of the Company are Mr Patrick (appointed on 25 March 2021) and Mr Murphy (appointed by Mr Patrick on 22 April 2021).

11 The Company has been governed by the following memorandum and articles of association from time to time:

11.1 The memorandum and articles of association dated 27 October 2011; and

11.2 The amended and restated memoranda and articles of association dated 19 January 2015; 24 January 2024; and 20 February 2025 respectively.

The Company remains governed by the memorandum and articles of association as amended and restated on 20 February 2025 (the "**Articles**") save that the Company reserves the right to challenge the validity of the Articles.

12 Save as set out above, the Company will rely on the Articles and all previous iterations for their applicable full terms and effect.

13 Pursuant to the Articles and at all relevant times, the authorised share capital of the Company was US$50,000 divided into 100 Management Shares of US$0.01 par value each and 4,999,900 Participating Shares of US$0.01 par value each.

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

14 The Articles (with reference to the defined term of 'Restricted Person') require that the Participating Shareholders must at all times qualify as a tax-exempt organisation pursuant to section 501(c)(3) of the United States Internal Revenue Code of 1986 ("**IRC**").

15 The Participating Shares do not have voting rights but confer the right to participate in the profits or assets of the Company including by way of the receipt of dividends (Article 12).

16 The Management Shares have voting rights but confer no other right to participate in the profits or assets of the Company (Article 11).

17 The Participating Shareholders therefore have the entirety of the economic interest in the Company, whereas the Management Shareholders have the control rights.

18 On 7 November 2011, the Company issued:

18.1 300 Participating Shares to The Highland Capital Management Partners Charitable Trust #2 ("**Trust #2**"); and

18.2 100 Management Shares to Grant Scott.

19 On 30 November 2011, Trust #2 transferred its 300 Participating Shares equally amongst:

19.1 Highland Kansas City Foundation, Inc.;

19.2 Highland Dallas Foundation, Inc.[1]; and

19.3 Highland Santa Barbara Foundation, Inc.,

collectively, the "**Supporting Organisations**".

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[1]Since June 2024, Highland Dallas Foundation, Inc. has also done business as 'NexPoint Philanthropies Dallas, Inc.', per an Assumed Name Certificate filed with the Secretary of State of Texas.

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

20 On 12 August 2015, the Company issued 5 Participating Shares to the Community Foundation of North Texas, ("**CFNT**", and together with the Supporting Organisations the "**Original Participating Shareholders**") for Highland Capital Management, L.P. Charitable Fund at CFNT.

21 On 25 March 2021, the Management Shares were transferred to Mr Patrick and he continues to hold these shares.

22 The Participating Shares held by the Original Participating Shareholders represented the entire issued Participating Share capital of the Company until 7 February 2025. On that date, Mr Patrick, with the agreement and concurrence of Mr Murphy, caused the Company to issue 318 Participating Shares to the Fourth Defendant, DFW Charitable Foundation ("**DFW**"), significantly diluting the shareholdings of the Original Participating Shareholders and the indirect economic interest of the Charities.

23 Until 18 December 2024, the sole asset of the Company was its limited partnership interest in the Fund (the "**Partnership Interest**").

24 As a result of the Impugned Transactions, the Company now has no material assets.

DFW

25 DFW (the Fourth Defendant) is a non-profit non-stock corporation incorporated in Delaware on 9 December 2024, which is organised under the General Corporation Law of the State of Delaware exclusively for charitable purposes.

26 DFW is the majority Participating Shareholder of the Company by virtue of the purported share issuance on 7 February 2025, and Mr Patrick is its registered director, president and sole member.

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The Fund

27 The Fund is a Cayman Islands exempted limited partnership formed on 28 October 2011 (registration no. 53083), having its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

28 The Fund is governed by the Second Amended and Restated Exempted Limited Partnership Agreement dated 11 March 2024 (the "**LPA**"). The initial exempted limited partnership agreement of the Fund was dated 25 October 2011, was amended and restated on 7 November 2011 and further amended on 26 July 2022 (with effect from 24 March 2021). The Company will rely on the LPA for its applicable full terms and effect.

29 Mr Patrick was instrumental in the establishment of the Company, the Fund and the Fund structure.

30 Until 18 December 2024, the Company was the sole limited partner of the Fund.

31 On 18 December 2024, Mr Patrick, with the agreement and concurrence of Mr Murphy, caused the Company to transfer its limited partnership interest to CDMCFAD, LLC ("**CDM**") (the Third Defendant) in exchange for a membership interest in CDM.

32 The original general partner of the Fund was Charitable DAF GP, LLC (the "**Original GP**"), a Delaware limited liability company registered as a foreign company in the Cayman Islands. The Original GP was the general partner from the Fund's formation until 7 March 2024.

33 On 7 March 2024, the Original GP was replaced by CDH GP, Ltd. (the "**New GP**") (the Fifth Defendant).

34 The sole asset of the Fund is its 100% shareholding in CLO HoldCo, Ltd. ("**CLO HoldCo**") (the Sixth Defendant), a Cayman Islands exempted company incorporated with limited liability,

having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

35 The assets of the Fund were valued at c. $270 million in September 2024.

The New GP

36 The New GP (the Fifth Defendant) is a Cayman Islands exempted company incorporated on 27 February 2024, having its registered office located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

37 Mr Patrick is the New GP's sole director and sole shareholder.

38 The New GP is a defendant to these proceedings in two capacities: (i) in its capacity as General Partner; and (ii) for and on behalf of the Fund in order to join the Fund as a defendant to these proceedings.

CDM

39 CDM (the Third Defendant) is a limited liability company incorporated in Delaware on 12 December 2024, having its registered address c/o The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

40 CDM is governed by the terms of a Limited Liability Company Agreement dated 18 December 2024.

41 Since 18 December 2024, the primary asset of CDM has been the limited partnership interest in the Fund.

42 The sole manager of CDM is Mark Patrick.

43 From 18 December 2024 to 27 March 2025, the sole member of CDM was the Company.

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44 On 27 March 2025, Mr Patrick caused CDM to redeem the Company and admit DFW as the sole participating member.

CLO HoldCo

45 CLO HoldCo (the Sixth Defendant) is a Cayman Islands exempted company incorporated on 13 December 2010, having its registered office address located at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands, and which is the Fund's main subsidiary.

46 The directors of CLO Holdco are Messrs Patrick and Murphy.

47 The sole shareholder of CLO Holdco is the Fund.

The Directors

Mark Patrick

48 Mr Patrick (the First Defendant) is a U.S. resident who is:

48.1 a director, holds the offices of (i) President, (ii) General Counsel, and (iii) Chief Investment Officer and is the current Management Shareholder of the Company;

48.2 the Manager of CDM (the Third Defendant);

48.3 the sole director and the sole member of DFW (the Fourth Defendant);

48.4 the sole director and sole shareholder of the New GP (the Fifth Defendant); and

48.5 a director of CLO HoldCo (the Sixth Defendant).

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49 Mr Patrick was employed as tax counsel by Highland Capital Management, L.P. ("**Highland**") from 2008 to 2021 and as tax counsel by Highgate Consulting Group, Inc. d/b/a Skyview Group from March 2021 to October 2024.

Paul Murphy

50 Mr Murphy (the Second Defendant) is a Cayman Islands resident who is:

50.1 a director of the Company;

50.2 a director of CLO HoldCo (the Fifth Defendant); and

50.3 a director of various other entities in the Charitable DAF structure.[2]

51 Mr Patrick and Mr Murphy are referred to herein as the "**Directors**".

THE CHARITABLE PURPOSE OF THE FUND

52 The Fund was formed on 28 October 2011 at the instigation of Mr James Dondero, a U.S. resident and the founder of Highland to enable certain assets, held through the shares in CLO Holdco, to be donated to a charitable foundation.

53 Upon the formation of the Fund, the Company was admitted as a limited partner and, by way of capital contribution, contributed all of the outstanding equity interests in CLO HoldCo to the Fund.

54 The purpose of the Fund was to make investments for the ultimate benefit of the Original Participating Shareholders and the Charities:

[2]Mr Murphy was appointed to the board of directors of the following entities on 22 April 2021; Liberty CLO Holdco, Ltd., Liberty Sub, Ltd., HCT Holdco 2, Ltd. and MGM Studios Holdco, Ltd. at the same time as Charitable DAF HoldCo, Ltd and CLO HoldCo, Ltd.

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54.1 The recitals to the LPA of the Fund provide that the purpose of the Fund was to "*make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code … for the economic benefit of the Limited Partner and its Indirect Charitable Owners…*".

54.2 Clause 1.3 of the LPA provides that "*… the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners*".

54.3 Clause 1.6(a) of the LPA provides that "*the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner*".

54.4 "Indirect Charitable Owners" is defined in the LPA as "*the indirect equity owners of the Limited Partners which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.*" i.e., the Company's Participating Shareholders or the Charities.

54.5 Clause 4.2(a) of the LPA provides that "*Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses…*".

54.6 The LPA does not modify the statutory duty of the General Partner to act in good faith and in the interests of the Fund.

55 The Charities are the following four US charitable or non-profit foundations:

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55.1 *The Dallas Foundation*: a charitable entity established in Texas in 1929 which has awarded over $1 billion in grants and manages over $500 million in assets.

55.2 *Greater Kansas City Community Foundation*: a charitable entity established in Missouri in 1978 which has awarded over $7 billion in grants and manages over $6 billion held in charitable funds.

55.3 *Santa Barbara Foundation*: a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million.

55.4 *North Texas Community Foundation*: which manages assets totalling $513 million and donated $38.9 million to local non-profits in 2023.

56 The Dallas Foundation, Greater Kansas City Community Foundation and Santa Barbara Foundation (the "**Supported Organisations**") hold their interests in the Company through their respective Supporting Organisation namely Highland Dallas Foundation, Inc. as the Supporting Organisation for The Dallas Foundation; Highland Kansas City Foundation, Inc. as the Supporting Organisation for the Greater Kansas City Community Foundation; Highland Santa Barbara Foundation, Inc as the Supporting Organisation for the Santa Barbara Foundation.

57 CFNT holds its Participating Shares in the Company directly.

THE TAX STRUCTURE

58 As a matter of U.S. tax law, in order for the Supported Organisations to benefit from distributions from the Fund in a tax efficient manner, it was necessary for them to hold their interests through an offshore corporate blocker entity, namely the Company:

58.1 S501(c)(3) of the IRC provides that charitable organisations which meet certain criteria are exempt from state and federal taxes except to the extent that it receives income classified as unrelated business taxable income ("**UBTI**"); and

58.2 the Supported Organisations and their Supporting Organisations meet the criteria of s501(c)(3). They are therefore generally exempt from U.S. state and federal taxes, with a few exceptions, including to the extent that they receive UBTI.

59 As a matter of U.S. tax law, at least a portion of income received directly from the Fund by the Supported Organisations would likely be considered UBTI.

60 In order to insulate the Supported Organisations from UBTI, instead of holding their interest in the Fund directly, they held through an offshore corporate blocker structure, namely the Company.

THE SUPPORTED ORGANISATIONS CONTROL THE SUPPORTING ORGANISATIONS

61 The Supporting Organisations were incorporated in Delaware by Mr Dondero on or about 22 November 2011 for the purpose of making charitable donations to their respective charity from the proceeds of dividends received by the Supporting Organisations from the Company.

62 Supporting organisations under the IRC are tax exempt charitable organisations that provide financial or operational support to one or more public charitable organisations (called “supported organisations”). Because of the link with the supported public charities, supporting organisations are classified as public charities themselves, as opposed to private foundations, despite the fact that a supporting organisation's sources of funding may be limited to a single individual, which would otherwise cause the entity to be classified as a private foundation.

63 Contributions to supporting organisations, as public charities, qualify for the highest tax deductibility thresholds under the IRC (up to 50% of the taxpayer’s adjusted gross income, or

60%, in the case of cash gifts) instead of the substantially lower threshold for contributions to private foundations (30% of adjusted gross income, regardless of the character of the contribution).

64 The Supporting Organisations are "Type I" tax exempt organisations under the IRC which means they must be organised and operated exclusively to support and benefit their relevant charity and controlled by that charity:

64.1 S509(a)(3) of the IRC contains the qualifications for a "supporting organisation". Under that section, a supporting organisation is a tax-exempt entity that must be organised and then operate exclusively for either (i) the benefit of, (ii) to perform the functions of, or (iii) to carry out the purposes of one or more supported organisations. The supported organisations must also be s501(c)(3) entities;

64.2 There are three types of supporting organisations, known as “Type I”, “Type II” and “Type III”. S509(a)(3)(B)(i), (ii) and (iii) sets out the requirements for each “Type”, respectively;

64.3 S509(a)(3)(B)(i) provides that a Type I supporting organisation must be operated, supervised or controlled by the supported organisation; and

64.4 S509(a)(3)(C) provides that the supporting organisation may not be controlled by a disqualified person, other than the foundation managers and the supported organisation.

65 The Supporting Organisations are so controlled by the respective Supported Organisations.

66 The Supporting Organisations are governed by the terms of their respective Certificate of Incorporation and by-laws (the "**Bylaws**").

67 The Certificates of Incorporation provide (amongst other things) that:

67.1 the Supporting Organisation:

(a) is organised and shall be operated exclusively for charitable, educational and scientific purposes;

(b) is organised and operated exclusively to support and benefit the particular charity that controls it; and

(c) is a non-profit non-stock corporation and cannot issue any capital stock;

67.2 no part of the net earnings of the Supporting Organisation shall be distributable to the directors and officers of the Supporting Organisation or other private persons save that the Supporting Organisation can pay reasonable compensation for services rendered; and

67.3 net earnings can be used to make grants, loans and similar payments for charitable, educational and scientific purposes to benefit the relevant Supported Organisation.

68 The Bylaws provide that (amongst other things):

68.1 There are two classes of members of the Supporting Organisations with one member in each such class:

(a) the institutional member (the "**Institutional Member**") which shall be the Supported Organisation; and

(b) the individual member (the "**Individual Member**") which shall be Mr Dondero or an individual designated as the Individual Member in the Bylaws.

68.2 In terms of voting on a matter submitted to a vote of the members (except as otherwise provided in the Bylaws):

(a) the Institutional Member is entitled to two votes; and

(b) the Individual Member is entitled to one vote.

68.3 Institutional membership is not transferable or assignable.

68.4 Individual membership is transferable or assignable only upon approval of the Institutional Member.

68.5 Both the Institutional Member and the Individual Member must be present in person or by represented proxy to constitute a quorum at all meetings of members.

68.6 There shall be three directors of the board of the Supporting Organisation. Two directors shall be elected annually by the Institutional Member and one director shall be elected annually by the Individual Member.

69 The relationship between the Supporting Organisations and their respective Supported Organisation are governed by separate operating/legal relationship agreements (collectively "**Operating Agreements**"). These agreements provide, among other things, that:

69.1 the Supported Organisation will provide certain services to the Supporting Organisation;

69.2 the Supported Organisation will appoint two of the three directors of the Supporting Organisation as required by Bylaws; and

69.3 in consideration for the services provided by the Supported Organisation to the Supporting Organisation, the Supporting Organisation shall pay a fee to the Supported Organisation.

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70 Mr Dondero sits on the board of each of the Supporting Organisations with two other directors from each of the Supported Organisations respectively.

71 The relationships, rights and obligations created by and between the Supported Organisations and the Supporting Organisations pursuant to the agreements entered into between them were at all material times in summary that:

71.1 the Supported Organisations control the Supporting Organisations through their majority voting interest and their ability to elect a majority of the directors of the Supporting Organisations;

71.2 the Supporting Organisations support the Supported Organisations by way of making grants to them from time to time from their assets, including any dividends received from the Company;

71.3 the Supporting Organisations have no ability to pay dividends to any private person or make payments to their directors (save reasonable reimbursement for reasonable out-of-pocket expenses) and can only make grants to the relevant Charity in furtherance of their charitable purposes; and

71.4 while Mr Dondero sits on the board of the Supporting Organisations, he does not control them, as a supermajority of the votes are always held by the respective Charity.

72 The Company will rely on the Certificates of Incorporation, Bylaws, Operating Agreements and terms of the IRC for their applicable full terms and effect.

THE CONTROL POSITION OF MR PATRICK OVER THE COMPANY AND THE FUND

73 The terms of the LPA grant sole control over the management and distribution of the Fund's assets to the General Partner. The terms of the Articles grant sole control over the management and distribution of the Company's assets to the Management Shareholder.

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The LPA

73.1 Clause 1.12

(i) The term "**General Partner**" shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

73.2 Clause 1.6

(i) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(ii) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners

hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

The Articles

73.3 Article 11

The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganization or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.

73.4 Article 12

Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

73.5 Article 13

…the rights attached to any such Class may… only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes case at such a meeting.

73.6 Article 84 (d)

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The office of Director shall be vacated if the Director…is removed from office by Ordinary Resolution.

The definition of Ordinary Resolution is a vote of the Management Shares.

73.7 Article 99

Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Act and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.

73.8 Article 104

Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.

74 The Management Shares in the Company and the General Partner in the Fund have at all material times been held and/or controlled by a single individual who, as a result, has sole control of the Fund structure (the "**Control Position**"):

74.1 In or around November 2011:

(a) Grant Scott was appointed as the sole director and allotted the 100 Management Shares of the Company; and

(b) Grant Scott became the holder of the membership interest in the Original GP and was appointed the Manager thereof,

thereby assuming the Control Position from that date.

74.2 In or around 24 March 2021, Mr Scott:

(a) assigned 100% of the membership interest in the Original GP to Mr Patrick pursuant to an Assignment and Assumption of Membership Interests Agreement, which membership interest gave Mr Patrick the sole right to manage the Original GP;

(b) transferred to Mr Patrick the 100 Management Shares in the Company; and

(c) resigned as a director of the Company and resolved to appoint Mr Patrick as the sole director in his place.

74.3 On 25 March 2021, Mr Patrick was entered into the Company's Register of Members as the holder of the Management Shares.

74.4 Mr Patrick therefore assumed the Control Position from that date.

74.5 On 22 April 2021, Mr Patrick resolved to appoint Mr Murphy as a second director of the Company.

74.6 On 7 March 2024, by way of a Deed of Assignment and Assumption, Mr Patrick, as managing member of the Original GP, caused the Original GP to transfer its general partnership interest in the Fund to the New GP.

74.7 Mr Patrick is the sole shareholder and director of the New GP.

74.8 Mr Patrick therefore remains in the Control Position and was in such position at all relevant times since 25 March 2021.

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75 Further, the sole asset of the Fund is its shares in CLO Holdco (the Sixth Defendant). Mr Patrick and Mr Murphy are the directors of CLO Holdco and were appointed on 2 April 2021 and 22 April 2021 respectively.

76 The Control Position was not and is not a term of art but was nevertheless a legal and factual position:

76.1 where a single individual was the sole Management, and therefore voting, Shareholder of the Company;

76.2 where the same individual was a director of the Company;

76.3 where the same individual was the sole shareholder or controller of the General Partner;

76.4 where the same individual was a director of the General Partner;

76.5 where the same individual was in complete and effective control of at least the Company, of the General Partner, of the Fund and of CLO Holdco;

76.6 where the same individual was in effective sole control of all assets of the Fund;

76.7 where the same individual had no economic, residual, beneficial or winding up interest in assets of the Company;

76.8 where the same individual had no economic, residual, beneficial or winding up interest in assets of the General Partner;

76.9 where the same individual had no economic, residual, beneficial or winding up interest in assets of the Fund;

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76.10 where the same individual was, irrespective of his or her formal positions, functions or duties, including as a director, acting as a trustee, fiduciary or in a trustee-like or fiduciary-like position with respect to the assets held by the Fund;

76.11 where the same individual was at all times acting solely for the benefit or the ultimate benefit of the Original Participating Shareholders and/or through them the Supported Organisations and/or through them the Charities; and

76.12 in the alternative to the plea directly above, where the duties otherwise owed by the same individual as a matter of law, including as a director, were affected and/or altered by the existence of the structure as pleaded above, including the facts and matters relating to the Control Position and including the fact that the structure as pleaded above was designed and intended to be solely for the benefit or the ultimate benefit of the Original Participating Shareholders, and/or through them the Charities.

EVENTS RESULTING IN THE COMPANY HAVING NO MATERIAL ASSETS AND THE DILUTION OF THE SUPPORTING ORGANISATIONS' INTERESTS

Plan to defeat the interests of the Original Participating Shareholders

77 On 9 November 2023, Shields Legal Group ("**Shields Legal**") (the U.S. attorneys for the Company) sent to Campbells LLP ("**Campbells**") (then Cayman Islands attorneys for the Company) a work plan (the "**Work Plan**") relevant to the Company, the Fund and CLO HoldCo.

78 It can be inferred, and is averred, that the purpose of the Work Plan and the subsequent advice and steps taken as detailed below was to seek to entrench Mr Patrick's Control Position and defeat the interests of the Original Participating Shareholders.

79 The Work Plan stated that (amongst other things):

79.1 the advice required related to "*…potential disputes and corporate reviews and best practices for each, including proactive corporate actions, solidifying defenses, etc...*"; and

79.2 "*…we may need to rely on opinions and memoranda in potential future disputes...*"

80 The Work Plan set out the issues on which the Directors sought advice, including among other things the following questions:

80.1 'Can the controlling person dilute shares, e.g., the Participation Shares?'

80.2 'Can the controlling person redeem shares, e.g., the Participation Shares?'

80.3 'Is there any Cayman law requirement that the Company distribute money upwards to the next level of entities (Highland Dallas Foundation, Inc. and others)?'

80.4 'Could the Company liquidate, distribute all its assets elsewhere, or otherwise make the Participation Shares worthless?'

80.5 'What can be done at this point to make [the share transfers in the Company from Mr Scott to Mr Patrick] bullet proof?'

81 The Directors were advised that any steps taken in relation to the proposed issuance of new Participating Shares and withholding dividends must be in compliance with their fiduciary duties and taken in the best interest of the Company:

81.1 On 8 January 2024, Walkers (Cayman) LLP ("**Walkers**") (also then Cayman Islands counsel for the Company) provided advice on issues set out in the Work Plan to the effect that (amongst other things):

(a) the Directors have power under the Articles to issue new Participating Shares that dilute the current Participating Shareholders, but must consider their fiduciary duties (including the duty to act in the best interests of the Company) when issuing such shares;

(b) the Participating Shares are non-redeemable;

(c) while payment of a dividend or other distribution is at the discretion of the Directors, if the Company were to have distributable reserves available, there may be a question of whether the Directors would be acting in its best interests to not pay some dividend or distribution; and

(d) the Directors have fiduciary duties to the Company which are paramount when considering (i) making a distribution and (ii) the distributable reserves available from which to make payments; they must have regard to what is in the Company's best interests, its future cash requirements, and its present and future solvency.

82 In February 2024, without telling the Supporting Organisations or the Charities, Mr Patrick sought to form a new entity to replace the Original GP. On 5 February 2024, Walkers emailed Mr Patrick to ask whether that entity should be a Cayman LLC or an exempted company, to which he responded later that day: "*Doesn't matter to me. Whatever from a strategic point of view - hard to find or track, or trace. Or find owners etc. Generic name. Strong litigation protection*."

83 On 27 February 2024, without telling the Supporting Organisations or the Charities, the New GP (the Fifth Defendant) was incorporated in the Cayman Islands.

84 On 7 March 2024, Mr Patrick, in his capacity as Managing Member of the Original GP, and without telling the Supporting Organisations or the Charities, executed a written consent for the

transfer of the GP Interest to the New GP, thereby replacing the Fund's General Partner. The Supporting Organisations subsequently discovered this change only by chance in February 2025.

85 In or around August 2024, the Supporting Organisations were provided with a financial analysis (prepared by NexPoint Advisors LP) of the Fund's annual expenses which showed or appeared to show increases in expenditure, particularly as follows (and without prejudice to any further relevant facts and matters relating to Directors' fees or expenses):

85.1 directors' fees increased from around US$40,000 in 2022 to almost US$600,000 in 2023 – and increased further to around US$2.25 million in the first half of 2024; and

85.2 expenses overall for the first half of 2024 were around US$18.3 million – almost the same amount spent over the entire course of 2023 (i.e. US$18.6 million).

86 On 13 September 2024, without telling the Supporting Organisations or the Charities, the Directors resolved (amongst other things) with respect to Mr Patrick's compensation:

86.1 to increase Mr Patrick's salary to US$850,000 per annum;

86.2 include a long-term incentive ("**LTI**") tied to the Fund's returns, being 7.5% of annualised net fund returns in excess of 10% (capped at 25% annualised return); and

86.3 the Company should assess legal expenses attributable to investment which impacted the LTI compensation and then determine whether the LTI compensation should be increased.

87 On 1 October 2024, without telling the Supporting Organisations or the Charities:

87.1 the Directors resolved (amongst other things) that Mr Patrick would receive:

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(a) an LTI payment of US$975,000; and

(b) an 'annual discretionary bonus' for 2023 at an amount of 2.5 times his base salary.

87.2 Previously, in or around October 2021, Mr Patrick had signed an 'employment agreement' for his position at the Company, for the period commencing 24 March 2021, which provides that Mr Patrick:

(a) shall receive a base salary of US$850,000;

(b) shall receive an LTI payment for the period 24 March 2021 to 24 March 2024 in the amount of US$4,759,000; and

(c) is eligible for both annual and discretionary bonuses as determined at the 'sole and absolute discretion of the Directors'.

88 Comparatively, Mr Scott's salary during his tenure in the Control Position was approximately US$60,000 per annum. Notwithstanding the above, the Supporting Organisations were not informed of these increases to the Directors' fees, remuneration and/or benefits.

89 In late October 2024, as a result of concerns arising from this additional expenditure, the Supporting Organisations requested that Mr Patrick provide relevant financial information for the Company and the Fund. Mr Patrick did not do so.

90 On 11 November 2024, Holland and Knight ("**H&K**"), U.S. attorneys for the Supporting Organisations, issued a letter to Mr Murphy advising that the Supporting Organisations no longer had confidence in the governance of the Company and/or the Fund and considered that a reorganisation of the governance structures was required to protect the charitable efforts of the Supporting Organisations (the "**No Confidence Letter**").

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91 On 26 November 2024, Mr Patrick sought advice from Walkers as to whether the Company could issue further Participating Shares to a new non-profit organisation to dilute the Supporting Organisations so as to weaken any winding-up petition brought by the Supporting Organisations on just and equitable grounds. Mr Murphy wrote that:

> "*Issuance of new participation shares, where the existing foundations represent a smaller % of the issued and outstanding shares, would weaken any petition based on just and equitable grounds but we must be careful they don't point to this as ground to wind up i.e. the existing foundations say we're artificially trying to weaken their position by diluting them therefore the company should be wound up or an order made for change of management /revocation of the share issuances. It's a very difficult situation to get right without gifting them a potential ground…*"

92 On 27 November 2024, Walkers responded to the Directors confirming that, if other shareholders were to oppose an equitable winding up, such opposition will be taken into consideration and would likely help.

93 On 9 December 2024, DFW was incorporated as a non-profit non-stock company in Delaware, by or with the assistance of Mr Douglas Mancino, partner of U.S. firm, Seyfarth Shaw LLP ("**Seyfarth**"), who, worked alongside Mr Patrick in the establishment of the Company and the Fund structure. The sole member of DFW was and is Mr Patrick.

94 On 7 February 2025, 318 Participating Shares were issued to DFW.

95 On 20 February 2025, Mr Patrick as the Management Shareholder of the Company resolved to adopt the Amended and Restated Memorandum and Articles of Association dated 20 February 2025 which, among other things:

95.1 Amended the Memorandum at paragraph 3 to give the Company charitable objects;

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95.2 Amended article 70 to introduce the concept of a Management Director (being a director holding the Management Share) and to weight the voting such that on all matters the Management Director had 10 votes and any other directors had 1 vote;

95.3 Deleted the previous articles 70 and 71 giving the right to appoint alternate directors and proxies. By email dated 27 February 2025, Walkers confirmed that the purpose of this deletion was to "*avoid the risk of 'outsiders' being brought into the fold*".

96 The Company reserves its position in respect of the validity of these amendments.

The purported restructuring: Mr Patrick causes the assignment of the Partnership Interest to CDM

97 On 12 December 2024, CDM was incorporated as a limited liability company in Delaware.

98 On 18 December 2024, without telling the Supporting Organisations or the Charities, the Directors of the Company resolved (the "**Transfer Resolutions**") to approve the transfer of the entirety of the Company's limited partnership interest in the Fund to CDM, in consideration for the contribution by the sole member of CDM of 100% of the membership interest in CDM. The Transfer Resolutions provide (amongst other things) that, based apparently on U.S. tax advice, the transfer of the limited partnership interest to CDM:

98.1 "*…would help insulate the DAF from exposure to [Dondero] and his entities who may be at risk of causing the [IRS] to revoke the tax-exempt status of one or more of the Participating Shareholders/supporting organizations which could imperil the assets of the Company*";

98.2 "*The IRS would look favorably upon any and all attempts for DAF to maintain its influence from what seems to be persistent attempts by Dondero and the entities controlled by him to use DAF for his private benefit and private inurement*";

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98.3 As a Delaware limited liability company (CDM): "…*as permitted under the LLC Act, the terms of the LLC Agreement eliminate the fiduciary duties of the manager of the Transferee*".

99 On 18 December 2024, without telling the Supporting Organisations or the Charities, the Company, CDM and the New GP entered into a Deed of Assignment and Assumption (the "**Deed**") which was executed by Mr Patrick on behalf of each of (i) the Company in his capacity as Director; (ii) CDM in his capacity as Manager; and (iii) the New GP in his capacity as Director. Pursuant to the terms of the Deed:

99.1 The Company assigned its entire limited partnership interest in the Fund to CDM (the "**CDM Assignment**").

99.2 The New GP provided its written consent to the CDM Assignment and the admission of CDM as the new limited partner, in accordance with clause 1.11(a) of the LPA.

99.3 CDM agreed to exercise its reasonable best endeavours to ensure that 100% of the membership interest in CDM held by Mr Patrick would be transferred to the Company (the "**CDM Membership Interest**").

100 On 18 December 2024, the Company (as member) and Mr Patrick (as manager) entered into a Delaware law governed Limited Liability Company Agreement in respect of CDM (the "**LLC Agreement**").

101 The LLC Agreement, materially provides (amongst other things) that:

"Fair Market Value shall have the meaning set forth in Section 6.9(b).

…

The initial Manager shall be Mark Patrick.

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30

…

6.5 No Duties to the Company. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that the Manager shall owe no fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing.

…

6.9 Valuation of Company Assets.

(a) General. The Manager shall make a good faith determination of the value of the Company's assets in connection with any distribution pursuant to Section 8.1(b), as required under Section 4.3(c), upon the dissolution of the Company, and whenever otherwise required by this Agreement or determined by the Manager.

(b) Binding Effect. The value of any Company asset or Interest determined pursuant to this Section 6.9 shall be binding upon the Company and the Members and shall establish the "Fair Market Value" of such asset or Interest for all purposes under this Agreement.

…

7.3 Redemption. The Manager, in its sole discretion, may cause any Member's Interest to be redeemed by the Company for any reason. Any Interest of a Member to be redeemed by the Company shall be redeemed for the Fair Market Value of such Interest, as determined by the Manager in its sole discretion. Such payment to the

Member shall either be made in cash or pursuant to a promissory note. Such promissory note shall: (i) provide for interest at the lowest rate necessary to avoid the imputation of additional interest under the Code; and (ii) have a stated principal amount of the Fair Market Value of such Member's Interest being redeemed, as determined by *the Manager in its sole discretion."*

102 The Company will rely on the terms of the LLC Agreement for their applicable full terms and effect.

103 The effect of these transactions was that:

103.1 CDM was inserted into the corporate structure below and as a subsidiary of the Company and would hold the entirety of the limited partnership interest in the Fund previously held by the Company; and

103.2 The Company would hold the entire membership interest in CDM, with the result that the Company's sole asset, having previously been its limited partnership interest in the Fund, was exchanged for the CDM Membership Interest

(the "**Restructuring**")

104 The Restructuring was at an undervalue and not in the interests of the Company (in that the CDM Membership Interest was less valuable than the limited partnership interest that the Company assigned to CDM) because (amongst other things):

104.1 The General Partner owed fiduciary duties to the Company in the Fund, but the Manager (Mr Patrick) did not owe any fiduciary duties to CDM; and

104.2 The CDM Membership Interests were susceptible to being redeemed by Mr Patrick (as Manager) in his sole discretion and for any reason, for "fair market value" as defined by Article 6.9, i.e. a "good faith determination of the value".

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105 On 3 April 2025, the Company obtained retrospective advice from Leading Counsel on the steps taken by the Company in December 2024 to effect the Restructuring and whether the transfer is "*open to challenge by the Participating Shareholders*", which advice:

105.1 refers to the justifications for the decisions taken as set out in the Restructuring Resolutions, and considers that, if called upon to justify the purpose of those decisions, the Directors would need to explain:

(a) how the penalisation or loss of tax-exempt status any of the current Participating Shareholders could have "*imperil[ed]*" the *"assets"* of the Company;

(b) the detrimental issues the Company was facing that the Directors believed would be mitigated by the interposition of CDM into the Fund structure; and

(c) how and/or why the Restructuring would (i) benefit the Company and (ii) reduce the influence of Mr Dondero; and

105.2 considers that a shareholder reviewing the reasons listed in the Restructuring Resolutions "*might suggest that the contents of the resolution are self-serving and do not tell the full story, but rather seek to obscure the true motivations of the board*".

Persistent and continual lack of information for the Supporting Organisations

106 On 23 January 2025, having received no response from Mr Murphy to the No-Confidence Letter, Julie Diaz, the CEO of The Dallas Foundation, sent Mr Patrick an email advising that the Supporting Organisations needed to better understand the Company's/Fund's asset position, and requesting certain information be provided by 10 February 2025.

107 Having received no response, on 28 January 2025, Ms Diaz sent a further email to the Directors expressing serious concern (i) that the Supporting Organisations' requests for information

continued to be disregarded, and (ii) about the ongoing lack of transparency on the part of the Directors.

108 On 30 January 2025, Mr Murphy replied to Ms Diaz stating that the Directors:

108.1 had not received the 23 January email – but understood the next step was for the Directors to "*present directly*" to the Supporting Organisations to address the No-Confidence Letter; and

108.2 are cooperating with the Supporting Organisations to provide additional information – but "*have no legal obligation to do so*" and such cooperation "*should not be construed as an implicit acknowledgement of any duty to continue providing information to you*".

109 On 31 January 2025, Mr Michael Stockham of H&K responded to Mr Murphy noting that he and Mr Patrick were fiduciaries, managing US$270 million in assets for the benefit of charities that support the most vulnerable (i.e. the Charities) and: *"[w]hatever your side's obvious antagonism to Mr Dondero, the fact remains that the underlying assets are ultimately for these charitable missions.*"

110 On 4 February 2025, Mr Murphy responded that while open to resolving the concerns, they (i.e. the Directors) were struggling to understand the Supporting Organisations' change in position.

111 On 7 February 2025, H&K responded that the Directors were fiduciaries in control of US$270 million for the benefit of charities: "*these monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed and … fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees*".

112 On 14 February 2025, H&K received a letter from Mr Mancino which rejected the accuracy of the reported increases in expenditure. On 27 February 2025, H&K responded that his clients

were frustrated by the lack of transparency and refusal to answer simple queries about the financial position. In response, Seyfarth sought available dates for Mr Murphy to make the promised presentation to the Supporting Organisations. H&K responded the next day with three potential dates/times for the proposed call between 26 March and 3 April 2025. Mr Mancino did not respond.

113 On 20 March 2025, Mr Mancino sent a letter purportedly on behalf of the Company to the IRS about alleged undue influence and control exercised over the Supporting Organisations by Mr Dondero. The letter makes serious and unsubstantiated allegations about the Supporting Organisations, absent evidential support, including that they each (i.e. all of them): "*operates for Mr Dondero's private benefit when he uses his influence or control over them to cause them to use or attempt to use their influence as Participating Shareholders of DAF Holdco to wrest control of DAF Holdco and its assets…*".

114 On 3 April 2025, Mr Mancino sent an email to H&K stating that he had just learned there was a call scheduled for the following day and seeking to reschedule. H&K responded that no such call had been arranged and queried the apparent source of confusion.

115 Mr Mancino, and Mr Patrick and Mr Murphy (each in part through Mr Mancino as an instructed attorney) acted in bad faith by maintaining a pretence of actual or potential cooperation with the Supporting Organisations when this was not the case, and by sending or causing to be sent the email of 20 March 2025 in secret:

115.1 four (4) months after the Directors and/or the Company transferred away the Company's interest in the Fund without telling the Supporting Organisations or the Charities;

115.2 two (2) months after the Directors and/or the Company diluted the existing Participating Shareholders without telling the Supporting Organisations or the Charities (see below);

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115.3 one (1) week after the Directors and/or the Company redeemed the Company's interest in CDM without telling the Supporting Organisations or the Charities (see below);

115.4 one (1) day after the Directors placed the Company in voluntary liquidation, without telling the Supporting Organisations or the Charities.

Purported Share Issuance and allotment to DFW

116 In November 2024, without telling the Supporting Organisations or the Charities, the Directors began seeking advice from Walkers on whether the Company could issue new Participating Shares that would have the effect of diluting the existing Participating Shareholders - "*in light of a possible just and equitable winding up petition*" being filed by one of the Supporting Organisations.

117 On 7 February 2025, Walkers advised that, while there must be a corporate benefit to the exercise of the power, the Articles grant the Directors power to issue new shares that dilute the Participating Shareholders, and recommended the shares be issued sooner than later, and before any winding up petition was presented, since any alteration to the Company's membership made after the presentation of the petition would be void.

118 On 7 February 2025, without telling the Supporting Organisations or the Charities, the Directors resolved to issue 318 Participating Shares to DFW (the "**Share Issue Resolutions**"), resulting in DFW owning 51.04% of the Participating Shareholding and the dilution of the Supporting Organisations from an aggregate shareholding of 100% to 48.96% (the "**Share Issuance**"). The Share Issue Resolutions provided that:

118.1 Participating Shareholders had requested information and made false and misleading claims about the Company and its finances which the Directors believe were directed by Mr Dondero.

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118.2 Based apparently on U.S. tax advice:

(a) There was a heightened risk the IRS could revoke the tax-exempt status of the Participating Shareholders which could imperil the status and assets of the Company.

(b) Increasing the number of Participating Shareholders would mitigate the undue influence and private inurement of Mr Dondero.

(c) The IRS would look favourably upon attempts by the Fund to maintain its independence from his (i.e. Mr Dondero's) attempts to use the Fund for his private benefit.

118.3 The Directors believed the Share Issuance to DFW would protect the Company and the Participating Shareholders and resolved that the Share Issuance to DFW be approved.

119 On 5 March 2025, Leading Counsel (Mr Tony Beswetherick KC) issued draft retrospective (but final) advice to the Company on the Share Issuance in which he opined (amongst other things) as follows:

119.1 where Articles confer a power on directors to issues shares, that power is a fiduciary one and must only be exercised for proper purposes; an issue of shares "…*deliberately aimed at altering the balance of power between*" is problematic; the power should not be exercised with a view to altering an existing balance of power, irrespective of whether the directors consider that doing so is in the interests of the company;

119.2 the effect of the Share Issuance was that, if there were to be a company meeting or proposal to approve a modification that affects the Participating Shareholders' rights,

the ability of the prior Participating Shareholders to vote down such a change was negatively affected (DFW now having over 50% of the total Participating Shares);

119.3 it is not immediately clear from the Share Issue Resolutions whether the justifications stated were actually relevant to the Directors' decision. If they were relevant, it is not explained why the issue of shares to DFW would prevent false claims being made by Mr Dondero; it may be that those matters are part of the context, rather than part of the reason for the decision; and

119.4 the Participating Shareholders might suggest the Share Issue Resolutions are self-serving and do not tell the full story, but rather seek to obscure the true motivations of the board.

Plan to redeem the Original Participating Shareholders

120 In January and February 2025, the Directors, in connection with a plan to try to redeem the Participating Shareholders and/or the CDM Membership Interest held by the Company, and without telling the Supporting Organisations or the Charities, sought to obtain an analysis of the fair market value of the Participation Shares, and the discount that should be applied to such valuation, given the limited rights conferred upon Participating Share under the Articles.

Historic ValueScope Valuations

121 At the request of the Company, ValueScope, Inc. ("**ValueScope**") conducted a series of valuation analyses of 100 Participation Shares on a net asset value ("**NAV**") basis between December 2020 and September 2024 to determine their fair market value ("**FMV**"). These valuations were apparently prepared for internal reporting purposes and apparently applied consistent methodologies throughout the period. The results of these valuations are summarised below:

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Valuation date	NAV	NAV Per Share	Combined Discounts	FMV Per Share	FMV (100 shares)
31 December 2020	$176.96M	$580,193	17.0%	$481,468	$48,146,754
31 December 2021	$243.19M	$797,343	11.6%	$705,210	$70,521,019
31 December 2022	$276.24M	$905,711	15.4%	$766,549	$76,654,941
31 December 2023	$277.57M	$910,076	14.0%	$782,847	$78,284,712
30 September 2024	$269.05M	$882,140	13.9%	$759,614	$75,961,370

122 The final NAV-based valuation prepared by ValueScope prior to the Restructuring was dated 7 January 2025, and gave a valuation of 100 Participating Shares as at 30 September 2024 (the "**September 2024 Valuation**").

PwC and FTI

123 On 14 January 2025, Walkers inquired with PwC about a valuation of "*the shares of Charitable DAF Holdco*". In that email, Walkers, presumably on instructions from the Directors, listed the Supporting Organisations as "*potential adverse parties*".

124 On 7 February 2025, Walkers informed PwC that CDM had been inserted into the structure and requested that a second valuation be prepared of all the CDM Membership Interest, which valuation Walkers said was also to rely on the NAV as previously advised (rather than leaving

PwC to determine their own valuation methodology). PwC responded that their initial view is "*there is no meaningful difference*" between the two valuations requested - "*i.e. the economic interest in the underlying NAV still fully accrues to the participating shareholders*" - but that voting power/control remains with Mr Patrick (or with entities he controls). PwC asked for further information about what Mr Patrick was trying to achieve by the Restructuring to help them understand the valuation implications.

125 On 10 February 2025, PwC suggested a call with Walkers to discuss the second valuation, which call took place on 11 February 2025, and was also attended by Mr Patrick's '*onshore and Delaware counsel*'. Following that call, PwC declined to take on the instructions:

> *"... our view is that the new Delaware entity (CDMCFAD) effectively has full economic interest and control over the Fund, so we don't really see a basis for applying any discounts to the underlying Fund NAV for that entity. As it relates to the participating shareholders' interest in Charitable DAF Holdco, Ltd., we don't think we can reliably estimate the value/discount given the current fact pattern. While we could make hypothetical assumptions about how the articles may be interpreted, and/or how future cash flows may or may not be distributed, the impact on value is so substantial that we don't think it would be a meaningful exercise (i.e. we'd end up with the discount being 100% in one scenario, but 0% in another). On that basis, I don't think there is a fee / scope that can work for us currently."*

The FTI Memo

126 On 13 February 2025, without telling the Supporting Organisations or the Charities, the Company engaged FTI Consulting in London ("**FTI**") to advise on (i) the discount applicable (if any) to a valuation considering how the rights attached to Participation Shares differed from those typically associated with ordinary shares, and (ii) the impact of the existence of an additional share class (being the Management Shares held by Mr Patrick). FTI's engagement

letter also stated that "*The Memo will also include a valuation of the ordinary shares of CDMCFAD, LLC, the immediate subsidiary of Charitable DAF HoldCo*".

127 On 2 March 2025, FTI provided a draft memorandum to Walkers/the Company.

128 On 27 March 2025, FTI issued its final memorandum (the "**FTI Memo**"), which stated (amongst other things) that the rights of Participating Shares were extremely limited, and the potential distribution of cash was highly dependent on a member's alignment with the Fund's mission. The FTI Memo concluded that a "limited discount" for lack of control and marketability should be applied where a member is aligned with the Fund's mission (said to be close to the range concluded by ValueScope in its 7 January ValueScope Report, i.e. a discount of 13.9%), and a "high discount" of 95% where a member is not.

Legal advice sought

129 On 25 February 2025, without telling the Supporting Organisations or the Charities, the Directors sought advice from Walkers and Shields Legal on any powers under the Articles to enable the removal of the Supporting Organisations, including by (i) redemption of the Participating Shares (Art 14 and 28), (ii) a forced transfer of Participating Shares held by a Restricted Person (Art 21) (iii) or an alternative course whereby DFW repurchased the shares, which could then be cancelled, and new shares issued which are redeemable by the Company. Walkers advised that both redemption and forced transfers were not permitted but agreed with the alternative course involving DFW.

130 On 5 March 2025, as stated above, Leading Counsel provided retrospective advice to the Company regarding the Share Issuance, which also considered whether the Directors had power under the Articles to redeem the Participating Shares. Leading Counsel opined that they did not, on the basis that the Participating Shares were not issued as redeemable shares, and could not be redeemed unless there were a prior variation of the rights ascribed to them. That said, any proposal to vary the rights attached to the shares to make them redeemable would

support an argument "*that the [DFW Share Issue] was itself procured with a view, ultimately, to disenfranchising the pre-existing Participating Shareholders*".

131 On 17 March 2025, Mr Patrick wrote to Walkers in the following terms:

> *"Agree we need to finalise the [FTI valuation] reports …We should request any limits on use removed.*
>
> *We are seeking U.S. tax counsel to send emails to Paul and I that the non profits are Restricted Persons and/or best interests of the Company to have non dondero holders of its interests. After that, an alternative approach is to give them what they want – liquidate Holdco Ltd after its only investment is redeemed by the US. LLC pursuant to U.S. counsel advice above, that it's in the best interests of the Company to redeem all non-profits affiliated with Dondero. US LLC has same valuation conducted on its shares as the participation shares. so we would redeem the LLC interest, then distribute the proceeds out of Holdco Ltd., and file articles of Dissolution for Charitable daf Holdco Ltd before a wind up petition is filled. That would put us on the "high ground" to fight (rather the way this is currently heading in a defensive posture). they would have to scrap their wond up petition and fight for reinstatement, gripe about the valuations, and file fiduciary breach actions …*
>
> *We will stage this in light of the Doug letter, new advice of two separate U.S Tax counsel, and seeing how successful (or not) our outreach to the Texas attorney general office is.*
>
> *Note US LLC would make DFW its sole owner."*

132 The email of 19 March 2025 makes plain that the Directors, or at least Mr Patrick, intended to liquidate the Company without notice to the Supporting Organisations and to otherwise obstruct

the Supporting Organisations' ability to exercise any right to petition to wind up the Company on just and equitable grounds.

133 On 20 March 2025, Walkers provided comments on the FTI draft valuation, and FTI responded. These comments include, amongst other things:

> "Walkers: *It is stated at [3.2(2)] that "there is no overriding duty of DAF's Directors to act in the shareholders' interest. The Directors will act according to the best interest of the company, that is, to achieve the charitable causes that are aligned with DAF's mission". However, as a matter of Cayman law, directors owe duties to the company, and must act in its best interests [which are] generally regarded as the interests of the members as a whole, and in certain circumstances the objects of the company may be taken into account when determining what is in its best interests.*
>
> FTI: *Can you explain how it was in the interests of the company to materially dilute the existing shareholders*?
>
> …
>
> Walkers: *It is stated at [3.10] that "the Participating Shareholders do not have any rights to cause a liquidation/winding up of the company". However, the Participating Shareholders do have the right to seek a winding up of the company, as conferred upon them by the Companies Act (rather than the Articles).*
>
> FTI: *Why won't they just do this immediately and seek distributions? Isn't the ability to trigger a liquidation contradictory with point 1 which states "Shareholders do not have any right to exert influence on whether/how the funds of DAF are used or distributed*".
>
> …

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Walkers: *As per our comments, please could you delete references to our advice so as to avoid any potential arguments about waiver of privilege.*

FTI: *Your advice is important in us arriving at our conclusions. I understand from our legal team that we either (i) keep the reference to your advice or (ii) address the memo to you. Are you expecting there to be litigation in relation to the proposed transaction?*

…

Walkers: *Our client now seeks a valuation report which may, in connection with a proposed redemption of the membership interests in CDM, be disclosed to third parties and relied on to establish fair market value of both the membership interests in CDM, and in turn HoldCo.*

FTI: *This is a material change in the purpose and access rights of the report. Please provide more detail of the transaction. Is it the case that Mark will make CDM redeem the shares owned in by DAF? And who would you like to share the report with? And on what basis (e.g. non-reliance)? We also note our memo is not a valuation – it is a quantification of discounts given the rights of the participating shares. To do a valuation, we would need to do a more detailed exercise, including valuing the underlying assets."*

134 On 21 to 24 March 2025, FTI and Walkers had an exchange (amongst other things) as follows:

"FTI: *If the firm was wound down, would it result in distributions to the existing participating shareholders? Or would Mark still be able to shareholder structure to ensure the existing participating shareholders got nothing? Given they haven't received dividends since 2019, why haven't the participating shareholders triggered a wind down? If they can trigger a wind down and then in short order receive $300m of distributions, it does change things re discount.*

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Walkers: *if HoldCo was wound up, the Participating Shareholders would receive distributions which would be made pari passu, and Mark (if he was the liquidator) would not be able to ensure the existing Participating Shareholders get nothing. Whilst the Participating Shareholders have the right to seek to wind up under the Companies Act, they need a proper basis to do so… We can only assume [they] have not commenced proceedings seeking to wind the company up because they do not have a proper basis on which to do so …*

…

FTI: *Would an absence of distributions be sufficient grounds to make an application to wind the company up? If the participating shareholders did make the application, would Mark be able to issue a vast number of shares to another party before the distributions were made thereby ensuring the existing shareholders received very little?*

Walkers: *A Participating Shareholder may consider an absence of distributions sufficient grounds for a winding up order on the just and equitable basis… But it is difficult for us to say whether that petition would be successful. If (a) a Participating Shareholder presented a petition; (b) new shares were purportedly issued; and (c) the Court then made a winding up order, the issue of the new shares would be void and not impact the amounts the Participating Shareholders would receive.*"

135 On 26 and 27 March 2025, FTI and Walkers had an exchange (amongst other things) as follows*:*

"Walkers: *We have discussed with our client and onshore counsel and set out some amendments in the attached. In addition, we note (1) we have not received any material addressing reliance on the memo by CDM; and (2) the "Limitations and restrictions" section still provides that the memo "should not be used to support a transaction". For*

the memo to be useful in the circumstances, CDM [and HoldCo] need to be able to rely on it or a separate memo would need to be addressed to CDM on which it may rely. Further, both entities need to be able to rely on the memo(s) to support the proposed transaction.

FTI: *What is the intention of adding that directors should act in the interests of future members? I am struggling to understand how a director could act in a manner which is beneficial for future shareholders which is not also helpful for existing shareholders.*

The limitations in our note will remain. To do a valuation to support a transaction, we will need to do significantly more detailed work. This is an unusual/complicated situation. We are open to doing a fairness opinion on the transaction. But this will require approval from our risk committee and more information on the transaction and situation. We are happy for CDM to have our memo on a non-reliance basis. But this memo should not be used to support a transaction."

March 2025 ValueScope Valuation

136 Following the Restructuring, ValueScope was requested by Shields Legal, without telling the Supporting Organisations or the Charities, to prepare two valuation analyses:

136.1 100% Membership Interest in CDM; and

136.2 Certain Participating Shares of the Company as at 25 March 2025 (the "**March 2025 Valuation**").

137 The March 2025 Valuation had the same instructions, definition of value and scope of work as the September 2024 Valuation. Like the September 2024 Valuation, the March 2025 Valuation also referenced a 30 September 2024 balance sheet (and did not refer to any later analysis of

assets and liabilities). As shown below, the September 2024 Valuation and March 2025 Valuation produced very different results.

138 A comparative summary of the September 2024 and March 2025 Valuations is set out below:

Valuation Date	DLOC*	DLOM**	Valuation Basis	FMV (100 Shares)
30 September 2024	8.1%	6.3%	NAV	$75,961,370
25 March 2025	99.2%	20.00%	DCF***	$536,784
Difference	**+91.1%**	**+13.7%**		**-$75,424,586**

*DLOC – Discounted for Lack of Control

**DLOM – Discounted for Lack of Marketability

***DCF – Discounted Cash Flow

139 The March 2025 Valuation stated: "*for the valuation of non-controlling assets in holding companies such as DAF, the asset-based approach is most commonly used [as Valuescope had always done previously]. When applied to such companies, the approach consists of measuring the underlying net asset value of an entity (the fair market value of the entity's assets less the fair market value of its liabilities). The NAV is then discounted as appropriate to determine the fair market value of the fractional interest in the entity. However, in the case of the participation shares under consideration, the asset-based approach is not applicable. These shares do not confer control and only have a claim in respect of the underlying assets in a winding up.*"

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140 ValueScope does not appear to have considered whether winding up was a possibility, and therefore, whether value could have been realised that way and by reference to NAV.

141 For reasons which are unclear to the Company, the March 2025 Valuation expressly rejected the asset-based (NAV) approach on the basis that the economic benefits of the Participating Shares in the Company were contingent on discretionary distributions by its manager. The report states.

> *'Unlike equity interests that derive value from an allocable portion of the entity's net assets, the economic benefits of these shares are contingent upon discretionary distributions by the director. As such, their value is not directly tied to the entity's NAV, and an alternative valuation approach is required to appropriately reflect their characteristics and economic reality*'.

142 Accordingly, the methodology applied in the March 2025 Valuation was markedly different from the methodology applied in the September 2024 Valuation. Instead of relying on discounted net assets, the March 2025 Valuation:

142.1 applied a discounted cash flow ("**DCF**") methodology to estimate the present value of expected future distributions, rather than an asset-based approach, as had been applied in at least the past five annual valuations by ValueScope;

142.2 determined the FMV of 100 Participating Shares to be US$536,784;

142.3 applied a discount of 99.2% for DLOC; and

142.4 applied a discount of 20.00% for DLOM.

143 The DCF model is based on the present value of future distributions to the Company. ValueScope's report shows that these were estimated based on historic distributions themselves controlled by Mr Patrick.

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144 Based on the valuations above, between 30 September 2024 and 25 March 2025, the FMV of 100 Participating Shares in the Company apparently declined from US$75,961,370 to US$536,784, representing a reduction in value of 99.29% in less than a six month period, in which the Restructuring occurred, attributable to a change in valuation basis (amongst other things) from NAV to DCF.

145 Furthermore, ValueScope does not appear to have sense-tested their valuation. Although they identified "total equity" of c. US$270 million and concluded that all of the Participation Shares had a value of only c. US$1.6 million, they did not address themselves to who benefitted from the residual value of c. US$268 million.

Admission and Redemption

146 On 27 March 2025, Mr Patrick, as manager of CDM, executed a written consent (the "**Manager Consent**") to (a) cause CDM to admit DFW as an additional member of CDM pursuant to the terms of an Admission and Amendment No.1 Agreement (the "**Admission Agreement**") and (b) redeem the CDM Membership Interest held by the Company pursuant to the terms of a Redemption and Amendment No. 2 Agreement (the "**Redemption Agreement**" and together with the Admission Agreement, the "**Restructure Agreements**"):

146.1 The recitals to the Manager Consent stated that the redemption of the Company's membership interest was justified by reason of alleged attempts by the Supporting Organisations to exert control, and the potential loss of their (i.e. the Supporting Organisations') non-profit and tax-exempt status:

> *"… the Manager has formed the view that the Current Member, by virtue of being a member of the Company and having as Participating Shareholders the Highland Foundations, poses a material risk to the Company, its assets, and the Mission Statement of DAF due to, among other things, (i) officers and directors of the Highland Foundations seeking to assert dominion and control*

over the assets of DAF (through the Current Member), despite no legal ability to do so under the Current Member's organizational documents and despite the potential illegality (as demonstrated by tax counsel to DAF—see Exhibits C and D) of doing so, (ii) the potential loss of the non-profit status of the Highland Foundations due to their actions, among others, described in clause (i), and (iii) the potential loss of the tax-exempt status which the Highland Foundations currently enjoy and which is central to the mission of DAF, as a result of the factors including those described in clauses (i) and (ii)"

146.2 The Manager Consent further stated:

"*WHEREAS, in connection with the Restructure Agreements and the transactions contemplated thereby, the Manager (on behalf of the Company) obtained a valuation report of the membership interests of the Company from ValueScope and FTI Consulting, copies of which are attached hereto as Exhibit E, which valuation reports have informed the Manager the fair market value of the membership interests*"

146.3 Exhibits C and D to the Manager Consent are documents purportedly containing information regarding various alleged U.S. tax issues relating to the Company.

146.4 Exhibit C is the letter from Mr Mancino to the IRS dated 20 March 2025, in which Mr Mancino (amongst other things) stated:

(a) there has been "deterioration" of the Company's relationship with Highland Dallas Foundation, Inc. ("**HDF**") due to the undue influence and control exercised over HDF by Mr Dondero.

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(b) the information in the letter will demonstrate clearly that Mr Dondero's influence and control is an inappropriate donor relationship with representatives of the HDF who serve on the Board of Directors of and as officers of HDF.

(c) such undue influence and control potentially jeopardises the tax-exempt status of HDF as an organisation described in s.501(c)(3) and, at a minimum, causes it to fail to remain a supporting organisation described in s. 509(a)(3).

146.5 Exhibit D is an advice produced by Carrington Coleman (U.S. law firm) dated 25 March 2025 (the "**Carrington Advice**") which amongst other things:

(a) asserts that Mr Dondero has been attempting "*through his control of the Highland SOs, to exert dominion and control over the cash and property he previously donated to DAF and for which he claimed charitable deductions, all for his personal benefit.*"

(b) suggests that Mr Dondero was using the Company as his personal "*piggy bank*", and that it may be perceived by the IRS that the Fund has been or is his financial alter ego.

(c) concludes that "*the IRS will look favourably upon any and all attempts for DAF to maintain its independence from what seems to be persistent attempts by Dondero, and the entities controlled by him to use DAF for his private benefit and inurement.*"

146.6 Exhibit E contained two valuation reports:

(a) The first was a ValueScope valuation.

(b) The second is the FTI Memo referred to above, in which FTI expressly stated that the analysis in the FTI Memo should not be used in support of a transaction, but which Mr Patrick, in any event:

(i) expressly relied upon in the Manager Consent to determine the fair market value of the CDM Membership Interest and the basis for the redemption of the Company's interests; and

(ii) permitted Carrington Coleman to refer to and rely on in the FTI Memo (indeed, having provided the 27 March 2025 copy which was a draft copy only).

146.7 On 27 March 2025, without telling the Supporting Organisations or the Charities, Mr Patrick executed the:

(a) Admission Agreement between CDM and DFW under which DFW was admitted as a member of CDM, in consideration for a capital contribution of US$1,637,192; and

(b) Redemption Agreement under which CDM redeemed the Company's membership interest in CDM for the same sum of US$1,637,192 (the "**Redemption Sum**").

147 On 27 March 2025, without telling the Supporting Organisations or the Charities, the Company entered into a letter agreement with CDM (the "**Letter Agreement**"), pursuant to which the Company assigned to CDM various contracts and agreements to which the Company was a party, listed in Schedule A to the Letter Agreement and CDM agreed to assume the liabilities and obligations in respect of those contracts.

148 On 2 April 2025, the Directors of the Company, by way of written resolution:

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148.1 Noted the redemption of the Company's membership interest in CDM for the Redemption Sum (the "**Redemption**").

148.2 Resolved to pay a dividend to the Original Participating Shareholders of US$1,612,192.01 in the amount of (i) US$528,587.54 with respect to each of HDF, Highland Kansas City Foundation, Inc. and Highland Santa Barbara Foundation, Inc.; and (ii) US$26,429.39 with respect to CFNT.

149 The substantive financial effect of the Redemption, under which DFW did or was committed to make a capital contribution equivalent to the Redemption Sum to CDM, and the CDM Membership Interest held by the Company were redeemed for the Redemption Sum, was that the Company's membership interest in CDM was purchased by or otherwise transferred to DFW for the Redemption Sum.

150 The substantive effect of the overall transaction or series of transactions pleaded above, including the Impugned Transactions already pleaded, was that:

150.1 The Company realised its interest in the Fund, which had a NAV of c. US$270 million, for c. US$1.6 million.

150.2 The Company made a distribution to the Original Participating Shareholders (c. US$1.6 million).

150.3 The Supporting Organisations and the Charities were actually or effectively divested of their indirect interest in the Fund, and the assets underlying the Fund; and

150.4 The Original Participating Shareholders were diluted from 100% of the economic interests in the Company to less than 50%.

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Voluntary Liquidation and Supervision Order

151 On 2 April 2025, the Directors resolved, without telling the Supporting Organisations or the Charities, to place the Company into voluntary liquidation and appoint Mitchell Mansfield and William Clarke (the JVLs) of Kroll (Cayman) Ltd as voluntary liquidators.

152 However, unaware of the voluntary liquidation, on 10 April 2025, the Supporting Organisations presented a petition seeking the winding up of the Company on a just and equitable basis, under section 92(e) of the Companies Act (2025 Revision) (the "**J&E Petition**").

153 On 25 April 2025, Walkers and Shields Legal held a call to discuss the J&E Petition. Following that call, Mr Patrick wrote in an email that the "*message ideas*" "*for Monday*" were to "*poison the well*", by which he meant to create a negative impression of Mr Dondero in the eyes of the Court.

154 On 6 May 2025, Justice Jalil Asif KC made a supervision order, under which voluntary liquidation of the Company was to be continued under the supervision of the Court pursuant to s.131 of the Companies Act (As Revised), and the JOLs were appointed.

OBLIGATIONS OWED BY THE DIRECTORS

155 At all material times, the Directors, as directors, owed the following duties individually to the Company:

155.1 A fiduciary duty to act *bona fide* in what he considers to be the best interests of the Company (the "**Best Interests Duty**").

155.2 A fiduciary duty to exercise his powers for a proper purpose, and for the purposes for which they were conferred (the "**Proper Purpose Rule**").

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155.3 A fiduciary duty not to place himself in a position where his personal interest actually or potentially conflicted with his duty of loyalty to the Company (the "**First No-Conflicts Duty**").

155.4 A fiduciary duty not to place himself in a position where his duty to another actually or potentially conflicted with his duty of loyalty to the Company (the "**Second No-Conflicts Duty**").

155.5 A fiduciary duty to not make an unauthorised profit from or by reason of his fiduciary position (the "**No Profit Duty**").

155.6 A fiduciary duty not to accrue or take a benefit or commercial opportunity from the Company without the full and informed consent of the Company (the "**No Self-Dealing Rule**").

155.7 A duty to exercise reasonable skill, care, and diligence in the performance of his role and function as director (the "**Reasonable Care Duty**").

156 With respect at least to Mr Patrick, his duties above and the standard to which he was obliged to comply with such duties are affected by being in the Control Position and the trustee or trustee-like position he occupied. Paragraph 76 above is also relied upon.

157 The Company reserves its position as to whether Mr Patrick, by reason of being in the Control Position and the trustee or trustee-like position he occupied, was an express or other trustee of the assets of the Fund for the Original Participating Shareholders and, through or in addition to them, the Charities.

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ATTRIBUTION OF KNOWLEDGE AND INTENTION

158 As a matter of Cayman Islands law, Mr Patrick's intention and knowledge of facts and matters for all such purposes relevant to this claim is to be attributed to each of DFW, CDM, and the New GP on the basis of at least the following facts:

158.1 As regards DFW, Mr Patrick is listed under DFW's certificate of incorporation, dated 9 December 2024, as "the member of the corporation", and the Admission Agreement showed he served as its "President". Mr Patrick is also the registered director of DFW. Mr Patrick the agent of DFW, in which capacity Mr Patrick executed the Admission Agreement.

158.2 As regards CDM, Mr Patrick is described under the LLC Agreement as the "Manager" of CDM, in which role Mr Patrick was CDM's agent, and in which capacity he (i) executed the Deed of Assignment and Assumption on behalf of CDM, and (ii) executed a written 'Manager Consent' (the **"Manager Consent"**) approving the Redemption and Admission Agreements; and executed the Redemption and Admission Agreements.

158.3 As regards the New GP, Mr Patrick was and remains its director, and therefore its agent (in which capacity, Mr Patrick executed the Deed of Assignment and Assumption on the New GP's behalf). Further, Mr Patrick is the sole shareholder of the New GP.

159 Further, if applicable, as a matter of the laws of the State of Delaware, Mr Patrick's knowledge and intention is to be attributed to DFW, CDM, and the New GP on a like basis.

CLAIMS AGAINST THE DEFENDANTS

<u>Breaches of fiduciary and other duty</u>

160 The First and Second Defendants, and each of them, in their capacity as a Director of the Company, acted in breach of their fiduciary and other duties to the Company as follows.

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Restructuring, including the CDM Assignment

161 The Directors (and each of them), in procuring, directing or effecting the Restructuring as set out above, acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring, directing or effecting the Restructuring as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

161.1 The Plaintiff relies on paragraphs 77 to 105 above.

161.2 With the assistance of Mr Mancino, Mr Patrick took steps to form CDM and appoint himself as Manager of CDM.

161.3 Mr Patrick designed and/or negotiated and/or directed and/or effected the Restructuring in his capacity as Director of the Company, Director of the New GP, and Manager of CDM, being each of the parties to the Deed, and signed the Deed on behalf of each party.

161.4 The Directors (and each of them) approved the transfer of the Company's entire limited partnership interest in the Fund (having net assets worth c. US$270 million) to CDM, a Delaware entity whose LLC Agreement excluded any fiduciary obligations owed by its Manager (i.e. Mr Patrick) to CDM itself or to its members; in exchange for membership interest in CDM, which interest was capable of being extinguished, by redemption, and for a "fair value", determined at the discretion of the Manager (i.e. Mr Patrick).

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161.5 The Restructuring was of no benefit to the Company and not in its best interests, and Mr Patrick was subject to conflicts of interest (First and Second No-Conflicts Duties) and committed acts of self-dealing.

161.6 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known that the Company was proposing to exchange the Partnership Interest for a membership interest in CDM that was subject to redemption entirely at Mr Patrick's discretion, and for a "*fair value*" determined, in good faith, in his discretion.

(b) knew or ought to have known that the Company was therefore proposing to trade its Partnership Interest, which was not in practical terms defeasible, for an interest that could be extinguished: (i) at a time over which it had no control, (ii) for a price over which it had very limited control and (iii) for a potential valuation basis which excluded a net asset valuation of the assets held in the Fund.

(c) knew or ought to have known that the CDM Membership Interest was to be in a Delaware-incorporated company whose LLC Agreement excluded any fiduciary obligations owed by its Manager either to CDM itself or to its members and was therefore less valuable than the Partnership Interest.

(d) knew or ought to have known that the CDM Assignment was therefore a transaction at an undervalue.

161.7 It can be inferred, and is averred, that Mr Patrick was drawing fees or remuneration or emoluments or benefits from CDM without the full authorisation or full and informed consent of the Company.

161.8 Further, and in any event, the Directors (and each of them) acted when each of them:

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(a) knew or ought to have known that the CDM Assignment was the first step in a series of connected future transactions, including those pursuant to the CDM Assignment, the Share Issuance, the Admission Agreement, the Redemption Agreement and the Redemption, under which the Directors were able to and ultimately did procure the redemption of the Company's CDM Membership Interest, thus extinguishing the Company's interest in the Fund, for an undervalue.

(b) knew or ought to have known that:

(i) the full terms and effect of the CDM Assignment was not a proper or proportionate response to any genuinely perceived risk about U.S. tax concerns.

(ii) the full terms and effect the CDM Assignment was not a proper or proportionate response to any genuinely perceived risk to the Company, which was not itself a Donor Advised Fund and/or did not enjoy or require tax-exempt status under s.501(c)(3) of the U.S. Internal Revenue Code.

(iii) other approaches to address concerns with respect to the tax-exempt status of the HDF short of undertaking the Restructuring (and entering into the CDM Assignment) included notifying the HDF of the conflict and/or concerns and requesting it to remedy it or them.

(iv) even if the facts and matters alleged in relation to the HDF were correct, there was more than a possibility, after an extended passage of time and at least two levels of appeal, that a U.S. tax audit would result in an adverse determination with respect to the tax-exempt status of the HDF.

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(v) the tax-exempt status of the HDF was of no concern or no reasonable concern to the Company.

(c) knew or ought to have known that they were keeping the Restructuring, the CDM Assignment, CDM itself and all the surrounding circumstances secret from the Participating Shareholders.

162 By reason of the foregoing breaches of duty or any of them:

162.1 The CDM Assignment is void, alternatively voidable and hereby avoided.

162.2 CDM holds the Partnership Interest on trust or constructive trust for the Company.

162.3 CDM is required to re-transfer the Partnership Interest to the Company and account for any profits on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

Share Issuance

163 The Directors (and each of them), in procuring, directing or effecting the Share Issuance as set out above, acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring, directing or effecting the Share Issuance as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

163.1 The Plaintiff relies on paragraphs 77 to 84, 91 to 96 and 106 to 119 above.

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163.2 The Directors (and each of them) designed and/or engineered the Share Issuance, having sought legal advice in relation to the powers conferred on them as Directors of the Company, for the improper purpose of:

(a) diluting without any proper reason or corporate purpose the existing Participating Shareholders and/or depriving the ability of the Supporting Organisations to continue to comprise a majority of the Participating Shareholders.

(b) inserting DFW as a new Participating Shareholder, an entity under the sole control of Mr Patrick, to obstruct and/or prejudice and/or adversely affect the exercise of a Participating Shareholders' right to petition for the just and equitable winding-up of the Company.

163.3 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known the issue and allotment of shares at par to DFW was of no benefit to the Company.

(b) knew or ought to have known that the exercise of the power to issue shares and allot them to DFW was for the improper purpose of diluting the interest of the Original Participating Shareholders.

(c) knew or ought to have known that the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW was a response to the prospect that the Supporting Organisations might present a petition for the winding-up of the Company on a just and equitable basis, as indeed they did on 10 April 2025 in ignorance of the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW.

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(d) knew or ought to have known that the sole or primary purpose of the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW was to insert a new majority Participating Shareholder (under their or at least Mr Patrick's control) into the Company's share capital structure to (if they or at least Mr Patrick deemed fit) to oppose the actions of the Supporting Organisations and/or the Original Participating Shareholders, both in relation to any potential contributories' winding-up petition and otherwise, and/or to obstruct and/or prejudice and/or adversely affect the exercise at any time of any rights of the Supporting Organisations as Participating Shareholders.

163.4 Mr Patrick designed and/or directed and/or effected the Share Issuance in his capacity as Director of the Company, even though he was 'President' of DFW and the sole member and the sole director of DFW.

163.5 It can be inferred, and is averred, that Mr Patrick was drawing fees or remuneration or emoluments or benefits from DFW (if not also from CDM) without the full authorisation or full and informed consent of the Company.

164 By reason of the foregoing breaches of duty or any of them:

164.1 the Share Issue Resolution and/or the Share Issuance or otherwise the issue and/or allotment of shares to DFW is void, alternatively voidable and hereby avoided.

164.2 DFW holds its shares on trust or constructive trust for the Company.

164.3 DFW is required to concur in the rescission of the allotment and to re-transfer its shares to the Company on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

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164.4 The Company's register of shareholders shall be rectified accordingly.

Admission and Redemption

165 The Directors (and each of them), in procuring or entering into the Admission Agreement and the Redemption Agreement, and/or in procuring, directing or effecting the Redemption acted in breach of their duties to the Company, including the Best Interests Duty, the Proper Purpose Rule and the Reasonable Care Duty. Additionally, Mr Patrick, in procuring or entering into the Admission Agreement and the Redemption Agreement, or in procuring, directing or effecting the Redemption as set out above, acted in breach of his duties to the Company, including the No Self-Dealing Rule, No Profit Duty, and No-Conflicts Duty (First and Second No-Conflicts Duties).

PARTICULARS

165.1 The Plaintiff relies on paragraphs 120 to 150 above.

165.2 The Directors (and each of them) acted when each of them:

(a) knew or ought to have known that:

(i) proceeding on the basis of the Seyfarth/Mancino letter to the IRS dated 20 March 2025 was flawed or unreasonable.

(ii) proceeding was not a proper or proportionate response to any genuinely perceived risk about U.S. tax concerns.

(iii) the tax-exempt status of the HDF was of no concern or no reasonable concern to the Company.

(iv) proceeding on the basis of the March 2025 Valuation and the FTI Report was flawed in that: (i) the 99.2% discount in value proposed by the

ValueScope Report was a manifestly excessive discount, and resulted in the Company parting with its indirect ownership of 99% of the economic interest in the Fund (which had net assets worth c. US$270 million) for a mere US$1,637,192; and (ii) as pleaded above, the FTI Report expressly stated that *"this memo should not be used to support a transaction."*

(v) the Admission Agreement and the Redemption Agreement were steps in a series of connected transactions, including those pursuant to the CDM Assignment, the Share Issuance, under which the Directors were able to and ultimately did procure the extinguishment of the Company's interest in the Fund, through the redemption of the Company's membership interest in CDM, for an undervalue.

(b) knew or ought to have known that the sole or primary purpose of the Admission Agreement, the Redemption Agreement and the Redemption was to ensure that the Company was fully and finally deprived of an asset (its interest in the Fund) at an undervalue; and to enable a third party, DFW, controlled by Mr Patrick, to procure ownership of an interest in the Fund in complete replacement of the Company.

165.3 Mr Patrick designed and/or negotiated and/or directed and/or effected the Admission Agreement, the Redemption Agreement and the Redemption as Director of the Company, even though he was Manager of CDM and 'President' of DFW, sole member of CDM and sole member and sole director of DFW.

166 By reason of the foregoing breaches of duty or any of them:

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166.1 DFW holds the CDM Membership Interest on trust or constructive trust for the Company.

166.2 DFW is required to concur in the transfer of the CDM Membership Interest to the Company or as the Company directs on the basis of such trust or constructive trust and/or on a restitutionary and/or on a proprietary basis.

Further claims against Mr Murphy

167 In respect of any breach of duty as set out above for which Mr Patrick alone is liable:

167.1 At all material times, Mr Murphy worked in close concert with Mr Patrick, including at his direction.

167.2 Mr Murphy knew or ought to have known all the facts and matters pleaded above as known or ought to have been known by Mr Patrick.

167.3 Mr Murphy knew or ought to have known of all the facts and matters pertaining to such breach or breaches by Mr Patrick.

167.4 Mr Murphy took no steps to stop Mr Patrick or to prevent or report the breach or breaches of duty by Mr Patrick.

167.5 Mr Murphy accepted and acquiesced in all steps and actions suggested, promoted or effected by Mr Patrick.

167.6 Mr Murphy accepted and acquiesced in the breach or breaches of duty by Mr Patrick.

167.7 As a consequence, Mr Murphy has acted in breach of his duties to the Company, including the Best Interests Duty and the Reasonable Care Duty.

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Directors' Fees, Remuneration and Expenses

168 The Company is still unclear as to what precise fees or remuneration or emoluments or benefits were afforded to the Directors and from what source, and as to the proper expenses of the Company, in the period after March 2021 and thus reserves its position.

169 As is pleaded above in paragraphs 85 to 89, the Directors approved large increases for Mr Patrick's remuneration, benefits or emoluments: by around 1 October 2024, Mr Patrick's remuneration comprised a base salary of US$850,000, a bonus of 2.5 times that base salary, an LTI incentive payment of US$975,000; for the period March 2021 to March 2024, Mr Patrick was entitled to an aggregate LTI payment of US$4,759,000; and eligibility for discretionary and annual bonuses in addition, to be determined at the sole and absolute discretion of the Directors. By contrast, Mr Scott's annual salary and entire benefits during his tenure in the Control Position was US$60,000.

170 Insofar as the Directors (or each of them) approved of or procured any payment or benefit to or for Mr Patrick or Mr Murphy more than the sum of US$60,000 per annum each in respect of fees or remuneration or emoluments or benefits, such sum was excessive and conferred in breach of duty to the Company, including the Best Interests Duty, the Proper Purpose Rule, the first No-Conflicts Duty, the No Self-Dealing Rule and the Reasonable Care Duty.

171 Further, as is pleaded above, the Directors (or each of them) approved or caused the payment of considerable sums by way of expenses, amounting for example to US$18.3 million for the first half of 2024, and US$18.6 million spent over 2023. Such expenses may include the expenses incurred in effecting the transactions which are the subject matter of these proceedings. The reasonableness or *bona fides* of these expenses is not accepted by the Company.

172 The Company claims:

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

172.1 Full information, documents and discovery as to the fees or remuneration or emoluments or benefits or expenses paid or claimed by Mr Patrick and Mr Murphy and each of them since March 2021.

172.2 Full information, documents and discovery as to expenses incurred by the Company or the Fund or any of the Fund's subsidiaries or investments since March 2021.

172.3 Repayment to the Company of all fees or remuneration or emoluments or benefits paid or claimed by Mr Patrick or Mr Murphy and each of them in excess of US$60,000 per annum; together with all improperly paid expenses caused or procured by Mr Patrick or Mr Murphy (or damages or equitable compensation in relation thereto).

Unlawful Means Conspiracy

173 The facts and matters pleaded above amount to an unlawful means conspiracy as follows:

173.1 It is unclear when the conspiracy began but it appears to have started by around the start of 2024.

173.2 The original conspirators were Mr Patrick and Mr Murphy. The Company is unaware of the circumstances in which Mr Patrick and Mr Murphy agreed or combined and is unable to plead further pending further information or discovery.

173.3 As they were incorporated and participated in the facts and matters pleaded above, the New GP, CDM and DFW joined the conspiracy but remain liable in damages for all losses, including prior to joining the conspiracy.

173.4 The conspiracy was a conspiracy to injure the Company.

173.5 The overt acts of the conspiracy were all the facts and matters pleaded above, including as breaches by Mr Patrick or Mr Murphy.

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173.6 The unlawful means of the conspiracy were all the facts and matters pleaded above as breaches of duty by Mr Patrick or Mr Murphy.

173.7 Each of the conspirators intended to injure the Company. This averment is an inference from all the facts and matters pleaded above.

173.8 As a consequence, the Company has suffered loss and damage, as a result of the Restructuring, the CDM Assignment, and the Admission and Redemption, and the combined effect thereof, as set out above.

Proprietary claim and/or unconscionable receipt

174 The facts and matters pleaded above give rise to claims by the Company for unconscionable receipt as follows:

174.1 CDM received the Company's Partnership Interest in the Fund under the CDM Assignment.

174.2 The knowledge of CDM was and is that of Mr Patrick.

174.3 The breaches of duty in relation to the CDM Assignment above are relied upon.

174.4 CDM knew that the CDM Assignment was at an undervalue and that causing or procuring the Company to enter into the CDM Assignment was a breach of fiduciary duty by Mr Patrick and/or Mr Murphy.

174.5 By reason of the foregoing, it is unconscionable for CDM to retain the Partnership Interest in the Fund and CDM is liable to account to the Company in equity, by restoring Partnership Interest in the Fund to the Company and/or accounting for any profits or otherwise accounting to the Company in equity.

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Unjust Enrichment

175 In receiving the Company's Partnership Interest in the Fund, CDM was unjustly enriched at the Company's expense and is liable to the Company in restitution:

175.1 The Partnership Interest was transferred on the basis that there was a valid assignment agreement effecting that transfer.

175.2 That basis has totally failed, the CDM Assignment being either void, or avoided hereby.

Alter Ego and Lifting the Corporate Veil

176 In order to obtain the return to it of the Partnership Interest in the Fund, together with an Account of Profits, the Company does not need as a matter of law to make any allegation of "alter ego" or to lift the corporate veil in relation to CDM or DFW.

177 If, contrary to the paragraph above, the Company does so need, it makes the following allegations for the purposes of all relevant claims or causes of action set out above.

177.1 CDM is the "alter ego" of Mr Patrick.

177.2 DFW is the "alter ego" of Mr Patrick.

177.3 In relation to the receipt of any property by CDM directly or indirectly from the Company or the accrual of any profits or benefits by reason of such receipt, the corporate veil should be lifted, with the consequence that such receipt and such profits or benefits should be treated as those of Mr Patrick personally.

177.4 In relation to the receipt of any property by DFW directly or indirectly from the Company or the accrual of any profits or benefits by reason of such receipt, the corporate veil should be lifted, with the consequence that such receipt and such profits or benefits should be treated as those of Mr Patrick personally.

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PARTICULARS

(a) In relation to CDM:

(i) Mr Patrick was and is the Manager. There are no other officers or managers.

(ii) Mr Patrick was and is the managing member.

(iii) CDM was incorporated at Mr Patrick's instigation in order to enter into the CDM Assignment or a transaction of like nature.

(iv) CDM's sole or primary purpose was to play a part in a scheme whereby Mr Patrick would obtain control of the Company's Partnership Interest in the Fund free of the Company, the Company's obligations towards the Supporting Organisations and (if the scheme succeeded) free of Mr Patrick's duties to the Company.

(v) CDM exists and operates in order to conceal the identity of the true or real actor, namely Mr Patrick.

(b) In relation to DFW:

(i) Mr Patrick was and is the 'President'. There are no other officers or managers.

(ii) Mr Patrick was and is the sole member.

(iii) Mr Patrick was and is the sole registered director.

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(iv) DFW was incorporated at Mr Patrick's instigation in order to enter into a transaction whereby it would in effect take over the Company's interest in CDM pursuant to the CDM Assignment.

(v) DFW's sole or primary purpose was (i) to play a part in a scheme whereby Mr Patrick would obtain control of the Company's Partnership Interest in the Fund free of the Company, the Company's obligations towards the Supporting Organisations and (if the scheme succeeded) free of Mr Patrick's duties to the Company, (ii) to be the ultimate vehicle by which Mr Patrick would so control of the Company's Partnership Interest in the Fund and (iii) to be a newly-inserted majority Participating Shareholder (under at least Mr Patrick's control) in the Company's share capital structure to oppose the actions of the Supporting Organisations, both in relation to any potential contributories' winding-up petition and otherwise, and/or to obstruct and/or prejudice and/or adversely affect the exercise at any time of any rights of the Supporting Organisations as Participating Shareholders.

(vi) DFW exists and operates in order to conceal the identity of the true or real actor, namely Mr Patrick.

Loss and Damage

178 As a consequence of the above, the Company has suffered loss and damage, including but not limited to:

178.1 Its Partnership Interest in the Fund.

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178.2 The costs and expenses incurred in relation to the CDM Assignment, the Share Issuance, the Letter Agreement and the Redemption (including all legal or other advice taken in relation thereto).

178.3 Excessive Directors' fees or remuneration or emoluments or benefits.

178.4 Improper expenses (if any).

178.5 The lost opportunity cost of the Fund and its subsidiaries deploying such funds (as set out in (1), (2) and (3) above) elsewhere, and the consequent fall in value of the Company's interest in the Fund.

178.6 The legal and liquidation costs of investigating the conspiracy, and the costs of these proceedings.

RESERVATION OF POSITION

179 The Company and the JOLs (who direct the Company in bringing these proceedings) fully reserve their position to apply to amend this claim in any way or to bring fresh or further proceedings against any of the Defendants (whether in the Cayman Islands or elsewhere) in the name of the Company or in the name of the JOLs.

OTHER

180 CLO Holdco is joined as a party to these proceedings in order that, as the main subsidiary of the Fund, it may abide by any Order that the Court may make.

INTEREST

181 The Company claims interest pursuant to section 34 of the *Judicature Act (2021 Revision)* and the *Judgment Debts (Rates of Interest) Rules (2021 Revision)*, alternatively pursuant to the

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Court's equitable jurisdiction, compounded in equity at quarterly rests, alternately at common law, for such period and at such rate as the Court thinks just.

PRAYER FOR RELIEF

In the premises, the Company claims:

(1) Damages or equitable compensation.

(2) Orders for restitution or disgorgement.

(3) Orders for the restoration of property to the Company.

(4) Interlocutory or final injunctions as may be necessary or appropriate.

(5) Orders for the appointment of a Receiver or Receivers, as may be necessary or appropriate.

(6) Orders for the provision of documents or information at an early interlocutory stage.

(7) Orders for the cancellation of the Share Issuance, as appropriate.

(8) Rectification of the register of the Company, as appropriate.

(9) Orders pursuant to s.99 of the Companies Act (as revised), as appropriate.

(10) An Account of the fees or remuneration or emoluments or benefits or expenses paid or claimed by Mr Patrick and Mr Murphy and each of them since March 2021.

(11) An Account of all expenses incurred by the Company or the Fund or any of the Fund's subsidiaries or investments since March 2021.

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(12) All other Accounts, including an Account of Profits, or Inquiries as may be necessary or appropriate; and further Orders to give effect to the outcome of such Accounts or Inquiries, including Orders for payment of sums to the Company.

(13) All such declarations as may be necessary or appropriate, including to give effect to the continuing interest of the Company in the Fund on the basis of a proprietary interest, trust, constructive trust or otherwise.

(14) All such other relief relating to the Impugned Transactions as may be necessary or appropriate.

(15) Interest as above.

(16) Further or other relief.

(17) Costs.

DATED this 15th day of July 2025

Maples and Calder (Cayman) LLP

Maples and Calder (Cayman) LLP

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

182 The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

183 A Defendant who states in the Defendant's Acknowledgment of Service that the Defendant intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiffs may enter judgment against the Defendant without further notice.

184 A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings

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states, in answer to Question 3 in the Acknowledgment of Service, that the Defendant intends to apply for a stay, execution will be stayed for 14 days after that Defendant's Acknowledgment, but the Defendant must, within that time, issue a Summons for a stay of execution, supported by an affidavit of the Defendant's means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See overleaf for Notes for Guidance

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

Notes for Guidance

1 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2 For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to the Defendant.

3 Where the Defendant is sued in a name different from the Defendant's own, the form must be completed by the Defendant with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after that Partner's name.

5 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN THAT PERSON'S OWN, the form must be completed by the Defendant with the addition in paragraph 1 of the description "trading as (.....)" after that Defendant's name.

6 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.

7 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.

8 A Defendant acting in person may obtain help in completing the form at the Courts Office.

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/JRN/TQR/858403.000001/83559387)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2025 ( )

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give that Attorney this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

☐ yes	☐ no

3. If the claim against the Defendant is for a debt or liquidated demand, AND the Defendant does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

☐yes ☐ no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, the Defendant must give the Defendant's post office box number and the physical address of the Defendant's residence or, if the Defendant does not reside in the Cayman Islands, the Defendant must give an address in Grand Cayman where communications for the Defendant should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of that Plaintiff's name, address and reference, if any, in the box below.

Maples and Calder (Cayman) LLP
PO Box 309 Ugland House
Grand Cayman KY1-1104

Cayman Islands: CJM/JRN/LRA/TQR/858403-01

Indorsement by defendant's Attorney (or by defendant if suing in person) of that defendant's name, address and reference, if any, in the box below.

EXHIBIT 60

Docusign Envelope ID: 11CD8132-8630-49A0-A1FE-B8548E945158

November 11, 2024

From: Highland Dallas Foundation, Inc.
Highland Kansas City Foundation, Inc.
Highland Santa Barbara Foundation, Inc.

To: Mr. Paul Murphy
Director of Charitable DAF HoldCo, Ltd.
and Charitable DAF Holdings Corp.
paul@gkmanagement.com.ky

Dear Mr. Murphy:

We write to you collectively on behalf of the following organizations:

1. Highland Dallas Foundation, Inc., a participation shareholder in Charitable DAF HoldCo, Ltd., of which you are a director along with Mark Patrick. As you know, Mr. Patrick also is the managing member of the Charitable DAF GP, LLC, which governs the related Charitable DAF Fund, LP.

2. Highland Kansas City Foundation, Inc., also a participation shareholder in Charitable DAF HoldCo, Ltd.

3. Highland Santa Barbara Foundation, Inc., also a participation shareholder in Charitable DAF Holdco, Ltd.

Highland Dallas Foundation, Inc is a supporting organization of The Dallas Foundation. Highland Kansas City Foundation, Inc. is a supporting organization of Greater Kansas City Community Foundation. Highland Santa Barbara Foundation, Inc. is a supporting organization of Santa Barbara Foundation. The Dallas Foundation, Greater Kansas City Community Foundation and Santa Barbara Foundation (collectively the "Foundations") have worked closely with their respective supporting organizations named above to award grants and funding to a wide range of charitable causes that have made tangible, lasting impacts on the communities they serve. Our primary commitment has been, and always will be, our concern for the community, respect for donors, thoughtful giving, and careful investing—core values that have guided each of us throughout our existence.

With these core values and with the well-being of these Foundations in mind, we write you to voice that we no longer have confidence that the governance structures of, including but not limited to Charitable DAF-GP, LLC, Charitable DAF HoldCo, Ltd., Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (collectively the "DAF-related entities"), can function appropriately. We believe a reorganization must occur or the DAF-related entities should be equitably wound up because the governance structure has become unworkable. Recently, various competing constituencies provided the Foundations with conflicting information related to the operations and financial inner

Docusign Envelope ID: 11CD8132-8630-49A0-A1FE-B8548E9451F8

workings of the DAF-related entities. This conflicting information raises significant concerns about how the corpus of these funds is administered and spent. The Foundations have no real pathway to verify the information as the current governance structures prevent them from receiving such information, and indeed, efforts to secure additional information have been rebuffed. As a result, these recent submissions demonstrate that the current governance structure is ill-equipped to address such allegations and provide sufficient protection to the economic funds that support so many charitable efforts.

Further, because we have substantial concerns, out of an abundance of caution, and until an accounting can be conducted, we believe it is inappropriate for anyone to authorize the depletion of further assets of DAF-related entities. We urge you to take our accounting and governance concerns seriously because depletion of assets in the DAF-related entities has a direct impact on our mission and the charitable good works in our communities.

Thank you for your attention to this matter. Our counsel with the law firm of Holland & Knight LLP is copied on this letter should you have any questions.

Sincerely yours,

HIGHLAND DALLAS FOUNDATION, INC.

Signed by:
By: _____
8C324EA969434F3...
Julie Diaz
Vice President

HIGHLAND KANSAS CITY FOUNDATION, INC.

DocuSigned by:
By: Deborah L Wilkerson
71ED433BB139439...
Debbie Wilkerson
Vice President

HIGHLAND SANTA BARBARA FOUNDATION, INC.

DocuSigned by:
By: Jackie Carrera
66D757ACD7A1461...
Jacqueline M. Carrera
Secretary and Treasurer

cc: David M. Rosenberg
(via email at david.rosenberg@hklaw.com)

Michael Stockham
(via email at michael.stockham@hklaw.com)

EXHIBIT 61

Rachel Baxendale

From: Paul Murphy <paul@gkmanagement.com.ky>
Sent: 26 November 2024 6:32 PM
To: Mark Patrick; Geoffrey Sykes
Cc: Brandon R. Schaller; dmancino@seyfarth.com; Shawn Raver; Bart Higgins; Lauren Vernon; Philip Aubry; Barnaby Gowrie
Subject: RE: DAF - Participating Shares Summary [WALKERS-AMER_DOCS.FID2294181]

[this message is from an external sender]

Thanks for this Geoffry,

Mark, I'll let Walkers come back but here are my thoughts:

1. Issuance of new participation shares, where the existing foundations represent a smaller % of the issued and outstanding shares, would weaken any petition based on just and equitable grounds but we must be careful that they don't point to this as ground to wind up i.e. the existing foundations say we're artificially trying to weaken their position by diluting them therefore the company should be wound up or an order made for change of management/revocation of the share issuances. It's a very difficult situation to get right without gifting them a potential ground to claim just and equitable grounds.

2. Management shareholders have a right to object to the winding up but they have no special status by virtue of being management shares. I'll have to double check the docs but this would be different if there were something in the articles of association/share issuance agreement where there was an explicit provision where they had agreed not to present a winding up petition. The just and equitable ground is specifically designed to prevent unfair prejudice to a shareholder.

3. I think our main point is to stress that if they take any action they significantly undermine Donderro's position in the bankruptcy and UBS action because he will be seen as the alter ego of DAF as they've always claimed. Additionally, taking steps to preserve independence improves the DAFs standing in those proceedings. This isn't related to the advice but something for the call next week.

Paul.

From: Mark Patrick <mpatrick@dafholdco.com>
Sent: Tuesday, November 26, 2024 5:43 PM
To: Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com>
Cc: Brandon R. Schaller <bschaller@shieldslegal.com>; dmancino@seyfarth.com; Paul Murphy <paul@gkmanagement.com.ky>; Shawn Raver <sraver@dafholdco.com>; Bart Higgins <bhiggins@shieldslegal.com>; Lauren Vernon <Lauren.Vernon@walkersglobal.com>; Philip Aubry <Philip.Aubry@walkersglobal.com>; Barnaby Gowrie <Barnaby.Gowrie@walkersglobal.com>
Subject: Re: DAF - Participating Shares Summary [WALKERS-AMER_DOCS.FID2294181]

Another consideration, is that Holdco has management shares. Does the equitable theory take into account the rights of the owner of the management shares when the non-control shares want equitable relief. If the management shareholders, disagrees, are those powers and right abdicated in a equitable wind down proceedong? Seems the Management Shareholder has a right to express its rights as to whether the company should be wound down or not.

On Tue, Nov 26, 2024, 4:26 PM Mark Patrick <mpatrick@dafholdco.com> wrote:

Charitable DAF Holdco holds only one asset - LP interest in charitable daf fund LP. As a limited partner, Holdco cannot force the partnership to wind its affairs?

On Tue, Nov 26, 2024, 4:11 PM Mark Patrick <mpatrick@dafholdco.com> wrote:

If new participating shares are issued to a new non-profit, and say per Paul's point they try to implement an "equitable" winding down of the company, but the new shareholders objects, would that help? Also, what could possibly be the basis for any "equitable" liquidation if the Articles don't give such rights.

On Tue, Nov 26, 2024, 3:34 PM Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com> wrote:

Hi Brandon

Thanks for your time on the phone last week and the below.

As discussed, please see attached in draft the high priority memo as updated with a new Section E in respect of winding up petitions on the just and equitable ground.

We look forward to speaking with you tomorrow morning.

Best regards,

Geoffrey Sykes
Associate
Walkers (Cayman) LLP

T +1 345 814 6834 | **M** +1 345 814 6834
www.walkersglobal.com

Bermuda | British Virgin Islands | Cayman Islands | Dubai | Guernsey | Hong Kong | Ireland | Jersey | London | Singapore

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From: Brandon R. Schaller <bschaller@shieldslegal.com>
Sent: Friday, November 22, 2024 1:36 PM
To: dmancino@seyfarth.com; Philip Aubry <Philip.Aubry@walkersglobal.com>; Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com>; Barnaby Gowrie <Barnaby.Gowrie@walkersglobal.com>
Cc: Paul Murphy <paul@gkmanagement.com.ky>; mpatrick@dafholdco.com; sraver@dafholdco.com; Bart Higgins <bhiggins@shieldslegal.com>
Subject: DAF - Participating Shares Summary

[this message is from an external sender]

Doug and Walkers team,

As discussed, here are our notes from a review of the provisions applicable to Participating Shares in the Articles for Charitable DAF HoldCo, Ltd. As you know, we are not licensed in the Cayman Islands, so we would appreciate Walkers' help to confirm/expand our views.

Rights of Participating Shares*:

Rights

1. Participate (receive) discretionary dividends. See "Participating Share" and Articles generally.
2. If new shares/classes are issued, and the change would materially adversely vary the Participating Shares, then 2/3rds Participating Shareholder consent is required. See #13.
    a. Issuance of authorized but unissued Participating Shares (i.e., dilution of existing shareholders) makes this consent right contingent on outstanding shares. See #14 and #7.
3. Rights to assets in a winding up in accordance with the waterfall. See #122-124.
4. Certain foundations own 100 Participating Shares out of a total of authorized 4,999,900 Participating Shares. See #7.

No rights

1. Cannot vote shares. See #12.
2. Cannot redeem shares. See "Participating Shares."
3. No rights to information. See #12.
4. No rights to attend meetings. See #12.
5. No rights to notice of meetings. See #12.
6. No rights to pro rata distributions based on % of Participating Shares. See #105.
7. No rights to appoint or remove directors or officers. See Articles generally and #65.
8. No rights to receive notice of issuance of additional shares. See Articles generally.
9. No rights to receive notice of distributions to other Participating Shareholders. See Articles generally.
10. No pre-emptive rights. See Articles generally.

Restrictions

1. If a Participating Shareholder is (i) in breach of any law, (ii) is not a non-profit, or (iii) the directors are of the opinion such Shareholder might result in the Company incurring additional liability, including for legal reasons, the directors may require such Shareholder to transfer its shares. See #21. *Walkers to review.*
2. May be diluted by the directors issuing additional Participating Shares. See #8.
    a. Including additional pari passu shares. See #14.
    b. Dilution may, ultimately, affect the ability of the existing Participating Shareholders to consent to changes to the rights attached to the Participating Shares. See #14, #7, and Articles generally.

*Suggest the foundations confirm that they have the latest version of the Articles (attached). We suspect they do not.

Best regards,

Brandon

Brandon R. Schaller

ATTORNEY

16400 Dallas Parkway, Suite 300

Dallas, TX 75248

Phone | 469.726.3055

Email | bschaller@shieldslegal.com

Bio | **LinkedIn** | **vCard**

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EXHIBIT 62

Rachel Baxendale

From: Barnaby Gowrie
Sent: 27 November 2024 9:09 AM
To: Mark Patrick; Paul Murphy
Cc: Geoffrey Sykes; Brandon R. Schaller; dmancino@seyfarth.com; Shawn Raver; Bart Higgins; Lauren Vernon; Philip Aubry
Subject: RE: DAF - Participating Shares Summary [WALKERS-AMER_DOCS.FID2294181]
Attachments: Aquapoint L.P. v Xiaohu Fan (CICA (Civil) Appeal No. 14 of 2022).pdf; In the matter of Sigma Finance Corporation (Cause No. FSD 171 of 2024 (DDJ) 19 July 2024).pdf

Hi Mark, Paul

Thanks for your emails. Our answers to Mark's questions are as follows, and we generally agree with Paul's comments in respect of them:

1. *If new participating shares are issued to a new non-profit, and say per Paul's point they try to implement an "equitable" winding down of the company, but the new shareholders objects, would that help?*
    a. Yes, if other shareholders are opposed to an equitable winding up that will be taken into consideration and would likely help. However, it may not be determinative – the question will still be whether, in all of the circumstances, it is just and equitable for the company to be wound up.

2. *Also, what could possibly be the basis for any "equitable" liquidation if the Articles don't give such rights.*
    a. The right to seek a winding up order on the just and equitable ground is provided by legislation (see the Companies Act (2023 Revision) sections 92(e)) and 95(3)).

3. *Charitable DAF Holdco holds only one asset - LP interest in charitable daf fund LP. As a limited partner, Holdco cannot force the partnership to wind its affairs?*
    a. As a limited partner of Charitable DAF Fund LP, Charitable DAF HoldCo Ltd does have standing to present a petition seeking the winding up of Charitable DAF Fund LP, including on the just and equitable basis.

4. *Another consideration, is that Holdco has management shares. Does the equitable theory take into account the rights of the owner of the management shares when the non-control shares want equitable relief. If the management shareholders, disagrees, are those powers and right abdicated in a equitable wind down proceeding? Seems the Management Shareholder has a right to express its rights as to whether the company should be wound down or not.*
    a. As above, on the hearing of a winding up petition on the just and equitable ground, the question will be whether, in all of the circumstances, it is just and equitable for the company to be wound up. The rights and views of the holder of the management shares will be relevant to that consideration, but may not be determinative. If a winding up order is made and a liquidator appointed, the rights of the holder of the management shares will be varied in line with relevant legislation and the articles. Noting the meeting tomorrow morning we have not explored this in detail but please let us know if you would like further advice in that regard.

5. *Please provide a couple Cayman Cases where Equitable wind up occurred for my review based on mismanagement, etc. I'd like some context if this procedure is extra ordinary / rare or an action that does occur leading to Cayman Case Law.*
    a. Winding up orders on the just and equitable ground are not extraordinary or rare in the Cayman Islands. Please see attached two Cayman decisions involving winding up orders on the just and equitable ground (noting that partnerships may be wound up on the just and equitable ground under the same provisions as companies, and that the *Aquapoint* decision is currently on appeal to the Judicial Committee of the Privy Council).

Please let us know if you would like anything further before the meeting tomorrow morning.

Best regards,

Barney

Barnaby Gowrie
Partner
Walkers (Cayman) LLP

T +1 345 914 6365 | M +1 345 525 3385
www.walkersglobal.com

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From: Mark Patrick <mpatrick@dafholdco.com>
Sent: Tuesday, November 26, 2024 6:44 PM
To: Paul Murphy <paul@gkmanagement.com.ky>
Cc: Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com>; Brandon R. Schaller <bschaller@shieldslegal.com>; dmancino@seyfarth.com; Shawn Raver <sraver@dafholdco.com>; Bart Higgins <bhiggins@shieldslegal.com>; Lauren Vernon <Lauren.Vernon@walkersglobal.com>; Philip Aubry <Philip.Aubry@walkersglobal.com>; Barnaby Gowrie <Barnaby.Gowrie@walkersglobal.com>
Subject: Re: DAF - Participating Shares Summary [WALKERS-AMER_DOCS.FID2294181]

[this message is from an external sender]

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1. Agreed about the perception.

However, I have been exploring funding a large campus in DFW with a major church building, housing, and conference center, and exhibitions. In addition we been having exploring other large donations in the future on the scale of tens of millions leading to hundreds millions for educational buildings for an existing University in Dallas.

People I have spoken to have suggested I form a non profit now to work these endeavors.

On Tue, Nov 26, 2024, 5:31 PM Paul Murphy <paul@gkmanagement.com.ky> wrote:

> Thanks for this Geoffry,
>
> Mark, I'll let Walkers come back but here are my thoughts:
>
> 1. Issuance of new participation shares, where the existing foundations represent a smaller % of the issued and outstanding shares, would weaken any petition based on just and equitable grounds but we must be careful that they don't point to this as ground to wind up i.e. the existing foundations say we're artificially trying to weaken their position by diluting them therefore the company should be wound up or an order made for change of management/revocation of the share issuances. It's a very difficult situation to get right without gifting them a potential ground to claim just and equitable grounds.
>
> 2. Management shareholders have a right to object to the winding up but they have no special status by virtue of being management shares. I'll have to double check the docs but this would be different if there were something in the articles of association/share issuance agreement where there was an explicit provision where

they had agreed not to present a winding up petition. The just and equitable ground is specifically designed to prevent unfair prejudice to a shareholder.

3. I think our main point is to stress that if they take any action they significantly undermine Donderro's position in the bankruptcy and UBS action because he will be seen as the alter ego of DAF as they've always claimed. Additionally, taking steps to preserve independence improves the DAFs standing in those proceedings. This isn't related to the advice but something for the call next week.

Paul.

From: Mark Patrick <mpatrick@dafholdco.com>
Sent: Tuesday, November 26, 2024 5:43 PM
To: Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com>
Cc: Brandon R. Schaller <bschaller@shieldslegal.com>; dmancino@seyfarth.com; Paul Murphy <paul@gkmanagement.com.ky>; Shawn Raver <sraver@dafholdco.com>; Bart Higgins <bhiggins@shieldslegal.com>; Lauren Vernon <Lauren.Vernon@walkersglobal.com>; Philip Aubry <Philip.Aubry@walkersglobal.com>; Barnaby Gowrie <Barnaby.Gowrie@walkersglobal.com>
Subject: Re: DAF - Participating Shares Summary [WALKERS-AMER_DOCS.FID2294181]

Another consideration, is that Holdco has management shares. Does the equitable theory take into account the rights of the owner of the management shares when the non-control shares want equitable relief. If the management shareholders, disagrees, are those powers and right abdicated in a equitable wind down proceedong? Seems the Management Shareholder has a right to express its rights as to whether the company should be wound down or not.

On Tue, Nov 26, 2024, 4:26 PM Mark Patrick <mpatrick@dafholdco.com> wrote:

> Charitable DAF Holdco holds only one asset - LP interest in charitable daf fund LP. As a limited partner, Holdco cannot force the partnership to wind its affairs?

On Tue, Nov 26, 2024, 4:11 PM Mark Patrick <mpatrick@dafholdco.com> wrote:

> If new participating shares are issued to a new non-profit, and say per Paul's point they try to implement an "equitable" winding down of the company, but the new shareholders objects, would that help? Also, what could possibly be the basis for any "equitable" liquidation if the Articles don't give such rights.

On Tue, Nov 26, 2024, 3:34 PM Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com> wrote:

Hi Brandon

Thanks for your time on the phone last week and the below.

As discussed, please see attached in draft the high priority memo as updated with a new Section E in respect of winding up petitions on the just and equitable ground.

We look forward to speaking with you tomorrow morning.

Best regards,

Geoffrey Sykes
Associate
Walkers (Cayman) LLP

T +1 345 814 6834 | **M** +1 345 814 6834
www.walkersglobal.com

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From: Brandon R. Schaller <bschaller@shieldslegal.com>
Sent: Friday, November 22, 2024 1:36 PM
To: dmancino@seyfarth.com; Philip Aubry <Philip.Aubry@walkersglobal.com>; Geoffrey Sykes <Geoffrey.Sykes@walkersglobal.com>; Barnaby Gowrie <Barnaby.Gowrie@walkersglobal.com>
Cc: Paul Murphy <paul@gkmanagement.com.ky>; mpatrick@dafholdco.com; sraver@dafholdco.com; Bart Higgins <bhiggins@shieldslegal.com>
Subject: DAF - Participating Shares Summary

[this message is from an external sender]

Doug and Walkers team,

As discussed, here are our notes from a review of the provisions applicable to Participating Shares in the Articles for Charitable DAF HoldCo, Ltd. As you know, we are not licensed in the Cayman Islands, so we would appreciate Walkers' help to confirm/expand our views.

Rights of Participating Shares*:

Rights

1. Participate (receive) discretionary dividends. See "Participating Share" and Articles generally.
2. If new shares/classes are issued, and the change would materially adversely vary the Participating Shares, then 2/3rds Participating Shareholder consent is required. See #13.

    a. Issuance of authorized but unissued Participating Shares (i.e., dilution of existing shareholders) makes this consent right contingent on outstanding shares. See #14 and #7.

3. Rights to assets in a winding up in accordance with the waterfall. See #122-124.
4. Certain foundations own 100 Participating Shares out of a total of authorized 4,999,900 Participating Shares. See #7.

No rights

1. Cannot vote shares. See #12.
2. Cannot redeem shares. See "Participating Shares."
3. No rights to information. See #12.
4. No rights to attend meetings. See #12.
5. No rights to notice of meetings. See #12.
6. No rights to pro rata distributions based on % of Participating Shares. See #105.
7. No rights to appoint or remove directors or officers. See Articles generally and #65.
8. No rights to receive notice of issuance of additional shares. See Articles generally.
9. No rights to receive notice of distributions to other Participating Shareholders. See Articles generally.
10. No pre-emptive rights. See Articles generally.

Restrictions

1. If a Participating Shareholder is (i) in breach of any law, (ii) is not a non-profit, or (iii) the directors are of the opinion such Shareholder might result in the Company incurring additional liability, including for legal reasons, the directors may require such Shareholder to transfer its shares. See #21. *Walkers to review.*
2. May be diluted by the directors issuing additional Participating Shares. See #8.

    a. Including additional pari passu shares. See #14.
    b. Dilution may, ultimately, affect the ability of the existing Participating Shareholders to consent to changes to the rights attached to the Participating Shares. See #14, #7, and Articles generally.

*Suggest the foundations confirm that they have the latest version of the Articles (attached). We suspect they do not.

Best regards,

Brandon

Brandon R. Schaller

ATTORNEY

16400 Dallas Parkway, Suite 300

Dallas, TX 75248

Phone | 469.726.3055

Email | bschaller@shieldslegal.com

Bio | **LinkedIn** | **vCard**

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EXHIBIT 63

Walkers

Participating Shareholder Rights
Charitable DAF Holdco Ltd.



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Binding Effect of Articles of Association

Binding Effect of Articles of Association

"... the binding effect of the Articles as they stand ... is given statutory force by section 25(3) of the Companies Law which reads:

> '(3) Where registered the said articles of association shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to this law; ....'"

(*In the Matter of Strategic Turnaround Master Partnership Ltd* [2008] CIGC J1128-1, per Chief Justice Smellie at paragraph 135)

Participation in Discretionary Dividends

Participate in Discretionary Dividends

"The Participating Shares shall confer upon the Shareholders ... the right to participate in the profits or assets of the Company in accordance with these Articles." **(Art 12)**

Participation in Discretionary Dividends

"The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit." **(Art 102)**

"Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares." **(Art 105)**

Participating Shareholders do not have:

- **the right to cause or vote on distributions;**
- **the right to pro rata distributions based on their shareholding;**
- **the right to annual or timed distributions; or**
- **the right to receive notice of distributions to other Participating Shareholders.**

Removal of Directors

Removal of Directors

"Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution." **(Art 65)**

Participating Shareholders do not have:

- the right to remove Directors; or
- the right to appoint Directors.

Note: the right to appoint Directors is held by the Management Shareholder and the Directors, and the right to remove Directors is held solely by the Management Shareholder (Articles 64, 65, and 69, and Definition of "Ordinary Resolution").

Modification of Rights

Modification of Rights

"... the rights attached to [any] Class may ... only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting." **(Art 13)**

Participating Shareholders do not have:

- **the right to cause a distribution; or**
- **the right to amend the Articles.**

Modification of Rights – Issuance of Shares

"The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not ... be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company." **(Art 14)**

"... all Shares for the time being unissued shall be under the control of the Directors who may:

(a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine;

(b) and grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued." **(Art 7)**

Participating Shareholders do not have:

- **the right to vote on the issuance of further Participating Shares;**
- **pre-emption rights; or**
- **the right to receive notice of such issuance.**

Modification of Rights – Issuance of Shares

"The capital of the Company is US$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US$0.01 each 100 Management Shares of a nominal or par value of US$0.01 each..." **(Art 7)**

Note: Of the authorised share capital of the Company, 305 Participating Shares have been issued. In accordance with the Articles, the Directors may unilaterally issue additional Participating Shares and thereby dilute the power of existing shareholders for the purposes of voting on matters that may materially adversely vary or abrogate the rights of the Participating Shareholders.

Additional Note: many of the rights that shareholders of a company typically hold (e.g. the right to receive notices, and the right to vote at general meetings, including in respect of the appointment and removal of directors) are held by the Management Shareholder (Mark Patrick) rather than the Participating Shareholders. In addition, the Directors (Mark Patrick and Paul Murphy) have the ability to unilaterally declare dividends and issue new Participating Shares without the approval of the Participating Shareholders (or the Management Shareholder).

Share Redemption

Share Redemption

""**Participating Share**" means a non-voting, participating, non-redeemable share in the capital of the Company of $0.01 nominal or par value issued subject to and in accordance with the provisions of the Act and these Articles..."

"... the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them..." **(Paragraph 7, Memorandum)**

"The rights conferred upon the holders of the Participating Shares ... shall not ... be deemed to be materially adversely varied or abrogated by ... the redemption or purchase of any Participating Shares of any Class by the Company." **(Art 14)**

Participating Shareholders do not have:

- the right to redeem their shares; or
- the right to vote on the Company's redemption of their shares.

Transfer of Shares

Share Transfer by Notice of the Directors – Restricted Person

"If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles." **(Art 21)**

"**Restricted Person**" means any Person holding Participating Shares:

a) in breach of the law or requirements of any country or governmental authority;

b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the Code or an entity or organisation all of whose beneficiaries are exempt under Section 501 (c)(3) of the Code; or

c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered."

Note: the Directors have duties to act, and to exercise their powers, in the best interests of the Company. The scope of those duties includes continually evaluating whether any Participating Shareholder may pose a threat to the Company which could cause them to fall within the definition of Restricted Person, and how best to protect the Company against any such threat.

General Meetings

General Meetings

"Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company..." **(Art 12)**

Participating Shareholders do not have:

- **the right to receive notice of general meetings;**
- **the right to attend general meetings;**
- **the right to speak at general meetings;**
- **the right to vote at general meetings; or**
- **the right to information regarding proceedings of general meetings.**

Limited Information Rights

Limited Information Rights

"The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors." **(Art 108)**

"The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution." **(Art 110)**

Participating shareholders have very limited information rights. Specifically, the articles do not provide the Participating Shareholders with the following:

- **the right to inspect any account;**
- **the right to inspect any book; or**
- **the right to inspect any document of the Company.**

Further to the above, we note that :

- This only applies to the limited company which issued the participation shares, i.e. DAF HoldCo;
- It does not apply to subsidiary entities;
- It does not apply to entities in which DAF HoldCo holds a passive interest; and
- There is no "look- through" down through all the entities in the structure.

EXHIBIT 64

Rhiannon Zanetic

Subject: [EXTERNAL]-RE: DAFHoldCo information request

From: Michael.Stockham@hklaw.com
Date: February 7, 2025 at 12:43:56 PM CST
To: Paul Murphy <paul@gkmanagement.com.ky>, Julie Diaz <jdiaz@dallasfoundation.org>, mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>, Jackie Carrera <jcarrera@sbfoundation.org>, David.Rosenberg@hklaw.com, DMancino@seyfarth.com
Subject: [EXTERNAL]-RE: DAFHoldCo information request

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Paul-

I appreciate your email, and your willingness to find a framework to resolve the concerns, but am flummoxed by your, "struggle" to understand our growing frustration.

I do not believe it should be difficult to comprehend the request for transparency around $270 million dollars you control as a fiduciary for the benefit of charities in Dallas, Kansas City, and Santa Barbara. Indeed, these odd legal and rhetorical machinations of yours and Mr. Patrick miss the point. These monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed, and—among other things—creating a lasting impact on young minds by fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees. If I'm wrong, please educate me.

Your failure to be forthcoming about the underlying assets, the investment philosophy of the fund, and the "revised" governance, have caused me to start digging. I am not only a lawyer but also a Certified Fraud Examiner and a Certified Compliance & Ethics

Professional, and what I have found is nothing short of alarming.

- As I mentioned, director fees for 2024 appeared to be on track to exceed $5 million, which was an over 12,000 percent increase—up from zero. It is hard to fathom what you and Mr. Patrick have changed or contributed to the funds to warrant such a drastic change in director fees. I could be wrong, but if so, then tell me why. What is the dramatic value add?

- As I understand it, the annualized expenses of the funds were on pace to outstrip the actual return on the investments. So I am at a loss as to how you can justify running the fund at a loss while apparently paying the directors handsomely and freezing Supporting Organizations (the shareholders) out of basic information.

On November 6, 2024, we had an introductory video call with Doug Mancino, who announced himself as Compliance Counsel. But no details of the assets or financial condition of the funds were communicated.

On November 20, 2024, we had another video call with folks from your side, including ValueScope, and it was informative; however, the thrust of the presentation was why you refused proposed investments from NexPoint. It had nothing to do with the underlying assets and financial conditions of the fund. This was perplexing as ValueScope has been the valuation firm for the fund for years; yet they were silent about the condition of the fund.

On December 11, 2024, we had a video call with you, Doug Mancino, and your Cayman counsel. The thrust of that discussion was your vision of running the fund more as an institutional investment vehicle and a promise to provide financial information in the future. But the presentation again lacked any information on the underlying assets and financial conditions of the fund. It did, however, include a discussion that the Supporting Orgs had no right to information under the structure of the funds.

Shortly after the December 11 call, we received your first demand to withdraw our concerns about the governance of the funds, and it also advanced that if the Supporting Organizations wanted more

transparency they must sign a non-disclosure agreement with a liquidated damages clause. Which is, quite frankly, ridiculous.

In sum, and as I understand the thread running through the communications, your continuing posture is the following. The Supporting Orgs have no right to information. And, if the Supporting Organizations want more information, they must both recant their governance concerns and then sign the NDA. Those are both coercive non-starters. Again, if I'm wrong please tell me how.

Finally, and this I find perhaps the most egregious, I just discovered through my own research that Mark Patrick cancelled the Delaware charter of Charitable DAF GP, LLC on October 30, 2024 and rechartered it in Cayman. I can find no legitimate reason to recharter the general partner, and instead believe it to be a move to further insulate Mr. Patrick's and your actions by retreating from jurisdiction in the United States and offshore the entity in its entirety. If I've misunderstood, please let me know in detail how, but I remain skeptical. Further, in the calls listed above, not one representative from your side spoke up to explain, or even mention, the rechartering of the general partner. That is a striking repeated omission.

So the change of tone should not provide any struggle to puzzle through. Over the last three months, you have not provided any information about the assets and financial health of the fund. You have demanded that information only flows under an NDA with liquidated damages. You continually issue a veiled threat that information is a privilege not a right under the agreements. Expenses have gone through the roof, and the governance has been changed to further insulate it in a foreign jurisdiction. To say the least, I see red flags all over this situation, but have not received any facts, yet, that tell me they are unwarranted.

If I'm wrong, fine. It won't be the first time. But this also isn't my first rodeo, and the way to diffuse this is through immediate full transparency and facts. So if I've misunderstood, and your intent is to provide a fully transparent briefing to the Supporting Organizations without coercive caveats, then we stand ready to have that conversation after receiving the basic financial information requested by Julie Diaz in her January 23, 2025 email.

Michael Stockham, JD, CFE, CCEP | **Holland & Knight**
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, Texas 75201
Phone 214.969.2515 | Fax 214.969.1751 | Mobile 214.542.6435
michael.stockham@hklaw.com | www.hklaw.com

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From: Paul Murphy <paul@gkmanagement.com.ky>
Sent: Tuesday, February 4, 2025 9:31 AM
To: Stockham, Michael W (DAL - X62515) <Michael.Stockham@hklaw.com>; Julie Diaz <jdiaz@dallasfoundation.org>; mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; Rosenberg, David M (DAL - X61508) <David.Rosenberg@hklaw.com>; DMancino@seyfarth.com
Subject: RE: DAFHoldCo information request

[External email]

Dear Mike,

We remain open to finding a framework within which we can resolve your clients' concerns.

I don't want to repeat points already made in my email dated 30th January 2025, but our understanding was that we were to prepare a presentation for the Foundations to address these concerns. This was a course of action suggested by you in our call last year and one which we thought was very sensible.

We are struggling to understand what happened between 21st January (when David Rosenburg, from your firm, confirmed a video conference would be acceptable) and 23rd January when an email was sent to Mark's old email address repeating various allegations that we were going to address in the presentation.

We remain committed to trying to work with your clients and would be grateful if you could confirm your clients' willingness to do so.
Many thanks,
Paul.

From: Michael.Stockham@hklaw.com <Michael.Stockham@hklaw.com>
Sent: Friday, January 31, 2025 3:32 PM
To: Paul Murphy <paul@gkmanagement.com.ky>; Julie Diaz <jdiaz@dallasfoundation.org>; mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; David.Rosenberg@hklaw.com; DMancino@seyfarth.com
Subject: RE: DAFHoldCo information request

Paul-

I have added Doug Mancino to this email chain, as you are represented by counsel, I believe it appropriate to loop him in for this communication. I also told you that I had a tendency toward the blunt.

I am appalled by your response. As fiduciaries, you and Mr. Patrick manage $270 million in assets for the benefit of charities that support the most vulnerable in their communities. Whatever your side's obvious antagonism to Mr. Dondero, the fact remains that the underlying assets are ultimately for these charitable missions. And your focus and mission should be not only to ensure the success of the investments, but transparency to the ultimate beneficiaries. The assets are for their benefit, not Mr. Dondero, not Mr. Patrick, and not you.

The Supporting Organizations have legitimate concerns. The last information they received from SEI in July of 2024 — before Mr. Patrick shut down that line of communication and information — showed legal expenses had increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022. If annualized, and at that pace, legal expenses appeared to be on path to exceed $12 million for 2024. That's a 300% increase. Director fees skyrocketed from $40 thousand in 2022 to $2.25 million in the first six months of 2024. Again, annualized, these fees are on a path to exceed $5 million in 2024. That is a 12,400% increase. Yet, no information has been provided by you

and Mr. Patrick, no clarity given. It appears that total expenses for 2024, if annualized, were on pace to exceed $36 million. Even if you earned a return of 10 percent on the $270 million invested, the fund would be at $11 million of negative revenue for 2024. If the information we received is wrong, then please explain why, and provide the detailed information to disabuse us of these concerns. But telling us we have no legal right to the answers is not workable.

Upon Mr. Patrick taking control, you and he should have immediately engaged with the Supporting Organizations to explain the transition, your plans, and how the assets are being managed. I would have thought that a fiduciary would have engaged in a campaign of maximum transparency and disclosure. Instead, as to the actual financial condition of the assets, you have been opaque at best and purposefully elusive at worse, and your email below retreats into statements about having no legal obligation to disclose the activities of the funds. And it seems to condition further transparency on the Supporting Organizations recanting their earlier expressed concerns. I think you should reconsider such an entrenchment.

The Supporting Organizations have no interest in the animosity or dysfunction between Mr. Patrick and Mr. Dondero. What they do have an interest in, is an active campaign by you and Mr. Patrick to continue to manage the assets in a shroud of mystery, dripping out details and information whenever you deem it appropriate. To do so simply proves our concerns that the governance structure of these entities is broken.

Yes, it is true that we have been in discussions for months about transparency, and you provided some information. However, what has been ignored are the repeated requests for a simple set of financials. But how hard is it to create a short PowerPoint on the current state of financial statements, a simple diagram of the alleged new governance structure (who are the advisory board members?), your visions for the funds, and then provide a one-hour briefing to the Supporting Organizations? If you are truly managing the funds to the institutional-investor standards represented in our call, these details should be at your fingertips. Yet somehow this has all devolved into delays and posturing related to the dust up between Messrs. Dondero and Patrick.

That type of myopic thinking is not appropriate in this situation. The Supporting Organizations deserve

answers, and the transparency needs to happen sooner rather than later. And, the answer you provided, which essentially said that you can tell the organizations to pound sand and they should be grateful for the information you do provide, is not acceptable.

Michael Stockham, JD, CFE, CCEP | Holland & Knight
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, Texas 75201
Phone 214.969.2515 | Fax 214.969.1751 | Mobile 214.542.6435
michael.stockham@hklaw.com | www.hklaw.com

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CFE - Certified Fraud Examiner - Association of Certified Fraud Examiners www.acfe.com
CCEP - Certified Compliance and Ethics Professional - Society of Corporate Compliance and Ethics Professionals www.corporatecompliance.org

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From: Paul Murphy <paul@gkmanagement.com.ky>
Sent: Thursday, January 30, 2025 12:13 PM
To: Julie Diaz <jdiaz@dallasfoundation.org>; mpatrick@dafholdco.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; Stockham, Michael W (DAL - X62515) <Michael.Stockham@hklaw.com>; Rosenberg, David M (DAL - X61508) <David.Rosenberg@hklaw.com>
Subject: RE: DAFHoldCo information request

[External email]
Dear Julie,

I am an independent director of Charitable DAF HoldCo, Ltd. (which I believe is the entity you refer to as "DAF HoldCo" in your email dated 28 January 2025 (the "**28 January Email**")).

As an initial matter, I hope you will find the tone of this initial response to the 28 January Email conciliatory as I am keen to avoid any misunderstandings in circumstances where I had understood the next steps following the meetings between our respective legal

representatives (Douglas Mancino and David Rosenberg) in December last year was for us to present directly to the foundations/supporting organizations in order to address some of the concerns in the letter dated 11 November 2024 (the "**11 November Letter**"). This proposed presentation would supplement the two Zoom conference calls with your attorneys held by me and our independent valuation experts, ValueScope, in December last year as well as the ValueScope 9/30/24 report sent to you on 7 January that provided a balance sheet and information on all investment holdings.

As recently as 21 January 2025, David again confirmed that a Zoom conference call with yourselves would be an effective way to address your concerns and move forward in a cooperative manner.

Given our transparency and cooperation with the foundations/supporting organizations, as well as the agreed way forward, it was surprising to receive the 28 January Email which repeats some of the allegations in the 11 November Letter. Please note that neither Mark nor myself received your email dated 23 January 2025 given that it was sent to an out-of-use email address for Mark (which I understand he communicated to you and your assistant in person) and did not copy me. Therefore, the basis of the concerns and request to wind-up expressed in the 28 January Email, appears to be the single failure to respond to an email that was sent to a defunct email address. Having now been reminded that the email address is not functional, I hope you can take some comfort that you were not being ignored.
However, given the content and tone of the 28 January Email and David's request to progress the direct presentation to the foundations/supporting organizations only 7 days prior on 21 January 2025, there seems to be a disconnect between the conciliatory approach adopted in the latter and the more aggressive position set out in the former.

For our part, at this stage we are more than happy to continue to engage with the foundations/supporting organizations in an

effort to provide clarity on investments and the DAF HoldCo governance structure.

I must, however, record that we have some growing concern around the content and circumstances your email of 23 January 2025, specifically that it might be interpreted as a premise to attempt to inappropriately exercise control over DAF HoldCo and/or its assets. As a reminder, when the participating shares in DAF HoldCo were issued to the supporting organizations, there was no conveyance of voting rights or control, and it has always been well understood that such shares did not convey voting rights or control. In particular, without waiving applicable privileges, we are advised that any attempt to exert control of DAF HoldCo or its assets by James Dondero would be both inappropriate, unlawful and inconsistent with DAF HoldCo's charitable mission. We are deeply concerned that this outreach, which began following Mark's resignation from Skyview in October 2024, may be the supporting organizations acting as proxy for Mr. Dondero. We hope we are wrong, but the supporting organizations have received the same ValueScope quarterly financial reports and charitable distributions over time without change and without issue.

Please let us know if you are prepared to withdraw the allegations made in the 11 November Letter and the 23 and 28 January Emails and are content to proceed with our proposed delivery of the presentation which we are confident will provide a complete answer to your concerns.

Finally, as a matter of record, it is important that I outline the following:

The 11 November 2024 Letter was not directly sent to me. I received it from Charitable DAF HoldCo's US attorneys who had, in turn, received it from a US law firm acting for Mr. Dondero. As set out above, this supports our belief, which is also based on other actions we have seen to date, that Mr. Dondero is seeking to improperly

exerting influence over the foundations and supporting organizations for self-serving purposes to the detriment of DAF HoldCo, the foundations and supporting organizations.

We note that your communications to date contain several misstatements of fact and we reject all of your allegations. DAF HoldCo holds itself to the highest standards in achieving its goal of maximizing returns in risk-adjusted assets to achieve its charitable objectives. It is important to underline that we have policies and procedures in place to preserve DAF HoldCo's independence and are advised by best-in-class, independent experts.

Whilst we are cooperating with the foundations/supporting organizations to provide additional information we have no legal obligation to do so (which is not disputed). In no way should our cooperation be construed as an implicit acknowledgment of any duty to continue providing information to you or as a waiver of any DAF HoldCo's rights and remedies.

We look forward to hearing from you in relation to the proposed presentation and withdrawal of the allegations.

Kind regards,

Paul.

Paul Murphy
G.K. Management Limited
P.O. Box 10729
Suite 1, Artemis House
67 Fort Street
Grand Cayman KY1-1007
Cayman Islands
Phone: +1 345 946 3459
Mobile: +1 345 324 1121
Fax: +1 345 946 3493
E-mail: paul@gkmanagement.com.ky

From: Julie Diaz <jdiaz@dallasfoundation.org>
Sent: Tuesday, January 28, 2025 9:14 PM
To: Mark Patrick <MPatrick@CharitableDAF.com>; Paul Murphy <paul@gkmanagement.com.ky>
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>; Michael.Stockham@hklaw.com; Rosenberg, David M (DFW - X61508) <David.Rosenberg@hklaw.com>
Subject: RE: DAFHoldCo information request

Mark and Paul-

We have great concern that our reasonable requests below have not been acknowledged. This failure to provide the courtesy of a response continues a pattern of a lack of communication and transparency as to assets and financials of DAF HoldCo under your stewardship. These failures exacerbate the concerns we previously communicated in our letter to Paul in November 2024 (copy attached), which highlighted our concerns that the governance of the DAF HoldCo has failed in its current structure. The situation as it now stands is untenable. The lack of engagement on the true financial condition of the DAF HoldCo and the underlying assets leads us to believe that you have rejected our request to revise the governance of the DAF HoldCo and related structure. As such we are requesting that DAF HoldCo and the related entities be wound up and the underlying assets be distributed in kind to the Supporting Organizations so they can manage those assets for the benefit of the charities and the communities they serve. As previously requested, until these issues are resolved, we are insisting that you do not dissipate the assets further.

From: Julie Diaz
Sent: Thursday, January 23, 2025 9:45 AM
To: MPatrick@CharitableDAF.com
Cc: Debbie Wilkerson <wilkerson@growyourgiving.org>; Jackie Carrera <jcarrera@sbfoundation.org>
Subject: DAFHoldCo information request

Hi Mark –

Since we spoke last fall, the three CEOs from Santa Barbara, Kansas City, and Dallas community foundations (copied here) were discussing our plans for 2025 and wanted to reach out to you to check in on the DAFHoldCo. We have been discussing the need for a better understanding of the assets and thought it would be helpful if you could provide us with several detailed reports now that the new structure is in place.

Specifically, could you send:

- **Income Statements for the last for years**: A complete set of income statements (or profit and loss statements) for the last four fiscal years (2021-2024), including any supplemental notes or breakdowns that provide insight into revenue streams and expenses
- **Listing of Underlying Assets**: A detailed listing of the underlying assets held by DAF HoldCo, including both tangible and intangible assets. This should include any real estate, investments, intellectual property, or other significant assets that contribute to the company's operations or value.
- **Audited Financial Statements**: The most recent audited financial statements for DAFHoldCo, including the balance sheet, statement of cash flows, and any related auditor's reports. Please include any supplementary schedules or disclosures that are typically associated with these statements.
- **Current Structure of DAFHoldCo Operations:** An up-to-date organizational chart or structural overview detailing the key divisions, subsidiaries, and any relevant operational or financial entities that comprise the DAFHoldCo structure, including any significant changes that may have occurred over the last few years.

As you can appreciate, our job as leaders of our respective community foundations is to ensure proper stewardship of the charitable assets that are owned by our organizations. We are grateful for the decade plus of charitable investments that we have been able to make from the proceeds of the DAFHoldCo and would like to have confidence that this vehicle will continue to grow and make

additional meaningful contributions to our respective communities.

Please let us know your ability to get this information to us by Feb. 10, 2025.

Thank you and happy New Year.

Julie Diaz
President & CEO

P 2146942506
C 2143173784
E jdiaz@dallasfoundation.org
L /julie-h-diaz
W dallasfoundation.org

The Dallas Foundation
Pegasus Park
3000 Pegasus Park Drive, Suite 930
Dallas, Texas 75247

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Julie Diaz
President & CEO

P 2146942506
C 2143173784
E jdiaz@dallasfoundation.org
L /julie-h-diaz
W dallasfoundation.org

The Dallas Foundation
Pegasus Park
3000 Pegasus Park Drive, Suite 930
Dallas, Texas 75247

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EXHIBIT 65

CHARITABLE DAF HOLDCO, LTD.
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE
DIRECTORS OF THE COMPANY DATED 2 APRIL 2025

Capitalised terms used herein shall have the meaning ascribed to such terms in the Company's Amended and Restated Memorandum and Articles of Association (as adopted by Special Resolution dated 20 February 2025), unless the context otherwise requires.

The undersigned, being all the Directors of the Company for the time being, hereby take the following actions and adopt the following resolutions.

1. VOLUNTARY LIQUIDATION

1.1 **IT IS NOTED** that:

(a) the Company's sole investment, being 100% of the limited liability company interests in CDMCFAD, LLC, a Delaware limited liability company, was redeemed on 27 March 2025 (the "**CDMCFAD Redemption**");

(b) proceeds lawfully available for distribution from the CDMCFAD Redemption in the amount of $1,612,192 were distributed to holders of Participating Shares of the Company by way of a cash dividend paid on April 2;

(c) the Company will not be engaging in any further business or investment activity and the operations of the Company have been fully wound down;

(d) the Company has no assets and no liabilities;

(e) in the circumstances, there is no reason for the Company to continue as a going concern and the Directors are of the view that the Company should therefore be wound up voluntarily;

(f) Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY1-1204, Cayman Islands have indicated that they consent to act as joint voluntary liquidators of the Company (the "**JVLs**") if so appointed;

(g) the Directors have received and reviewed a liquidation proposal from the JVLs, together with its terms and conditions (the "**Liquidation Proposal**");

(h) the Directors have conducted a full enquiry into the Company's affairs and to the best of the Directors' knowledge and belief the Company will be able to pay its debts in full together with interest at the prescribed rate within twelve-month period from the commencement of the voluntary winding up; and

(i) the Directors have received a form of the declaration of solvency for execution pursuant to section 124 of the Companies Act (as amended) (the "**Declaration of Solvency**").

1.2 **IT IS RESOLVED** that:

(a) the Liquidation Proposal be approved;

(b) the Directors recommend to Mark Patrick, being the only Shareholder having the right to receive notice of, attend, speak at and vote at general meetings of the Company, that:

(i) the Company be wound up voluntarily; and

(ii) Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd be appointed as the JVLs of the Company; and

(c) if the Company is wound up voluntarily, each Director execute the Declaration of Solvency.

2. GENERAL AUTHORISATION

2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, any Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively), and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as any Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of any Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, all the Directors prior to such action being taken.

Mark Patrick
Director

Paul Murphy
Director

EXHIBIT 66

Walkers

BY EMAIL

25 April 2025 Our Ref: PP/PA/187150

Johnstone Law
10 Market Street, PO Box 926
Grand Cayman KY1-9006

Dear Mr Johnstone

CHARITABLE DAF HOLDCO, LTD (IN VOLUNTARY LIQUIDATION) (THE "COMPANY")

1. We act as Cayman Islands counsel to the Company.

2. We refer to the documents served yesterday by your firm on the Company at its registered office, which include a winding up petition ("**Petition**"), an application for the appointment of provisional liquidators ("**PL Application**"), and a cover letter of service ("**Service Letter**").

The Company is already in Voluntary Liquidation

3. Please note the following (all documents enclosed):

   (a) On 29 March 2025, Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd executed a consent to act as joint voluntary liquidators of the Company ("**JVLs**").

   (b) On 2 April 2025: (i) the directors of the Company executed written resolutions including to recommend to the management shareholder that the Company be wound up voluntarily and the JVLs be appointed; (ii) the management shareholder executed special resolutions that the Company be wound up voluntarily and the JVLs be appointed; and (iii) the directors of the Company executed a declaration of solvency.

   (c) On 14 April 2025, Gazette Issue No. 8/2025 was published, which included notice that on 2 April 2025 the Company was placed into Voluntary Liquidation and the JVLs appointed.

4. Further, please see enclosed:

   (a) The current Memorandum and Articles of the Company, dated 20 February 2025 ("**M&A**").

(b) The current Register of Members of the Company, dated 25 April 2025.

(c) An email chain between your firm and our firm dated 23-24 April 2025.

5. As outlined above, the Company is in Voluntary Liquidation.

6. That fact should have been evident from a search of the Gazette prior to service, as per the enclosed notice referred to at paragraph 3(c) above.

7. Further, the email chain referred to at paragraph 4(c) above is all that we received from your firm by way of pre-action correspondence. We enquired as to the nature of the proceedings to be served, and had we been informed that it was a winding up petition and application for the appointment of provisional liquidators (rather than simply that the proceedings were in the process of being served on the Company's registered office), we would have informed you that the Company was already in Voluntary Liquidation.

8. There is nothing in the M&A which entitles your clients to receive notice from the Company of its entry into Voluntary Liquidation.

The appropriate course of action

9. As the Company is already in Voluntary Liquidation, the Petition and PL Application are plainly redundant, and we invite your clients to withdraw them without delay.

10. If the JVLs (or your clients) consider it appropriate that the Voluntary Liquidation be brought under the supervision of the court, any of them may make an application for a supervision order pursuant to the Companies Act section 131. If your clients would like to discuss such an application with the JVLs, including in respect of funding, please let us know.

11. In the event that the Petition and PL Application are not withdrawn, or at the very least the hearing of the PL Application (which we understand from your firm's Service Letter is listed on Monday 28 April 2025 at 2pm) is not adjourned, this letter must be brought to the attention of the Court, and we will appear on behalf of the Company.

12. If it becomes appropriate to do so, we will put this letter before the Court including on the question of costs.

Yours faithfully

Walkers (Cayman) LLP

WALKERS (CAYMAN) LLP

Direct Tel: +1 345 914 6365
Email: Barnaby.Gowrie@walkersglobal.com

EXHIBIT 67

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. OF 2025 (JAJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD

PETITION FOR COURT SUPERVISION
OF A VOLUNTARY LIQUIDATION

TO: THE GRAND COURT OF THE CAYMAN ISLANDS

THE **HUMBLE PETITION** of (1) The Highland Dallas Foundation, Inc, (2) The Highland Kansas City Foundation, Inc, (3) The Highland Santa Barbara Foundation, Inc, (4) The HCMLP Charitable Fund (the ***Supporting Organisations*** or ***Petitioners***), in their capacity as members of Charitable DAF Holdco, Ltd (the ***Company*** or ***HoldCo***):

1. The purpose of this petition (the ***Supervision Application***) is to seek an order that the voluntary liquidation of the Company continue under the supervision of this Honourable Court pursuant to section 131 of the Companies Act (2025 Revision) (the ***Act***) and Order 15, Rule 3 of the Companies Winding Up Rules (2023 Consolidation) (the ***CWR***). The Company was placed into voluntary liquidation, and Mitchell Mansfield and William Clarke (together, the ***JVLs***) of Kroll (Cayman) Ltd, pursuant to written resolutions of the directors of the Company dated 2 April 2025.

2. The petitioning Supporting Organisations are non-profit charitable entities exempt from taxation under s.501(c)(3) of the US Internal Revenue Code who collectively hold (or in light of recent developments allegedly held) 100% of the Participating Shares in the Company. Holders of Participating Shares are entitled under the Company's Amended and Restated Memorandum and Articles of Association dated 20 February 2025 (the ***Articles***) to participate in the profits or assets of the Company but are not entitled to attend, to speak at, or to vote at general meetings. By contrast, holders of Management Shares are entitled to attend, to speak at and to vote at any general meeting, but have no right to participate in the profits or assets of the Company.

3. HoldCo is a Cayman Islands exempt company formed on 27 October 2011 (registration no. 263805) whose registered office is Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands. HoldCo is purportedly governed by the Articles.

4. HoldCo is (or at least was) the limited partner of Charitable DAF Fund, LP (the ***Fund***), a Cayman Islands limited partnership formed on 28 October 2011 (registration no. 53083) whose registered office is Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands. The Fund is, to the best of the Petitioners' knowledge, governed by the Amended and Restated Limited Partnership Agreement dated 7 November 2011 (the ***ARLPA***).

5. This Petition refers to the Supporting Organisations' petition seeking the winding up of the Company on just and equitable grounds dated 10 April 2025 (the ***J&E Petition***), and the summons for the appointment of provisional liquidators dated 10 April 2025 (the ***PL Summons***), in Proceedings FSD. No. 99 of 2025, the latter of which is listed for hearing before this Honourable Court on 29 April 2025 (the ***Hearing***) – copies of which are at **Schedules A** and **B**, respectively.

VOLUNTARY LIQUIDATION OF THE COMPANY

6. On 23 April 2025 at 1:42pm, Johnstone Law (the Petitioners' attorneys) sent an email to Walkers (Cayman) LLP advising that they acted for the Supporting Organisations and seeking confirmation as to whether Walkers acted for and were instructed to accept service on the Company's behalf.

7. On 24 April 2025 at 11:35am, Walkers responded to Johnstone Law requesting confirmation of the nature of the proceeding to be served – but not addressing whether they acted for or had instructions to accept service on the Company's behalf. Johnstone Law replied that given their failure to respond the day prior, the papers would be served on HoldCo's registered office. That same day, copies of the Petition, the PL Summons and supporting materials were served on the Company's registered office.

8. On 25 April 2025, the Petitioners were preparing for the Hearing of the J&E Petition / PL Summons and in the course of finalising the hearing materials for delivery to the Court. At 3.32pm that day however Johnstone Law received a letter from Walkers (the ***Walkers Letter***) that stated *inter alia*:

   (a) On 2 April 2025, nearly four weeks ago: (i) HoldCo was placed into voluntary liquidation, and the JVLs appointed, by way of written resolutions of the directors, and (ii) the directors had executed a declaration of solvency with respect to the Company.

(b) On 14 April 2025, Gazette Issue No. 8/2025 (the ***Gazette***) was published, which included notice that the Company was placed into voluntary liquidation.

(c) Nothing in the Articles entitled the Petitioners to receive notice from the Company of its entry into Voluntary Liquidation, and "*[t]he fact should have been evident from a search of the Gazette prior to service, as per the enclosed notice*".

(d) As the Company was already in voluntary liquidation, the Petition and Summons were "*plainly redundant*" and should be withdrawn. If they were not withdrawn, this letter must be brought to the Court's attention at the Hearing, at which Walkers will appear for the Company and seek costs if appropriate.

9. Enclosed to the Walkers Letter were copies of the following:

(a) director resolutions dated 2 April 2025 (the ***Director Resolutions***);

(b) management shareholder resolution dated 2 April 2025;

(c) the JVLs' consents to act;

(d) declaration of solvency;

(e) the Gazette;

(f) the Articles;

(g) the Company's register of members as at 25 April 2025.

10. Although not stated anywhere in the Walkers Letter, the enclosures revealed the following matters, which were previously unknown to the Petitioners:

(a) On 7 February 2025, HoldCo allotted 318 participating shares to an entity named 'DFW Charitable Foundation' (***DFW***) – the effect being the substantial dilution of the Supporting Organisations' interest in the Company, from a cumulative holding of **100%** of the Participation Shares to **48.9%**. The Petitioners have since discovered that DFW is a Delaware company incorporated on 9 December 2024, registered to Mark Patrick's home address and Mark Patrick being the sole member. Mark Patrick is a director of and holds the Management Shares in HoldCo. DFW was purportedly granted charitable status by the State of Delaware on 7 February 2025, the same day it was allotted 318 participating shares in the Company.

(b) On 20 February 2025, HoldCo amended its Articles by way of special resolution, such special resolution passed solely by Mark Patrick.

(c) The Company's sole investment, being an interest in an entity by the name of CDMCFAD LLC was redeemed on 27 March 2025 and, on 2 April 2025, the proceeds available for distribution from this redemption were distributed in the amount of US$1,612,192 purportedly to HoldCo's participating shareholders;

(d) As at 2 April 2025, the Company has no assets.

11. On 27 April 2025, Johnstone Law responded to the Walkers Letter setting out the Petitioners' serious concerns arising from the matters disclosed therein, and stating *inter alia*:

(a) There can be no honest, reasonable or lawful justification or basis for the Company taking the steps it has, or for doing so without notifying and consulting the Petitioners in advance, and the subsequent failure to provide notice of such actions makes clear the information was deliberately withheld (supported further by the matters being disclosed only 1 clear working day before the Hearing).

(b) The steps were taken while the Supporting Organisations and HoldCo were engaged in correspondence about financial irregularities and lacking transparency on the part of the Company and its underlying interests. The failure of HoldCo (through its current directors or its US attorneys) to disclose this information in the course of that correspondence is proof of the utmost bad faith and deception on the part of HoldCo and its directors.

(c) The fact that the JVLs appointed by the Company have themselves taken no steps to inform the Supporting Organisations of such matters since their appointment causes them to conclude the JVLs lack sufficient independence required to protect the interests of the Supporting Organisations and the Company as a whole.

(d) The Walkers Letter makes it more, not less, essential that independent officer holders operating under the Court's supervision are appointed over the Company without delay. The Supporting Organisations will not withdraw the Petition or the PL Summons, but plan to issue or at least finalise additional proceedings on 28 April 2025, and to invite the Court to appoint Margot MacInnis and Sandipan Bhowmik as official liquidators of the Company at the Hearing – and seeking the Company's agreement by 12pm on 28 April 2025.

(e) The Supporting Organisations were, until 7 February 2025, and in law remain, owners of 99% of the economic interest in HoldCo. They do not approve of the purported share dilution nor the appointment of JVLs and their rights are fully reserved, and in the circumstances, it is inappropriate for assets of the Company, or any related entities, to be used for the purpose of payment of legal fees.

(f) A request for details of DFW, including when it was formed and received charitable status, the identity of its owners/controllers, its registered address and centre of operations.

(g) A request for confirmation by 8pm on 27 April 2025: (i) what has become of the Company's interest in the Fund, and (ii) to whom and in what amounts were the distributions referred to in the Director Resolutions transferred.

12. No response was received from Walkers by 8pm on 27 April 2025. At 9:16pm, Johnstone Law sent an email to Walkers noting the failure to provide the information and requesting that, in the circumstances and, if within their knowledge, the JVLs provide such information.

NOTICE OF SUPERVISION APPLICATION

13. In the circumstances, in particular that the Supporting Organisations (and purportedly DFW, although the Petitioners do not accept the validity of the share allotment to DFW) are the Company's only contributories – and given the clear evidence that the Supporting Organisations' interests in the Company have been diluted and the assets of the Company dissipated without notice or justification – the Petitioners respectfully request the Court exercise its discretion to dispense, as it is entitled to do, with the notice requirements in O.15 of the CWR.

APPLICATION FOR SUPERVISION ORDER

14. The Petitioners respectfully seek an Order from this Honourable Court that the voluntary liquidation of the Company continue under the supervision of the Court pursuant to section 131 of the Act, and that Margot MacInnis and Sandipan Bhowmik of Grant Thornton be appointed as joint official liquidators (together, the ***JOLs***) of the Company, for the following reasons:

(a) The making of a supervision order will allow the JOLs to conduct a proper investigation of the affairs of the Company and conduct an orderly winding up under the supervision of this Honourable Court for the benefit of all stakeholders.

(b) There is to say the least a large cloud hanging over Mr Patrick and Mr Murphy, as directors of HoldCo, who should not be allowed or entitled, irrespective of the professionalism of the JVLs, to retain the role and functions that directors normally retain attendant upon voluntary liquidations.

(c) The Supporting Organisations, as the owners of 100% of the economic interest in the Company (at least prior to the purported allotment of shares to DFW on 7 February 2025) should be entitled to choose the liquidator, or at least a liquidator not appointed by the directors, the conduct of whom has raised serious concerns even prior to the events disclosed in the Walkers Letter.

(d) Court supervision will result in an indisputably more effective, economic, and expeditious liquidation of the Company in the interests of the Supporting Organisations as contributories. Save in respect of any claim the Supporting Organisations save, there

does not appear to be any creditors.

(e) An investigation into the allegations of misconduct on the part of the management of the Company will be substantially expedited and more effective if conducted by official liquidators, who are not the same persons as the JVLs.

(f) Should an investigation identify transactions that should be set aside, or claims that should be advanced, whether against the directors of the Company or third parties, such actions are most appropriately and effectively undertaken by official liquidators, who are not the same persons as the JVLs.

(g) As the holder of the Management Shares in the Company (Mr Patrick) is resident in the US and as are many of the entities related to and with whom the Fund transacts, it is highly likely, if not certain, that the liquidators will need to instruct attorneys in the US, obtain recognition under chapter 15 of the US Bankruptcy Code, and commence proceedings in the US to recover any assets wrongfully dissipated. Such steps necessitate the liquidation being conducted under the supervision of the Court.

15. Ms MacInnis and Mr Bhowmik of Grant Thornton:

(a) are "qualified insolvency practitioners" as defined in s.89 of the Act and as prescribed by Regulation 4 of the Insolvency Practitioners' Regulations (2023 Consolidation) (***IPR***);

(b) meet the residency requirements contained in Regulation 5, IPR;

(c) meet the independence requirements prescribed by Regulation 6, IPR;

(d) meet the insurance requirements prescribed by Regulation 7, IPR, and Grant Thornton holds a trade licence which authorises its staff to carry on business as professional insolvency practitioners; and

(e) consent to their appointment as official liquidators of the Company, if so appointed.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

1. The voluntary liquidation of the Company be continued under the supervision of the Court pursuant to s.131 of the Act and O.15, r.8 of the CWR.

2. Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands, be appointed as joint official liquidators (***JOLs***) of the Company pursuant to s.132 of the Act.

3. The JOLs have the power to act jointly and severally.

4. The JOLs shall not be required to give security for their appointment.

5. The JOLs be authorised pursuant to s.110(2)(a) of the Act, to jointly and severally exercise all of the powers specified in Part II of the Third Schedule to the Act..

6. The JOLs be authorised pursuant to s.110(2)(a) of the Act to exercise the following powers in Part I of the Third Schedule to the Act, without the further sanction or intervention of the Court:

   a. The power to bring or defend any action or other legal proceeding in the name and on behalf of the company;

   b. The power to carry on the business of the company so far as may be necessary for its beneficial winding up;

   c. The power to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company.

   d. The power to deal with all questions in any way relating to or affecting the assets or the winding up of the company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.

   e. The power to engage staff, agents and/or consultants in the Cayman Islands and elsewhere to assist the JOLs in the performance of their functions; and

   f. The power to engage attorneys and other professionally qualified persons in the Cayman Islands and elsewhere to assist the JOLs in the performance of their functions.

7. The JOLs be specifically authorised and entitled without the further sanction of the Court to undertake the following:

   a. Presenting a petition for the winding up of the exempted limited partnership, Charitable DAF Fund, LP (the Fund).

   b. Taking control of the Company's subsidiaries, joint ventures, investments, associated companies, businesses, or other entities (collectively referred to as the "Associated Companies") in which the Company holds an interest (or such shares of such Subsidiaries and/or Associated Companies as are owned directly or indirectly by the Company), in each case, wherever located, as the JOLs see fit. Additionally, to call or cause to be called meetings of such Subsidiaries and/or Associated Companies, and to sign resolutions (in accordance with the provisions of any relevant constitutional or related documentation of

such companies) and take such other steps, including applications to and communications with appropriate courts and/or regulators, as the JOLs consider necessary to appoint or remove directors, legal representatives, officers, and/or managers to or from such Subsidiaries and/or Associated Companies. In each case, take the necessary steps to ensure that the registered agents (or other equivalent corporate administrators) of such Subsidiaries or Associated Companies implement the changes to the boards of directors, legal representatives, officers, and/or managers of such companies or entities. This includes (without limitation) effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the JOLs. Furthermore, to take such other actions in relation to all such Subsidiaries or Associated Companies as the JOLs see fit for the purpose of protecting the assets of the Company and managing its affairs (which, to avoid any doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies).

c. Issuing and pursuing an application by summons for an order appointing themselves or other fit and proper persons as joint provisional liquidators of the Fund.

d. Locating and taking possession of and preserving all the Company's books, records and other papers (whether hard copy, digital or otherwise).

e. Identifying the nature and location of all property and assets which appear to belong to the Company.

f. Getting in or otherwise securing and protecting all such property and assets.

g. Investigating the costs and expenses incurred by the Company.

h. Identifying any creditors of the Company.

i. Investigating the promotion, business, dealings, and affairs of the Company.

j. Investigating whether the Company or the JOLs may have any claims (either in this jurisdiction or elsewhere) against any officer or employee or former officer or employee of the Company, or against any other person or persons.

k. Commencing and pursuing any such or other claims, if the JOLs are of the view that that is necessary or desirable in order to protect the ability of the Company or any liquidator of the Company to pursue any such claims or otherwise to preserve the value of any such claims.

l. Seeking registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the liquidation.

m. Carrying on the business of the Company so far that may be beneficial for the Company, its

creditors.

n. Being at liberty to complete or terminate any contracts or transactions entered into by the Company.

o. Retaining and operating the existing bank or other accounts of the Company and where necessary opening new accounts.

p. Taking control of or redirecting any email or other digital communication method used for the purposes of the Company's business or affairs.

q. Applying to the Court for directions, including on short notice, including for Orders to vary these powers and functions.

8. The Court dispenses with the requirement for this Supervision Application and the hearing of this Supervision Application to be advertised pursuant to O.15 of the CWR.

9. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with s.109 of the Act, Part III of the Regulations, and O.20 of the CWR.

10. The costs of this Supervision Application shall be paid out of the assets of the Company as an expense in the liquidation, such costs to be taxed if not agreed with the JOLs.

11. The JVLs shall prepare a final report and accounts for the period from the commencement of the voluntary liquidation until the date of the supervision order, and deliver such report to the JOLs within 28 days of this Order.

12. Such further or other orders be made as the Court shall deem fit.

AND your Petitioner will ever pray etc.

Dated 28th April 2025

Johnstone Law

Johnstone Law Ltd.
Attorneys for the Petitioners

THIS PETITION was presented by Johnstone Law Ltd., attorneys for the Plaintiffs, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (**Ref:AJ/RZ/00016**)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on at am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands; Tel: +1(345)949-4296.

EXHIBIT 68

THE COMPANIES ACT (AS AMENDED)

NOTICE OF APPOINTMENT OF OFFICIAL LIQUIDATORS

Charitable DAF HoldCo, Ltd - In Official Liquidation (the "Company")
Registration No: 263805
Grand Court FSD Cause No: 0116-2025 (JAJ)

TAKE NOTICE that by order of the Grand Court made on 6 May 2025, that the Company, registration number 263805 whose registered office is situated at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands, was ordered to be wound up in accordance with the Companies Act (As Amended).

AND FURTHER TAKE NOTICE that Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, Century Yard, Cricket Square, PO Box 1044, Grand Cayman, Cayman Islands KY1-1102 ("**GTSS**"), were appointed as the Joint Official Liquidators ("**JOLs**") of the Company.

Creditors of the Company are invited to prove their debts or claims and to establish any title they may have under the Companies Act (As Amended). The proof of debt form can be requested by contacting us via the email below.

Dated this 7th day of May 2025

Contact for enquiries:
Margot MacInnis / Sandipan Bhowmik
Telephone: +1 (345) 949 7100
Email: cdaf.core@uk.gt.com

Mailing address for service:
2nd Floor, Century Yard
Cricket Square
PO Box 1044
Grand Cayman
Cayman Islands, KY1-1102

EXHIBIT 69

THE COMPANIES ACT

NOTICE OF FIRST MEETING OF CONTRIBUTORIES

Charitable DAF HoldCo, Ltd. - In Official Liquidation
(the "Company")

Registration No: 263805

Grand Court Cause No: FSD 116-2025 (JAJ)

NOTICE OF THE FIRST MEETING OF CONTRIBUTORIES of the Company is to be held on 9 July 2025 at 9.00am (Cayman time) at the offices of Grand Thornton Specialist Services (Cayman) Limited.

Attendance by telephone conference will also be possible. Those contributories wishing to attend the meeting by this means are required to advise the JOLs of their intention to do so, and apply for confidential dial-in details, by no later than 4:00pm (Cayman time) on 4 July 2025 at the contact for enquiries listed below.

Corporate contributories entitled to attend the meeting in person or by telephone conference must appoint a proxy by completing and returning a proxy form, which you may also obtain by contacting the JOLs.

The completed proxy form must be returned to the offices of Grant Thornton Specialist Services (Cayman) Limited or submitted by email to the e-mail address listed below by 4:00pm (Cayman time) on 4 July 2025.

Dated: 2 June 2025

Margot MacInnis
Joint Official Liquidator

Contact for enquiries:
Margot MacInnis / Sandipan Bhowmik
Telephone: +1 (345) 949 7100
Email: CDAF.Core@uk.gt.com

Mailing address for service:
2nd Floor, Century Yard
Cricket Square
PO Box 1044
Grand Cayman
Cayman Islands, KY1-1102

EXHIBIT 70

Seyfarth

Seyfarth Shaw LLP
2029 Century Park East
Suite 3500
Los Angeles, California 90067-3021
T (310) 277-7200
F (310) 201-5219

dmancino@seyfarth.com
T (310) 201-5241

www.seyfarth.com

February 14, 2025

VIA FAX

Michael Stockham
Partner
Holland & Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, TX 75201

Re: Future Correspondence with Directors of Charitable DAF Holdco, Ltd. ("Charitable DAF")

I am writing you because I am disappointed by the increasingly hostile and accusatorial tone of your emails to Paul Murphy and Mark Patrick. After I re-read your Friday January 31st and Friday February 7th emails to Paul, Mark and Julie Diaz, the tone of which was, in my view, "over the top" of reasonableness even for someone who describes himself as having "tendency toward the blunt," I decided it was time to clear the air about several of your allegations and request that all future communications to my client and its representatives from you or your firm and from representatives of your clients such as Julie Diaz be sent through me only.

First, Charitable DAF is not paying Paul or Mark "millions in director fees," as alleged in your January 31st email. The information supplied by SEI is simply incorrect. Also, all compensation decisions are supported by outside expert opinions. Similarly, for 2024 the legal spend did not exceed $10 million and as matters are settled will continue to fall in 2025 and 2026. Furthermore, as was discussed in ValueScope's November 18, 2024 presentation, virtually all non-transactional legal expenses relate to claims brought by, or initiated due to actions of Mr. Dondero's many adversaries.

Second, it is hard to understand the change of heart about ValueScope and the nature and amount of the information it provides to your clients about Charitable DAF investments. It appears that when Grant Scott, Mr. Dondero's close friend, was Charitable DAF's sole director, the degree of detailed information provided in ValueScope's valuation analysis was fine (see, e.g., the valuation analysis dated March 31`, 2020 attached). Now that Mark has left Skyview and is not rubber-stamping investment requests from NextPoint, as was Grant Scott, the tone of communications has become increasingly hostile and the demands for information have only increased, even though, as you yourself acknowledged in one of our early calls, Participating Shareholders of Charitable DAF have no rights to information and what they already get exceeds that to which they are entitled.

Finally, the controlling role and influence that Mr. Dondero and his agents such as Lucy Bannon appear to be exerting over the Supporting Organizations raise significant private benefit concerns that call into question whether one or more of the Supporting Organizations is at risk

of becoming a Restricted Person as that term is defined Article 21 of Charitable DAF's Articles of Association. I know David will be familiar with the seminal Tax Court decision in *American Campaign Academy v. Commissioner,* 92 T.C. 1053 (1989),which involved the denial of section 501(c)(3) exemption because the Internal Revenue Service concluded that the organization was operated for the substantial nonexempt purpose of benefitting private interests. We offer no opinion on that question but raise it as a matter of concern to Charitable DAF.

In closing, Paul is still willing to have a Zoom call with representatives the Supporting Organizations as we agreed to in December 2024. There should be no pre-conditions other than that the call not be recorded and that your clients acknowledge the importance of keeping the contents of the call confidential.

Very truly yours,

SEYFARTH SHAW LLP

Douglas M. Mancino

cc. David Rosenberg, Paul Murphy and Mark Patrick

DMM:kcl

316209527v.3

EXHIBIT 71

Holland & Knight

One Arts Plaza | 1722 Routh Street, Suite 1500 | Dallas, TX 75201-2532 | T 214.964.9500 | F 214.964.9501
Holland & Knight LLP | www.hklaw.com

Michael Stockham
+1 214-969-2515
Michael.Stockham@hklaw.com

February 27, 2025

Via Email: dmancino@seyfarth.com

Douglas M. Mancino, Esq.
Seyfarth Shaw LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021

Re: Charitable DAF Holdco, Ltd. ("Charitable DAF")

Doug-

I received your letter dated February 14, 2025. I apologize if you believe my previous emails to be "over the top." However, what you perceive as "hostility" is nothing more than frustration at the circuitous dialogue and veiled threats we receive in response to simple and repeated requests for transparency as to the finances and governance of Charitable DAF. So far, our specific concerns have been met with denials but no real data on the particular issues raised. In a world where Messrs. Dondero and Patrick appear to be feuding, the Supporting Organizations can, at best, adopt a position of "trust but verify." They will, therefore, continue to push for transparency.

Further, the frustration you perceive arises from comments in many of the communications we have received from you and your clients attempting to position the Supporting Organizations as being manipulated by Mr. Dondero. The Supporting Organizations are nobody's patsy, proxy, or puppet. To suggest otherwise insults the intellect and professionalism of the executive leadership at each of the Supporting Organizations.

Paul Murphy continues to assert that he is ready to present to the Supporting Organizations and clear up all the misunderstandings. You know our concerns; let us get to it. Please propose dates in the next two weeks on which Paul is ready to present to, and answer questions from, the Supporting Organizations.

Sincerely yours,

Michael W. Stockham

cc: David Rosenberg

#517320412_v1

EXHIBIT 72

Seyfarth

Seyfarth Shaw LLP
2029 Century Park East
Suite 3500
Los Angeles, California 90067-3021
T (310) 277-7200
F (310) 201-5219

dmancino@seyfarth.com
T (310) 201-5241

www.seyfarth.com

March 20, 2025

FEDEX

TEGE Referrals Group
Internal Revenue Service
1100 Commerce Street
MC 4910 DAL
Dallas, TX 75242-1027

Re: Highland Dallas Foundation, Inc. (EIN: 45-3961755)

Dear Sir or Madam:

I am writing on behalf of my client, Charitable DAF Holdco, Ltd., a Cayman Islands exempt[1] company ("DAF Holdco"), concerning the deterioration of its relationship with one of its Participating Shareholders, Highland Dallas Foundation, Inc. ("Highland Dallas"). Highland Dallas is a supporting organization of the Dallas Foundation.[2]

The deterioration of this relationship is due directly to the undue influence and control exercised over Highland Dallas by James D. Dondero and his affiliates, as described in this Form 13909, *Tax-Exempt Organization Complaint (Referral).* This disclosure letter supplements in detail and in exhibits the more general information described in the accompanying Form 13909 and is an integral part of that form (collectively, the Form 13909 and this letter are referred to as the "Referral").

We believe the information described in this Referral will demonstrate clearly that Mr. Dondero's influence and control is an inappropriate donor relationship with representatives of the Dallas Foundation who serve on the Board of Directors of and as officers of Highland Dallas. We believe this undue influence and control potentially jeopardizes the tax-exempt status of Highland Dallas as an organization described in section 501(c)(3) and, at a minimum, causes it to fail to remain a supporting organization described in section 509(a)(3) because of the

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[1] To be clear, DAF Holdco is not a tax-exempt organization under U.S. tax law, notwithstanding the use of the term "DAF" in its corporate name.. However, under its Cayman Islands Articles of Association, a "Restricted Person," i.e., an entity that *cannot* own Participating Shares, is an organization that is *not* described in section 501(c)(3) of the Code. As a consequence, all Participating Shareholders of DAF Holdco must be and remain organizations described in section 501(c)(3).

[2] The Dallas Foundation is a tax-exempt community foundation described in sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 (the "Code").

excessive influence of a disqualified person and substantial contributor, i.e., Mr. Dondero, under section 509(a)(3)(C).

This Referral is divided into three major parts, with multiple subparts.

Part I provides the Internal Revenue Service (the "IRS" or the "Service") with extensive factual information concerning Highland Dallas, its governance and control. As will be seen, Mr. Dondero exerts undue influence and control over Highland Dallas directly, as a director, President and substantial contributor, and indirectly through his and his associates' influence over Highland Dallas's supported organization representatives on the Highland Dallas Board of Directors, and the Dallas Foundation itself.

Part II provides the IRS with background information on DAF Holdco and Mr. Dondero's efforts to exert dominion and control over DAF Holdco and its assets. Because Highland Dallas is a Participating Shareholder of DAF Holdco, Mr. Dondero's efforts (both successful and unsuccessful) to control DAF Holdco for his personal gain directly affect Highland Dallas financially and provide him an additional amount of private benefit and private inurement from a donation where he once benefitted from a charitable contribution deduction to a charitable remainder trust ("CRT").

As will be discussed in Part III, the tax discussion section, Mr. Dondero's influence and control is pervasive and is exercised primarily for Mr. Dondero's financial benefit directly and for the financial benefit he derives indirectly through several entities owned or controlled by him. We believe he therefore derives more than insubstantial benefit form Highland Dallas and causes its net earnings to inure to his benefit, all in violation of section 501(c)(3)'s most basic operational requirements. Also, at a minimum, we believe his influence and control over Highland Dallas has caused it to become a private foundation, thereby subjecting Mr. Dondero to Chapter 42 excise tax exposure.

I. Background Concerning the Formation and Legal Structure of Highland Dallas, Highland Capital Management, L.P., and NexPoint Advisors, L.P.

A. Highland Dallas

Highland Dallas was incorporated as a Delaware nonprofit nonstock corporation by Mr. Dondero in 2011 in connection with his desire to form three tax-exempt public charities to become the three remaindermen of a CRT of which he was the income beneficiary. Highland Dallas applied for and was recognized by the IRS as a charitable organization described in section 501(c)(3) of the Code and as a supporting organization of the Dallas Foundation described in section 509(a)(3) of the Code. Highland Dallas did not register as a foreign corporation to do business in Texas until 2020.

At the time of its formation, Mr. Dondero became the sole "individual" member of Highland Dallas, with the legal power to select one director. The Dallas Foundation became the sole "institutional" member of Highland Dallas, with the power to select two directors. Thus, in 2011, Highland Dallas satisfied the requirements for being classified as a Type I supporting organization of the Dallas Foundation.

In addition, Mr. Dondero, in 2011, became and remains today the President of Highland Dallas and a member of its Board of Directors.

The other two supporting organizations are the Highland Santa Barbara Foundation, Inc. ("Highland Santa Barbara") (EIN: 45-3962008) and the Highland Kansas City Foundation, Inc. ("Highland Kansas City") (EIN: 45-3961865). These two supporting organizations of the Santa Barbara Foundation and Greater Kansas City Community Foundation, respectively, also have the same legal structure as Highland Dallas and, like Highland Dallas, each owns 100 Participating Shares of DAF Holdco.

We do not believe either Highland Santa Barbara or Highland Kansas City is as easily manipulated by Mr. Dondero and his affiliates as Highland Dallas because, according to their Forms 990 for 2023 (which is the last year those forms are available on Guidestar.com), Participating Shares of DAF Holdco are their only assets. By contrast, Mr. Dondero has made substantial additional contributions to Highland Dallas after 2011, either directly or through trusts or other entities owned or controlled by Mr. Dondero, some of which will be addressed later in this Referral. Thus, we believe Mr. Dondero is in a position to exert greater influence as a substantial contributor to Highland Dallas on the Directors of Highland Dallas appointed by the Dallas Foundation (including the Dallas Foundation's President & CEO, Julie Diaz).[3]

B. Mr. Dondero and Highland Capital Management, L.P.

Highland Capital Management, L.P. ("HCM") is an investment management firm located in Dallas, Texas that was co-founded in 1993 and controlled by Mr. Dondero and individuals close to him. As described on page 7 of the *Special Turnover Petition* filed by UBS Securities LLC and UBS AG London Branch in the New York Supreme Court in 2023, a complete copy of which is enclosed with this Referral as Exhibit 1 (the "2023 UBS Petition"), before HCM filed for bankruptcy, "HCM was an investment management firm that managed billions of dollars of assets 'through its organizational structure of approximately 2,000 separate business entities.'" (citation omitted). It is estimated by a plaintiff in another action that, at its height, HCM managed as much as $40 billion in assets.

Mr. Dondero was not only HCM's co-founder with Mark Okada,[4] he served as HCM's President and Chief Executive Officer until he was removed by the bankruptcy trustee in 2020.

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[3] By way of example, the consolidated financial statements of the Dallas Foundation for 2023 available on its website include the assets of seven supporting organization, including Highland Dallas. Page 22 of the statements disclose that approximately $163.4 million of its assets were held by supporting organizations. On page 19, it appears that approximately $92.3 million (almost 57%) represent Highland Dallas assets. Also, in 2023, Highland Dallas received almost $34 million in charitable contributions, presumably all from Mr. Dondero and entities affiliated with or controlled by him. Thus, it is understandable why the Dallas Foundation representatives who serve on the Highland Dalias Board would acquiesce to almost any request or demand made by Mr. Dondero or one of his associates such as Lucy Bannon.

[4] In the Dallas Foundation's 2022 Form 990, the most recent available on Guidestar.com, Mr. Okada was listed as a member of the Board of Governors of the Dallas Foundation. On its website, the Dallas Foundation identifies another confidant and employee of Mr. Dondero, Lucy Bannon, as an "Advisory Member" of the Board of Governors (last visited March 5, 2025). Thus, Mr. Dondero continues to exert substantial indirect influence over Highland Dallas's supported organization, the Dallas Foundation.

C. Mr. Dondero, NexPoint Advisors, L.P., and NexPoint Hospitality Trust

In 2012, prior to his removal as President of HCM in 2020, Mr. Dondero formed NexPoint Advisors, L.P. ("NexPoint Advisors"), a Dallas-based portfolio real estate and investment firm. NexPoint Advisors is one of a vast array of entities operating under the "NexPoint" umbrella. After the HCM bankruptcy, Mr. Dondero and his affiliates seamlessly shifted their operations from HCM to NexPoint Advisors and its affiliates.

As alleged in another lawsuit filed in 2021 in the United States Bankruptcy Court of the Northern District of Texas by Marc S. Kirshner as a litigation trustee in the HCM bankruptcy case, "NexPoint [Advisors] was effectively a shell entity that Dondero created in March 2012 to siphon profits from [HCM] in order to evade [HCM's] creditors." *See Complaint and Objection to Claims,* in *Kirschner v. Dondero, et. Al.* Case No. 19-34054-sgj11, at pages 18-21, a copy of which is attached as Exhibit 2.

Mr. Dondero's family trust, The Dugaboy Investment Trust ("Dugaboy"), a grantor trust, allegedly owns 99.9% of NexPoint Advisors. Mr. Dondero is the income beneficiary of Dugaboy and his sister, Nancy Dondero, is the family trustee of Dugaboy.

One of the entities affiliated with and advised by NexPoint Advisors is NexPoint Hospitality Trust, an open-ended real estate investment trust (the "REIT") based in Ontario, Canada. The REIT was formed in 2018 for the purpose of acquiring and operating income-producing hotel properties in the United States. The REIT's investment interests (called "Units") were listed for public trading on the TSX Venture Exchange of the Toronto Stock Exchange ("TSXV").

Dugaboy contributed 1,500,000 Class B non-voting Units of the REIT to Highland Dallas on December 24, 2019 and also granted Highland Dallas an "embedded" put option to sell them back to Dugaboy for $6.19 per share (the "Put Option"). The net asset value of the REIT as of December 24, 2019 was $6.19 per share. The Put Option is exercisable at any time prior to December 24, 2026. *See* the Dugaboy/REIT documents included as Exhibit 2.

The significance of the Put Option at that time is that the Class B non-voting Units could be treated for valuation purposes as equivalent to the Class A voting Units, which were owned or controlled by Mr. Dondero. Therefore, for purposes of determining their fair market value on the date of the charitable contribution, the valuation firm could value them as if they were voting Units unreduced by a 2.9% discount for lack of control. That allowed Dugaboy to claim a charitable deduction in 2019 of $11,505,000, which we assume passed through to Mr. Dondero as the income beneficiary of Dugaboy. We also assume that Highland Dallas signed a Form 8283, *Noncash Charitable Contributions*, form acknowledging it received the Units that would have been included with Mr. Dondero's 2019 Form 1040 along with a qualified appraisal of the Units (we have no actual knowledge of this, however).

On information and belief, we believe Mr. Dondero has used his influence and control over Highland Dallas to cause it defer exercising the Put Option at least through the effective time of the merger for at least three reasons.

- First, the forbearance to exercise the Put Option allows Mr. Dondero and Dugaboy to enjoy the benefits of an interest-free loan of $9,285,000 (the put exercise price ($6.19 x 1,500,000 units) while the Put Option remains outstanding and unexercised.

- Second, the forbearance to exercise the Put Option effectively has protected Mr. Dondero from the declining value of the REIT between December 2019 and November 2024. As of November 22, 2024, the reported fair value of the Units was $0.015 per Unit, so the fair value on that date of 1,500,000 Units was only $22,500, less than one percent of the Put Option value of $9,285,000.

- Third, most charitable organizations have a policy of immediately selling contributed shares that are listed for trading on a stock exchange in order both to diversify and to reinvest the sale proceeds in a manner that aligns more closely with the charity's investment policy. Had Highland Dallas sold the Units on the TSXV at any time within three years after their receipt, Highland Dallas would have been required to file a Form 8282, *Donee Information Return,* with the Service that would likely have reflected a much lower value of the original contribution amount claimed in 2019. Thus, in effect, Highland Dallas was acting to protect Mr. Dondero from having to address the precipitous fall in fair market value as the REIT Units plummeted in value beginning shortly after the gift was made.

Highland Dallas's failure to exercise the Put Option up until now becomes all the more significant because on November 25, 2024, the REIT announced the execution of a definitive agreement (the "Merger Agreement") pursuant to which the REIT will be dissolved and its subsidiary entities will be merged with and into entities owned or controlled, directly or indirectly, by NexPoint Diversified Real Estate Trust. Under the Merger Agreement, The proposed price per Unit is $0.36 per Unit. According to the press release issued by the REIT announcing the merger, "[t]he proposed price of US$0.36 per Unit represents a premium of approximately 2300% to the 30-day volume weighted average price per Unit on the TSXV ended November 22, 2024 of US$0.015."

Last month, in a press release issued on February 21, 2025, it was announced that a majority of minority votes approved of the merger. Under Canadian law, when a person such as Mr. Dondero owns or controls a majority of a Canadian public company's voting shares, a transaction such as this merger must be approved by two-thirds of the minority shares, or in this instance the 5,131,020 Class B non-voting Units.

Based on public filings with the U.S. Securities and Exchange Commission, we believe the REIT had approximately 29,353,660 Units, of which 82.52% were owned by entities owned or controlled by Mr. Dondero.

We have to assume that Highland Dallas voted its 1,500,000 Units in favor of the merger at Mr. Dondero's request.[5] That suggests that the merger needed Highland Dallas's 29.2% (almost one-third of the two-thirds vote required) of minority Unit's approval. That also suggests that

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[5] We understand that the Board of Directors of Highland Dallas usually acts by Unanimous Written Consent Without a Meeting, which means the Mr. Dondero along with the two Dallas Foundation Board appointees would have approved voting in favor of the merger. Presumably the same would be true if a decision were taken by the Board to refrain from exercising the Put Option.

Highland Dallas chose not to exercise its Put Option to permit Mr. Dondero to retain control over the REIT even as its finances deteriorated.

We have no way of knowing whether Highland Dallas will exercise the Put Option before the REIT is dissolved (projected for the end of the first quarter of 2025, i.e., by the end of this month), but clearly if it fails to do so this will result in a $9 million inappropriate windfall to both Dugaboy and Mr. Dondero. Obtaining the answer to this question would only require the IRS to open an examination of Highland Dallas and issue an Information Document Request and/or issue a third-party subpoena to Dugaboy.[6]

D. Highland Dallas's Assumed Name

In March 2024, Highland Dallas filed an Assumed Name certificate with the Texas Secretary of State to permit it to operate under the name "NexPoint Philanthropies Dallas, Inc." This is consistent with Mr. Dondero's current ownership and control of NexPoint Advisors and his loss of control of HCM in the bankruptcy and consistent with the goal of allowing a private company (NexPoint) and Mr. Dondero to take credit for and enjoy the halo effect from NexPoint Philanthropies Dallas's (really Highland Dallas's) charitable giving.

E. Mr. Dondero's Firearms Contributions to Highland Dallas

Several years ago, Mr. Dondero (either directly or through entities owned and controlled by him) made contributions of a collection of firearms to Highland Dallas. Presumably, a Highland Dallas officer signed the donee acknowledgement on Form 8283, *Noncash Charitable Contributions*, and checked the box "No" asking whether the organization intended to use the property for an unrelated use, because checking "Yes" would limit Mr. Dondero's charitable contribution deduction to his adjusted basis and not its appraised fair market value. This in itself demonstrates Mr. Dondero's improper influence over the Dallas Foundation representatives serving as Board members and officers of Highland Dallas, especially as it is hard to believe a supporting organization of a community foundation could possibly use firearms in a related trade or business.

But to further demonstrate his abuse and diversions of assets for his own benefit, earlier this year in 2025 he diverted a substantial debt service payment of $1.3 million on a loan owed to one of DAF Holdco's subsidiaries to pay for a specially-designed and built vault for those firearms (shotguns). That diversion of assets has caused a default of that loan that has now landed in Texas State court, thereby depleting DAF Holdco's assets further because of legal fees. It is unknown whether the vault was requested by anyone associated with the Dallas Foundation serving as a director or officer of Highland Dallas, such as Julie Diaz, but we believe it likely was.

F. Mr. Dondero's Character

Mr. Dondero has a demonstrated pattern of behavior of stealing assets from those he perceives as adversaries. What is also demonstrated by even a cursory reading of the 2023 UBS Petition

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[6] We will be happy to provide the IRS with a copy of the S-4 filed with the SEC available on EDGAR and the REIT's press releases that were used to develop this data.

and the *First Amended Original Complaint* filed by Highland Employee Retention Assets LLC against Mr. Dondero and his affiliates on July 15, 2024 in the U.S. District Court for the Northern District of Texas, Dallas Division, a complete copy of which is enclosed as Exhibit 4 with this Referral (the "2024 Complaint"), Mr. Dondero, to put it mildly, has no respect for corporate formalities and is willing to engage in self-dealing to strip entities of their assets without regard to any fiduciary duty of care or loyalty to serve his personal needs and to benefit himself financially to the detriment of others, including his own former HCM employees.[7]

The 2023 UBS Petition outlines how Mr. Dondero, facing a $1 billion judgment, directed various entities he owned and controlled to shift substantially all of their assets offshore to a Cayman Islands insurance company for a fraudulent insurance policy. The 2023 UBS Petition is an attempt to collect on a 2020 $1 billion judgment in favor of the UBS entities. Mr. Dondero has been so successful at hiding assets that the UBS entities have not been paid.

The 2024 Complaint seeks recovery of hundreds of millions from Mr. Dondero. It describes how a former Mr. Dondero employee at HCM, Patrick Daugherty, had a falling out with Mr. Dondero. After the falling out, Mr. Dondero took extraordinary steps to ruin Mr. Daugherty's life—depriving him of assets, removing his long-term incentive plan, embroiling him in lawsuits, and the list goes on.

These are not isolated incidents. In the ACIS Capital Management, L.P. matter,[8] Mr. Dondero had a falling out with Josh Terry, a former employee of HCM, and took extraordinary steps to ruin Mr. Terry's life—the same playbook as above with Mr. Daugherty.

In fact, Mr. Dondero and his litigiousness is widely known in the Dallas/Fort Worth area. Mr. Dondero is variously described as "Highland Capital's Giraffe-Eating Hedge Fund Manager" (Dallas Observer June 1, 2012), and "the distressed debt investor who was once a scourge to private equity. . . " (Financial Times March 10, 2023).

As it relates to this Referral more specifically, in a May 3, 2023 post entitled "James Dondero: Dallas's Surprising Philanthropy Hero," the post states: "Most gifts are made through the Highland Dallas Foundation, Inc., the philanthropic arm of Highland Capital Management." Note that this post appears to have been prepared by Mr. Dondero himself and appeared three years after he was ousted as HCM's President. What's more to the point is that it outlines in Mr. Dondero's own words the likely failures of Highland Dallas to comply with the section 509(a)(3) operational test discussed below. A copy of that post is included as Exhibit 6.

G. Skyview Group

Skyview Group is a back-office and administrative service provider whose clients consist 99% of entities affiliated with or controlled by Mr. Dondero. Mr. Mark Patrick was engaged as a tax

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[7] *See also In Re: Highland Capital Management L.P. v. Dondero,* Case No. 19-34054-sgj11 (June 6, 2021), a decision by the U.S. Bankruptcy Court for the Northern District of Dallas. In that opinion, the Bankruptcy Judge found Mr. Dondero to be in contempt for violating a temporary restraining order. A copy of that opinion is enclosed as Exhibit 5.

[8] We can provide the IRS with a copy of this complaint if that would be of interest.

consultant by Skyview Group until Mr. Patrick resigned in October 2024 on the advice of the undersigned counsel. Skyview Group charged DAF Holdco management fees for its services.

Skyview Group is nominally owned and controlled by Scott Ellington, who was HCM's Chief Legal Officer and General Counsel until his removal by the bankruptcy trustee in 2021. Despite this nominal ownership and control by Mr. Ellington, Mr. Dondero controls all compensation decisions, including decisions relating to Mr. Ellington's compensation, and thus dominates Skyview Group as if he owned it himself.

Since Mr. Patrick's resignation from Skyview Group, Mr. Patrick has been directly employed and compensated by DAF Holdco rather than Skyview Group. In addition, Mr. Patrick, again acting on advice of counsel, caused DAF Holdco to give six-months' notice in October 2024 to Skyview Group that it was terminating its contract with Skyview Group.

Mr. Dondero became furious when he learned of these actions, and that is when (for the first time in over a decade) Highland Dallas and Dallas Foundation executives and attorneys started raising questions about DAF Holdco's investments and management. In addition, this is when Highland Dallas, and Julie Diaz (who serves as both the President of the Dallas Foundation and as a Director and Vice President of Highland Dallas), began voicing concerns over DAF Holdco's investment performance, concerns that were never raised when Mr. Dondero's lackey, Grant Scott was rubber-stamping NexPoint and other Dondero-related investments and that were never raised prior to Mr. Patrick's resignation from Skyview Group.

II. DAF Holdco

A. The Grant Scott Control Era

Back in 2011, when Highland Dallas and the two other supporting organizations were being formed, one of the highly successful types of investments designed and marketed by HCM through investment partnerships were collateralized loan obligations, or CLOs.

A CLO is a single security backed by a pool of corporate debt issued by corporate borrowers with low credit ratings or loans taken out by private equity firms to conduct leveraged buyouts. With a CLO, the investor receives scheduled debt payments from the underlying loans, assuming most of the risk in the event of a default. In exchange for taking on that default risk, the investor is offered greater diversity and the potential for higher-than-average investment returns. DAF Holdco was formed initially in 2011 to hold partnership interests in partnerships that held CLOs.

Mr. Dondero caused DAF Holdco to be formed to have a structure through which he could have his CRT make remainder interest distributions of the Participating Shares of DAF Holdco to Highland Dallas and to the other two supporting organizations.[9] How CLOs work is not relevant

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[9] This is documented in Part III, Line 4a of each of the three supporting organizations' Form 990, *Return of Organization Exempt From Income Tax*, for 2023 (the last year for which a Form 990 for the organizations was posted on Guidestar.com).

to this Referral except to the extent that Management Shares of DAF Holdco were initially issued to Mr. Dondero's college roommate and long-time close friend, Grant Scott.[10]

Grant Scott's ownership of the Management Shares from 2011 to 2021 effectively allowed Mr. Dondero to retain control of DAF Holdco and, thereby, use DAF Holdco's assets as a piggybank for other investments described below. Management Shares have no economic right to distributions; the value for Mr. Dondero is in their control over DAF Holdco and the ability to utilize its assets either to make dividend distributions to the Participating Shareholders (i.e., the supporting organizations) or to fund Dondero-managed investments on non-market terms and with below-market returns on investment.

NexPoint Advisors repeatedly reached out to DAF Holdco for investment-backing with below market terms and rates of returns while under the control of Grant Scott. Grant Scott consummated these transactions without hiring outside counsel or valuation experts for DAF Holdco. The lack of ams'-lenggth dealing inder Grant Scott's control is made patently obvious in the ValueScope November 18, 2024 presentation materials included as Exhibit 7. The economics of these transactions clearly show that Mr. Dondero was directing Grant Scott to cause DAF Holdco to enter into below-market deals for DAF Holdco that redirected the profits to Mr. Dondero and entities he owns. In other words, Mr. Dondero was stealing from DAF Holdco and, in turn, the supporting organizations.

Mr. Dondero's theft was not limited to below-market transactions. In March 2020, Mr. Dondero and his affiliates directed Grant Scott to make a $1 million payment to an entity called Tall Pine Group, LLC. The payment was allegedly for professional services rendered, but no such services were rendered to DAF Holdco. In subsequent court filings, it became clear that the $1 million went to pay Mr. Dondero's affiliates' employment compensation bonuses, which could not be paid in the normal course because HCM was subject to various bankruptcy restrictions at the time. Further detail is available in the *Kirschner* Complaint, at page 61, a copy of which is attached hereto as Exhibit 2.

B. The Mark Patrick Control Era (including present day)

Grant Scott assigned the Management Shares to Mark Patrick in March 2021. Mr. Patrick now controls DAF Holdco and the timing of distributions to the supporting organizations, including Highland Dallas. Mr. Patrick also controls the negotiations and approvals of the terms and conditions of all investments since he assumed control. Since then, under Mark Patrick's leadership DAF Holdco has begun to diversify away from Dondero-managed investments.

Total DAF Holdco (including its subsidiaries) exposure to Dondero-managed investments was over $100 million in June 2023. Because of the formation history of DAF Holdco and the various transactions between DAF Holdco and Dondero-managed investments, DAF Holdco has been named as a defendant in numerous lawsuits claiming it is an alter ego of Mr. Dondero and his

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[10] On pages 7 and 8 of the litigation trustee's Complaint and Objection to Claims in *Kirschner v, Dondero* included as Exhibit 2, the trustee described Grant Scott as follows: "Dondero personally selected Scott as his successor to run the Charitable DAF Fund. . . . Scott has no training in finance or compliance and no investment experience. Scott routinely rubber-stamped Dondero's and [HCM's] directives without asking questions or requesting additional information."

entities and that the initial funds transferred to DAF Holdco from the CRT were fraudulent transfers. These lawsuits have been very expensive and time-consuming for DAF Holdco, which disadvantages Highland Dallas and the other Participating Shareholders because the payment of legal fees depletes available cash.

Because Mr. Patrick viewed the $100 million exposure to Dondero-related and the lawsuits as a risk to DAF Holdco (and therefore the Participating Shareholders), he has taken steps to create layers of independence between DAF Holdco and Mr. Dondero. As documented by an independent valuation consultant, ValueScope, LLC (a copy of the ValueScope report is enclosed as Exhibit 7), upon assuming control of DAF Holdco, Mr. Patrick engaged independent counsel to assist him in negotiating "market" terms and returns on investment for investments with all outside parties, especially those controlled by or affiliated with Mr. Dondero, such as NexPoint Advisors. Neither Mr. Dondero nor his associates expected this because no market discipline was exercised by DAF Holdco when it was controlled by Mr. Dondero's college roommate and close friend Grant Scott.

Outside counsel and valuation experts frequently either negotiated more market-standard (and more favorable to DAF Holdco) terms for Dondero-managed investments or advised against the transactions on the terms proposed by Mr. Dondero (via his various entities, including NexPoint Advisors). And, because Mr. Patrick refused to simply rubber-stamp Dondero-related investment asks, Mr. Dondero became upset with Mr. Patrick and demanded that Mr. Patrick provide him with increased levels of control over DAF Holdco, including meetings between Mr. Patrick and Mr. Dondero three times per week when he was still a consultant with Skyview Group and permitting one of Mr. Dondero's affiliates increased access to DAF Holdco information and finances. Mr. Patrick refused these requests.

Mr. Patrick also hired an independent director for DAF Holdco, Paul Murphy. During Mr. Scott's control, Mr. Scott served as sole director and sole person in control. There was no requirement under Cayman law to hire an independent director; Mr. Patrick did so for the benefit of DAF Holdco (and, indirectly, Highland Dallas and the other Participating Shareholders).

Mark Patrick also resigned from Skyview Group in October 2024. As noted above, Mr. Dondero effectively controls Skyview Group, and it is nominally owned by one of his affiliates, Scott Ellington. Mr. Dondero viewed this as the last straw—he viewed this as his final loss of control over DAF Holdco and its assets. On the same day, in order to complete the separation, Mr. Patrick directed DAF Holdco to terminate a services agreement with Skyview Group.

Mr. Patrick's resignation from Skyview Group was recommended by outside counsel, including this firm. Mr. Patrick recognizes he has fiduciary duties to DAF Holdco and its subsidiaries. Mr. Dondero created tension with these duties by demanding that Mr. Patrick rubber-stamp Dondero-managed investments, as did Grant Scott. For example, in September 2024, Mr. Dondero recommended that DAF Holdco consummate a real property acquisition on The Campus at Legacy (described in Exhibit 7) for $45 million and provide one of Mr. Dondero's entities a repurchase option if the price were to appreciate. In no uncertain terms, DAF Holdco would take all the downside financial and real estate risk and transfer the upside financial benefit to Mr. Dondero if this proposal had been accepted. This was typical for Dondero-managed investments.

Mr. Dondero also demanded that Mr. Patrick cause DAF Holdco to wire one of Mr. Dondero's offshore entities, Sentinel, $1.5 million in November 2023. Mr. Patrick sought the advice of outside counsel, who told Mr. Patrick the payment would be "impermissible and illegal for a number of reasons". Mr. Patrick accordingly refused the payment (i.e., embezzlement) request.

Mr. Dondero's behavior and attitude toward DAF Holdco is nothing if not consistent. Whether Mr. Scott or Mr. Patrick was in control, Mr. Dondero never abandoned the belief that the assets he caused his CRT to distribute to DAF Holdco remained his own. Mr. Patrick's steps toward independence and then resigning from Skyview Group in October 2024 led to Mr. Dondero exerting his influence over Highland Dallas in a manner we believe results in improper private benefit accruing to him as discussed in the tax aspects portion of this disclosure letter.

Following Mr. Patrick's resignation from Skyview Group, Mr. Dondero directed his entities to cease all principal and interest payments owed on Dondero-managed investments to DAF Holdco and its subsidiaries, which has led to several ongoing lawsuits discussed below and outlined in Exhibit 7. It is inevitable that Mr. Patrick will receive the same treatment as Mr. Daugherty and Mr. Terry (described above)—he will be subject to frivolous, vexatious lawsuits and harassment because he is Mr. Dondero's newest villain.

C. October 2024 to Present

The events that have unfolded show Mr. Dondero's anger at his loss of control of DAF Holdco's assets. Mr. Patrick met with Highland Dallas shortly after his resignation from Skyview Group and assured Julie Diaz of Highland Dallas and the Dallas Foundation that his resignation would not modify management of distributions to the Dallas Foundation. Mr. Patrick believed the meeting went well; Ms. Diaz voiced no concerns and actually requested additional distributions.

Shortly thereafter, Highland Dallas and the two other Participating Shareholders hired the law firm Holland & Knight (which had already represented the Dallas Foundation for years) to represent them and to send a "no confidence" letter to DAF Holdco. This purported lack of confidence was a new sentiment by Highland Dallas, which had never previously expressed any concern when it received ValueScope reports from Grant Scott. The "no confidence" letter came out of the blue—there were no calls, emails, or other communications that expressed a lack of confidence or requested any information whatsoever.

DAF Holdco subsequently learned that Mr. Dondero directed his subordinates at Skyview Group and NexPoint Advisors to provide false and misleading financial information to Highland Dallas and to the other Participating Shareholders. Rather than contact DAF Holdco or Mr. Patrick to question this information (especially given the questionable source), Highland Dallas sent the "no confidence" letter without any attempt to verify it. (As a post-script, DAF Holdco has refuted the false and misleading information, but the dispute continues because it was never really about that.)

Despite the November 11, 2024 date on the "no confidence" letter, DAF Holdco did not receive it until December 6, 2024, after the November 18, 2024 presentation to the supporting organizations' attorneys, Holland &Knight. In addition, DAF Holdco received the "no confidence letter from Mr. Dondero's personal attorneys, who do not represent Highland Dallas or the other Participating Shareholders.

DAF Holdco responded and voiced its concerns that Mr. Dondero was directing Highland Dallas to take these actions. Recall that Mr. Dondero is a Director and President of Highland Dallas. Holland & Knight ignored the accusations that Mr. Dondero was calling the shots and began sending acrimonious (but toothless) emails to DAF Holdco. Finally, Julie Diaz, a Director and Vice President of Highland Dallas (and President of the Dallas Foundation), sent an email requesting a winding up of DAF Holdco and distribution of all of its assets to Highland Dallas and the other Participating Shareholders.

Paul Murphy, an independent Director of DAF Holdco, made a presentation to the supporting organizations' attorneys from Holland & Knight in which he reviewed all of the governance and management improvements that have already been made, but they persist behind the scenes to facilitate Mr. Dondero's attempts to undermine Mr. Patrick and regain control over DAF Holdco's assets for use by NexPoint for investments.

DAF Holdco was contacted in February 2025 by Cayman Islands counsel stating they represent "DAF 2." DAF Holdco believes this "DAF 2" is an attempt by Mr. Dondero and his affiliates to fraudulently obtain DAF's assets.

In February 2025, DAF Holdco subsidiaries filed two lawsuits against Mr. Dondero's entities for non-payment on Dondero-managed investments. Mr. Patrick also directed a non-DAF entity he controls to file a third lawsuit against Mr. Dondero's entities for non-payment. These lawsuits are fundamentally the same as other lawsuits where creditors have sued Mr. Dondero and his entities for nonpayment. Mr. Dondero has not changed—he refuses to pay his debts and he believes he is the rightful owner of DAF Holdco's assets. Mr. Dondero's instrument is Highland Dallas. He controls Highland Dallas and will cause it to continue its crusade against DAF Holdco. As noted by James Seery, the HCM bankruptcy trustee who removed Mr. Dondero from HCM, Mr. Dondero will "burn the place down" if he does not get his way.

III. Discussion of Tax Exemption-Related Lack of Compliance and Outright Avoidance

In order for an organization to qualify for tax-exempt status under section 501(a) of the Code as a charitable organization described in section 501(c)(3) of the Code, it must be organized and operated exclusively for one or more charitable purposes described in section 501(c)(3) and the Treasury Regulations promulgated thereunder. We do not question whether Highland Dallas is organized for charitable purposes, nor do we question whether Highland Dallas's grantmaking to the Dallas Foundation and other bona-fide charitable organizations is consistent with its charitable purposes.

We do question whether Mr. Dondero's influence and control over at least Highland Dallas has allowed some portion of their net earnings to indirectly inure to Mr. Dondero's benefit as a result of his historic access to DAF Holdco's assets at below market rates and terms that appear to have been acquiesced to by each supporting organization. As we discuss below, Mr. Dondero's influence and control over DAF Holdco when Grant Scott was the Management Shareholder was never of concern, especially to Highland Dallas, even as each supporting organization received periodic valuation reports prepared by ValueScope detaining DAF Holdco's NexPoint investments. See report prepared for Grant Scott by ValueScope, attached hereto as Exhibit 8. In fact, we believe those valuation reports were used by each of them to prepare their Forms 990 and to prepare consolidated financial statements.

We also believe that each of the supporting organizations operates for Mr. Dondero's private benefit when he uses his influence or control over them to cause them to use or attempt to use their influence as Participating Shareholders of DAF Holdco to wrest control of DAF Holdco and its assets now that Mr. Patrick declined NexPoint investment requests that are both on non-market proposed terms and provide below market returns on investment.

If Highland Dallas elects not to exercise the Put Option before the REIT dissolves, we believe that would be an excess benefit transaction under section 4958 of the Code in which the organization managers had to have knowingly participated.

We also believe Mr. Dondero exercises such control as a substantial contributor of Highland Dallas, resulting from gifts he has made since the initial gift of Participating Shares were made by the CRT in 2011, that Highland Dallas should no longer satisfy the requirement in section 509(a)(3)(C) that there be no control by disqualified persons.

Finally, as discussed briefly below, we believe the donor advised fund rules in section 4966 and 4967 may be implicated, but have insufficient knowledge of the facts to assert conclusively that they do apply.

A. Private Benefit

We respectfully submit that Highland Dallas in particular no longer satisfies the operational test of section 501(c)(3) because its actions taken at Mr. Dondero's direction serve his private interests more than incidentally as prohibited by Treasury Regulation § 1.501(c)(3)-1(d)(*1*)(ii).

As we have outlined above, Mr. Dondero and affiliates such as NexPoint Advisors used DAF Holdco, when it was controlled by Grant Scott, as his personal piggybank. And, when Grant Scott controlled DAF Holdco, neither Julie Diaz (in her capacity as Director and Vice President of Highland Dallas) nor the Dallas Foundation questioned whether DAF Holdco's investment were prudent or generated market returns. Rather, even as they received and used for tax and financial reporting purposes the ValueScope valuation opinions which disclosed DAF Holdco's NexPoint and other Dondero-related investments, they never questioned whether the terms were market terms or whether the asset allocations were prudent. It was only **after** Mr. Patrick took over as Management Shareholder of DAF Holdco and (a) started declining NexPoint investment asks—really demands, (b) started diversifying DAF Holdco's investments away from NexPoint investments, (c) began demanding repayment of amounts owed with respect to NexPoint investments, and (d) Mr. Patrick resigned from Skyview Group and terminated its contract for back office and other services, that the supporting organizations collectively hired outside counsel and, under the lead of Julie Diaz, a Director and Vice President of Highland Dallas began sending no-confidence emails to DAF Holdco Directors (including Mr. Patrick and Mr. Murphy) demanding information to which they were not even legally entitled (a fact that their attorneys openly acknowledged in a Zoom call) and a complete restructuring of DAF Holdco to bring it back under Mr. Dondero's control.

In the seminal decision, *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), the Tax Court concluded that the absence of private inurement to the benefit of a private shareholder or individual does not end the analysis of whether an organization satisfies the operational test of exemption under section 501(c)(3). it went on to state: "when the Court concludes that no prohibited inurement of net earnings exists, it cannot stop there but must

inquire further and determine whether a prohibited private benefit is conferred."(citations omitted) *Id.* at 1070. It concluded that "an organization's conferral of benefits on disinterested persons may cause it to serve 'a private interest' within the meaning of section 1.501(c)(3)-1(d)(1)(ii)." *Id.* at 1070.

Finally, after looking at the organization's exclusive source of funding (much the same as Mr. Dondero's exclusive funding of Highland Dallas), control of a majority of the Board by members of the Republican Party (analogous to Mr. Dondero's role as President and Director of Highland Dallas and his substantial influence over the two Dallas Foundation directors evidenced by their epiphany that something has to be done since Mr. Dondero no longer controls DAF Holdco), and several other factors, "we conclude that petitioner is operated for the benefit of private interests, a nonexempt purpose." *Id.* at 1080.

In another case, *Airlie Foundation, Inc. v. United States,* 55 F.3d 684 (D.C. Cir. 1995), the relationship between the founder and executive director of the foundation bears a strong resemblance to the relationship between Mr. Dondero and Highland Dallas and served as a basis for sustain the Service's revocation of its section 501(c)(3) exemption on the ground that it provided more than incidental private benefit to the founder. Although the actual basis for revocation of exemption was a finding of inurement of net earnings, the pervasive control of the founder clearly influenced the D.C. Circuit to affirm the District Court and, equally important, the court cited *American Campaign Academy* for the proposition that an organization does not operate exclusively for tax-exempt purpose if it serves a private interest rather than a public interest and "[t]his requirement applies to the organization's actual, not purported purposes." *Id.* at 75 AFTR 2d 95-2068, 95-2071.

B. Potential Inurement

Section 501(c)(also requires that "no part of the net earnings " of the organization may "inure to the benefit of any private shareholder or individual." As observed in the *Airlie Foundation* case, "the extent of the inurement is immaterial." *Id.* As noted in that case, and as is the case with Mr. Dondero, the founder of Airlie Foundation, Inc. "established and controlled a network of taxable and tax-exempt entities. The transactions that took place within the network organizations formed the basis for the IRS's revocation of AFI's tax-exempt status, as discussed at length by the district court."

We respectfully submit that if the Service audits Highland Dallas it will identify many more instances of inurement, beyond the single instance of forgiving $33,672 by Airlie Foundation, Inc. owed by one of the founder's affiliated entities. The Dugaboy effective interest-free loan and potential windfall if Highland Dallas fails to exercise its Put Option should be enough, but we believe there will be many other transactions such as management and administrative fees that generate income for Dondero-related entities.

As discussed above in Section II.A., during the Grant Scott control era of DAF Holdco, Mr. Dondero's effective control of DAF Holdco led DAF Holdco to make investments that benefitted him personally. These investment deprived DAF Holdco of assets that could be distributed to Participating Shareholders, including Highland Dallas.

C. The Failure to Exercise the Put Option as an Excess Benefit Transaction

As you know, section 4958 treats as excess benefit transactions between a public charity such as Highland Dallas and a disqualified person such as Mr. Dondero economic arrangements that are above or below market between them. Section 4958(c)(3)(A) also treats as "automatic" excess benefit transactions "any grant, loan, compensation or other similar payment to" a disqualified person such as a substantial contributor.

We believe, upon examination, the Service will find that Highland Dallas has engaged in multiple automatic excess benefit transactions with Mr. Dondero or entities owed and controlled by him such as NextPoint Advisors.

First, the forbearance to exercise the Put Option effectively created an interest free loan to Dugaboy, a disqualified person. Thus, the mere fact it has remained outstanding for years means it is an automatic excess benefit transaction that requires not only the payment of the 25% excise tax by Dugaboy but also the correction of it through the payment of the full $9,250,000 plus interest.

Second, if NexPoint Advisors performs investment management services for a fee, that would be an automatic excess benefit transaction requiring not only correction but also payment of the 25% excise tax. In fact, we know from public SEC filings that NexPoint Advisors or one of its affiliates does perform investment management services for the REIT, which may itself be an excess benefit transaction requiring correction.

Finally, while other excess benefit transactions may be identified during an examination of Highland Dallas, any forbearance to exercise the Put Option to benefit Dugaboy should be regarded, at a minimum, as a "similar payment" given the fact that Mr. Dondero benefits economically in a substantial way from that forbearance.

Given that the other two directors must act to approve these actions, it is likely they have done so knowingly and willfully.

D. Potential Non-Compliance with Section 509(a)(3) Operational Test Sufficient to Cause Highland Dallas to be Reclassified as a Private Foundation and Thus Subject to Chapter 42 Rules

In Mr. Dondero's article entitled "James Dondero: Dallas's Surprising Philanthropy Hero" (May 3, 2023, copy enclosed as Exhibit 6), Mr. Dondero said as follows:

> "Mr. Dondero and his firm have supported The Family Place, The Dallas Zoo, SMU's Tower Scholars program, The Perot Museum of Nature and Science, Education Is Freedom, and many more local charity organizations. Most gift are made through the philanthropic arm of Highland Capital Management."

Thus, in his own words, Mr. Dondero has acknowledged Highland Dallas has violated the section 509(a)(3) operational test in Treasury Regulation § 1.509(a)-4(e)(1) concerning permissible beneficiaries of a supporting organization and should be re-classified as a private foundation. That would mean that all dealings between Highland Dallas and entities owned or controlled by Mr. Dondero should be scrutinized to determine whether they constitute acts of

self-dealing described in section 4941 of the Code or violate other provisions of Chapter 42 of the Code, such as the taxable expenditure rules in section 4945.

Under Treasury Regulation § 1.509(a)(-4(e)(1), "[a] supporting organization will be regarded as 'operated exclusively' to support one or more specified publicly supported organizations . . . **only if it engages solely in activities which support or benefit the specified publicly supported organizations.**" (emphasis supplied)

The only exception to the requirement that a supporting organization benefit the supported organization "solely" is when the supporting organization provides benefits to individual members of the charitable class benefitted by the supported organization, such as by granting scholarships to graduates of a particular high school for college. *See, e.g., Nellie Callahan Scholarship Fund v. Commissioner,* 73 T.C. 626 (1980). The word "solely" is unambiguous; therefore, Mr. Dondero's own acknowledgement that Highland Dallas is the source of his funding of other admittedly charitable organizations provides conclusive evidence that Highland Dallas fails the operational test of section 509(a)(3).

Furthermore, section 509(a)(3)(C) provides that a supporting organization may not be controlled directly or indirectly by a disqualified person. A substantial contributor to a supporting organization is a disqualified person under section 4946(a)(1)(A). Thus, Mr. Donero's Dugaboy gift of the REIT Units to Highland Dallas made him a disqualified person and his effective veto power places him in control of Highland Dallas.

Therefore, we respectfully submit that that the Service should examine Highland Dallas to determine if it should be reclassified as a private foundation for the foregoing reasons and, if it is so-reclassified, all transactions between Mr. Dondero and his related or controlled entities should be evaluated to determine whether any constitute acts of self-dealing under section 4941. This should include the failure on the part of Highland Dallas to exercise its Put Option

E. Potential Non-Compliance with Section 4966/4967 Rules Applicable to Donor Advised Funds

Finally, we respectfully submit that the Service should examine Highland Dallas to determine whether it, in effect, functions as a donor advised fund of Mr. Dondero given the fact he provided substantially all of its funding, effectively controls it and may personally benefit financially more than incidentally through entities he owns or controls from management fees, charity special events such as banquets and other means.

* * * *

Representatives of DAF Holdco will be available to be interviewed by the Service in a manner that will not result in compromising confidentiality under section 6103 and without the need for an administrative summons.

Very truly yours,

SEYFARTH SHAW LLP

Douglas M. Mancino

Douglas M. Mancino

cc. Mark Patrick, Paul Murphy and Texas, California and Missouri Offices of the Attorney General (Charitable Trusts Sections)

DMM

LIST OF EXHIBITS

1. Special Turnover Petition filed in March 2023 in *UBS Securities LLC and UBS AG London Branch v. James Dondero et. al.*, in the Supreme Court of the State of New York
2. Complaint and Objection to Claims filed in October 2021 in *Kirschner v. Dondero et.al.*, Case No. 19-34054-sgj11 in U.S. Bankruptcy Court, Northern District of Texas
3. Documents pertaining to The Dugaboy Investment Trust charitable contribution of 1,500,000 Class Units of NexPoint Hospitality Trust to Highland Dallas
4. Plaintiff's First Amended Complaint filed in July 2024 in *Highland Employee Retention LLC v James Dondero et.al.*, Case No. 3:24-cv-00498-K, in the U.S. District Court for the Northern District of Texas
5. Bankruptcy Court Memorandum Opinion issued in June 2021 in *In Re: Highland Capital Management, L.P. v. James Dondero,* Case No. 19-34054-sgj11
6. Post dated May 3, 2023 by James Dondero entitled: "James Dondero: Dallas's Surprising Philanthropy Hero"
7. ValueScope, LLC Slide Deck presented to Supporting Organizations' legal counsel in a Zoom call on November 18, 2024
8. Example of ValueScope, Inc. Valuation Analysis prepared for Grant Scott when he was in control of DAF Holdco

EXHIBIT 73

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE DIRECTORS OF THE COMPANY DATED April 2 2025

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1. ASSIGNMENT OF UNDERTAKINGS

1.1 IT IS NOTED that:

(a) the Directors have received a draft letter agreement to assign all of the contracts listed in Schedule A of the letter agreement ("**Assigned Contracts**") from the Company to CDMCFAD, LLC (the "**Document**"); and

(b) in connection with the Assigned Contracts, CDMCFAD, LLC has agreed to assume all responsibilities and risks in any manner connected with the Assigned Contracts, whether now existing or hereafter arising.

1.2 **IT IS RESOLVED** that:

(a) in the opinion of the Directors, the entry into and performance by the Company of its obligations under the Document would be in the best interests of the Company;

(b) the transactions contemplated by the Document be approved;

(c) the Company enter into the Document;

(d) the form of the Document be approved on behalf of the Company subject to such amendments and additions thereto as any Director or (if applicable) any Attorney or Authorised Signatory (defined below) in their absolute discretion and opinion deem appropriate, the signature of any Director or any Attorney or Authorised Signatory on the Document being due evidence for all purposes of the approval of any such amendment or addition and the final terms thereof on behalf of the Company;

(e) the Company do give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgements, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of any Director or any Attorney or Authorised Signatory be considered necessary or desirable for the purpose of compliance with any condition precedent or the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of all or any of the transactions contemplated by or referred to in the Document and the Company do all such acts and things as might in the opinion and absolute discretion of any Director or any Attorney or Authorised Signatory be necessary or desirable for the purposes stated above;

(f) the Ancillary Documents be in such form as any Director or any Attorney or Authorised Signatory in their absolute discretion and opinion approve, the signature of any Director or any Attorney or Authorised Signatory on any of the Ancillary Documents being due evidence for all purposes of their approval of the terms thereof on behalf of the Company; and

(g) the Document and Ancillary Documents, where required to be executed by the Company (whether under hand or as a deed), be executed by the signature thereof of any Director

or any Attorney or Authorised Signatory and where required to be sealed, by affixing thereto of the Seal of the Company, witnessed as required by the Articles of Association of the Company.

2. GENERAL AUTHORISATION

2.1 IT IS RESOLVED that, in connection with or to carry out the actions contemplated by the foregoing resolutions, any Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as any Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of any Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, all the Directors prior to such action being taken.

Mark Patrick
Director

Paul Murphy
Director

Before me, Mark Patrick, personally appeared to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed for purposes expressed therein.

NATALIE R OLVERA
Notary ID #130890197
My Commission Expires
March 29, 2027

Natalie Olvera, as Notary Public
My commission expires 3/29/27

State of Texas
County of Dallas

PAUL MURPHY HAS

SIGNED IN THE PRESENCE OF

Amy Altneu
Notary Public in and for The Cayman Islands
Dated this 2 day of April, 20 25
(My commission expires on 31 January 20 26)

EXHIBIT 74

CHARITABLE DAF HOLDCO, LTD.
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE VOTING SHAREHOLDER OF THE COMPANY DATED 2 APRIL 2025

Capitalised terms used herein shall have the meaning ascribed to such terms in the Company's Amended and Restated Memorandum and Articles of Association (as adopted by Special Resolution dated 20 February 2025) (the "**Articles**"), unless the context otherwise requires.

The undersigned, being the only Shareholder of the Company having the right to receive notice of, attend, speak at and vote at general meetings and having considered the written resolutions of the Directors dated 2 April 2025 which state that the Directors recommend that the Company be wound up voluntarily and that Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY1-1204, Cayman Islands be appointed as the joint voluntary liquidators of the Company (the "**JVLs**"), hereby consents to the following actions and adopts the resolutions set out below.

1. VOLUNTARY LIQUIDATION

1.1 **IT IS RESOLVED BY SPECIAL RESOLUTION** that:

(a) the Company be wound up voluntarily; and

(b) Mitchell Mansfield and William Clarke of Kroll (Cayman) Ltd be appointed as the JVLs of the Company.

1.2 **IT IS RESOLVED BY ORDINARY RESOLUTION** that:

(a) the JVLs be authorised, in accordance with Article 123 of the Articles, to divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for that purpose, set such value as they deem fair upon any property to be divided as aforesaid and may determine how such division will be carried out as between the Participating Shareholders or different Classes; and

(b) the JVLs shall have the power to retain the Company's administrator, manager or such other person as determined by the JVLs to assist them in discharging any registration and notification obligations and any obligation to complete the Company's final filings and retain records pursuant to the US Foreign Account Tax Compliance Act and/or Common Reporting Standard and/or Economic Substance Reporting.

Mark Patrick

EXHIBIT 75

Rhiannon Zanetic

From: David.Rosenberg@hklaw.com
Sent: 18 March 2025 09:27
To: Mancino, Douglas; Michael.Stockham@hklaw.com
Cc: Paul Murphy
Subject: RE: Can you get me a couple of dates for Paul Murphy to make a presentation to your three clients? We would like to do this as soon as practicable. Thanks for your attention to this.

Doug, we are available on:

- Wednesday March 26, after 4:00 p.m. U.S. Central Daylight Time.
- Monday, March 31, until 12:00 p.m. U.S. Central Daylight Time.
- Thursday, April 3 until 12:00 p.m. U.S. Central Daylight Time.

David Rosenberg | Holland & Knight
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, Texas 75201
Phone 214.969.1508 | Fax 214.964.9501
david.rosenberg@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Mancino, Douglas
Sent: Monday, March 17, 2025 1:00 PM
To: Rosenberg, David M (DAL - X61508) ; Stockham, Michael W (DAL - X62515)
Cc: Paul Murphy
Subject: Can you get me a couple of dates for Paul Murphy to make a presentation to your three clients? We would like to do this as soon as practicable. Thanks for your attention to this.

Doug

Douglas Mancino (he/him/his) | Partner | Seyfarth Shaw LLP
2029 Century Park East | Suite 3500 | Los Angeles, California 90067-3021
Direct: +1-310-201-5241 | Fax: +1-310-551-8326
DMancino@seyfarth.com | www.seyfarth.com

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EXHIBIT 76

Rhiannon Zanetic

From: David.Rosenberg@hklaw.com
Sent: 03 April 2025 09:51
To: Mancino, Douglas
Cc: Michael.Stockham@hklaw.com; Paul Murphy
Subject: RE: Zoom call with Paul Murphy

Doug, no such call is on our calendar, so I am not sure of the source of the confusion. We will circle back with our clients and provide some windows starting on April 16.

I wish your wife the best of health with her back. Thanks.

David Rosenberg | Holland & Knight
Partner
Holland & Knight LLP
One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas Texas 75201 Phone 214.969.1508 | Fax 214.964.9501
david.rosenberg@hklaw.com | https://urldefense.proofpoint.com/v2/url?u=http-3A__www.hklaw.com&d=DwIFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=RjdPX5h2cOpgbX1KbC0WsA&m=rtNqaByRU1S_SGisTolK5eacT1e3ojm6eK4M4xkty0lq4Kq7A8kNpSNaOg8_Sk5D&s=dUaYK7RyBQ-__Uvhuz_UbZY9LLgA8fqgfSQfMU9IREk&e=

-----Original Message-----
From: Mancino, Douglas <DMancino@seyfarth.com>
Sent: Thursday, April 3, 2025 9:47 AM
To: Rosenberg, David M (DAL - X61508) <https://urldefense.proofpoint.com/v2/url?u=http-3A__David.Rosenberg-40hklaw.com&d=DwIFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=RjdPX5h2cOpgbX1KbC0WsA&m=rtNqaByRU1S_SGisTolK5eacT1e3ojm6eK4M4xkty0lq4Kq7A8kNpSNaOg8_Sk5D&s=dK186X1LRwbLe82XNr4DiwVprLY83NgIEL5KUk2L9wM&e=>
Cc: Stockham, Michael W (DAL - X62515) <https://urldefense.proofpoint.com/v2/url?u=http-3A__Michael.Stockham-40hklaw.com&d=DwIFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=RjdPX5h2cOpgbX1KbC0WsA&m=rtNqaByRU1S_SGisTolK5eacT1e3ojm6eK4M4xkty0lq4Kq7A8kNpSNaOg8_Sk5D&s=H8AOyc2PQyRIKod6ljjomBwRDxne7__BsTh9i-RGFDY&e=>; Paul Murphy <paul@gkmanagement.com.ky>
Subject: Zoom call with Paul Murphy

Good morning. I just learned there is a call scheduled with Paul Murphy tomorrow that I do not have on my calendar. Did I miss an evite? If so I apologize.
I need to be on any such call. I am unavailable tomorrow as I am in Miami for a wedding. I am in New Zealand next week leaving on April 7th and returning on April 14th. I have to take my wife for CT scans of her back on the 15th so the zoom meeting can be rescheduled on the 16th or thereafter but I need to be on the zoom call.
Let me know what dates work for your clients.
Sorry for any inconvenience
Doug

Sent from my iPhone

Douglas Mancino (he/him/his) | Partner | Seyfarth Shaw LLP
2029 Century Park East | Suite 3500 | Los Angeles, California 90067-3021
Direct: +1-310-201-5241 | Fax: +1-310-551-8326 DMancino@seyfarth.com |

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EXHIBIT 77

I THE GRA D CO RT OF THE CAYMA ISLA DS

FI A CIAL SERVICES DIVISIO

CA SE O FSD 99 ***OF*** JAJ

I THE MATTER OF SECTIO OF THE COMPA IES ACT REVISIO

A D I THE MATTER OF CHARITA LE DAF HOLDCO LTD

WI DI G P PETITIO

TO T e Grand Court o t e Cayman Islands

THE H M LE PETITIO of the ***Supporting Organisations*** (as defined below) (the ***Petitioners***), in their capacity as members of Charitable DAF Holdco, Ltd (the ***LP***) (and indirectly by way of separate petition the Charitable DAF Fund, LP (the ***Fund***)) shows that:

A I TROD CTIO

1. The Petitioners respectfully seek:

   (a) an order pursuant to section 92(e) of the Companies Act (2025 Revision) (the ***Act***) that the LP be wound up on the basis that it is just and equitable to do so; and

   (b) the appointment of Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands as joint official liquidators (the ***JOLs***) of the Fund; and/or

   (c) such other orders as the Court considers to be appropriate.

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2. The Fund is a Cayman Islands limited partnership formed on 28 October 2011 (registration number 53083) whose registered office is Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

3. The Fund is governed by the Amended and Restated Limited Partnership Agreement dated 7 November 2011 (the ***ARLPA***).

4. The Fund invests in securities for the purpose of benefiting, directly and indirectly, its Supporting Organisations (as defined below) which support various charitable causes in the U.S., including education, veteran and first responder welfare, medical research, economic and community initiatives, and youth and family programs.

5. The LP is the sole limited partner of the Fund and is a Cayman Islands exempt company incorporated on 27 October 2011 (registration number 263805) whose registered office is Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

6. The LP is governed by the Amended and Restated Memorandum and Articles of Association of the LP dated 19 January 2015 (the ***Articles***).

7. The general partner of the Fund is (or at least was at the time of the Fund's formation and pursuant to the ARLPA) Charitable DAF GP, LLC (the ***GP***), a Delaware company incorporated on 25 October 2011, whose registered office is Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands.

Ownership and Management

8. The Fund was formed to "*make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code (the **Code**) … for the economic benefit of the Limited Partner and its Indirect Charitable Owners*" (ARLPA, Recitals).

9. The Petitioners understand that exempt entities under section 501(c)(3) of the Code, commonly referred to as charitable organisations, must be operated exclusively for charitable purposes and not for the benefit of private interests. 'Supporting organizations' under section 509(a)(3) of the Code must carry out such exempt purposes by supporting *other* charities.

10. In this context:

(a) The LP holds ninety-nine percent (99%) of the economic interest in the Fund. The other one per cent (1%) in the Fund is held by the GP or its successor as GP.

(b) The LP issued 305 participation shares (the ***Participation Shares***) that are held by four Delaware corporate entities, namely: The Highland Dallas Foundation, Inc. (***HDF***), The Highland Kansas City Foundation, Inc. (***HKCF***), The Highland Santa Barbara Foundation, Inc. (***HSBF***), and The HCMLP Charitable Fund (***HCMLP***) (together, the ***Supporting Organisations***).

(c) Each Supporting Organisation provides funding to its respective U.S. charitable foundation (together, the ***Charities***) which are the ultimate beneficial owners of the Fund's entire economic interest.

(d) The LP also issued 100 management shares (the ***Management Shares***) which attach the only voting rights for all shareholders of the LP. The terms of the ARLPA and the Articles together grant complete management control of the Fund to the holder of the Management Shares, and the holder of the entire issued share capital in the GP (the ***Membership Interest***).

11. The Management Shares and the Membership Interest have at all material times been held by a single individual who, as a result, has sole control of the Fund structure (the ***Control Position***).

C ***THE PETITIO ERS***

12. As stated above, the Petitioners (the Supporting Organisations) are non-profit charitable entities exempt from taxation under section 501(c)(3) of the \ Code and through the LP hold 99% of the economic interest in the Fund.

13. The Supporting Organisations provide funding directly to the Charities as follows:

(a) HDF holds 32.87% of the Participating Shares. HDF provides funding to The Dallas Foundation, a charitable entity established in Texas in 1929, which has awarded over $1 billion in grants and manages over $500 million in assets.

(b) HKCF holds 32.87% of the Participating Shares. HKCF provides funding to the Greater Kansas City Community Foundation, a charitable entity established in Kansas in 1978 which has awarded over $7 billion in grants and currently manages over $5 billion in assets.

(c) HSBF holds 32.787% of the Participating Shares. HSBF provides funding to the Santa Barbara Foundation, a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over $800 million.

(d) HCMLP holds 1.639% of the Participating Shares. HCMLP provides funding to the North Texas Community Foundation, which manages assets totaling $513 million and donated $38.9 million to local nonprofits in 2023.

14. Since the Fund's inception in 2011, through profits generated by the Fund the Supporting Organisations have granted over $42 million to charitable foundations and have funded $32 million in total commitments, including donations to 275 organisations, with average annual grant payments of $3.7 million.

D ACKGRO D

15. The Fund was created in 2011 on the instructions of James Dondero. Mr Dondero is the President of NexPoint Advisors, L.P. (***NexPoint***), an alternative investment firm registered with the U.S. Securities and Exchange Commission (***SEC***), and the former President of Highland Capital Management, L.P. (***Highland***), also an SEC registered investment advisor which he founded in 1993. Mr Dondero is a regular donor to philanthropic and charitable causes. The Fund is one of the vehicles he utilises to donate such funds to charitable organisations. Mr Dondero holds no ownership or control stake in the Fund or any related entities, although he sits on the boards of the Supporting Organisations.

16. From the Fund's formation until March 2021, the Control Position was held by Grant Scott. On 25 March 2021, Mr Scott: (i) resigned as director of the Fund and the LP, (ii) appointed Mark Patrick as director of the Fund and the LP, and (iii) transferred to Mr Patrick the Management Shares in the LP and Management Interest in the GP. Mr Patrick therefore assumed the Control Position from that date.

17. From 2008 to 2021, Mr Patrick was employed as tax counsel by Highland Capital Management, LP (***Highland***), an investment advisor founded by Mr Dondero. From March 2021 to October 2024, Mr Patrick was employed as tax counsel by Skyview Group (***Skyview***). In both positions, Mr Patrick acted as an advisor to Mr Dondero and entities owned or affiliated to him.

18. On 22 April 2021, Paul Murphy, a Cayman Islands resident, was appointed as director of the LP.

19. On 16 October 2019, Highland filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the Northern District of Texas (the ***Highland Bankruptcy***). The Highland Bankruptcy plan was confirmed in February 2021, and the estate remains open as it makes distributions to creditors.

E EVE TS FOLLOWI G MR PATRICK S ASS MPTIO OF THE CO TROL POSITIO

20. Since assuming the Control Position, Mr Patrick has used that position to advance his own interests to the detriment of the LP, the Fund, the Supporting Organisations and the Charities.

Non-disclosure of personal interest in grant

21. In June 2023, Mr Patrick made a request that the Highland Dallas Foundation (i.e. the Supporting

Organization that supports the Dallas Foundation) "*direct $10,000*" to Creative HEARTS TX, a non-profit entity formed on 13 June 2023. Following due diligence, it was discovered that the directors of the entity were Mr Patrick, Darees Patrick and Alyse Patrick (his daughter and wife). Mr Patrick had made the grant request without disclosing his and/or his family's involvement.

22. The grant payment was authorised on 5 September 2023, but Mr Patrick was informed that further payments were unlikely.

Attempt to obtain secret profit

23. In September 2023, Mr Dondero was contacted by Kevin Cronin of Fortaris Capital Advisors (***Fortaris***), a firm providing litigation support and investigative services which, at the time, was engaged by the Fund on an unrelated matter.

24. Mr Cronin disclosed to Mr Dondero that Mr Patrick had approached him with a proposition whereby Mr Patrick (on behalf of the Fund) would engage an entity controlled by Mr Cronin (other than Fortaris) at a monthly fee of between US$25,000 and US$50,000, and that this fee would be split between Fortaris and Mr Patrick as a supplement to Mr Patrick's compensation.

25. Mr Cronin refused Mr Patrick's proposal.

26. Mr Patrick's attempt to obtain a secret, undisclosed personal profit from the Fund would, if successful, have constituted U.S. federal wire fraud, and/or violations of the Texas Penal Code's prohibitions on bribery and misapplication of fiduciary property. It was otherwise a breach of Mr Patrick's duties to the LP and, through the LP, to the Fund.

Unauthorised use of MNPI / Insider Trading

27. NexPoint and its affiliates, through their investment activities, regularly obtain material non-public information (***MNPI***) related to those investments. As a service provider to NexPoint and its affiliates, Skyview employees also obtain the same MNPI. Trading on the basis of MNPI amounts to 'insider trading' which is prohibited under U.S. securities and other laws. As a result, NexPoint and its affiliates, and Skyview, all have the same robust regulatory compliance program to prevent, among other things, insider trading (the ***Compliance Policy***). NexPoint and its affiliates, and Skyview, require their employees to abide by the Compliance Policy at all times and employees are required to confirm in writing each quarter that they will not use MNPI while trading. Mr Patrick completed an annual 2023, Q4 2023, Q1 2024 and Q2 2024 certifications, among others.

28. In late August 2024, Mr Patrick contacted the attorneys to the Dallas Foundation to provide information about an asset held by the Dallas Foundation, which was held directly and separately from the Fund. This information was obtained by Mr Patrick through his employment at Skyview and constituted MNPI. On the basis of this MNPI, Mr Patrick advised the Dallas Foundation to

exercise a put option it held in a NexPoint affiliated asset. The Dallas Foundation did not act on the information or recommendation provided by Mr Patrick, but in the event it had exercised the put option, both the Dallas Foundation and Mr Patrick would have committed violations of the U.S. securities laws that prohibit insider trading.

29. Upon receipt of the allegations against Mr Patrick, Skyview's compliance department commenced an internal investigation which, due to the serious nature of the allegations, was conducted without Mr Patrick's knowledge, so as to avoid potentially tipping off Mr Patrick. The investigation concluded that Mr Patrick's actions constituted a serious breach of his compliance and employee obligations and that Mr Patrick had attempted a serious breach of U.S. securities laws.

30. Mr Patrick resigned from Skyview immediately before the internal investigation was finalised. At the same time, he terminated the Fund's services agreement with Skyview. That termination was not in the interests of the Fund, was for Mr Patrick's own self-protection and was otherwise a breach of Mr Patrick's duties to the LP and, through the LP, to the Fund.

Financial Irregularities in the Fund / Unexplained Expenditure

31. A review of the Fund's financial records conducted by Skyview covering the calendar years ending 2018 to 2023 and the first half of 2024 showed significant increases in expenditures, notably:

(a) ***Directors ees***, which increased from US$40,000 in 2022 to almost US$600,000 in 2023, and in the first half of 2024 alone, increased further to around US$2.25 million; and

(b) ***E penses overall***, which for the first half of 2024 were around US$18.3 million, with a further US$18.6 million being spent in the calendar year 2023.

32. In October 2024, the Charities requested that Mr Patrick provide financial information about the Fund entities to seek to understand these increases in expenditures. This information was not provided.

33. In November 2024, Holland and Knight (***H&K***), the Charities' US attorneys, delivered a letter to Mr Murphy from the Charities advising that the Charities no longer had confidence in the governance of the Fund and considered that a reorganisation was required (the ***No Confidence Letter***). No response to the No Confidence Letter was received.

34. In January 2025, further correspondence was sent to Mr Patrick and Mr Murphy advising that a better understanding of the Fund's asset position was needed and expressing serious concern that the Charities' requests for information continued to be disregarded, reflecting an ongoing lack of transparency on the part of Mr Patrick and Mr Murphy. Mr Murphy responded via email to this request noting that he and Mr Patrick would "*present directly to the foundations/supporting organisations*" to address some of the concerns in the No Confidence Letter.

35. H&K responded to Mr Murphy's email noting, *inter alia*, that the Supporting Organisations had legitimate concerns and highlighted that "*the last information they received from in July of 2024, before Mr Patrick shut down [communication] showed that legal expenses had increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022*" (a 300% increase, if annualized) and "*director fees skyrocketed from $40 thousand in 2022 to $2.25 million in the first six months of 2024*" (a 12,400% increase, if annualized).

36. In February 2025, further correspondence was sent between H&K and Douglas Mancino (***Mr Mancino***) of Seyfarth Shaw LLP (***Seyfarth***), US counsel purporting to act for the Fund, whereby Seyfarth rejected the reported increases in legal and directors' fees and provided a valuation of the Fund from 2020 to support the suggestion that similar information was provided to the Charities when Mr Scott was in the Control Position. It is clear that Mr Patrick and/or Mr Murphy has instructed Seyfarth, purportedly on behalf of the Fund, to take a hostile, indignant and non-neutral stance when faced with reasonable requests on behalf of the Charities, as ultimate beneficiaries of the assets of the Fund. Such conduct is a breach of their duties to the LP and, through the LP, to the Fund.

37. H&K responded to Seyfarth that the Charities were becoming frustrated by the ongoing lack of transparency and refusal to respond to simple inquiries about the financial position and governance of the Fund. Seyfarth sent an email to H&K requesting available dates for Mr Murphy to make the promised presentation to the Charities. The next day, H&K suggested three potential dates/times for such a call between 26 March and 3 April 2025, but did not receive any response. On 3 April 2025, Seyfarth sent an email to H&K stating that they had just learned that a call was scheduled for the following day and seeking to reschedule. H&K responded that no such call had been arranged and queried the source of confusion. Seyfarth has made no further efforts to schedule the meeting, nor has it otherwise provided any of the requested financial information.

Replacement of GP without notification

38. In February 2025, H&K discovered that Mr Patrick had redomiciled and replaced the general partner of the Fund, without notice to the Charities, almost one year prior.

39. On 27 February 2024, CDH GP, Ltd (the ***New GP***) was incorporated in the Cayman Islands (registration number 407515) with its registered office at Campbells Corporate Services Ltd, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.

40. Mr Patrick is the sole director of the New GP.

Sale of assets

41. Following Mr Patrick's resignation from Skyview and his termination of Skyview's services agreement with the Fund, the Petitioners have become aware that assets of the Fund have been

sold without explanation, at values which appear to be below-market.

Hunter Mountain

42. In February 2025, an individual associated with Mr Patrick, Shawn Raver, asked for the in-bound wire instructions for one of Mr Dondero's affiliates that owned a position in a trust called Hunter Mountain. Hunter Mountain is an indirect majority owned subsidiary of the Fund and owns the majority of the distribution rights of the equity position in the Highland Bankruptcy. The residual value of the Highland estate should be distributed to Hunter Mountain at the close of the Highland Bankruptcy.

43. According to Hunter Mountain's own filings, this value has been calculated in excess of $100 million gross, with approximately $17 million net value. After additional inquiries from accounting staff, Mr Raver disclosed that the entire Hunter Mountain position had been sold, at potentially a substantial undervalue, to an unidentified party for $1 million. The Fund has not disclosed the identity of the purchaser. In the absence of a further or better explanation, there is the inference of self-dealing, fair dealing, no profit or conflict rules

Atlas IDF, L.P.

44. Atlas IDF, L.P. is a fund controlled by its general partner Atlas IDF GP, LLC, a wholly owned subsidiary of the Fund. The economic beneficiaries of Atlas IDF are the holders of annuity policies issued by Crown Global Insurance Company. The majority annuity policyholder is Empower Dallas Foundation (***EDF***), a charitable foundation for which Mr Dondero serves as President whose purpose is to benefit the Dallas Foundation.

45. On 20 February 2025, Mr Patrick in his capacity as the general partner of Atlas IDF GP, LLC, sent a letter to Crown Global Insurance advising of the intention to dissolve Atlas in accordance with the partnership agreement dated 30 November 2015 on the basis of:

(a) concerns about the long-term availability and viability of back-office support;

(b) unsuccessful efforts to sell the defaulted Notes issued by HCRE Partners (one of Mr Donero's affiliates) dated 7 May 2014 in the amount of $2.3M and 27 May 2014 in the amount of $5M, held by the Partnership; and

(c) the decision by an affiliate of the GP to purchase the Notes at a price above their appraised value of zero dollars to facilitate an orderly wind-up.

46. At the time, the amounts outstanding on the two Notes, including accumulated interest, were in excess of $13M. The intention was to sell the Notes collectively for $500,000. Mr Patrick launched litigation related to these Notes prior to the 20 February 2025 and attempted sale of the Notes to

an affiliate.

47. On 27 February 2025, H&K as counsel for EDF (the policyholder), sent an email to Crown Global advising that the foundation was gathering information and requested that Crown Global therefore withdraw its consent to the proposed sale of the Notes.

48. On 28 February 2025, Mr Patrick sent a further letter to Crown Global noting the revocation of consent to sell the Notes, and further noting that: "*in addition to the purchase of the "Notes" for $500,000, we also intend to include a provision in the purchase and sale documents that, if the Notes are repaid in full within 12 months, all amounts received (minus fees and expenses of collection and purchase price) will be remitted to you as the sole limited partner of Atlas IDF, LP*." The initial zero valuation and proposed $500,000 sale price is commercially unjustifiable.

Attorney General Investigation

49. The Petitioners have been informed that on 14 March 2025, the Texas Attorney General (***Texas AG***) commenced an investigation into Charitable DAF GP, LLC (the Fund's former general partner) in relation to the organisation, conduct and management of Charitable DAF GP, LLC, and its related entities.

50. It is understood that the Texas AG has the power to investigate a charity, should it deem necessary, to determine whether a charity is complying with Texas law.

51. The Charities have requested information about the investigation from the Texas AG, but do not have knowledge of any further details.

F GRO DS FOR WI DI G P

52. The Supporting Organizations bring this Petition based on the multiple concerns identified above about the governance of the LP and the Fund, including potential mismanagement of assets and/or use of assets for purposes other than to benefit and support the Charities, as the ultimate beneficial owners of the Fund's interest, in carrying out their charitable purposes, in accordance with the terms of the ARLPA, on the basis of a complete breakdown in confidence in the person in the Control Position.

53. Accordingly, the Petitioners seek a winding up of the LP on a just and equitable basis and in particular, without limitation, on the following grounds (each discussed in detail below):

(a) governance issues and mismanagement; and

(b) the need for an investigation into the recent activities and expenditure of the Fund; and

(c) justifiable loss of faith and confidence in the management of the Fund.

F APPLICATIO

54. Given the above, the Petitioners seek an order that the LP be wound up pursuant to section 92(e) of the Act.

55. The Petitioners also seek an order appointing Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands, as the joint official liquidators (***JOLs***) of the LP.

56. Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd:

(a) are "qualified insolvency practitioners" as defined in section 89 of the Act and as prescribed by Regulation 4 of the Insolvency Practitioners' Regulations (2023 Consolidation) (***IPR***);

(b) meet the residency requirements contained in Regulation 5 of the IPR;

(c) meet the independence requirements prescribed by Regulation 6 of the IPR;

(d) meet the insurance requirements prescribed by Regulation 7 of the IPR and A&M holds a trade licence which authorises its staff to carry on business as professional insolvency practitioners; and

(e) consent to their appointment as official liquidators of the LP, if so appointed by the Court.

YO R PETITIO ERS THEREFORE H M LY PRAY THAT –

1. The LP be wound up by the Court in accordance with section 92(e) of the Act.

2. Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Ltd. of Second Floor, Century Yard, Cricket Square, George Town, Grand Cayman, Cayman Islands be appointed as the joint official liquidators (the ***JOLs***) of the LP.

3. The JOLs be authorized to act jointly and severally in their capacity as liquidators of the LP.

4. The JOLs shall not be required to give security for their appointment.

5. In addition to their powers prescribed in Part II of the Third Schedule to the Act, which are exercisable without sanction of this Honourable Court, the JOLs may also without further sanction or intervention from this Honourable Court exercise the following powers set out in Part I of the Third Schedule to the Act:

(a) The power to engage staff, agents and/or consultants (whether or not as employees of the LP) in the Cayman Islands and elsewhere to assist the JOLs in the performance of their

functions; and

(b) The power to engage attorneys and other professionally qualified persons in the Cayman Islands and elsewhere to assist the JOLs in the performance of their functions.

6. The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the LP.

7. The JOLs' remuneration and expenses be paid out of the assets of the LP in accordance with section 109 of the Act, Part III of the Regulations, and CWR Order 20.

8. The costs of this Petition shall be paid out of the assets of the LP as an expense in the liquidation, such costs to be taxed if not agreed with the JOLs.

9. The JOLs shall be at liberty to apply to further directions concerning their functions and the exercise or the proposed exercise of their powers.

10. Such further or other orders and directions be made as the Court shall deem fit.

A D your Petitioners will ever pray etc.

Dated 10 April 2025

Johnstone Law

Jo nstone La Ltd

OTE This Petition is intended to be served on:

CHARITA LE DAF HOLDCO LTD at its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010, Cayman Islands

THIS PETITIO was presented by Johnstone Law Ltd., attorneys for the Petitioners, whose address for service is Unit 9, Tropic Centre, 18 Earth Close, Grand Cayman, KY1-1109, Cayman Islands (***Re AJ RZ***)

OTICE OF HEARI G

TAKE OTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on April 29 2025 at 2:00pm ~~am.~~

Any correspondence or communication with the Court related to the hearing of this Petition should be addresses to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.

EXHIBIT 78

CAYMAN ISLANDS

COMPANIES ACT

(2025 Revision)

Supplement No. 3 published with Legislation Gazette No. 6 dated 28th January, 2025.

PUBLISHING DETAILS

Cap. 22 [Law 3 of 1961 and 12 of 1962] of the 1963 Revised Edition of the Laws consolidated with Laws 12 of 1962, 9 of 1966, 1 of 1971, 7 of 1973, 24 of 1974, 25 of 1975, 19 of 1977, 16 of 1978, 6 of 1980, 21 of 1981, 34 of 1983, 2 of 1984, 22 of 1984, 15 of 1985, 38 of 1985, 24 of 1987, 14 of 1988, 14 of 1989, 10 of 1990, 3 of 1991, 23 of 1991 (part), 11 of 1992, 3 of 1993, 23 of 1993, 33 of 1993, 2 of 1994, 8 of 1994, 14 of 1996, 26 of 1997, 4 of 1998, 6 of 1998, 20 of 1998 (part), 5 of 1999, 7 of 2000 (part), 5 of 2001, 10 of 2001, 29 of 2001, 46 of 2001, 22 of 2002, 26 of 2002, 28 of 2003, 13 of 2006, 15 of 2007, 12 of 2009, 33 of 2009, 37 of 2010, 16 of 2011, 29 of 2011, 6 of 2012, 14 of 2012, 29 of 2012, 1 of 2013, 6 of 2013, 14 of 2015, 3 of 2016, 2 of 2017, 42 of 2017, 37 of 2018, 46 of 2018, 10 of 2019, 4 of 2020, 19 of 2020 and Acts 56 of 2020, 60 of 2020, 6 of 2021, 15 of 2023, 11 of 2024 and the Companies (Amendment of Schedule) Order, 2011, Schedule 4 of the Companies Law Departmental Notice, 2015, Schedule 4 of the Companies Law Departmental Notice, 2017, the Companies (Amendment of Section 254) Regulations, 2022, the Companies (Amendment of Schedule 4) Order, 2023, the Companies (Amendment of Schedule 5) Order, 2023 and the Companies (Amendment of Schedule 5) Order, 2024.

Revised under the authority of the *Law Revision Act (2020 Revision)*.

Originally enacted —

Cap. 22-1st January, 1964
Law 9 of 1966-14th March, 1966
Law 1 of 1971-15th December, 1970
Law 7 of 1973-28th June, 1973
Law 24 of 1974-22nd November, 1974
Law 25 of 1975-9th December, 1975
Law 19 of 1977-10th November, 1977
Law 16 of 1978-8th September, 1978
Law 6 of 1980-17th March, 1980
Law 21 of 1981-13th October, 1981
Law 34 of 1983-24th November, 1983
Law 2 of 1984-28th February, 1984
Law 22 of 1984-7th September, 1984
Law 15 of 1985-24th May, 1985
Law 38 of 1985-19th December, 1985
Law 24 of 1987-17th November, 1987
Law 14 of 1988-9th September, 1988
Law 10 of 2001-25th May, 2001
Law 29 of 2001-26th September, 2001
Law 46 of 2001-14th January, 2002
Law 22 of 2002-5th December, 2002
Law 26 of 2002-5th December, 2002
Law 28 of 2003-3rd December, 2003
Law 13 of 2006-1st June, 2006
Law 15 of 2007-17th September, 2007
Law 12 of 2009-20th March, 2009
Law 33 of 2009-2nd December, 2009
Law 37 of 2010-15th September, 2010
Law 16 of 2011-11th April, 2011
Law 29 of 2011-18th November, 2011
Law 6 of 2012-29th August, 2012
Law 14 of 2012-31st August, 2012
Law 29 of 2012-19th November, 2012
Law 1 of 2013-10th January, 2013

Law 14 of 1989-5th September, 1989
Law 10 of 1990-18th July, 1990
Law 3 of 1991-21st February, 1991
Law 23 of 1991-12th December, 1991
Law 11 of 1992-13th July, 1992
Law 3 of 1993-26th March, 1993
Law 23 of 1993-29th September, 1993
Law 33 of 1993-29th November, 1993
Law 2 of 1994-9th March, 1994
Law 8 of 1994-23rd September, 1994
Law 14 of 1996-5th September, 1996
Law 26 of 1997-9th March, 1998
Law 4 of 1998-4th March, 1998
Law 6 of 1998-9th March, 1998
Law 20 of 1998-15th February, 1999
Law 5 of 1999-14th April, 1999
Law 7 of 2000- 20th July, 2000
Law 5 of 2001-20th April, 2001
Law 6 of 2013-15th March, 2013
Law 14 of 2015-12th August, 2015
Law 3 of 2016-6th May, 2016
Law 2 of 2017-27th February, 2017
Law 42 of 2017-16th November, 2017
Law 37 of 2018-22nd November, 2018
Law 46 of 2018-17th December, 2018
Law 10 of 2019-26th July, 2019
Law 4 of 2020-31st January, 2020
Law 19 of 2020-20th May, 2020
Act 56 of 2020-7th December, 2020
Act 60 of 2020-16th December, 2020
Act 6 of 2021-8th December, 2021
Act 15 of 2023-23rd November, 2023
Act 11 of 2024-11th December, 2024

Consolidated and revised this 1st day of January, 2025.

Note (not forming part of this Act): This revision replaces the 2023 Revision which should now be discarded.

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(4) In this section —

"**dissenting shareholder**" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer that person's shares to the transferee company, in accordance with the scheme or contract.

PART 5 - Company Restructuring and Winding up of Companies and Associations

Preliminary

Definitions

89. In this Part —

"**company**" includes a foreign company in respect of which the Court has made a winding up order;

"**contributory**" means —

(a) every person liable by virtue of section 49 to contribute to the assets of a company in the event that it is wound up under this Act; and

(b) every holder of fully paid up shares of a company;

"**controller**" means a person appointed by the Authority pursuant to the regulatory laws to take control of a company;

"**document**" includes any device by means of which information is recorded or stored;

"**foreign company**" means any body corporate incorporated outside the Islands;

"**foreign practitioner**" means a person who is qualified under the law of a foreign country to perform functions equivalent to those performed by official liquidators under this Act or by trustees in bankruptcy under the *Bankruptcy Act (1997 Revision)*;

"**limited partnership**" means an ordinary limited partnership registered in accordance with section 49 of the *Partnership Act (2024 Revision)* or an exempted limited partnership registered in accordance with section 9 of the *Exempted Limited Partnership Act (2021 Revision)*;

"**official liquidator**" means the liquidator of a company which is being wound up by order of the Court or under the supervision of the Court and includes a provisional liquidator;

"**prescribed**" means prescribed by the Insolvency Rules Committee;

"**professional service provider**" means a person who contracts to provide general managerial or administrative services to a company on an annual or continuing basis;

"**qualified insolvency practitioner**" means a person holding the qualifications specified in the regulations made by the Insolvency Rules Committee under section 155 or such other qualifications as the Court considers appropriate for the conduct of the winding up of a company;

"**Rules**" mean rules prescribed by the Insolvency Rules Committee;

"**shadow director**" means, in relation to a company, any person in accordance with whose directions or instructions the directors of the company are accustomed to act, but the person is not deemed to be a shadow director by reason only that the directors act on advice given by that person in a professional capacity; and

"**winding up order**" includes an order that a voluntary winding up continue under the supervision of the Court and references to a company being wound up by the Court includes a company which is being wound up under the supervision of the Court.

Alternative modes of winding up

90. A company may be wound up —

(a) compulsorily by order of the Court;

(b) voluntarily —

(i) by virtue of a special resolution;

(ii) because the period, if any, fixed for the duration of the company by its articles of association has expired; or

(iii) because the event, if any, has occurred, on the occurrence of which its articles of association provide that the company shall be wound up; or

(c) under the supervision of the Court.

Jurisdiction of the Court

91. The Court has jurisdiction to make winding up orders in respect of —

(a) an existing company;

(b) a company incorporated and registered under this Act;

(c) a body incorporated under any other law; and

(d) a foreign company which —

(i) has property located in the Islands;

(ii) is carrying on business in the Islands;

(iii) is the general partner of a limited partnership; or

(iv) is registered under Part 9.

Company Restructuring

Interpretation of "company"

91A. For the purposes of sections 91B, 91C, 91D, 91E, 91F, 91G, 91H, 91I and 91J, "**company**" means —

(a) any company liable to be wound up under section 91; or

(b) any other entity or partnership to which the provisions of this Part apply in respect of the entity's or partnership's winding up.

Appointment of a restructuring officer

91B.(1) A company may present a petition to the Court for the appointment of a restructuring officer on the grounds that the company —

(a) is or is likely to become unable to pay its debts within the meaning of section 93; and

(b) intends to present a compromise or arrangement to its creditors (or classes thereof) either, pursuant to this Act, the law of a foreign country or by way of a consensual restructuring.

(2) A petition under subsection (1) may be presented by a company acting by its directors, without a resolution of its members or an express power in its articles of association.

(3) The Court may, on hearing a petition under subsection (1) —

(a) make an order appointing a restructuring officer;

(b) adjourn the hearing conditionally or unconditionally;

(c) dismiss the petition; or

(d) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.

(4) A restructuring officer appointed by the Court under subsection (3)(a) shall have the powers and carry out only such functions as the Court may confer on the restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.

(5) Where the Court makes an order under subsection (3)(a), the Court shall set out in the order —

(a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —

(i) the company's creditors, including any contingent or prospective creditors;

(ii) the company's contributories; and

(iii) the Authority, in respect of any company which is carrying on regulated business;

(b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and

(c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.

(6) Where a company which is carrying on a regulated business presents a petition under subsection (1), the directors of the company shall, immediately after presenting the petition, serve notice of the petition on the Authority.

(7) A director who fails to comply with subsection (6) commits an offence and is liable to a fine of ten thousand dollars.

Appointment of an interim restructuring officer

91C.(1) A company may, where it is in the interests of the company to do so, make an *ex parte* application to the Court for the appointment of a restructuring officer on an interim basis pending the hearing of the petition under section 91B(1).

(2) An application under subsection (1) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.

(3) The Court may, on hearing an application under subsection (1), appoint a restructuring officer on an interim basis, on such terms and conditions as the Court thinks fit.

(4) A restructuring officer appointed on an interim basis by the Court under subsection (3) shall have the powers and carry out only such functions as the Court may confer on that restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.

(5) Where the Court makes an order under subsection (3), the Court shall set out in the order —

(a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —

(i) the company's creditors, including any contingent or prospective creditors;

(ii) the company's contributories; and

(iii) the Authority, in respect of any company which is carrying on regulated business;

(b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and

(c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.

(6) Where a company which is carrying on a regulated business makes an application under subsection (1), the directors of the company shall, immediately after making the application, serve notice of the application on the Authority.

(7) A director who fails to comply with subsection (6), commits an offence and is liable to a fine of ten thousand dollars.

Restructuring officer

91D. (1) A restructuring officer appointed under section 91B or 91C shall be a qualified insolvency practitioner.

(2) Where two or more persons are appointed as restructuring officers under section 91B or 91C, they shall be authorised to act jointly and severally, unless their powers are expressly limited by an order of the Court.

(3) A restructuring officer appointed under section 91B or 91C is an officer of the Court.

(4) Notwithstanding subsection (1), where the Court has appointed a qualified insolvency practitioner to act as a restructuring officer, the Court may appoint a foreign practitioner to act as a restructuring officer in addition to the qualified insolvency practitioner.

(5) A foreign practitioner appointed by the Court to act as a restructuring officer shall not act as the sole restructuring officer of a company.

(6) The remuneration of a restructuring officer appointed under section 91B or 91C shall, on the application of the restructuring officer, be fixed by the Court from time to time in accordance with section 109.

(7) A restructuring officer, a creditor of the company, including a contingent or prospective creditor, or a contributory of the company may apply to the Court to determine any question arising in the course of carrying out the restructuring officer's functions.

Variation or discharge of the order appointing a restructuring

91E. (1) At any time after the appointment of a restructuring officer by the Court under section 91B or 91C —

(a) the company acting by its directors;

(b) a restructuring officer appointed under section 91B or 91C;

(c) a creditor of the company, including a contingent or prospective creditor;

(d) a contributory of the company; or

(e) the Authority, in respect of any company which is carrying on a regulated business,

may apply by way of summons to the Court for the variation or discharge of the order appointing the restructuring officer.

(2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.

(3) The Court may, on hearing an application under subsection (1) —

(a) vary the order appointing the restructuring officer;

(b) discharge or continue the order appointing the restructuring officer;

(c) adjourn the hearing conditionally or unconditionally;

(d) dismiss the application; or

(e) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.

Removal and replacement of restructuring officers

91F. (1) A restructuring officer may be removed from office and replaced by an alternative restructuring officer by order of the Court made on the application of —

(a) the company acting by its directors;

(b) a creditor of the company, including a contingent or prospective creditor;

(c) a contributory of the company; or

(d) the Authority, in respect of any company which is carrying on a regulated business.

(2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.

(3) A restructuring officer who has been removed and replaced pursuant to subsection (1) shall prepare a report and accounts for the restructuring officer replacing the removed restructuring officer, within twenty-one days of the date of removal and replacement.

Stay of proceedings

91G.(1) At any time —

(a) after the presentation of a petition for the appointment of a restructuring officer under section 91B, but before an order for the appointment of a restructuring officer is made, and when the petition has not been withdrawn or dismissed; and

(b) when an order for the appointment of a restructuring officer is made, until the order appointing the restructuring officer has been discharged,

no suit, action or other proceedings, other than criminal proceedings, shall be proceeded with or commenced against the company, no resolution shall be passed for the company to be wound up and no winding up petition may be presented against the company, except with the leave of the Court and subject to such terms as the Court may impose.

(2) Where at any time referred to in subsection (1), there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

(a) the company acting by its directors;

(b) a creditor of the company, including a contingent or prospective creditor;

(c) a contributory of the company; or

(d) the Authority, in respect of any company which is carrying on regulated business,

may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.

(3) In this section —

(a) references to a suit, action or other proceedings include a suit, action or other proceedings in a foreign country; and

(b) references to other proceedings include any court supervised insolvency or restructuring proceedings against the company.

Enforcement of creditors' security

91H. Notwithstanding the presentation of a petition for the appointment of a restructuring officer or the appointment of a restructuring officer by the Court under section 91B or 91C, a creditor who has security over the whole or part of the assets of the company is entitled to enforce the creditor's security without the leave of the Court and without reference to the restructuring officer appointed under section 91B or 91C.

Power to compromise with creditors and members within restructuring officer proceeding

91I. (1) Where a restructuring officer is appointed to a company and a compromise or arrangement is proposed between the company and its creditors or any class of them, or the company and its members or any class of them, the Court may, on the application of the restructuring officer, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, as the case may be, and also on the company.

(3) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company.

(4) An order made under subsection (2) or (3) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If a company makes default in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine of two dollars for each copy in respect of which default is made.

(6) In this section, "**arrangement**" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Provisions for facilitating reconstruction and amalgamation of companies

91J. (1) Where an application is made to the Court under section 91I for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "**a transferor company**") is to be transferred to another company (in this section referred to as "**the transferee company**") the Court, may either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for —

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provisions to be made for any person who within such time and in such manner as the Court directs dissents from the compromise or arrangement; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and any such property shall, if the order so directs, be freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section —

"**property**" includes property, rights and powers of every description;

"**liabilities**" includes duties; and

"**transferee company**" means any company or body corporate established in the Islands or in any other jurisdiction.

Winding up by the Court

Circumstances in which a company may be wound up by the Court

92. A company may be wound up by the Court if —

(a) the company has passed a special resolution requiring the company to be wound up by the Court;

(b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(c) the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be wound up;

(d) the company is unable to pay its debts; or

(e) the Court is of opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts

93. A company shall be deemed to be unable to pay its debts if —

(a) a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding one hundred dollars then due, has served on the company by leaving at its registered office a demand under that person's hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;

(b) execution of other process issued on a judgment, decree or order obtained in the Court in favour of any creditor at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Application for winding up

94. (1) An application to the Court for the winding up of a company shall be by petition presented either by —

(a) the company;

(b) any creditor or creditors (including any contingent or prospective creditor or creditors);

(c) any contributory or contributories; or

(d) subject to subsection (4), the Authority pursuant to the regulatory laws.

(2) Where expressly provided for in the articles of association of a company, the directors of a company incorporated before the 31st August, 2022, the commencement date of *the Companies (Amendment) Act, 2021 [Act 6 of 2021]* have the authority to —

(a) present a winding up petition; or

(b) where a winding up petition has been presented, apply for the appointment of a provisional liquidator, on behalf of the company without the sanction of a resolution passed at a general meeting.

(2A) Subject to subsection (2B), the directors of a company incorporated after the 31st August, 2022, the commencement date of the *Companies (Amendment) Act, 2021 [Act 6 of 2021]* may present a winding up petition on behalf of the company on the grounds that the company is unable to pay its debts within the meaning of section 93 or where a winding up petition has been presented, apply on behalf of the company, for the appointment of a provisional liquidator.

(2B) The articles of association of a company may expressly remove or modify the directors' authority to present a winding up petition or apply for the appointment of a provisional liquidator on the company's behalf.

(3) A contributory is not entitled to present a winding up petition unless either —

(a) the shares in respect of which that person is a contributory, or some of them, are partly paid; or

(b) the shares in respect of which that person is a contributory, or some of them, either were —

(i) originally allotted to that person, or have been held by that person, and registered in that person's name for a period of at least six months immediately preceding the presentation of the winding up petition; or

(ii) have devolved on that person through the death of a former holder.

(4) A winding up petition may be presented by the Authority in respect of any company which is carrying on a regulated business in the Islands upon the grounds that it is not duly licensed or registered to do so under the regulatory laws or for any other reason as provided under the regulatory laws or any other law.

Powers of the Court

95. (1) Upon hearing the winding up petition the Court may —

(a) dismiss the petition;

(b) adjourn the hearing conditionally or unconditionally;

(c) make a provisional order; or

(d) any other order that it thinks fit,

but the Court shall not refuse to make a winding up order on the ground only that the company's assets have been mortgaged or charged to an amount equal to or in excess of those assets or that the company has no assets.

(2) The Court shall dismiss a winding up petition or adjourn the hearing of a winding up petition on the ground that the petitioner is contractually bound not to present a petition against the company.

(3) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court shall have jurisdiction to make the following orders, as an alternative to a winding-up order, namely —

(a) an order regulating the conduct of the company's affairs in the future;

(b) an order requiring the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do;

(c) an order authorising civil proceedings to be brought in the name and on behalf of the company by the petitioner on such terms as the Court may direct; or

(d) an order providing for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly.

(4) Where an alternative order under subsection (3) requires the company not to make any, or any specified, alteration in the memorandum or articles of association, the company does not have power, without the leave of the Court, to make any such alteration in breach of that requirement.

(5) Any alteration in a company's memorandum or articles of association made by virtue of an alternative order under subsection (3) is of the same effect as if duly made by resolution of the company, and the provisions of this Act shall apply to the memorandum or articles of association as so altered accordingly.

(6) A copy of an alternative order made under subsection (3) altering, or giving leave to alter, a company's memorandum or articles of association shall be filed by the company with the Registrar within fourteen days of the making of the order.

Power to stay or restrain proceedings

96. At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may —

(a) where any action or proceeding against the company, including a criminal proceeding, is pending in a summary court, the Court, the Court of Appeal or the Privy Council, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any action or proceeding is pending against the company in a foreign court, apply to the Court for an injunction to restrain further proceedings therein,

and the court to which application is made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of attachments and stay of proceedings

97. (1) When a winding up order is made or a provisional liquidator is appointed, no suit, action or other proceedings, other than criminal proceedings, shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose.

(1A) Where a winding up order is made or a provisional liquidator is appointed in respect of a company, and there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

(a) the company;

(b) a creditor of the company;

(c) a contributory of the company; or

(d) subject to section 94(4), the Authority, in respect of any company which is carrying on regulated business, may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.

(2) When a winding up order has been made, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

Notice of winding up order

98. When a winding up order is made, the liquidator shall —

(a) file a copy of the winding up order with the Registrar; and

(b) publish notice of the winding up in the Gazette and any newspaper in which the winding up petition was advertised.

Avoidance of property dispositions, etc.

99. When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void.

Commencement of winding up by the Court

100. (1) If, before the presentation of a petition for the winding up of a company by the Court —

(a) a resolution has been passed by the company for voluntary winding up;

(b) the period, if any, fixed for the duration of the company by the articles of association has expired;

(c) the event upon the occurrence of which it is provided by the articles of association that the company is to be wound up has occurred; or

(d) a restructuring officer has been appointed pursuant to section 91B or 91C and the order appointing the restructuring officer has not been discharged,

the winding up of the company is deemed to have commenced at the time of passing of the relevant resolution or the expiry of the relevant period or the occurrence of the relevant event or the date of the presentation of the petition to appoint a restructuring officer pursuant to section 91B.

(2) In any other circumstance not specified in subsection (1), the winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for winding up.

Company's statement of affairs

101. (1) Where the Court has made a winding up order or appointed a provisional liquidator, the liquidator may require some or all of the persons mentioned in subsection (3) to prepare and submit to that person a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by an affidavit sworn by the persons required to submit it and shall show —

(a) particulars of the company's assets and liabilities, including contingent and prospective liabilities;

(b) the names and addresses of any persons having possession of the company's assets;

(c) the assets of the company held by those persons;

(d) the names and addresses of the company's creditors;

(e) the securities held by those creditors;

(f) the dates when the securities were respectively given; and

(g) such further or other information that the liquidator may require.

(3) The persons referred to in subsection (1) are —

(a) persons who are or have been directors or officers of the company;

(b) persons who are or have been professional service providers to the company; and

(c) persons who are or have been employees of the company, during the period of one year immediately preceding the relevant date.

(4) Where any persons are required under this section to submit a statement of affairs to the liquidator, they shall do so, subject to subsection (5), before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the liquidator.

(5) The liquidator may release a person from an obligation imposed on that person under subsection (1) or, when giving the notice mentioned in subsection (4) or subsequently, the liquidator may extend the time for compliance; and if the liquidator refuses to extend the time for compliance, the Court may do so.

(6) In this section —

"**relevant date**" means —

(a) in a case where a provisional liquidator is appointed, the date of that person's appointment; and

(b) in any other case, the commencement of the winding up.

(7) A person who, without reasonable excuse, fails to comply with any obligation imposed under this section commits an offence and is liable on conviction to a fine of ten thousand dollars.

Investigation by liquidator

102. (1) Where a winding up order is made by the Court, the liquidator shall be empowered to investigate —

(a) if the company has failed, the causes of the failure; and

(b) generally, the promotion, business, dealings and affairs of the company,

and to make such report, if any, to the Court as that person thinks fit.

(2) Subject to obtaining the directions of the Court, the liquidator shall have power to —

(a) assist the Authority and the Royal Cayman Islands Police Service to investigate the conduct of persons referred to in section 101(3); and

(b) institute and conduct a criminal prosecution of persons referred to in section 101(3).

(3) Subject to obtaining the prior approval of the company's creditors, if it is insolvent, or its contributories, if it is solvent, the directions given under

subsection (2) may include a direction that the whole or part of the costs of investigation and prosecution be paid out of the assets of the company.

Duty to co-operate and the private examination of relevant persons

103. (1) This section applies to any person who, whether resident in the Islands or elsewhere —

(a) has made or concurred with the statement of affairs;

(b) is or has been a director or officer of the company;

(c) is or was a professional service provider to the company;

(d) has acted as a controller, advisor or liquidator of the company or receiver or manager of its property;

(e) not being a person falling within paragraphs (a) to (c), is or has been concerned or has taken part in the promotion, or management of the company,

and such person is referred to in this section as the "**relevant person**".

(2) It is the duty of every relevant person to co-operate with the official liquidator.

(3) While a company is being wound up, the official liquidator may at any time before its dissolution apply to the Court for an order —

(a) for the examination of any relevant person; or

(b) that a relevant person transfer or deliver up to the liquidator any property or documents belonging to the company.

(4) Unless the Court otherwise orders, the official liquidator shall make an application under subsection (3) if that person is requested in accordance with the rules to do so by one-half, in value, of the company's creditors or contributories.

(5) On an application made under subsection (3)(a), the Court may order that a relevant person —

(a) swear an affidavit in answer to written interrogatories;

(b) attend for oral examination by the official liquidator at a specified time and place, or

(c) do both things specified in paragraphs (a) and (b).

(6) The Court may direct that any creditor or contributory of the company be permitted by the official liquidator to participate in an oral examination.

(7) The Court shall have jurisdiction —

(a) to make an order under this section against a relevant person resident outside the Islands; and

(b) to issue a letter of request for the purpose of seeking the assistance of a foreign court in obtaining the evidence of a relevant person resident outside the jurisdiction.

Official Liquidators

Appointment and powers of provisional liquidator

104. (1) Subject to this section and any rules made under section 155, the Court may, at any time after the presentation of a winding up petition but before the making of a winding up order, appoint a liquidator provisionally.

(2) An application for the appointment of a provisional liquidator may be made under subsection (1) by a creditor or contributory of the company or, subject to subsection (6), the Authority, on the grounds that —

(a) there is a *prima facie* case for making a winding up order; and

(b) the appointment of a provisional liquidator is necessary in order to —

(i) prevent the dissipation or misuse of the company's assets;

(ii) prevent the oppression of minority shareholders; or

(iii) prevent mismanagement or misconduct on the part of the company's directors.

(3) An application for the appointment of a provisional liquidator may be made under subsection (1) by the company and on such an application the Court may appoint a provisional liquidator if it considers it appropriate to do so.

(4) A provisional liquidator shall carry out only such functions as the Court may confer on that person and that person's powers may be limited by the order appointing that person.

(5) The remuneration of the provisional liquidator shall be fixed by the Court from time to time on that person's application and the Court shall in fixing such remuneration act in accordance with rules made under section 155.

(6) An application for the appointment of a provisional liquidator may be presented by the Authority on the grounds under subsection (2), in respect of any company which is carrying on a regulated business in the Islands upon the grounds that it is not duly licensed or registered to do so under the regulatory laws or for any other reason as provided under the regulatory laws or any other law regardless of whether or not the Authority presented the winding up petition.

Appointment of official liquidator

105. (1) For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed one or more than one person to be called an official liquidator or official liquidators; and the Court may appoint to such office such person as it thinks fit, and if more persons than one are appointed to such office, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any or more of such persons.

(2) The Court may also determine whether any and what security is to be given by an official liquidator on that person's appointment; and if no official liquidator is appointed, or during any vacancy in such office, all the property of the company shall be in the custody of the Court.

(3) The liquidator shall, within twenty-eight days of the date upon which the winding up order is made, summon —

(a) a meeting of the company's creditors if the order was made on the grounds that the company is insolvent; or

(b) a meeting of the company's contributories if the order was made on grounds other than insolvency,

for the purposes of resolving any other matters which the liquidator puts before the meeting.

(4) The Court may make an order dispensing with the need to summon a meeting under this section or extending the time within which it shall be summoned.

Appointment of joint liquidators

106. When two or more persons are appointed to the office of liquidator, either provisionally or as official liquidators, they shall be authorised to act jointly and severally, unless their powers are expressly limited by order of the Court.

Removal of official liquidators

107. An official liquidator may be removed from office by order of the Court made on the application of a creditor or contributory of the company.

Qualifications of official liquidators

108. (1) A foreign practitioner may be appointed to act jointly with a qualified insolvency practitioner.

(2) Official liquidators are officers of the Court.

Remuneration of official liquidators and restructuring officers

109. (1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are , subject to subsection (2), payable out of the company's assets in priority to all other claims.

(2) Where a company is wound up, the expenses properly incurred in any petition for a restructuring officer and during the term of appointment of the restructuring officer appointed —

(a) under section 91B(3)(a); or

(b) on an interim basis under section 91C(3), including the remuneration of the restructuring officer, are payable out of the company's assets in priority to all other claims.

(3) There shall be paid to a restructuring officer, including a restructuring officer appointed on an interim basis, and the official liquidator, such remuneration, by way of percentage or otherwise, that the Court may direct acting in accordance with rules made under section 155.

(4) If more than one restructuring officer, including a restructuring officer appointed on an interim basis, is appointed by the Court under section 91B or 91C, the remuneration paid under subsection (3) shall be distributed among the restructuring officers in such proportions as the Court may direct.

(5) If more than one official liquidator is appointed by the Court when a company is wound up, the remuneration paid under subsection (3) shall be distributed among the official liquidators in such proportions as the Court may direct.

Function and powers of official liquidators

110. (1) It is the function of an official liquidator —

(a) to collect, realise and distribute the assets of the company to its creditors and, if there is a surplus, to the persons entitled to it; and

(b) to report to the company's creditors and contributories upon the affairs of the company and the manner in which it has been wound up.

(2) The official liquidator may —

(a) with the sanction of the Court, exercise any of the powers specified in Part I of Schedule 3; and

(b) with or without that sanction, exercise any of the general powers specified in Part 2 of Schedule 3.

(3) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and subject to subsection (5), any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of such powers (hereinafter referred to as a "sanction application").

(4) In the case of —

(a) a solvent company, a sanction application may only be made by a contributory and the creditors shall have no right to be heard;

(b) an insolvent company, a sanction application may only be made by a creditor and the contributories shall have no right to be heard; and

(c) a company whose solvency is doubtful, a sanction application may be made by both contributories and creditors and both contributories and creditors shall have a right to be heard.

(5) For the purposes of exercising the powers specified under paragraph 3 of Part 1 of Schedule 3, a person shall be treated as related to a company if the person —

(a) has acted for the company as a professional service provider;

(b) is or was a shareholder or director of the company or of any other company in the same group as the company;

(c) has a direct or indirect beneficial interest in the shares of the company; or

(d) is a creditor or debtor of the company.

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General Powers of the Court

Power to stay winding up

111. (1) The Court may at any time after an order for winding up, on the application either of the liquidator or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings either all together or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The Court may at any time after the liquidation has commenced under section 116(c), but before the final meeting has been held as provided for in section 127, on the application of the liquidator accompanied by —

(a) a special resolution stating that the company will not be wound up and setting out the reasons for such decision;

(b) proof of a recall notice published in the Gazette; and

(c) such other documents as the Court may consider necessary,

make an order to recall the liquidation, place the company into active status and place the company back into good standing as it was prior to the commencement of liquidation under section 116(c), on such terms and conditions as the Court thinks fit.

(3) A company shall, within seven days of the making of an order under this section, forward a copy of the order to the Registrar who shall enter it in the records relating to the company.

Settlement of list of contributories

112. (1) The liquidator shall settle a list of contributories, if any, for which purpose that person shall have power to adjust the rights of contributories amongst themselves.

(2) In the case of a solvent liquidation of a company which has issued redeemable shares at prices based upon its net asset value from time to time, the liquidator shall have power to settle and, if necessary rectify the company's register of members, thereby adjusting the rights of members amongst themselves.

(3) A contributory who is dissatisfied with the liquidator's determination may appeal to the Court against such determination.

Power to make calls

113. (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories —

(a) to the extent of their liability, for the payment of any money which the Court considers necessary to satisfy the company's debts and liabilities and the expenses of winding up; and

(b) to the adjustment of the rights of the contributories among themselves,

and make an order for payment of any call so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

Inspection of documents by creditors, etc.

114. (1) At any time after making a winding up order the Court may make such orders as it thinks fit for —

(a) the inspection of the company's documents by creditors and contributories; and

(b) the preparation of reports by the official liquidator and the provision of such reports to the company's creditors and contributories.

(2) A contributory shall be entitled to make an application under this section notwithstanding that the company is or may be insolvent and the Court shall not refuse to make an order upon the application of a contributory merely by reason of the fact that the company is or may be insolvent.

Meetings to ascertain wishes of creditors or contributories

115. (1) The Court shall, as to all matters relating to the winding up, have regard to wishes of the creditors or contributories and for that purpose it may direct reports to be prepared by the official liquidator and meetings of creditors or contributories to be summoned.

(2) If it considers it necessary to do so, the Court may direct that separate meetings be held of different classes of creditors or contributories.

(3) Subject to Rules made under section 155, meetings may be requisitioned by creditors, if the company is insolvent, or by contributories if the company is solvent.

(4) The votes of creditors and contributories shall be counted by reference to —

(a) the value of their debts, in the case of creditors;

(b) the number of votes, in the case of contributories whose shares carry voting rights under the articles of association of the company; and

(c) the par value of all the shares held, in the case of contributories whose shares do not carry votes under the articles of association of the company and, where there are no par value shares, the net asset value of the company shown.

Voluntary Winding up

Circumstances in which a company may be wound up voluntarily

116. A company incorporated and registered under this Act or an existing company may be wound up voluntarily —

(a) when the period, if any, fixed for the duration of the company by its memorandum or articles of association expires;

(b) if the event, if any, occurs, on the occurrence of which the memorandum or articles of association provide that the company is to be wound up;

(c) if the company resolves by special resolution that it be wound up voluntarily; or

(d) if the company in general meeting resolves by ordinary resolution that it be wound up voluntarily because it is unable to pay its debts.

Commencement of winding up

117. (1) A voluntary winding up is deemed to commence —

(a) at the time of the passing of the resolution for winding up; or

(b) on the expiry of the period or the occurrence of the event specified in the company's memorandum or articles of association,

notwithstanding that a supervision order is subsequently made by the Court.

(2) Subject to any contrary provision in its memorandum or articles of association, the voluntary winding up of an exempted limited duration company is taken to have commenced upon the expiry of a period of ninety days starting on —

(a) the death, insanity, bankruptcy, dissolution, withdrawal, retirement or resignation of a member of the company;

(b) the redemption, repurchase or cancellation of all the shares of a member of the company; or

(c) the occurrence of any event which, under the memorandum or articles of association of the company, terminates the membership of a member of the company,

unless there remain at least two members of the company and the company is continued in existence by the unanimous resolution of the remaining members pursuant to amended memorandum and articles of association adopted during that period of ninety days.

Effect on business and status of the company

118. (1) In the case of a voluntary winding up, the company shall from the commencement of its winding up cease to carry on its business except so far as it may be beneficial for its winding up.

(2) Notwithstanding anything to the contrary contained in the company's articles of association, its corporate state and powers shall continue until the company is dissolved.

Appointment of voluntary liquidator

119. (1) One or more liquidators shall be appointed for the purpose of winding up the company's affairs and distributing its assets.

(2) When the winding up has commenced in accordance with the company's memorandum or articles of association upon the termination of a fixed period or the occurrence of an event —

(a) the persons designated as liquidators in the memorandum or articles of association shall become such liquidators automatically from the commencement of the winding up; or

(b) if no such person is designated in the memorandum or articles of association or the person designated is unable or unwilling to act, the directors shall convene a general meeting of the company for the purpose of appointing a liquidator.

(3) Except in the case of a person designated as liquidator in the company's memorandum or articles of association, the appointment of a voluntary liquidator shall take effect upon the filing of that person's consent to act with the Registrar.

(4) If a vacancy occurs by death, resignation or otherwise in the office of voluntary liquidator appointed by the company —

(a) the company in a general meeting may fill the vacancy; or

(b) the Court may fill the vacancy on the application of any contributory or creditor.

(5) On the appointment of a voluntary liquidator all the powers of the directors cease, except so far as the company in a general meeting or the liquidator sanctions their continuance.

(6) When two or more persons are appointed as voluntary liquidators jointly, they shall be authorised to act jointly and severally unless their powers are expressly limited by the resolution or articles of association under which they are appointed.

Qualifications of voluntary liquidators

120. Any person, including a director or officer of the company, may be appointed as its voluntary liquidator.

Removal of voluntary liquidators

121. (1) A voluntary liquidator may be removed from office by a resolution of the company in a general meeting convened especially for that purpose.

(2) A general meeting of the company for the purpose of considering a resolution to remove its voluntary liquidator may be convened by any shareholder or shareholders holding not less than one fifth of the company's issued share capital.

(3) Whether or not a general meeting has been convened in accordance with subsection (2), any contributory may apply to the Court for an order that a voluntary liquidator be removed from office on the grounds that that person is not a fit and proper person to hold office.

Resignation of voluntary liquidator

122. (1) Where two or more persons are appointed as joint voluntary liquidators, they may resign by filing a notice of resignation with the Registrar, so long as at least one of them continues in office.

(2) Except as provided in subsection (1), a voluntary liquidator wishing to resign shall —

(a) prepare a report and accounts; and

(b) convene a general meeting of the company for the purpose of accepting that person's resignation and releasing that person from the performance of any further duties, and shall cease to hold office with effect from the date upon which the resolution is passed.

(3) In the event that the company fails to pass a resolution accepting that person's resignation, the voluntary liquidator may apply to the Court for an order that that person be released from the performance of any further duties.

Notice of voluntary winding up

123. (1) Within twenty-eight days of the commencement of a voluntary winding up, the liquidator or, in the absence of any liquidator, the directors shall —

(a) file notice of the winding up with the Registrar;

(b) file the liquidator's consent to act with the Registrar;

(c) file the director's declaration of solvency with the Registrar (if the supervision of the court is not sought);

(d) in the case of a company carrying on a regulated business, serve notice of the winding up upon the Authority; and

(e) publish notice of the winding up in the Gazette.

(2) A director or liquidator who fails to comply with this section commits an offence and is liable to a fine of ten thousand dollars.

Application for supervision order

124. (1) Where a company is being wound up voluntarily its liquidator shall apply to the Court for an order that the liquidation continue under the supervision of the Court unless, within twenty-eight days of the commencement of the liquidation, the directors have signed a declaration of solvency in the prescribed form in accordance with subsection (2).

(2) A declaration of solvency means a declaration or affidavit in the prescribed form to the effect that a full enquiry into the company's affairs has been made and that to the best of the directors' knowledge and belief the company will be able to pay its debts in full together with interest at the prescribed rate, within such period, not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration.

(3) A person who knowingly makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the prescribed rate, within the period specified commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

Avoidance of share transfers

125. Any transfer of shares, not being a transfer with the sanction of the liquidator, and any alteration in the status of the company's members made after the commencement of a voluntary winding up is void.

General meeting at year's end

126. (1) In the event of a voluntary winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and at the end of each succeeding year and such meetings shall be held within three months of each anniversary of the commencement of the liquidation.

(2) At each meeting the liquidator shall lay before the meeting a report and account of that person's acts and dealings and the conduct of the winding up during the preceding year.

(3) A liquidator who fails to comply with this section commits an offence and is liable on conviction to a fine of ten thousand dollars.

Final meeting prior to dissolution

127. (1) As soon as the company's affairs are fully wound up, the liquidator shall make a report and an account of the winding up showing how it has been conducted and how the company's property has been disposed of and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving an explanation for it.

(2) At least twenty-one days before the meeting the liquidator shall send a notice specifying the time, place and object of the meeting to each contributory in any manner authorised by the company's articles of association and published in the Gazette.

(3) The liquidator shall, no later than seven days after the meeting, make a return to the Registrar in the prescribed form specifying —

(a) the date upon which the meeting was held; and

(b) if a quorum was present, particulars of the resolutions, if any, passed at the meeting.

(4) A liquidator who fails to call a general meeting of the company as required by subsection (1) or fails to make a return as required by subsection (3) commits an offence and is liable on conviction to a fine of ten thousand dollars.

Effect of winding up on share capital of company limited by guarantee

128. Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called upon shall be deemed to be an asset of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by that person, and payable at such time as may be appointed by the liquidator.

Reference of questions to Court

129. (1) The voluntary liquidator or any contributory may apply to the Court to determine any question arising in the voluntary winding up of a company or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up under the supervision of the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partly to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) The voluntary liquidator shall, within seven days of the making of an order under this section, forward a copy of the order to the Registrar who shall enter it in that person's records relating to the company.

Expenses of voluntary winding up

130. (1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

(2) The rate and amount of the liquidator's remuneration shall be fixed and payment authorised by resolution of the company.

(3) Each report and account laid before the company in general meetings by its liquidator shall contain all such information, including the rate at which the liquidator's remuneration is calculated and particulars of the work done, as may be necessary to enable the members to determine what expenses have been properly incurred and what remuneration is properly payable to the liquidator.

(4) If the company fails to approve the liquidator's remuneration and expenses or the liquidator is dissatisfied with the decision of the company, that person may apply to the Court which shall fix the rate and amount of that person's remuneration and expenses.

Winding up subject to the supervision of the Court

Application for supervision order

131. When a resolution has been passed by a company to wind up voluntarily, the liquidator or any contributory or creditor may apply to the Court for an order for the continuation of the winding up under the supervision of the Court, notwithstanding that the declaration of solvency has been made in accordance with section 124, on the grounds that —

(a) the company is or is likely to become insolvent; or

(b) the supervision of the Court will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the contributories and creditors.

Appointment of official liquidator

132. (1) When making a supervision order the Court —

(a) shall appoint one or more qualified insolvency practitioners; and

(b) may, in addition, appoint one or more foreign practitioners,

as liquidator or liquidators of the company and section 105 shall apply as if the Court had made a winding up order.

(2) Unless a voluntary liquidator is appointed as an official liquidator, that person shall prepare a final report and accounts within twenty-eight days from the date of the supervision order.

Effect of supervision order

133. A supervision order shall take effect for all purposes as if it was an order that the company be wound up by the Court except that —

(a) the liquidation commenced in accordance with section 117; and

(b) the prior actions of the voluntary liquidator shall be valid and binding upon the company and its official liquidator.

Offences of fraud, etc.

Fraud, etc. in anticipation of winding up

134. (1) Where a company is ordered to be wound up by the Court, or passes a resolution for voluntary winding up, any person, who is or was an officer, professional service provider, voluntary liquidator, restructuring officer or controller of the company and who, within the twelve months immediately preceding the commencement of the winding up, has —

(a) concealed any part of the company's property to the value of ten thousand dollars or more or concealed any debt due to or from the company;

(b) removed any part of the company's property to the value of ten thousand dollars or more;

(c) concealed, destroyed, mutilated or falsified any documents affecting or relating to the company's property or affairs;

(d) made any false entry in any documents affecting or relating to the company's property or affairs;

(e) parted with, altered or made any omission in any document affecting or relating to the company's property or affairs; or

(f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business),

with intent to defraud the company's creditors or contributories commits an offence and is liable on conviction to a fine and to imprisonment for five years.

(2) In this section —

"**officer**" includes a shadow director.

Transactions in fraud of creditors

135. Where a company is ordered to be wound up by the Court or passes a resolution for voluntary winding up, any officer, restructuring officer, controller or professional service provider of the company who —

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property; or

(b) has concealed or removed any part of the company's property,

with intent to defraud the company's creditors or contributories commits an offence and is liable on conviction to a fine and to imprisonment for five years.

Misconduct in course of winding up

136. (1) Where a company is being wound up, whether by the Court or voluntarily, a person who is or was a director, officer, restructuring officer, controller or professional service provider of the company and who —

(a) does not to the best of that person's knowledge and belief fully and truly discover to the liquidator —

(i) all the company's property (except such part as has been disposed of in the ordinary way of the company's business);

(ii) the date on which and manner in which the company's property or any part thereof property was disposed of, if it was disposed of;

(iii) the persons to whom any property was transferred, if it was disposed of; or

(iv) the consideration paid for any property which was disposed of;

(b) does not deliver up to the liquidator or does not deliver up in accordance with the directions of the liquidator any of the company's property which is in that person's custody or under that person's control, and which that person is required by law to deliver up;

(c) does not deliver up to the liquidator or does not deliver up, in accordance with the directions of the liquidator, all documents in that person's custody

or under that person's control which belong to the company and which that person is required by law to deliver up;

(d) knows or believes that a false debt has been proved by any person in the winding up and fails to inform the liquidator of such knowledge or belief as soon as practicable;

(e) prevents the production of any document affecting or relating to the company's property or affairs; or

(f) destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company,

with intent to defraud the company's creditors or contributories commits an offence and is liable on conviction to a fine of twenty five thousand dollars or to imprisonment for a term of five years, or to both.

(2) In this section —

"**officer**" includes a shadow director.

Material omissions from statement relating to company's affairs

137. (1) Where a company is being wound up, whether by the Court or voluntarily, a person who is or was a director, an officer, a manager, restructuring officer, controller or a professional service provider of the company, commits an offence if that person makes any material omission in any statement relating to the company's affairs, with intent to defraud the company's creditors or contributories.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of five years, or to both.

(3) In this section —

"**officer**" includes a shadow director.

General provisions

Getting in the company's property

138. (1) Where any person has in that person's possession any property or documents to which the company appears to be entitled, the Court may require that person to pay, transfer or deliver such property or documents to the official liquidator.

(2) Where the official liquidator seizes or disposes of any property which that person reasonably believed belonged to the company, that person shall not be personally liable for any loss or damage caused to its true owner except in so far as such loss or damage is caused by that person's own negligence.

Provable debts

139. (1) All debts payable on a contingency and all claims against the company whether present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company and the official liquidator shall make a just estimate so far as is possible of the value of all such debts or claims as may be subject to any contingency or sound only in damages or which for some other reason do not bear a certain value.

(2) Foreign taxes, fines and penalties shall be admissible to proof against the company only if and to the extent that a judgment in respect of the same would be enforceable against the company pursuant to the *Foreign Judgments Reciprocal Enforcement Act (1996 Revision)* or any laws permitting the enforcement of foreign taxes, fines and penalties.

Distribution of the company's property

140. (1) Subject to subsection (2), the property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto shall be distributed amongst the members according to their rights and interests in the company.

(2) The collection in and application of the property of the company referred to in subsection (1) is without prejudice to and after taking into account and giving effect to the rights of preferred and secured creditors and to any agreement between the company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any contractual rights of set-off or netting of claims between the company and any person or persons (including without limitation any bilateral or any multi-lateral set-off or netting arrangements between the company and any person or persons) and subject to any agreement between the company and any person or persons to waive or limit the same.

(3) In the absence of any contractual right of set-off or non set-off, an account shall be taken of what is due from each party to the other in respect of their mutual dealings, and the sums due from one party shall be set-off against the sums due from the other.

(4) Sums due from the company to another party shall not be included in the account taken under subsection (3) if that other party had notice at the time they became due that a petition for the winding up of the company was pending.

(5) Only the balance, if any, of the account taken under subsection (3) shall be provable in the liquidation or, as the case may be, payable to the liquidator as part of the assets.

Preferential debts

141. (1) In the case of an insolvent company, the debts described in Schedule 2 shall be paid in priority to all other debts.

(2) The preferential debts shall —

(a) rank equally amongst themselves and be paid in full unless the assets available, after having exercised any rights of set-off or netting of claims, are insufficient to meet them in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

Secured creditors

142. (1) Notwithstanding that a winding up order has been made, a creditor who has security over the whole or part of the assets of a company is entitled to enforce that person's security without the leave of the Court and without reference to the liquidator.

(2) Where the liquidator sells assets on behalf of a secured creditor, that person is entitled to deduct from the proceeds of sale a sum by way of remuneration equivalent to that which is or would be payable under section 109.

Preferential charge on goods distrained

143. In the event of a landlord or other person entitled to receive rent distraining or having distrained on any goods or effects of the company within three months preceding the date of the winding up order, the debts to which priority is given by section 141 shall be a first charge on the goods or effects so distrained on or the proceeds of sale thereof.

Effect of execution or attachment

144. (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, that person is not entitled to retain the benefit of the execution or attachment against the liquidator unless that person has completed the execution or attachment before the commencement of the winding up.

(2) Notwithstanding subsection (1) —

(a) where a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which that person had notice is substituted for the purpose of subsection (1) for the date of commencement of the winding up;

(b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which execution has been levied in all cases acquires a good title to them against the liquidator; and

(c) the rights conferred by subsection (1) on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(3) For the purposes of this Act —

(a) an execution against goods is completed by seizure and sale;

(b) an execution against securities is completed upon making a charging order absolute;

(c) an attachment of a debt is completed by receipt of the debt; and

(d) an execution against land is completed by the registration of a charging order.

Voidable preference

145. (1) Every conveyance or transfer of property, or charge thereon, and every payment obligation and judicial proceeding, made, incurred, taken or suffered by any company in favour of any creditor at a time when the company is unable to pay its debts within the meaning of section 93 with a view to giving such creditor a preference over the other creditors shall be voidable upon the application of the company's liquidator if made, incurred, taken or suffered within six months immediately preceding the commencement of a liquidation.

(2) A payment made as aforesaid to a related party of the company shall be deemed to have been made with a view to giving such creditor a preference.

(3) For the purposes of this section a creditor shall be treated as a "related party" if it has the ability to control the company or exercise significant influence over the company in making financial and operating decisions.

Avoidance of dispositions made at an undervalue

146. (1) In this section and section 147 —

(a) "**disposition**" has the meaning ascribed in Part VI of the *Trusts Act (2021 Revision)*;

(b) "**intent to defraud**" means an intention to wilfully defeat an obligation owed to a creditor;

(c) "**obligation**" means an obligation or liability (which includes a contingent liability) which existed on or prior to the date of the relevant disposition;

(d) "**transferee**" means the person to whom a relevant disposition is made and shall include any successor in title; and

(e) "**undervalue**" in relation to a disposition of a company's property means —

(i) the provision of no consideration for the disposition; or

(ii) a consideration for the disposition the value of which in money or monies worth is significantly less than the value of the property which is the subject of the disposition.

(2) Every disposition of property made at an undervalue by or on behalf of a company with intent to defraud its creditors shall be voidable at the instance of its official liquidator.

(3) The burden of establishing an intent to defraud for the purposes of this section shall be upon the official liquidator.

(4) No action or proceedings shall be commenced by an official liquidator under this section more than six years after the date of the relevant disposition.

(5) In the event that any disposition is set aside under this section, then if the Court is satisfied that the transferee has not acted in bad faith —

(a) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings; and

(b) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee (and of any predecessor transferee who has not acted in bad faith).

Fraudulent trading

147. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose the liquidator may apply to the Court for a declaration under this section.

(2) The Court may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are liable to make such contributions, if any, to the company's assets as the Court thinks proper.

Supply of utilities

148. (1) If a request is made by or with the concurrence of the liquidator (including a provisional liquidator) or a restructuring officer for the giving, after the effective date, of any of the supplies mentioned in subsection (2), the supplier —

(a) may make it a condition of the giving of the supply that the liquidator (including a provisional liquidator) or restructuring officer personally guarantees the payment of any charges in respect of the supply; but

(b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply,

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that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(2) The supplies referred to in subsection (1) are —

(a) a supply of electricity;

(b) a supply of water; and

(c) a supply of telecommunication services.

(3) In this section —

"**effective date**" means —

(a) the date on which the provisional liquidator was appointed;

(b) the date on which the winding up order was made; or

(c) the date on which the restructuring officer was appointed.

Interest on debts

149. (1) Subject to subsection (5), in a winding up interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder of the debt.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the period during which they have been outstanding since the company went into liquidation.

(3) All interest under this section ranks equally, whether or not the debts on which it is payable ranked equally.

(4) The rate of interest payable under this section in respect of any debt is the greater of —

(a) the rate applicable to the currency of the liquidation prescribed from time to time by the *Judgment Debts (Rates of Interest) Rules (2021 Revision)* made under section 34 of the *Judicature Act (2021 Revision)*; and

(b) the rate applicable to that debt apart from the winding up.

(5) No interest shall be payable if the liquidation is concluded in less than six months or the accrued amount is less than five hundred dollars.

Currency of the liquidation

150. (1) In the case of a solvent liquidation, a company's creditors are entitled to receive payment of their debts in the currency of the obligation.

(2) In the case of an insolvent liquidation, a company's liabilities shall be translated into the functional currency of the company at the exchange rates ruling —

(a) on the date of the commencement of the voluntary liquidation; or

(b) on the day upon which the winding up order is made.

(3) For the purposes of this section the functional currency of a company is the currency of the primary economic environment in which it operated as at the commencement of the liquidation.

Dissolution of a Company

Dissolution following voluntary winding up

151. (1) The Registrar shall, within three days of receiving a liquidator's return under section 127(3), register such return.

(2) Upon the expiration of three months from the registration of the return the company is deemed to be dissolved.

(3) Notwithstanding subsection (2), the Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect to such date as the Court thinks fit.

(4) An application under this section shall not be made after the company is deemed to have been dissolved.

(5) An order of the Court made under this section shall be registered with the Registrar within seven days of the date upon which it was made.

Dissolution following winding up by the Court

152. (1) When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of that order or such other date as the Court thinks fit, and the company shall be dissolved accordingly.

(2) The effect of an order for dissolution in respect of a segregated portfolio is that its creditors' claims against the company shall be extinguished, notwithstanding that the company has not been liquidated and dissolved.

(3) The official liquidator shall file the order for dissolution with the Registrar.

(4) An official liquidator who fails to file the order for dissolution with the Registrar within fourteen days from the date, upon which it was perfected, commits an offence and is liable on summary conviction to a penalty of ten dollars for every day during which that person is so in default.

Unclaimed dividends and undistributed assets

153. (1) Any unclaimed dividends or undistributed assets in the possession or control of the liquidator or former liquidator of a company shall be held by that person as trustee upon trust for the benefit of the contributories or creditors to whom such funds are owed.

(2) At the end of one year after the dissolution of the company, the former liquidator shall transfer any funds or other assets held on trust by that person to the Minister charged with responsibility for Finance who shall manage them in accordance with Part VIII of the *Public Management and Finance Act (2020 Revision)*.

Insolvency rules and regulations

Insolvency Rules Committee

154. (1) There shall be established an Insolvency Rules Committee comprising —

(a) the Chief Justice or other judge nominated by the Chief Justice in that person's place who shall be chairperson;

(b) the Attorney General or that person's nominee;

(c) two attorneys-at-law appointed by the Chief Justice on the recommendation of the Cayman Islands Legal Practitioners Association;

(d) a qualified insolvency practitioner appointed by the Chief Justice upon the recommendation of the Cayman Islands Institute of Professional Accountants;

(e) a person appointed by the Chief Justice who, in that person's opinion, demonstrates a wide knowledge of law, finance, financial regulation or insolvency practice; and

(f) a qualified insolvency practitioner appointed by the Chief Justice on the recommendation of the Recovery and Insolvency Specialists Association.

(2) The quorum of the Insolvency Rules Committee shall be the chairperson and three other members of the Committee; and the chairperson shall have a casting vote.

Powers of the Insolvency Rules Committee

155. (1) The Insolvency Rules Committee shall have power —

(a) to make rules and prescribe forms for the purpose of giving effect to Parts 4, 5 and 16;

(b) to prescribe court fees to be paid in connection with —

(i) applications under Part 4;

(ii) winding up proceedings under Part 5; and

(iii) applications under Part 16; and

(c) to make rules for the purpose of specifying —

(i) the qualifications which must be held by a person appointed to the office of official liquidator;

(ii) persons who are disqualified from holding office as official liquidator either generally or in relation to a particular company which is not in liquidation before the court;

(iii) the nature and scope of professional indemnity insurance, if any, required to be held by persons appointed to the office of official liquidators; and

(iv) the nature and scope of security bonds, if any, required to be posted by persons appointed to the office of official liquidator.

(2) The Insolvency Rules Committee, after consultation with the Authority and with any organisation representing insolvency practitioners in the Islands, shall make rules prescribing the rates of fees which may be charged by an official liquidator.

PART 6 - Removal of Defunct Companies

Company not operating may be struck off register

156. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, that person may strike the company off the register and the company shall thereupon be dissolved.

(2) A request on behalf of the company to strike the company off the register shall be accompanied by a fee of seventy-five dollars.

Striking off for failure to pay fine

156A.Where an administrative fine imposed in accordance with section 26 of the *Beneficial Ownership Transparency Act, 2023 [Act 13 of 2023]* remains unpaid for ninety days after imposition of the fine, the Registrar may strike the company off the register and the company shall thereupon be dissolved.

Company being wound up may be struck off register for want of liquidator, etc.

157. Where a company is being wound up, and the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, that person may strike the company off the register and the company shall thereupon be dissolved.

Registrar to publish fact of company being struck off register

158. The Registrar shall immediately publish a Government Notice to the effect that the company in question has been struck off the register, the date on which it has been struck off and the reason therefor. Such notice shall be gazetted.

Vesting of property

162. Any property vested in or belonging to any company struck off the register under this Act shall thereupon vest in the Minister charged with responsibility for Finance and shall be subject to disposition by the Cabinet, or to retention for the benefit of the Islands.

PART 7 - Exempted Companies

What companies may apply to be registered as exempted companies

163. Any proposed company applying for registration under this Act, the objects of which are to be carried out mainly outside the Islands or pursuant to a licence to carry on business in the Islands to which section 174 refers, may apply to be registered as an exempted company.

Registration of exempted companies

164. On being satisfied that section 165 has been complied with, the Registrar shall register the company as an exempted company.

Declaration by proposed company

165. A proposed exempted company applying for registration as an exempted company shall submit to the Registrar a declaration signed by a subscriber to the effect that the operation of the proposed exempted company will be conducted mainly outside the Islands or pursuant to a licence to carry on business in the Islands to which section 174 refers.

Shares shall be non-negotiable

166. The shares of an exempted company shall be non-negotiable and shall be transferred only on the books of the company.

Repealed

167. **Repealed** by section 3 of the *Companies (Amendment) Act, 2016 [Law 3 of 2016]*.

Annual return

168. In January of each year after the year of its registration each exempted company that does not hold a licence to carry on business in the Islands to which section 174 refers shall furnish to the Registrar a return which shall be in the form of a declaration that —

(a) since the previous return or since registration, as the case may be, there has been no alteration in the memorandum of association, other than an alteration in the name of the company effected in accordance with section 31 or an alteration already reported in accordance with section 10;

(aa) states the nature of the business;

(b) the operations of the exempted company since the last return or since registration of the exempted company, as the case may be, have been mainly outside the Islands; and

(c) section 174 has been and is being complied with.

Annual fee

169. (1) Every exempted company shall, in January of each year after the year of its registration, pay to the revenues of the Islands the annual fee specified in Part 4 of Schedule 5.

(2) Each such annual fee referred to in subsection (1) shall be tendered with the return required by section 168.

(3) An exempted company which defaults in submitting its annual return under section 168 or the fee specified in subsection (1) shall incur a penalty of —

(a) 33.33% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1st April and the 30th June;

(b) 66.67% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1st July and the 30th September; and

(c) 100% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1st October and the 31st December.

Failure to comply with section 168 or 169

170. Any exempted company which fails to comply with section 168 or 169 shall be deemed to be a defunct company and shall thereupon be dealt with as such under Part 6 but without prejudice to its being registered again as though it were being registered for the first time.

Registrar to give notice

171. Before taking action under section 170, the Registrar shall give one month's notice to the defaulting company and, if the default is made good before the expiry of such notice, sections 168 and 169 shall be deemed to have been complied with.

False statement in declaration

172. If any declaration under section 165 or 168 contains any wilful false statement or misrepresentation the company shall, on proof thereof, be liable to be immediately dissolved and removed from the register and in such case any fee tendered under section 26(4) or 169 shall be forfeited to the Minister charged with responsibility for Finance for credit to the general revenue.

Penalty for false declaration

173. Every director and officer of a company who knowingly makes or permits the making of any such declaration knowing it to be false commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for a term of one year, or to both.

Prohibited enterprises

174. (1) An exempted company shall not carry on a trade or business in the Islands with any person, except in furtherance of the business of the exempted company carried on outside of the Islands, unless that exempted company holds a licence to carry on business in the Islands under any applicable law.

(2) Nothing in this section shall be construed so as to prevent an exempted company effecting and concluding contracts in the Islands and exercising in the Islands all its powers necessary for the carrying on of its business outside the Islands.

(3) An exempted company that holds a licence to carry on business in the Islands under any applicable law, shall from the date of issue of such licence, continue for all purposes as if incorporated and registered as an ordinary resident company under and subject to this Act the provisions of which shall apply to the company and to persons and matters associated with the company as if the company were incorporated and registered under this Act except as provided in section 7(1)(a), 8(1) and (4), 13(1)(a), 26(3), 30(3), 31(1), 41(2), 42, 50(2), 166, 169, 175 or 252(2).

Prohibited sale of securities

175. An exempted company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public in the Islands to subscribe for any of its securities.

Penalty for carrying on business contrary to this Part

176. If an exempted company carries on any business in the Islands in contravention of this Part then, without prejudice to any other proceedings that may be taken in respect of the contravention, the exempted company and every director, provisional director and officer of the exempted company who is responsible for the contravention commits an offence and is liable on summary conviction to a fine of one hundred dollars for every day during which the contravention occurs or continues, and the exempted company shall be liable to be immediately dissolved and removed from the register.

Electronic business by exempted companies

177. Nothing in this Act shall prohibit an exempted company from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands.

PART 8 - Exempted Limited Duration Companies

Exempted company may apply to be registered as an exempted limited duration company

178. (1) An exempted company may, at any time, apply to the Registrar to be registered as an exempted limited duration company.

(2) An application may also be made under subsection (1) at the same time as an application is made —

(a) to register a proposed company as an exempted company;

(b) to re-register an ordinary non-resident company as an exempted company; or

(c) to register a company by way of continuation as an exempted company.

(3) An application under subsection (1) shall, in addition to any other fee that may be payable, be accompanied by an application fee of two hundred dollars.

Registration as an exempted limited duration company

179. (1) The Registrar shall register as an exempted limited duration company an exempted company that has made application under section 178 if —

(a) the company has at least two subscribers or two members;

(b) where the company was not already registered as a company prior to the application —

(i) the memorandum of association of the company limits the duration of the company to a period of thirty years or less; and

(ii) the name of the company includes at its end "Limited Duration Company" or "LDC"; and

(c) where the company was already registered as a company prior to the application —

(i) the Registrar has been supplied, where the duration of the company is not already limited to a period of thirty years or less with a certified copy of a special resolution of the company altering its memorandum of association to limit the duration of the company to a period of thirty years or less; and

SCHEDULE 3

Powers of Liquidators

(section 110)

PART 1

Powers exercisable with sanction

1. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.
2. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.
3. Power to dispose of any property of the company to a person who is or was related to the company.
4. Power to pay any class of creditors in full.
5. Power to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or for which the company may be rendered liable.
6. Power to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company.
7. Power to deal with all questions in any way relating to or affecting the assets or the winding up of the company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.
8. The power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
9. The power to raise or borrow money and grant securities therefor over the property of the company.
10. The power to engage staff (whether or not as employees of the company) to assist that person in the performance of that person's functions.
11. The power to engage attorneys and other professionally qualified persons to assist that person in the performance of that person's functions.

PART 2

Powers exercisable without sanction

1. The power to take possession of, collect and get in the property of the company and for that purpose to take all such proceedings as that person considers necessary.
2. The power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company seal.
3. The power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against that person's estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors.
4. The power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with the respect of the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.
5. The power to promote a scheme of arrangement pursuant to section 86.
6. The power to convene meetings of creditors and contributories.
7. The power to do all other things incidental to the exercise of that person's powers.

EXHIBIT 79

CAYMAN ISLANDS



Companies Act

(2023 Revision)

COMPANIES WINDING UP RULES

(2023 Consolidation)

Supplement No. 4 published with Legislation Gazette No. 1 dated 12th January, 2023.

PUBLISHING DETAILS

The Companies Winding Up Rules, 2018 made by the Insolvency Rules Committee on 27th November, 2017 as amended by the Citation of Acts of Parliament Act, 2020 [Act 56 of 2020].

Consolidated with —

Companies Winding Up (Amendment) Rules 2022-29th July, 2022.

Consolidated this 31st day of December, 2022.

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ORDER 15

APPLICATION FOR SUPERVISION ORDER

Introduction (O.15, r.1)

1. (1) An application for a supervision order must be made by a company's voluntary liquidator in accordance with section 124 of the Law if its directors fail to make and deliver their declaration of solvency to the voluntary liquidator within 28 days of the commencement of the liquidation.

(2) Notwithstanding that a declaration of solvency has been duly made in accordance with section 124 of the Law, the voluntary liquidator or any contributory or any creditor may apply to the Court for a supervision order on the grounds contained in section 131 of the Law.

Application under section 124 (O.15, r.2)

2. (1) The requirement to apply for a supervision order under section 124 of the Law shall apply only if the voluntary liquidation was commenced on or after 1 March 2009.

(2) An application for a supervision order under section 124 shall be made by petition.

(3) A petition under this Rule shall contain —

(a) particulars of the company's incorporation;

(b) particulars of the method by which the company was put into voluntary liquidation;

(c) particulars of the persons who are or were directors of the company on the date on which its voluntary liquidation commenced;

(d) a statement that the voluntary liquidator did not receive, within 28 days of the commencement of the liquidation, a declaration of solvency in the prescribed form signed by all of the company's directors; and

(e) if the voluntary liquidator is a qualified insolvency practitioner, a statement that the voluntary liquidator consents to being appointed as official liquidator; or

(f) if the voluntary liquidator is not a qualified insolvency practitioner or is unable to comply with the independence requirements of the Regulations or is unwilling to be appointed as official liquidator, the name and address of a qualified insolvency practitioner nominated for appointment as official liquidator.

(4) Every petition under this Rule must be presented within 35 days of the date upon which the liquidation is deemed to have commenced under section 117(1) of the Law.

(5) Unless the voluntary liquidator is a qualified insolvency practitioner who is willing and properly able to accept appointment as official liquidator, the voluntary liquidator must give notice of the petition to the company's members by whatever means is provided in its articles of association for giving notice of a general meeting of the company.

Application under section 131 (O.15, r.3)

3. (1) An application by a voluntary liquidator, contributory or creditor for a supervision order to be made under section 131 shall be made by petition.

(2) A petition under this Rule shall contain full particulars of the grounds upon which it is presented.

(3) Upon the presentation of a petition under this Rule, the petitioner must at the same time issue a summons for directions in respect of the matters contained in this Rule.

(4) Upon hearing the summons for directions, the Court shall either —

(a) make a supervision order, if the Court is satisfied that the company's members consent or do not object to an order being made; or

(b) fix a hearing date and make such directions as the Court thinks appropriate in respect of the following matters —

(i) whether the petition should be served and, if so, upon whom it should be served;

(ii) whether the petition should be advertised and, if so, in what manner it should be advertised;

(iii) the manner in which further evidence is to be given; and

(iv) such other procedural matters as the Court thinks fit.

(5) A petition under this Rule may be presented at any time.

Supporting Affidavits (O.15, r.4)

4. (1) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.

(2) An affidavit verifying a petition under Rule 2 shall be sworn by the voluntary liquidator personally.

(3) An affidavit verifying a petition under Rule 3 shall be sworn by —

(a) the petitioner; or

(b) the voluntary liquidator; or

(c) any director, officer or agent of the petitioner who has been concerned in and has personal knowledge of the matters giving rise to the petition.

(4) Unless the voluntary liquidator is a qualified insolvency practitioner who is willing and properly able to accept appointment as official liquidator, a petition under Rule 2 or Rule 3 must also be supported by an affidavit sworn by the person or persons nominated for appointment as official liquidator and containing the information required by Order 3, rule 4.

Hearing of section 124 Petition (O.15, r.5)

5. (1) If the voluntary liquidator is a qualified insolvency practitioner who has sworn an affidavit verifying that the voluntary liquidator is willing and properly able to accept appointment as official liquidator, a Judge may make a supervision order under section 124 of the Law without the need for any hearing if the Judge is satisfied that —

(a) notice of the petition has been given to the company's creditors and, if it appears to the voluntary liquidator that the company may in fact be solvent, to its shareholders; and

(b) there is no reason to believe that any creditor or, if applicable, any shareholder objects to the appointment of the voluntary liquidator as official liquidator.

(2) In any other case, the voluntary liquidator shall apply to fix a date for hearing the petition in open court and –

(a) give notice of the hearing of the petition to the company's creditors and, if applicable, to its shareholders in whatever manner is likely to bring it to their attention; and

(b) advertise the hearing of the petition once in a newspaper having a circulation within the Islands and, if the company is carrying on business outside the Islands, once in a newspaper having a circulation in a country in which the company appears most likely to have creditors, in which case the advertisement shall be published in the official language of such country.

(3) An advertisement under this Rule shall be in CWR Form No. 22.

(4) Any member or creditor of the company may appear on the petition and be heard upon the question of who should be appointed as official liquidator provided that that member or creditor has given notice of their intention to do so and has complied with the requirements of Order 3, rule 8(3).

Release of Voluntary Liquidator (O.15, r.6)

6. (1) Unless a voluntary liquidator is appointed as official liquidator, the voluntary liquidator shall cease to hold office automatically upon the making of a supervision order.

(2) When a voluntary liquidator ceases to hold office in accordance with this Rule, the voluntary liquidator shall prepare a final report and accounts for the period from the commencement of the voluntary liquidation until the date of the supervision order.

(3) The voluntary liquidator shall deliver the voluntary liquidator's final report and accounts to the official liquidator within 28 days of the date upon which the supervision order was made and the official liquidator shall —

(a) file the report and accounts in Court; and

(b) publish the report and accounts to the company's members and creditors in such manner as the official liquidator thinks fit.

(4) Having delivered the voluntary liquidator's final report and accounts, the voluntary liquidator may apply (but shall not be obliged to apply) to the Court for an order that the voluntary liquidator's accounts (including the amount of the voluntary liquidator's remuneration) be approved and that the voluntary liquidator be released from the performance of any further duties.

Delivery of Company's Books and Records (O.15, r.7)

7. (1) A voluntary liquidator who ceases to hold office upon the making of a supervision order shall forthwith deliver to the voluntary liquidator's successor the company's books and a copy of the voluntary liquidator's liquidation files (maintained in accordance with Order 26, rule 2).

(2) The official liquidator shall allow the voluntary liquidator to have unrestricted access to the company's books and records for the purpose of preparing the voluntary liquidator's report in compliance with Order 13, rule 8.

Supervision Order (O.15, r.8)

8. (1) A supervision order shall be in CWR Form No 23.

(2) The requirements of Order 3, rules 22 and 23 shall apply to supervision orders as they apply to winding up orders.

(3) On the making of a supervision order all the powers of the directors cease, save that directors retain residual powers to allow them to initiate an appeal against the supervision order.

EXHIBIT 80

Charitable DAF HoldCo, Ltd (In Official Liquidation)
(the "Company")
Registration No: 263805
Grand Court Cause No: FSD 116 of 2025 (JAJ)

Written resolutions of the Joint Official Liquidators of the Company

---

WHEREAS

- The Company is currently in official liquidation and under the control of the Joint Official Liquidators, Sandipan Bhowmik and Margot MacInnis, both of Grant Thornton Specialist Services (Cayman) Limited (the "**JOLs**") having been appointed by the Grand Court of the Cayman Islands on 6 May 2025;

- The Company's registered office is presently situated at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, George Town, Grand Cayman KY1-9010, Cayman Islands; and

- The JOLs consider it in the best interests of the liquidation to transfer the registered office of the Company to HSM Corporate Services Ltd, 68 Fort Street, George Town, PO Box 31726, Grand Cayman KY1-1207, Cayman Islands.

IT IS HEREBY RESOLVED THAT:

1. The registered office of the Company be transferred from Campbells Corporate Services Limited to HSM Corporate Services Ltd, with effect from 1 July 2025.

2. The JOLs be and are hereby authorised to take all necessary steps and execute all documents required to give effect to this resolution, including instructing HSM Corporate Services Ltd to attend to the necessary filings with the Registrar of Companies in relation to this matter.

Dated this 1st day of July 2025.

Sandipan Bhowmik
Joint Official Liquidator

Margot MacInnis
Joint Official Liquidator

Grant Thornton Specialist Services (Cayman) Limited
2nd Floor, Century Yard, Cricket Square,
PO Box 1044, Grand Cayman, KY1-1102
Cayman Islands,
T: +1(345) 949 7100
E: cdaf.core@uk.gt.com

www.verify.gov.ky File#: 263805

Filed: 02-Jul-2025 10:57 EST
Auth Code: D34568232717

EXHIBIT 81

Campbells

Campbells LLP
Floor 4, Willow House, Cricket Square
Grand Cayman KY1-9010
Cayman Islands

D +1 345 914 5898
T +1 345 949 2648
F +1 345 949 8613
E MGoodman@campbellslegal.com

campbellslegal.com

Our Ref: MGM/ROD/18955-44959
Your Ref:

CAYMAN | BVI | HONG KONG

BY EMAIL

Johnstone Law
Unit 9, Tropic Centre
18 Earth Close,
PO Box 926,
Grand Cayman, KY1-9006
Cayman Islands

30 May 2025

Dear Sirs

Re: Charitable DAF Holdco, Ltd. (in Official Liquidation) (the "Company")
FSD Cause No. 116 of 2025 (JAJ)

We refer to your letters dated 22 and 30 May 2025 sent on behalf of the joint official liquidators (the "**JOLs**") of the Company. Capitalised terms, unless otherwise defined, adopt the definitions applied in our letters dated 12 and 16 May 2025 ("**Our Letter**)" which were addressed to the JOLs.

As a preliminary point, we received a letter from Maples and Calder dated 28 May 2025 indicating that they have recently been instructed to act for the JOLs. We understood, based on your 22 May letter, that Johnstone Law were engaged as counsel by the JOLs (subject to sanction by the Court). In circumstances where two law firms are now corresponding with us, purportedly on behalf of the JOLs, it is incumbent on the JOLs to immediately clarify the situation.

Please confirm, by **no later than 5pm on Monday, 2 June 2025**, the respective roles of Maples and Calder and Johnstone Law.

Attendance at the Directions Hearing

1. Your letters repeatedly assert that our clients have "*no standing in the liquation*". This is patently incorrect. The JOLs were specifically authorised to commence proceedings against our client as a direct result of the evidence and draft order prepared by your firm, on behalf of the petitioner, at

the supervision hearing.[1] This resulted in the Court making an Order which granted the JOLs authority to present a petition / seek the appointment of provisional liquidators to the Fund before they could possibly have had an opportunity to consider the relevant facts, or if such steps were necessary or appropriate. In the circumstances, it is obvious that, (i) your firm cannot objectively advise the JOLs, and (ii) the Fund, as a party named in the Appointment Order, have standing to address the Court on those provisions.

2. As Lord Millet observed on behalf of the Privy Council in *Deloitte and Touche AG v Johnson,*[2] "*Orders made by the court are coercive. Every order of the court affects the freedom of action of the party against whom it is made*". Accordingly, when determining whether an applicant has standing, the Court will first consider if it has jurisdiction to make the order, and secondly, in words of Lord Millet, whether the applicant has a "*legitimate interest in the relief which they seek*". Clearly, given the Fund is the party directly affected by the inclusion of these '*coercive*' provisions, they have standing to bring an application to have the offending paragraphs removed from the Appointment Order.

3. As regards the reporting 'Protocol' proposed in Our Letter and referred to at the Directions Hearing, your 22 May letter, despite seeking "*assurances regarding the assets under the control of*" our clients, did not address the Protocol, or take us up on our offer to "*discuss the terms of the Protocol in further detail*". We were therefore surprised to hear Mr Johnstone summarily dismiss the Protocol as "*paper thin*" at the Directions Hearing. For the avoidance of doubt, our clients' offer to enter into a reporting Protocol in respect of material transactions remains open (to which, see paragraph 12 below).

4. As to the balance of the entirely baseless criticisms in your 30 May letter, we have no obligation to, and no intention of, addressing these. The appropriate forum to address those issues was in front of Mr Justice Asif KC at the Directions Hearing. They warrant no further comment.

JOLs' Powers

5. As regards paragraph 3 of your 22 May letter, the powers conferred on liquidators by the CWR and the Act to collect in the books and records of a company in liquidation, including those in paragraph 1 of Part II to Schedule 3, are to be exercised by the liquidator in respect the "*property of the Company*" and / or "*the company's books and records*". As these statutory powers do not extend to distinct legal entities which are not the subject of a liquidation or other court order, it follows

[1] Your 22 May letter indicates that these provisions were granted by the Court "*on the basis of the evidence before it*", although it is notable that you have not provided the transcript of the petition hearing (insofar as it relates to paragraphs 6(a) and (b) of the Appointment Order) we requested in Our Letter, or confirmation as to whether these provisions were addressed in legal submissions.

[2] [1999] CILR 297

that our clients' documents are not the "*property of the Company*" and JOLs have no basis to claim that the Company is entitled to these documents.

6. Further, any duty which Messrs Patrick or Murphy owe to the JOLs in their capacity as former directors of the Company does not extend to the books and records of the CDM Entities which are separate entities over which the JOLs have no power or authority. It is plainly incorrect to suggest that directors of the CDM Entities can disregard their duties to those companies on the basis of your assertion that they fall within the definition of "relevant persons" under s.103 of the Act. Directors are bound by duties under common law and statute to protect the interests, confidentiality, and assets of the companies they serve. To comply with your baseless requests would place them in breach of those duties unless and until a court determines otherwise.

7. If the JOLs believe it necessary to investigate particular transactions involving the CDM Entities, the proper course is to seek the appropriate order from the Grand Court under section 103 or 138 of the Act. This approach ensures that the statutory process is respected and our clients' rights are protected.

Response to Requests in your 22 May Letter

8. In response to the requests listed at paragraph 5 of your 22 May letter, please see the Schedule to this letter which lists each of the CDM Entities we represent.

9. As to paragraphs 5(b), (c) and (d), for the reasons outlined above, your request for extensive documentation, including registers, asset holdings, and transaction histories, has no legal basis. Nor is there any basis on which the JOLs can demand "*firm undertakings*" from our clients not to deal with their assets.

10. We do not understand the reference to the purported transaction involving Hunter Mountain Trust in your 30 May letter. The bare assertion of a proprietary claim (which is made for the first time in this letter) is completely unsubstantiated and legally flawed. Needless to say, the JOLs have no interest, proprietary or otherwise, in any assets held by the Fund and our clients do not need to seek approval or consult with the JOLs regarding transactions in the ordinary course of business.

11. Notwithstanding, our clients have already offered to enter into a reporting Protocol in an effort to assuage any misplaced concerns the JOLs may have regarding the commercial activities of the Fund and the risk of dissipation of assets outside of the ordinary course of business. However, it is notable that your letters have eschewed this reasonable and constructive proposal in favour of misconceived and unsustainable requests of our clients.

12. We now enclose a draft reporting Protocol whereby our clients offer to provide, *inter alia*, the following information to the JOLs:

    (a) a report listing all transactions undertaken by the Fund, or any of the CDM Entities, since 27 March 2025 which exceed US$5,000,000;

    (b) a 'business plan' explaining the ordinary day to day business of the Fund;

    (c) a monthly transactions report; and

    (d) advance notice of any single transaction exceeding US$5,000,000, or any series of transactions in an aggregate amount exceeding US$5,000,000 (save for transactions in the ordinary course of business involving or related to the renumeration of employees, officers and directors, agents, advisors and / or service providers).

13. For the avoidance of doubt, our clients reject the suggestion that they are under any duty to provide this information. However, in circumstances where the CDM Entities, including the Fund, are operating in the ordinary course to make investments on behalf of, and to support charitable causes, our clients are offering this Protocol to ensure that these charitable operations are not unnecessarily impacted by the JOLs.

14. Please confirm your agreement to, or provide any comments on, the draft protocol by **3pm on Wednesday, 4 June 2025**.

Paragraphs 6(a) and 6(b) of the Appointment Order

15. With regard to paragraphs 6(a) and (b) of the Appointment Order, as noted above and in Our Letter, we have serious concerns regarding the propriety of the JOLs seeking to retain the same counsel who had expressly sought, and obtained, an order that the JOLs be authorised to present a petition for the winding up of, and appointment of provisional liquidators to, the Fund "*if so advised*". There is simply no legal or practical basis for the JOLs to present a petition for the winding up of the Fund and, as foreshadowed at the Directions Hearing, our clients intend to apply to have paragraphs 6(a) and (b) struck from the Appointment Order.

16. It is well established in this jurisdiction that, per Mr Justice Jones KC in *Re ICP Strategic Credit Income Fund Limited*,[3] "*an official liquidator's power to 'bring or defend any action or other legal proceeding in the name and on behalf of the company' is exercisable only with the sanction of the Court.*" In addition, when determining whether to sanction such proceedings, "*the court must be satisfied that they have causes of action against the proposed defendants with a reasonable prospect of success*

[3] [2014] 1 CILR 314

and that the interests of the creditors will be best served by allowing proceedings to be commenced. As officers of the court, official liquidators are expected to behave in an exemplary manner and to perform their duties and exercise their powers fairly. The court will not allow its official liquidators to threaten or commence litigation speculatively as a means of extracting a settlement from a party against whom there is no genuine cause of action or no evidence from which to infer that a possible cause of action has any real prospect of success" (at paragraph 10).

17. Accordingly, it is clear that, despite the inexplicable inclusion of paragraphs 6(a) and (b) in the Appointment Order, the JOLs should be expected to obtain Court sanction before issuing any proceedings in the name of the Company. However, were the JOLs to seek sanction for the presentation of a winding up petition against the Fund, such an application would be destined to fail in circumstances where, for the reasons outlined in Our Letter, there is no genuine cause of action and no realistic prospect of the petition being successful.

18. Furthermore, given these provisions were sought and included in the Appointment Order without any proper consideration of the underlying transactions or the relevant facts, our clients have serious concerns with the manner in which the JOLs, presumably influenced by legal counsel, appear to have predetermined the course of the liquidation and the investigations which will be required into the affairs of our clients. Such conduct by the JOLs, without first ensuring they are "*thoroughly acquainted with the affairs of the company*" clearly disregards the dicta of the Court of Appeal in *In re Contract Corporation, Gooch's Case* (as applied by the Cayman Islands Court of Appeal in *In Re China Branding Group Ltd*).[4] In the circumstances, Mr Justice Jones KC's observation at paragraph 11 in *Re ICP Strategic Credit Income Fund Limited* that "*the Court's decision to sanction the commencement of litigation can never be entirely divorced from questions about how and by whom it will be financed*" seems particularly relevant.

19. We enclose herewith a draft Summons seeking a variation of the Appointment Order by removing paragraphs 6(a) and (b). As stated at the Directions Hearing, our instructions are to file this Summons and, given the narrow scope of the issue to be determined, to request that it is heard with the existing JOLs' sanction application on 24 June 2025.

20. However, in the circumstances, including, *inter alia*, the reasons set out above, we believe it would be practical for the JOLs to agree to vary the Appointment Order without requiring the issuance of

[4] In *re Contract Corporation, Gooch's Case* [1871] 12 LR Ch App 207, p 211: "*In truth, it is of the utmost importance that the liquidator should, as the officer of the Court, maintain an even and impartial hand between all the individuals whose interests are involved in the winding up. He should have no leaning for or against any individual whatever. It is his duty to the whole body of shareholders, and to the whole body of creditors, and to the Court, to make himself thoroughly acquainted with the affairs of the company; and to suppress nothing, and to conceal nothing, which has come to his knowledge in the course of his investigation, which is material to ascertain the exact truth in every case before the Court. And it is for the Judge to see that he does his duty in this respect*" (emphasis added).

a Summons and the associated hearing costs. We therefore invite the JOLs to agree a consent order agreeing that paragraphs 6(a) and (b) should be struck from the Appointment Order which we can jointly submit for His Lordship's consideration.

21. Please confirm by **3pm (Cayman Islands time) on Wednesday, 4 June 2025**, if the JOLs are amenable to agreeing a consent order in the manner proposed. If we do not hear from you before this, we are instructed to file a Summons without further notice to you and will rely on this letter for costs purposes.

Yours faithfully,

Campbells LLP

Campbells LLP

Schedule

(i) CDH GP, Ltd. (Cayman Islands)

(ii) CDMCFAD, LLC (Delaware)

(iii) Charitable DAF Fund 2, LP (Cayman Islands)

(iv) Charitable DAF Fund, LP (Cayman Islands)

(v) CLO HoldCo, Ltd. (Cayman Islands)

(vi) Liberty CLO HoldCo, Ltd. (Cayman Islands)

(vii) HCT Holdco 2, Ltd. (Cayman Islands)

(viii) MGM Studios Holdco, Ltd. (Cayman Islands)

(ix) Liberty CLO HoldCo, LLC (Delaware)

(x) Liberty Sub, Ltd. (Delaware)

(xi) Charitable DAF Holdings Corp. (Delaware)

(xii) DST Investco, LLC (Delaware)

(xiii) Allanon Capital Management LLC (Texas)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. 116 OF 2025 (JAJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

PROTOCOL IN RESPECT OF CHARITABLE DAF FUND, LP

By a petition filed on 2 May 2025, the (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund sought an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd ("**HoldCo**") continue under the supervision of the Court (the "**Supervision Application**") pursuant to s.131 Companies Act (2025 Revision) (the "**Act**").

By order of the Grand Court of the Cayman Islands (the "**Court**") in respect of FSD 116 of 2025 (JAJ) dated 6 May 2025 (the "**Order**"), the Court determined the Supervision Application and directed that Ms. Margot MacInnis and Mr. Sandipan Bhowmilk be appointed as Joint Official Liquidators (the "**JOLs**") of HoldCo.

Paragraph 6, 6(a) and 6(b) of the Order provide as follows:

> *"The JOLs are in addition authorised to exercise the following powers and to take the following steps without further sanction by the Court:*
>
> *(a) The power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;*
>
> (b) *The power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised…"*

(the "**DAF Provisions**")

Charitable DAF Fund, LP ("**DAF LP**") was not represented at the Supervision Application and understands that that the DAF Provisions were included in the Order "*on the basis of the evidence before* [the Court]".[1]

HoldCo was, and DAF LP is, part of a larger group of entities (collectively the "**DAF Structure**") whose establishment and aim is, according to its '**Mission Statement**', to "*make investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference*". "**CDM Entities**" means the DAF Structure entities listed on Annexure 1 hereto.

Preliminary statement

The purpose of this Protocol (the "**Protocol**") is to ensure the efficient and orderly administration of DAF LP, the CDM Entities, and the liquidation estate of HoldCo. The Protocol is designed to avoid conflict between the JOLs and DAF LP, to assuage any concerns the JOLs may have regarding the commercial activities of DAF LP with respect to the risk of dissipation / misuse of assets outside of the ordinary course of business, and, subject to the approval of the Court, to facilitate the removal of the DAF Provisions from the Order (without prejudice to the JOLs entitlement to seek sanction in the ordinary manner and in accordance with the Act and the Companies Winding Up Rules (2023 Consolidation)).

Background

DAF LP is a Cayman Islands limited partnership formed on 28 October 2011. CDH GP Ltd (the "**GP**"), is a Cayman Islands company incorporated in or around 7 February 2024 and is the general partner of DAF LP. Mark Patrick and Paul Murphy are the directors of the GP (the "**Directors**"). Holdco was incorporated and registered as a Cayman Islands exempted limited company on 27 October 2011. From its incorporation until March 2025 when it was placed in voluntary liquidation, Holdco was the limited partner of DAF LP through which it indirectly owned the other entities in the DAF Structure.

1. Notices

In the interests of expedience, the JOLs and the Directors agree that any notices or coummincation required under this Protocol shall be sent by email as follows:

a) To the JOLs:

Margot MacInnis - margot.macinnis@uk.gt.com
Sandipan Bhowmik - sandipan.bhowmik@uk.gt.com
CDAF Core - CDAF.Core@uk.gt.com

b) To the Directors:

[1]Letter dated 22 May from Johnstone Law to Campbells.

Mark Patrick - mpatrick@dafholdco.com
Paul Murphy - paul@gkmanagement.com.ky

2 Transactional Reporting

2.1 Upon execution of this Protocol, the Directors will provide a report to the JOLs listing all transactions undertaken by DAF LP, or any of the CDM Entities, since 27 March 2025 which exceed US$5,000,000.

2.2 The Directors shall provide a business plan within 21 days of the signing of this Protocol which can be revised from time-to-time if it is determined to be necessary by the Directors and within the ordinary course of buisness for DAF LP (the "**Business Plan**"). Steps taken with respect to the management of DAF LP will be considered to be in the ordinary course of business if they are provided for in the Business Plan.

2.3 The Directors and their employees, officers, agents and advisors, will operate and conduct the ordinary, day-to-day, business of DAF LP and the CDM Entities in accordance with the Mission Statement. The Directors shall provide a monthly transactions report to the JOLs so they have oversight of DAF LP's investment activity and financial performance, and the steps being taken by the Directors in the ordinary course of DAF LP's business.

2.4 If the JOLs have any doubt about whether a transaction is or is not in the ordinary course of DAF LP's business, they may contact the Directors for clairfation.

2.5 The Directors will endeavour to provide advance notice to the JOLs in respect of any single transaction of DAF LP exceeding US$ 5,000,000 or any series of transactions in an aggregate amount exceeding US$5,000,000 **SAVE THAT** advance notice is not required, in relation to any single transaction or series of transactions in the ordinary course of business involving or related to the renumeration of employees, officers and directors, agents, advisors and / or service providers of the CDM Entities.

2.6 Notwithstanding anything to the contrary in this Protocol, the Directors shall be under no obligation to undertake any action or refrain from taking any action to the extent they deem it reasonably necessary to comply with their legal obligations to the CDM Entities.

3 Legal and Professional Fees

The JOLs acknowledge DAF LP's need to take legal and other professional advice with respect to the liquidation of HoldCo. Nothing in this Protocol is intended to restrict or fetter the ability of DAF LP or the CDM Entites to seek legal or professional advice.

4 Consultation

Save in exceptional circumstances, the JOLs shall provide notice to the Directors of any intended exercise of powers by them which would be consistent with the DAF Provisions, and the JOLs shall discuss and consult with the Directors in respect of any intended action against DAF LP or the CDM

Entities. The JOLS shall provide advice notice of any intended exercise of their powers without sanction by the Court with respect to DAF LP or any CDM Entity that could reasonably be expected to exceed the powers granted to the JOLs by the Court.

5 Confidentiality

5.1 In respect of any information of whatever nature relating to any member of the CDM Entities, any of their assets, liabilities, management or business which is or has been provided to the JOLs (or their directors, employees, agents or advisors) pursuant to this Protocol (herinafter referred to as "**Confidential Information**"), the JOLs undertake that they will:

(a) keep the Confidential Information confidential and will not disclose it to anyone except as provided for by paragraph 6.2 below; and

(b) ensure that all Confidential Information is properly stored and protected with security measures and a degree of care of a standard at least as good as would apply to the JOLs' Confidential Information.

5.2 The JOLs may disclose Confidential Information:

(a) to directors, employees, officers, advisors, or agents of the JOLs who are in each case desirable in the course of their duties to receive and consider the Confidential Information, who shall be made aware by the JOLs of their obligations under this Protocol and shall be notified by the JOLs to observe the same restrictions on the use of the Confidential Information as are contained in this Protocol;

(b) where required or requested by any court of competent jurisdiction or where required or requested by any competent governmental, supervisory or regulatory body or rating agency; or

(c) with the Directors' prior written consent.

6 Formalities

6.1 This Protocol may not be waived, varied or amended without consent in writing from all parties.

6.2 This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

6.3 For the avoidance of doubt this Protocol is governed by, and to be construed in accordance with, the laws of the Cayman Islands, and any dispute arising hereunder will be subject to the adjudication of the Grand Court of the Cayman islands.

6.4 In the event that either party considers that the other party has acted contrary to this Protocol, it shall first raise the matter by telephone or by email with an explanation of the basis for such

complaint and thereafter allow a reasonable period for the other party to remedy the situation or provide an explanation for its conduct. If either party considers that the issue is not resolved then a conference call will be scheduled for a discussion between the Directors and the JOLs (and their respective legal advisors if necessary). Only in the event that there remains a dispute after these steps have been taken will either party refer the matter to the Court.

[SIGNATURES]

Annexure 1 – List of CDM Entities

(i) CDH GP, Ltd. (Cayman Islands)

(ii) CDMCFAD, LLC (Delaware)

(iii) Charitable DAF Fund 2, LP (Cayman Islands)

(iv) Charitable DAF Fund, LP (Cayman Islands)

(v) CLO HoldCo, Ltd. (Cayman Islands)

(vi) Liberty CLO HoldCo, Ltd. (Cayman Islands)

(vii) HCT Holdco 2, Ltd. (Cayman Islands)

(viii) MGM Studios Holdco, Ltd. (Cayman Islands)

(ix) Liberty CLO HoldCo, LLC (Delaware)

(x) Liberty Sub, Ltd. (Delaware)

(xi) Charitable DAF Holdings Corp. (Delaware)

(xii) DST Investco, LLC (Delaware)

(xiii) Allanon Capital Management LLC (Texas)

DRAFT

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. 116 OF 2025 (JAJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

SUMMONS

LET ALL PARTIES CONCERNED attend before the Judge in Chambers, at the Law Courts, George Town, Grand Cayman on day of 2025, at am/pm, on the hearing of an application by Charitable DAF Fund, LP (the "**DAF LP**") that:

1. The supervision order in these proceedings dated 6 May 2025 which ordered, *inter alia*, that the voluntary liquidation of Charitable DAF HoldCo, Ltd be continued under the supervision of the Court pursuant to s.131 of the Companies Act (2025 Revision) and O.15, r.8 of the Companies Winding Up Rules (2023 Consolidation) (the "**Supervision Order**") be varied such that paragraphs 6(a) and 6(b) of the Supervision Order, which authorised the joint official liquidators to take certain steps in respect of DAF LP, be deleted forthwith.

2. Such further or other orders and directions as the Court thinks fit.

3. Orders as to costs.

This **Summons** was filed by Campbells LLP, Attorneys-at-Law for and on behalf of the DAF LP, whose address for service is Floor 4 Willow House, Cricket Square, George Town, Grand Cayman (Ref: MGM/ROD/18955-44959).

#3245656v1

Dated: [.] May 2025

_____

Campbells LLP

Attorneys for the Charitable DAF Fund, LP

TO:	The Registrar of the Financial Services Division
AND TO:	Johnstone Law, Attorneys for the Joint Official Liquidators
TIME ESTIMATE:	1 hour

This **Summons** was filed by Campbells LLP, Attorneys-at-Law for and on behalf of the DAF LP, whose address for service is Floor 4 Willow House, Cricket Square, George Town, Grand Cayman (Ref: MGM/ROD/18955-44959)

#3245656v1

JOHNSTONE
LAW

5 June 2025

aj@j-law.ky
+1 (345) 929 3000
Ref: 00022

Campbells LLP
Floor 4, Willow House Cricket Square
Grand Cayman, KY1-9010
Cayman Islands

By email: mgoodman@campbellslegal.com

Dear Colleagues

Charitable DAF HoldCo, Ltd (In Official Liquidation) (the *Company*) | FSD No. 116 of 2025 (JAJ)

We refer to your letter dated 30 May 2025 and our recent correspondence in relation to the above matter.

Maples engagement

1. The JOLs have engaged both Johnstone Law (***JL***) and Maples and Calder (Cayman) LLP (***Maples***) in these proceedings and their respective involvement subject to the JOLs oversight and instruction. Both engagements are subject to the sanction of the Court.

Directions Hearing

2. The Directions Hearing related to an application for sanction under s.110 of the Act of the attorneys engaged by the JOLs. Irrespective of wider questions of standing (see below), your clients have and had no arguable standing to appear on a sanction application, being neither creditors nor contributories of the Company. You avoid this question because there is no answer to it.

3. With respect to your assertion that the specific terms of the Appointment Order give your clients standing to challenge it – you are simply wrong.

JOLs' Powers and Requests for Information

4. The JOLs assert no right to the books and records of your clients under their powers to collect in the books and records of the Company and your refusal to cooperate on this basis is entirely unhelpful.

5. The JOLs were appointed on 6 May 2025 and have now been in office almost a month. Despite ample opportunity, almost no information of substance or genuine utility has been provided to the JOLs by the majority of parties, your clients included. Instead, the weeks since the JOLs' appointment have been occupied with meritless challenges and tenuous technical objections at best rather than assisting the liquidators in their investigation of the C$270m that has been removed from the Company.

6. It is mandatory for your clients to cooperate with the JOLs and they are choosing not to do so. If required, as warned, the JOLs will take steps to obtain the information they require with the assistance of the Court.

Protocol

7. The JOLs' preliminary view is that the Company may have inter alia clear prima facie proprietary and other claims to the asset transferred pursuant to the transfer of the Company's interest in the Charitable DAF Fund, LP to your client, CDMCFAD, LLC, pursuant to a deed of assignment and assumption on 18 December 2024 (the ***Deed***). Nothing in your letter changes that analysis.

8. The protocol you propose is entirely inappropriate both to responding to proprietary claims and to the current circumstances. No dealing of any nature is appropriate in assets over which proprietary claims are asserted, whether in the ordinary course of business or subject to any threshold. Further, no expenditure from these assets on legal or any other professional fees is appropriate at any time.

9. It is in any event impossible for the JOLs to engage with the protocol in circumstances where they have no serious knowledge or understanding of what is happening at any underlying level. Your clients have had since 12 May 2025 to provide that knowledge and understanding and continue to decline to provide it to the JOLs. We again urge all your clients to set aside their distractive tactics and cooperate, and provide all information and documents, in an open and frank manner.

10. In the circumstances, the JOLs require your clients to provide undertakings by **3pm on 6 June 2025** that there will be no dealing in the assets formerly owned by the Company, and the provision of full and complete information on the whereabouts, ownership and control of all assets owned by the Company (directly or indirectly, legally or beneficially) prior to execution of the Deed. Nothing short of those assurances and undertakings is acceptable at this stage to the JOLs.

Hunter Mountain Investment Trust

11. We highlight below one specific aspect of the JOLs' concerns about dealing in assets. This relates to the Hunter Mountain Investment Trust (***HMIT***) transaction. As stated in our 30 May letter, the JOLs have become aware that your clients have, since receipt of the JOLs letter dated on 12 May 2025 (the ***Initial Letter***), and without notice to the JOLs, sought approval of a transaction involving HMIT. We requested information about this transaction and sought your urgent confirmation that no transactions will be undertaken involving any assets held by them.

12. HMIT was formerly the sole beneficiary of the Rand PE Fund, I, LP. The disclosure of those for whom you act includes a number of entities unknown to the JOLs, and does not include the HMIT Entities[1] which formerly held Fund assets.

[1] '***HMIT Entities'*** defined in Settlement Agreement as Hunter Mountain Investment Trust, Beacon Mountain LLC, Rand Advisors LLC, Rand PE Fund I, L.P, Rand-PE Fund Management, LLC, Atlas IDF, LP, and Atlas IDF GP, LLC

13. In your 30 May letter, you stated that your clients *"do not understand the reference to the purported transaction involving HMIT"*. The JOLs have however since been provided with a copy of a settlement agreement between the Highland Entities[2] and the HMIT Entities[3] (the ***Settlement Agreement***) which was **executed by Mark Patrick on behalf of the HMIT Entities** on **19 May 2025** – a mere matter of days after receipt of the Initial Letter.

14. Under the Settlement Agreement, HMIT stands to receive *inter alia* (i) initial payment of US$500,000, (ii) promissory note with an original face amount of $24,268,621.69 and other interests, (iii) distributions from its *Class 10 Interest* until 2029, and (iv) distributions from various other interests.

15. This appears to be a transaction involving assets which at some stage were indirectly owned by the Company, although your clients' continued non-disclosure makes it difficult for the JOLs to conduct a full and complete analysis of the true position. It is particularly concerning however that this transaction was executed after the JOLs' appointment and without notice to the JOLs, and it would be inappropriate for this transaction to be approved without their input, or at the very least prior to the JOLs being fully apprised of the nature and circumstances giving rise to this transaction. Please provide a full explanation, with all relevant details, by return.

Appointment Order

16. It is a matter for your clients if they wish to seek to challenge the Appointment Order, albeit such an application would clearly be hopeless.

17. The evidence supporting the applications in FSD No. 99 and FSD No. 116 was uncontested, and the issues ventilated over the course of two hearings during which Justice Asif KC engaged with the parties as to the form of the draft order, and indeed variously amended its terms (which is abundantly clear on the face of the draft and final versions).

18. The JOLs do not consent to the proposed (or any other) variation of the Appointment Order.

Conclusion

19. The JOLs would prefer to work cooperatively and constructively with your clients to protect the assets of the Fund and to "hold the ring", to obtain information necessary for the JOLs' investigations, and to expedite the conclusion of those investigations. They have provided a more than significant opportunity for your clients to offer and provide such cooperation, but it has not been forthcoming. On the contrary, your clients have continued to deal in assets to which the JOLs assert claims, without notice to the JOLs and have behaved antagonistically and obstructively.

20. Should your clients fail to provide the information and undertakings requested by **4pm** on **6 June 2025**,

---

[2] '***Highland Entities'*** defined in H Settlement MIT Agreement as Highland Capital Management, L.P, Highland Claimant Trust, Highland Litigation Sub-Trust, and Highland Indemnity Trust

[3] As defined in [1] above.

the JOLs will seek the assistance of the Court on these matters, without further notice.

Yours faithfully

Johnstone Law

Johnstone Law

Campbells

Campbells LLP
Floor 4, Willow House, Cricket Square
Grand Cayman KY1-9010
Cayman Islands

D +1 345 914 5898
T +1 345 949 2648
F +1 345 949 8613
E MGoodman@campbellslegal.com

campbellslegal.com

Our Ref: MGM/ROD/18955-44959
Your Ref:

CAYMAN | BVI | HONG KONG

BY EMAIL

Johnstone Law
Unit 9, Tropic Centre
18 Earth Close,
PO Box 926,
Grand Cayman, KY1-9006
Cayman Islands

9 June 2025

Dear Sirs

Re: Charitable DAF Holdco, Ltd. (in Official Liquidation) (the "Company")
FSD Cause No. 116 of 2025 (JAJ)

1. Further to previous correspondence in relation to this matter, we enclose herewith a revised reporting protocol for the JOLs' consideration.

2. As indicated in previous correspondence, we believe the appropriate course of action is for the JOLs to engage on the terms of the protocol, which will appease any concerns they may have regarding the dissipation or misuse of the Fund's assets outside of the ordinary course of business during the currency of the liquidation.

3. For convenience, our clients' proposed amendments are tracked in the enclosure and serve to; (i) remove the value threshold from the historical reporting obligation at paragraph 2.1, and (ii) reduce the value threshold for the provision of advance notice at paragraph 2.5.

4. Please confirm your agreement to, or provide any comments on, the draft protocol by **3pm on Wednesday, 11 June 2025**, failing which we are instructed to file a Summons without further notice and will rely on this letter, and previous correspondence, for costs purposes.

Yours faithfully,

Campbells LLP

3203729-1

#3264473v1

Campbells LLP

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. 116 OF 2025 (JAJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

PROTOCOL IN RESPECT OF CHARITABLE DAF FUND, LP

By a petition filed on 2 May 2025, the (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund (the "Highland Foundations") sought an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd ("**HoldCo**") continue under the supervision of the Court (the "**Supervision Application**") pursuant to s.131 Companies Act (2025 Revision) (the "**Act**").

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By order of the Grand Court of the Cayman Islands (the "**Court**") in respect of FSD 116 of 2025 (JAJ) dated 6 May 2025 (the "**Order**"), the Court determined the Supervision Application and directed that Ms. Margot MacInnis and Mr. Sandipan Bhowmilk be appointed as Joint Official Liquidators (the "**JOLs**") of HoldCo.

Paragraph 6, 6(a) and 6(b) of the Order provide as follows:

> "*The JOLs are in addition authorised to exercise the following powers and to take the following steps without further sanction by the Court:*
>
> *(a) The power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;*
>
> (b) *The power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised…*"

(the "**DAF Provisions**")

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Charitable DAF Fund, LP ("**DAF LP**") was not represented at the Supervision Application and understands that that the DAF Provisions were included in the Order "*on the basis of the evidence before* [the Court]".[1]

HoldCo was, and DAF LP is, part of a larger group of entities (collectively the "**DAF Structure**") whose establishment and aim is, according to its '**Mission Statement**', to "*make investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference*". "**CDM Entities**" means the DAF Structure entities listed on Annexure 1 hereto.

Preliminary statement

The purpose of this Protocol (the "**Protocol**") is to ensure the efficient and orderly administration of DAF LP, the CDM Entities, and the liquidation estate of HoldCo. The Protocol is designed to avoid conflict between the JOLs and DAF LP, to assuage any concerns the JOLs may have regarding the commercial activities of DAF LP with respect to the risk of dissipation / misuse of assets outside of the ordinary course of business, and, subject to the approval of the Court, to facilitate the removal of the DAF Provisions from the Order (without prejudice to the JOLs entitlement to seek sanction in the ordinary manner and in accordance with the Act and the Companies Winding Up Rules (2023 Consolidation)).

Background

DAF LP is a Cayman Islands limited partnership formed on 28 October 2011. CDH GP Ltd (the "**GP**"), is a Cayman Islands company incorporated in or around 7 February 2024 and is the general partner of DAF LP. Mark Patrick and Paul Murphy are the directors of the GP (the "**Directors**"). Holdco was incorporated and registered as a Cayman Islands exempted limited company on 27 October 2011. From its incorporation until March 2025 when it was placed in voluntary liquidation, Holdco was the limited partner of DAF LP through which it indirectly owned the other entities in the DAF Structure.

1. Notices

In the interests of expedience, the JOLs and the Directors agree that any notices or coummincation required under this Protocol shall be sent by email as follows:

a) To the JOLs:

Margot MacInnis - margot.macinnis@uk.gt.com
Sandipan Bhowmik - sandipan.bhowmik@uk.gt.com
CDAF Core - CDAF.Core@uk.gt.com

[1]Letter dated 22 May from Johnstone Law to Campbells.

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b) To the Directors:

Mark Patrick - mpatrick@dafholdco.com
Paul Murphy - paul@gkmanagement.com.ky

2 Transactional Reporting

2.1 Upon execution of this Protocol, the Directors will provide a report to the JOLs listing all transactions undertaken by DAF LP, or any of the CDM Entities, since 27 March 2025 ~~which exceed US$5,000,000~~.

2.2 The Directors shall provide a business plan within 21 days of the signing of this Protocol which can be revised from time-to-time if it is determined to be necessary by the Directors and within the ordinary course of buisness for DAF LP (the "**Business Plan**"). Steps taken with respect to the management of DAF LP will be considered to be in the ordinary course of business if they are provided for in the Business Plan.

2.3 The Directors and their employees, officers, agents and advisors, will operate and conduct the ordinary, day-to-day, business of DAF LP and the CDM Entities in accordance with the Mission Statement. The Directors shall provide a monthly transactions report to the JOLs so they have oversight of DAF LP's investment activity and financial performance, and the steps being taken by the Directors in the ordinary course of DAF LP's business.

2.4 If the JOLs have any doubt about whether a transaction is or is not in the ordinary course of DAF LP's business, they may contact the Directors for clairfation.

2.5 The Directors will endeavour to provide advance notice to the JOLs in respect of any single transaction of DAF LP exceeding US$ ~~5~~1,000,000 or any series of transactions in an aggregate amount exceeding US$~~5~~1,000,000 **SAVE THAT** advance notice is not required, in relation to any single transaction or series of transactions in the ordinary course of business involving or related to (i) the proper operation and administration of the DAF Structure; and (ii) the renumeration of employees, officers and directors, agents, advisors and / or service providers of the CDM Entities.

2.6 Notwithstanding anything to the contrary in this Protocol, the Directors shall be under no obligation to undertake any action or refrain from taking any action to the extent they deem it reasonably necessary to comply with their legal obligations to the CDM Entities.

3 Legal and Professional Fees

The JOLs acknowledge DAF LP's need to take legal and other professional advice with respect to the liquidation of HoldCo. Nothing in this Protocol is intended to restrict or fetter the ability of DAF LP or the CDM Entites to seek legal or professional advice.

4 Consultation

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Save in exceptional circumstances, the JOLs shall provide notice to the Directors of any intended exercise of powers by them which would be consistent with the DAF Provisions, and the JOLs shall discuss and consult with the Directors in respect of any intended action against DAF LP or the CDM Entities. The JOLS shall provide advice notice of any intended exercise of their powers without sanction by the Court with respect to DAF LP or any CDM Entity that could reasonably be expected to exceed the powers granted to the JOLs by the Court.

5 Confidentiality

5.1 In respect of any information of whatever nature relating to any member of the CDM Entities, any of their assets, liabilities, management or business which is or has been provided to the JOLs (or their directors, employees, agents or advisors) pursuant to this Protocol (herinafter referred to as "**Confidential Information**"), the JOLs undertake that they will:

(a) keep the Confidential Information confidential and will not disclose it to anyone except as provided for by paragraph 65.2 below;

~~(a)~~(b) Not disclose any Confidential Information to Mr James Dondero, the Highland Foundations, or any known affiliates or service providers of these individuals / entities; and

~~(b)~~(c) ensure that all Confidential Information is properly stored and protected with security measures and a degree of care of a standard at least as good as would apply to the JOLs' Confidential Information.

5.2 The JOLs may disclose Confidential Information:

(a) Subject to the restrictions in paragrpah 5.1(b), to directors, employees, officers, advisors, or agents of the JOLs who are in each case desirable in the course of their duties to receive and consider the Confidential Information, who shall be made aware by the JOLs of their obligations under this Protocol and shall be notified by the JOLs to observe the same restrictions on the use of the Confidential Information as are contained in this Protocol;

(b) where required or requested by any court of competent jurisdiction or where required or requested by any competent governmental, supervisory or regulatory body or rating agency; or

(c) with the Directors' prior written consent.

6 Formalities

6.1 This Protocol may not be waived, varied or amended without consent in writing from all parties.

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6.2 This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

6.3 For the avoidance of doubt this Protocol is governed by, and to be construed in accordance with, the laws of the Cayman Islands, and any dispute arising hereunder will be subject to the adjudication of the Grand Court of the Cayman islands.

6.4 In the event that either party considers that the other party has acted contrary to this Protocol, it shall first raise the matter by telephone or by email with an explanation of the basis for such complaint and thereafter allow a reasonable period for the other party to remedy the situation or provide an explanation for its conduct. If either party considers that the issue is not resolved then a conference call will be scheduled for a discussion between the Directors and the JOLs (and their respective legal advisors if necessary). Only in the event that there remains a dispute after these steps have been taken will either party refer the matter to the Court.

[SIGNATURES]

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Annexure 1 – List of CDM Entities

(i) CDH GP, Ltd. (Cayman Islands)
(ii) CDMCFAD, LLC (Delaware)
(iii) Charitable DAF Fund 2, LP (Cayman Islands)
(iv) Charitable DAF Fund, LP (Cayman Islands)
(v) CLO HoldCo, Ltd. (Cayman Islands)
(vi) Liberty CLO HoldCo, Ltd. (Cayman Islands)
(vii) HCT Holdco 2, Ltd. (Cayman Islands)
(viii) MGM Studios Holdco, Ltd. (Cayman Islands)
(ix) Liberty CLO HoldCo, LLC (Delaware)
(x) Liberty Sub, Ltd. (Delaware)
(xi) Charitable DAF Holdings Corp. (Delaware)
(xii) DST Investco, LLC (Delaware)
(xiii) Allanon Capital Management LLC (Texas)

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MAPLES GROUP

Our ref: CJM/JRN/858403-000001/83247181
Direct tel: +1 345 814 5245 / +1 345 814 5497
Email: caroline.moran@maples.com / luke.armitage@maples.com

By Email

Campbells LLP
Floor 4, Willow House
Cricket Square
Grand Cayman
KY1-9010
Cayman Islands

Attn: Mark Goodman

19 June 2025

Dear Colleagues

Charitable DAF HoldCo, Ltd (In Official Liquidation) (the "Company")

FSD Cause No: 2025-116 (JAJ)

1 We refer to your letter to Johnstone Law dated 9 June 2025 and the previous correspondence in relation to the draft protocol as to the conduct and management of Charitable DAF Fund, LP (the "**Fund**") and related entities.

2 The JOLs appreciate your clients preparing a revised version of the protocol (the "**CDM Protocol**"). However, the JOLs' position is that the terms proposed by your clients are inadequate to serve the purpose of the protocol in a number of respects.

3 Rather than seek to significantly amend the CDM Protocol, the JOLs have prepared their own version in a form acceptable to them (copy enclosed) (the "**JOLs' Protocol**"). The JOLs' Protocol approximates as much as possible the level of protection that the JOLs/Company could expect to receive from an injunction order against your clients and ancillary disclosure orders. This is both necessary and justified in the present circumstances. Please note that whilst we are happy to use the language of "protocol", we will require any agreed scheme to be incorporated into an undertaking given formally in writing to the Court not only by your clients but also by the clients of Baker & Partners and Kobre & Kim (each of whom are copied to this letter).

4 Without being exhaustive, some of the aspects of the CDM Protocol which are unacceptable to the JOLs are:

4.1 There is no provision expressly requiring CDH GP, Ltd. (the "**GP**"), CDMCFAD, LLC ("**CDM**") and DFW Charitable Foundation ("**DFW**") from disposing of or diminishing the value of any interest they hold in the Fund and its assets. This is an essential term that is needed in order to preserve the status quo whilst the JOLs continue their investigations.

4.2 Similarly, there should be an express requirement that Mark Patrick and Paul Murphy (together, the "**Directors**") and DFW must preserve any assets in their possession or control which have been previously been paid to them by the Company, the Fund and/or CDM, whether by way of distribution, divided or otherwise.

4.3 In relation to the proposed historical transaction report, the CDM Protocol would only require the Directors to provide confirmation of all transactions of the Fund and related entities since 27 March 2025 (i.e. just over 2 months ago). That period is obviously inadequate to serve the purpose of the protocol. The JOLs' position is that the period should commence on no later than 27 February 2024, being the date that the GP was incorporated and took over management of the Fund. Further, your clients' proposed reporting period would not cover the full period of the relevant sequence of transactions involved in the DAF Restructuring, which is not acceptable to the JOLs.

4.4 The CDM Protocol is lacking in any details of what is to be included in the historical transaction report (and in the monthly transaction reports moving forward). This is provided for at sections 3.1-3.2 and 4.9-4.12 of the JOLs' Protocol. This will add necessary certainty to your clients' obligations and will minimise the scope for future disputes about what is required. The required details are uncontroversial and we expect your clients will have no objection to them.

4.5 The CDM Protocol also would not require your clients to give full disclosure of the Fund's and related entities' assets and their current value. This is necessary in order for the JOLs to be able to properly police your clients' property preservation obligations referred to above and properly assess any requests by your clients to approve certain transactions moving forward.

4.6 The CDM Protocol is lacking any meaningful details as to what is to be included in the business plan for the ongoing management of the Fund and related entities and the deadline by which it should be submitted to the JOLs for approval. The JOLs' Protocol expressly provides for the information that is to be included in the business plan and requires the business plan to be provided to the JOLs within 21 days of execution of the protocol (with the JOLs then having 21 days to agree to it or reject it, in which case the JOLs can seek appropriate relief from the Court).

4.7 As there is likely scope for debate as to what is meant by the "ordinary course of business", we propose that your clients provide a written outline of what activities are within the Fund's "ordinary course of business" for the JOLs' approval. Your clients' proposed Protocol also does not prevent your clients from undertaking transactions that are not in the Fund's ordinary course of business. That is, for obvious reasons, an essential requirement for the JOLs and has therefore been included in the JOLs' Protocol.

4.8 The protocol needs to put in place protections for the period between the protocol being executed and the Business Plan being agreed. The JOLs' position is that the appropriate way to address this is to require that your clients must provide the JOLs with at least 7 days'

advance notice of any transactions affecting the Fund, or any assets of the Fund, and for the JOLs to review and approve the transactions.

4.9 The US$1,000,000 threshold for transactions that are to be reported to the JOLs in the monthly transaction reports is still far too high. The threshold should be set at what would be a typical threshold for a freezing injunction and disclosure orders, say US$10,000. In addition, merely requiring the Directors to "endeavour" to provide advance notice of transactions is not sufficient. The Directors must be required to provide written notice of a proposed transaction and the JOLs will then have the opportunity to approve or reject if it appears to be outside of the Fund's ordinary course of business or otherwise raises concerns.

4.10 Clause 2.6 of the CDM Protocol is not acceptable to the JOLs. It is far too broad and leaves it up to the Directors to take virtually any action if they, in their discretion, consider it reasonably necessary to comply with their legal obligations.

4.11 Clause 4 of the CDM Protocol is also unacceptable to the JOLs. The clause as presently drafted presupposes that the JOLs would consciously decide to exceed their powers, which the JOLs wholly disagree with. The JOLs will exercise their powers in accordance with the order appointing them, any sanction obtained from the Court and their powers under the Companies Act (As Revised). If the JOLs need to obtain sanction to exercise a certain power, the JOLs will make a sanction application and attend to service as required.

5 Please confirm your clients' agreement to giving an undertaking to the Court in the form of the enclosed Protocol or provide comments by no later than 12pm on Thursday, 26 June 2025. If ultimately the Protocol cannot be agreed by our respective clients, the JOLs reserve all of their rights to take other appropriate protective measures.

Yours faithfully

Maples and Calder (Cayman) LLP

Maples and Calder (Cayman) LLP

With copy to:

Baker & Partners
PO Box 636
Buckingham Square
720 West Bay Road
Grand Cayman
KY1-1107
Cayman Islands
Attn: Jennifer Colegate

Kobre & Kim
9 Forum Lane
Camana Bay

Grand Cayman
KY1-9006
Cayman Islands
Attn: Peter Tyers-Smith

PROTOCOL AND COURT UNDERTAKING IN RESPECT OF CHARITABLE DAF FUND, LP (THE "FUND") AND THE FUND ENTITIES

By a petition filed on 2 May 2025, the (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund sought an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd ("**HoldCo**") continue under the supervision of the Court pursuant to s.131 Companies Act (2025 Revision).

By order of the Grand Court of the Cayman Islands (the "**Court**") in respect of FSD 116 of 2025 (JAJ) dated 6 May 2025, the Court determined the supervision application and directed that Ms. Margot MacInnis and Mr. Sandipan Bhowmik be appointed as Joint Official Liquidators (the "**JOLs**") of HoldCo.

Preliminary statement

The Fund is a Cayman Islands exempted limited partnership formed on 28 October 2011. CDH GP, Ltd. (the "**GP**"), is a Cayman Islands company incorporated on 27 February 2024 and is the general partner of the Fund. Mark Patrick is the sole director of the GP. Mr Patrick is also the Manager of CDMCFAD, LLC ("**CDM**") and the registered director, president and sole member of DFW Charitable Foundation ("**DFW**"). HoldCo was incorporated and registered as a Cayman Islands exempted limited company on 27 October 2011. Until its voluntary liquidation on 2 April 2025, the directors of HoldCo were Mr Patrick and Paul Murphy (the "**Directors**"). From its incorporation until 27 March 2025, HoldCo was the sole limited partner of the Fund through which it indirectly owned the other entities in the DAF Structure (the "**Fund Entities**")[1]. For the avoidance of doubt, "Fund Entities" includes any other entities identified pursuant to clause 4.4(a) below.

The purpose of this protocol (the "**Protocol**") is to ensure the efficient and orderly administration of the Fund and the Fund Entities. The Protocol is designed to avoid conflict between the JOLs and the Fund, to assuage any concerns the JOLs may have regarding the commercial activities of the Fund and the Fund Entities with respect to the risk of dissipation / misuse of assets, and to (subject to compliance with the terms of this Protocol) avoid the need for the JOLs to seek injunctions and ancillary disclosure orders against the Fund and/or the Fund Entities.

1 Notices

1.1 In the interests of expedience, the JOLs and the Directors agree that any notices or communication required under this Protocol shall be sent by email as follows:

(a) To the JOLs:

Margot MacInnis - margot.macinnis@uk.gt.com

Sandipan Bhowmik - sandipan.bhowmik@uk.gt.com

CDAF Core - CDAF.Core@uk.gt.com

(b) To the Directors, the Fund, the GP, CDM and DFW:

Mark Patrick - mpatrick@dafholdco.com and mpatricktax1040@gmail.com

[1] As listed in Schedule A to the Protocol

Paul Murphy - paul@gkmanagement.com.ky

2 Preservation of Property

2.1 The GP, CDM and DFW each agree that they will preserve and will not in any way dispose of, deal with, encumber, transfer or diminish the value of (as applicable) their or any interest (of whatsoever nature), whether held directly or indirectly, in the Fund, and/or the Fund Entities and/or any assets of the Fund.

2.2 The Directors and DFW each agree that they will preserve and will not in any way dispose of, deal with, encumber, transfer or diminish any assets in their possession or control, whether they are in or outside the Cayman Islands, which were, are or may be received (whether directly or indirectly) by way of distribution, disposition, dividend, benefit, payment or other transfer from the HoldCo, and/or CDM and/or the Fund, and/or the Fund Entities and/or any assets of the Fund.

2.3 The Directors, the Fund, GP, CDM and DFW each agree that they shall not do anything to cause, procure, incite, promote or assist a breach by any other party of the above clauses 2.1 and 2.2 of this Protocol.

3 Historical Transaction Report and Disclosure of Assets

3.1 Within 14 days of the execution of this Protocol, the Directors shall provide to the JOLs a written report listing all transactions undertaken by the Fund and/or any of the Fund Entities since 27 February 2024 to the date of the report (the "**Historical Transaction Report**"). For each transaction in the Historical Transaction Report, the Directors shall include at least the following details:

(a) The date of the transaction;

(b) The identity of any party(ies) depositing funds in respect of the transaction;

(c) The identity of any party(ies) receiving funds in respect of the transaction; and

(d) An explanation as to the nature and purpose of the transaction.

3.2 Notwithstanding the above, the Historical Transaction Report must include the following:

(a) Full details of all entities owned by the Fund, whether through any Fund Entity or any other subsidiaries, whether directly or indirectly or solely or jointly owned, or otherwise.

(b) With respect to the Fund Entities, full details of the holders of shares or other membership interests, directors, officers or other controllers, and places and details of incorporation.

(c) Insofar as not covered by the above, full details of all assets owned by the Fund and their current values, whether the Fund holds such assets through any Fund Entity or any other subsidiaries, whether directly or indirectly or solely or jointly owned, or otherwise.

(d) Full details of all disposals, assignments, transfers, sales, purchases or other transactions in respect of all or part of any asset owned by the Fund, whether the Fund holds such assets through any Fund Entity or any other subsidiaries, whether directly or indirectly or solely or jointly owned, or otherwise for the period commencing on 27 February 2024 until the date of the Historical Transaction Report.

(e) Full details of every payment by way of salary, bonus, dividend, distribution or other compensation made to the Directors and/or any other officer, employee or consultant by HoldCo, the Fund, the GP, CDM, DFW or any of the Fund Entities between 27 February 2024 and the date of the Historical Transaction Report. Such information is to include the dates and amounts of each payment, the basis of the payment, the identity of the paying party, and full details of the account into which payment was made.

(f) Full details of every payment to any attorney, lawyer, third party consultant, accountant, or external professional services advisor, whether a firm, partnership, company or individual, by HoldCo, the Fund, the GP, CDM, DFW or any of the Fund Entities between 27 February 2024 and the date of the Historical Transaction Report. Such information is to include the dates and amounts of each payment, the basis of the payment, the identity of the paying party, and full details of the account into which payment was made.

(g) Full and complete copies of all financial statements or records, including statements prepared on a consolidated basis and/or management accounts prepared in respect of the Fund, the GP, CDM, DFW or any of the Fund Entities between 27 February 2024 and the date of the Historical Transaction Report ("**Statements, Records and Accounts**"). Any Statements, Records and Accounts provided must be independently prepared and verified by a reputable accountancy firm to the satisfaction of the JOLs.

(h) Full data and documents in support of the above. Copy documents shall be provided in electronic form but must be identified in clear terms (on a category basis) in the Historical Transaction Report.

(i) The Directors must sign the Historical Transaction Report and confirm its accuracy.

4 Regulation of the Fund

Business Plan

4.1 Within 21 days of signing this Protocol, the Directors shall provide to the JOLs a written business plan (the "**Business Plan**").

4.2 The Business Plan shall set out the Directors' proposal as to the ongoing operations and management of the Fund and the Fund Entities. The Business Plan requires the approval of the JOLs.

4.3 If agreement is not reached on the terms of the Business Plan within 21 days of the JOLs' receipt of it, or such other date as agreed between the Directors and the JOLs in writing,

the JOLs may apply to the Court for directions or seek any other relief they deem appropriate.

4.4 The Business Plan shall include, at a minimum, the following information:

(a) A current and accurate group structure chart, clearly identifying all entities within the DAF Structure (including any of those not listed in Schedule A to this Protocol), their jurisdiction of incorporation, and their inter-relationships;

(b) Up-to-date director registers for each of the Fund Entities, including full names, appointment dates, and any changes since the last reporting period;

(c) Current member (shareholder or partner) registers for each of the Fund Entities, detailing ownership interests, classes of shares or partnership interests, and any recent transfers or changes; and

(d) A detailed outline of the proposed operations and strategic objectives of the Fund and the Fund Entities. This should include key initiatives, anticipated expenditures, revenue projections, and any material contracts or engagements expected to be entered into.

4.5 The items listed in 4.4(a)-(c) above will be prepared by an independent advisor, [insert independent advisor] to be selected by the JOLs within [ ] days (the "**[ ] Advice**") on the following terms:

(a) The instructions provided to [ ] shall be those set out at clauses 4.4(a)-(c) above; and

(b) The JOLs shall be informed of, and given the opportunity to participate in, any discussions between the Directors and [ ] in respect of the [ ] Advice; and

(c) The [ ] Advice shall be incorporated in the Business Plan as an exhibit to the Business Plan in the same form as it was provided to the Directors.

4.6 The Directors and their employees, officers, agents and advisors, will operate and conduct the ordinary, day-to-day, business of Fund and the Fund Entities in accordance with the Business Plan (once agreed).

4.7 Any proposed revisions to the Business Plan must be submitted to the JOLs for prior written approval before implementation.

Overriding Principles applicable at all times

4.8 Where any proposed transaction, distribution, disposition, dividend, benefit, payment or other transfer which affects the Fund, or any assets of the Fund, is with or to any of the Directors, the GP, CDM or DFW or their nominees, those parties (and each of them) shall not be entitled to execute or complete such transaction, distribution, disposition, dividend, benefit, payment or other transfer unless in receipt of the prior written approval of the JOLs.

4.9 In respect of any proposed transaction, distribution, disposition, dividend, benefit, payment or other transfer which affects the Fund, or any assets of the Fund, which exceeds

US$10,000, or any series of transactions that are connected or related in any way in an aggregate amount exceeding US$10,000:

(a) The Directors and the GP shall inform the JOLs in writing in advance of any such proposed transaction, distribution, disposition, dividend, benefit, payment or other transfer, and shall explain full details of the nature and purpose of the proposed transaction, distribution, disposition, dividend, benefit, payment or other transfer, together with documentary support to the satisfaction of the JOLs;

(b) Such advance information and explanation of proposed transactions shall be provided at least 7 days prior unless the circumstances are an extreme emergency, in which case the information and explanation shall be provided as soon as possible and the urgent nature and inability to provide at least 7 days' prior notice shall be explained by the Directors in writing as soon as possible; and

(c) No such transactions will be executed without the prior written approval of the JOLs.

Monthly Transaction Reports

4.10 Commencing on the date that the Business Plan is agreed and until further agreement or order of the Court, the Directors shall, within 7 days of the end of each calendar month, provide the JOLs with a written report listing all transactions that have been undertaken by the Fund and/or any of the Fund Entities during the calendar month just passed (the "**Monthly Transaction Report**").

4.11 Notwithstanding the above, the first Monthly Transaction Report shall list all such transactions dating back to the date of the provision of the Historical Transaction Report to the JOLs.

4.12 For each transaction in a Monthly Transaction Report, the Directors shall include the following details:

(a) The date of the transaction;

(b) The identity of any party(ies) depositing funds in respect of the transaction;

(c) The identity of any party(ies) receiving funds in respect of the transaction; and

(d) An explanation as to the nature and purpose of the transaction.

Legal expenses

4.13 The JOLs acknowledge the need to take legal and other professional advice with respect to the liquidation of HoldCo. Nothing in this Protocol is intended to restrict or fetter the ability of the Fund, the GP, CDM, DFW, the Directors or the Fund Entities to seek legal or professional advice. However, it is agreed that any and all such expenses shall not be paid for out of assets which currently are or formerly were assets of the Fund, whether held directly or indirectly.

5 Confidentiality

5.1 In respect of any information of whatever nature relating to the Fund or any of the Fund Entities, any of their assets, liabilities, management or business which is or has been provided to the JOLs (or their directors, employees, agents or advisors) pursuant to this Protocol (hereinafter referred to as "**Confidential Information**"), the JOLs undertake that they will:

(a) keep the Confidential Information confidential and will not disclose it to anyone except as provided for by clause 5.2 below;

(b) not disclose any Confidential Information to Mr James Dondero, the Highland Foundations, or any known affiliates or service providers of these individuals / entities (except to the extent that any of them become members of the Company's liquidation committee and the information is provided to them in furtherance of the JOLs' duty to consult with the liquidation committee); and

(c) ensure that all Confidential Information is properly stored and protected with security measures and a degree of care of a standard at least as good as would apply to the JOLs' Confidential Information.

5.2 The JOLs may disclose Confidential Information:

(a) to directors, employees, officers, advisors, or agents of the JOLs who are in each case desirable in the course of their duties to receive and consider the Confidential Information, who shall be made aware by the JOLs of their obligations under this Protocol and shall be notified by the JOLs to observe the same restrictions on the use of the Confidential Information as are contained in this Protocol;

(b) where required for the purpose of any application to, or directed by, any court of competent jurisdiction or where required or requested by any competent governmental, supervisory or regulatory body or rating agency; or

(c) with the Directors' prior written consent.

6 The Directors

6.1 Each of the Directors will procure that the Fund, CDM, DFW, the GP, the other Director and the Fund Entities fully comply with this Protocol.

7 Reservation of Rights

7.1 Nothing in this Protocol shall prevent or inhibit the JOLs from making any application to any Court of competent jurisdiction for any relief or remedy which the JOLs in their absolute discretion consider necessary or appropriate.

8 Formalities

8.1 This Protocol may not be waived, varied or amended without consent in writing from all parties.

8.2 This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

8.3 This Protocol is governed by, and to be construed in accordance with, the laws of the Cayman Islands, and any dispute arising hereunder will be subject to the exclusive jurisdiction of the Grand Court of the Cayman Islands.

SCHEDULE A: LIST OF FUND ENTITIES / ENTITIES IN THE DAF STRUCTURE

(i) CDH GP, Ltd. (Cayman Islands)

(ii) CDMCFAD, LLC (Delaware)

(iii) Charitable DAF Fund 2, LP (Cayman Islands)

(iv) Charitable DAF Fund, LP (Cayman Islands)

(v) CLO HoldCo, Ltd. (Cayman Islands)

(vi) Liberty CLO HoldCo, Ltd. (Cayman Islands)

(vii) HCT Holdco 2, Ltd. (Cayman Islands)

(viii) MGM Studios Holdco, Ltd. (Cayman Islands)

(ix) Liberty CLO HoldCo, LLC (Delaware)

(x) Liberty Sub, Ltd. (Delaware)

(xi) Charitable DAF Holdings Corp. (Delaware)

(xii) DST Investco, LLC (Delaware)

(xiii) Allanon Capital Management LLC (Texas)

(xiv) DFW Charitable Foundation (Delaware)

(xv) CLO HoldCo LLC (Delaware)

(xvi) Rand Advisors LLC (Delaware)

(xvii) CDHC Royse City Land LLC (Texas)

(xviii) Royse City Land Company LLC (Texas)

(xix) CDHC Assets LLC (Texas)

(xx) CDHC Fort Worth Land LLC (Texas)

(xxi) CDHC Stewart Creek LLC (Texas)

(xxii) BVP Property LLC (Delaware with CA registration)

Campbells

Campbells LLP
Floor 4, Willow House, Cricket Square
Grand Cayman KY1-9010
Cayman Islands

D +1 345 914 5898
T +1 345 949 2648
F +1 345 949 8613
E MGoodman@campbellslegal.com

campbellslegal.com

Our Ref: MGM/ROD/18955-44959
Your Ref:

CAYMAN | BVI | HONG KONG

BY EMAIL

Maples and Calder (Cayman) LLP
Ugland House
PO Box 309
Grand Cayman, KY1-1104
Cayman Islands

29 June 2025

Dear Sirs

Re: Charitable DAF Holdco, Ltd. (in Official Liquidation) (the "Company")
FSD Cause No. 116 of 2025 (JAJ)

1. We refer to your letter dated 19 June 2025 (the "**Protocol Letter**"), to previous correspondence between this firm and Johnstone Law regarding a draft reporting protocol in respect of the assets and operations of Charitable DAF Fund, LP and related entities, to the letter sent by the joint official liquidators (the "**JOLs**") of the Company to the Trustees of the Highland Capital Management L.P. (the "**Trustees**") dated 24 June 2025 (the "**Trustee Letter**"), and to the **enclosed** stipulation dated 27 June 2025 entered into in between the Dallas Foundation and the HMIT Entities in the Highland Capital Management L.P. bankruptcy proceedings and which has been filed with the United States Bankruptcy Court (the "**Stipulation**").

2. Capitalised terms, unless otherwise defined, adopt the definitions applied in the Protocol Letter.

Previous Correspondence in respect of CDM Protocol and JOLs' standing

3. Before addressing the draft protocol enclosed with the Protocol Letter, it appears to be necessary to remind the JOLs of our previous correspondence with Johnstone Law regarding the CDM Protocol and the JOLs' standing to take steps against the Fund.

4. The JOLs have not established any direct or indirect beneficial interest in or creditor claim against the Fund or the CDM Entities. At most, the JOLs appear to have formed the view that they have an as yet unparticularized and unasserted claim to an indirect beneficial interest in the CDM Entities.

It is not necessary for us to pass comment on any such claim, other than to note that, even if the JOLs were able to establish an indirect beneficial interest in the Fund or any of the CDM Entities, that would not displace the directors' control of the CDM Entities.

5. We would remind you that the CDM Entities are managed by professionally qualified individuals who have repeatedly acknowledged their obligations to the companies to which they are appointed, and whose actions are guided by legal and other professional advice. The JOLs have no mandate or authority to interfere with the management of the CDM Entitles by those individuals.

6. However, in good faith, and without any legal obligation to do so, the CDM Entities voluntarily offered a transactional reporting protocol to the JOLs in an effort to alleviate (unwarranted) concerns the JOLs had with respect to the management of the CDM Entities and to demonstrate that their business operations were and are being conducted appropriately and transparently. This offer was made to the JOLs, by letter dated 16 May 2025. It is our clients' view that the JOLs, acting objectively, would have considered this protocol to be perfectly sufficient to allow them to discharge any duty they had to exercise oversight of the management of the CDM Entities.

7. However, Johnstone Law engaged in correspondence with this firm on behalf the JOLs but inexplicably refused to meaningfully engage with our clients' offer to provide a reporting protocol. Consequently, under cover of letter dated 30 May 2025, we sent a draft of the CDM Protocol to Johnstone Law and invited their agreement or comments. As noted at paragraph 13 of that letter, "*our clients reject the suggestion that they are under any duty to provide this information. However, in circumstances where the CDM Entities, including the Fund, are operating in the ordinary course to make investments on behalf of, and to support charitable causes, our clients are offering this Protocol to ensure that these charitable operations are not unnecessarily impacted by the JOLs*."

8. Johnstone Law responded on 5 June 2025 and again inexplicably refused to engage with the CDM Protocol. Our response dated 9 June 2025 reiterated that our clients are under no obligation to provide information to the JOLs, but were willing to do so "*in an attempt to assuage the JOLs' misplaced concerns and demonstrate that the CDM Entities are operating in the ordinary course of business*".

9. In a subsequent letter also dated 9 June 2025, the CDM Entities enclosed a revised version of the CDM Protocol which removed the value threshold from the proposed historical reporting protocol, and reduced the value threshold for the provision of advance notice from $5m to $1m. The letter reiterated the CDM Entities belief that "*the appropriate course of action is for the JOLs to engage on the terms of the protocol, which will appease any concerns they may have regarding the dissipation or misuse of the Fund's assets outside of the ordinary course of business during the currency of the liquidation*."

10. We note that at the hearing of the JOLs' sanction application on 24 June 2025, His Lordship, in obiter dictum, indicated that entry into a protocol seemed a sensible course of action. We believe that Court appointed liquidators acting objectively and in an even-handed manner would have accepted the original CDM Protocol, and that the JOLs' failure to do so indicates a predetermination that the conduct of the CDM Entities and their management merit investigation, which position is inconsistent with the JOLs' duty to "*maintain an even and impartial hand*".[1] However, we hope that the JOLs are willing to moderate their position in light of judicial encouragement to do so.

The JOLs' Protocol

11. In light of the foregoing, it is no surprise that our clients fundamentally object to the approach adopted in the JOLs' Protocol, which is completely inappropriate and unwarranted. The proposed restrictions, controls and undertakings sought by the JOLs would impose severe limitations on our clients' ability to operate, and would have the practical effect of placing their ongoing charitable activities under the de facto control of the JOLs, notwithstanding that no such legal authority exists.

12. Your references to the JOLs requiring what are, in effect, restrictions mirroring injunctive relief is entirely misguided. The only circumstances in which the draconian conditions sought in the JOLs' Protocol could be imposed would be if the JOLs, with the sanction of the Grand Court, sought and obtained a freezing injunction. That injunction would require the JOLs to, *inter alia*, make out a good arguable case (where it is denied that such a case exists) and provide evidence of that there is a real risk of dissipation of assets (where the CDM Protocol clearly demonstrates there is no such risk). Furthermore, were the JOLs to seek injunctive relief the CDM Entities would at least have the benefit of the protection afforded by the cross-undertaking in damages (which they do not have under the JOLs' Protocol). Following recent authority,[2] that cross-undertaking in damages would likely need to be supported by an indemnity from relevant stakeholders. The JOLs' Protocol seeks all of the benefits of an injunction without the JOLs or those funding them assuming any of the burdens that such relief would entail.

13. If the JOLs believe that injunctive or other restrictive relief is warranted, the proper course is for them to make an application to the Court in the ordinary course and satisfy these well-established

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[1] See In *re Contract Corporation, Gooch's Case* [1871] 12 LR Ch App 207, p 211: "*In truth, it is of the utmost importance that the liquidator should, as the officer of the Court, maintain an even and impartial hand between all the individuals whose interests are involved in the winding up. He should have no leaning for or against any individual whatever. It is his duty to the whole body of shareholders, and to the whole body of creditors, and to the Court, to make himself thoroughly acquainted with the affairs of the company; and to suppress nothing, and to conceal nothing, which has come to his knowledge in the course of his investigation, which is material to ascertain the exact truth in every case before the Court. And it is for the Judge to see that he does his duty in this respect*" (emphasis added).

[2] See *Hunt v Ubhi* [2023] EWCA Civ 417 which cited SC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 139

legal requirements. Our clients will of course strenuously resist any such application. However, there is no lawful or reasonable basis for the JOLs to seek to impose such intrusive restrictions on the CDM Entities, nor to demand undertakings that would exceed what the Court could properly order on an application for interim relief. If the JOLs and our clients are unable to agree the terms of a protocol, the correct course of action is to have the Court determine the scope of any such protocol as opposed to the JOLs seeking injunctive relief - the specter of which seems to be threatened in the Protocol Letter.

The Stipulation

14. Further, we note the Dallas Foundation and other entities referred to in the Stipulation as the 'Foundation Parties', have now entered into a binding term sheet (the "**Term Sheet**") with the HMIT Entities. As you can see, the Foundation Parties withdrew their objections to the Settlement Motion (defined below) with prejudice. At the hearing of the Settlement Motion, Mr. Dondero was allowed to testify in opposition to the settlement on behalf of a family trust (Dugaboy), though we understand that a material portion of his attempted testimony was stricken or subject to successful objection, and it appears that the US Bankruptcy Court gave his testimony no weight. Ms Diaz of the Dallas Foundation, who signed the Term Sheet on behalf of the Foundation Parties, swore affidavits on behalf of the petitioners in both the just and equitable winding up, and supervision applications. Ms Diaz's evidence in the supervision application, which was provided on behalf of all 'Supporting Organisations', was that a supervision order was required in order to "*allow the JOLs to conduct a proper investigation of the affairs of the Company*"[3] (as you know, this evidence is disputed).

15. Page two of the Term Sheet mandates that the Dallas Foundation will undertake various actions in relation to "DAF", which is described in the Term Sheet as "*the historical corporate structure of Charitable DAF Holdco, Ltd, its parents and subsidiaries, in existence as of January 1, 2024, and changes thereto*" (which would include the CDM Entities). These actions include the Dallas Foundation agreeing to meet with Mr Raver (as a representative of HMIT) to review the DAF structure and the balance sheets of DAF as of 30 September 2024, 31 December 2024 and 31 March 2025. The Term Sheet also provides that the Dallas Foundation will be provided with "*an accounting of any transfer assets from an entity within the DAF structure during the periods covered by the balance sheets to any other entity, including another entity within the DAF structure*".

16. This meeting is now scheduled for 2 July 2025. The meeting will be face to face, and Mr. Raver intends to provide additional balance sheet information beyond that required under the Term Sheet. The meeting (defined as the "DF Meeting") is specifically described as a confidential settlement meeting "*with an eye to commencing negotiations with DF about the use of current*

[3] Paragraph 15(a) of the Second Affidavit of Julie Diaz dated 29 April 2025.

support organization(s) or the creation of new support organizations to support the DF and as appropriate the other Foundations mentioned above (the "Resolution")." The Term Sheet also provides for the prospect of a subsequent meeting which Mr Patrick will attend with the objective being to further discussions toward a "Resolution". The Term Sheet explicitly provides that if the parties can agree on a Resolution, then "*Mr. Patrick, the Supporting Organization, and Dallas Foundation shall jointly request a meeting with the JOLs and the DF, with a view toward winding up the liquidation proceedings of Charitable DAF Holdco, Ltd., including not seeking any equitable wind up of Charitable DAF Fund, LP., all of which should be able to be accomplished expeditiously in the event of agreements hoped to be achieved upon the meeting described above*".

17. That the lead petitioner—having given evidence on behalf of all Supporting Organisations at the supervision application—has now entered into the Term Sheet is a clear indication that there is no longer any justification for the investigations it originally proposed (and which the JOLs appear to be myopically pursuing), and no real or justifiable risk of asset dissipation, particularly given that the CDM Entities' balance sheets and financial information will be shared with the Dallas Foundation. Given that the Term Sheet contemplates the Dallas Foundation and Supporting Organisations requesting a meeting with the JOLs with a view to concluding the liquidation of the Company and avoiding any application to wind up the Fund, it is difficult to reconcile the actions of the JOLs with the stated intention of the purported primary stakeholder.

Updated CDM Protocol

18. Notwithstanding, our clients remain willing to agree a reasonable protocol that provides the JOLs with an appropriate level of visibility into relevant matters while preserving our clients' right to conduct their charitable operations in the ordinary course of business. We do not, however, accept that the JOLs' Protocol represents a fair or proportionate proposal - it is neither necessary nor justified.

19. In particular, we make the following general observations:

    (a) The JOL's Protocol seeks to prohibit entirely lawful transactions from being conducted in the ordinary course of business, absent Court order, and effectively subjects all of the CDM Entities' operations to prior approval and veto - a degree of control that (i) is completely unwarranted, and (ii) could only properly be obtained through injunctive relief.

    (b) The financial thresholds, advance approvals, and granularity of the reporting provisions proposed in the JOLs' Protocol would materially and unfairly impede the CDM Entities' ordinary and necessary charitable operations and increase the costs of those operations to no obvious benefit to those entities.

(c) The JOLs' request that the CDM Entities provide extensive documentation, including registers, asset holdings, and transaction histories, appears to simply repeat misconceived requests made by Johnstone Law on behalf of the JOLs and has no legal basis. As stated in response to those previous requests, "*Directors are bound by duties under common law and statute to protect the interests, confidentiality, and assets of the companies they serve. To comply with your baseless requests would place them in breach of those duties unless and until a court determines otherwise.*"[4]

(d) Your letter asserts that the scope of disclosure sought by the JOLs' Protocol is necessary to enable the JOLs "*to properly police* [our] *clients' property preservation obligations*". There is simply no basis for this assertion, which was also addressed in correspondence with Johnstone Law when it was suggested the JOLs are somehow authorized to "hold the ring" in order to protect the assets of the Fund.[5]

(e) Similarly, for the reasons outlined above, your proposal to set the advance reporting threshold at US$10,000 as "*that would be a typical threshold for a freezing injunction and disclosure order*" is wholly unrealistic and impractical. Despite the JOLs not having obtained a freezing injunction, the CDM Entities are willing to set a reporting threshold which would afford the JOLs advance notice of substantial and meaningful transactions. However, requiring the CDM Entities to provide advance notice of such de minimus transactions, and to wait for the JOLs to prospectively approve these transactions, would severely hamper the charitable operations of the CDM Entities.

20. We **enclose** a revised version of the CDM Protocol with this letter. This updated version reflects a number of clarifications aimed at addressing the JOLs' concerns, while preserving our clients' ability to conduct their affairs in the ordinary course of business. These revisions are marked-up against the previous version of the CDM Protocol sent to Johnstone Law on 9 June 2025 and include, *inter alia*:

(a) Confirmation that the CDM Entities will engage Armanino LLP as an independent accounting firm to provide the financial reporting and accounting analysis required under the CDM Protocol;

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[4] Paragraph 6 of Campbells letter to Johnstone Law dated 30 May 2025.

[5] Paragraph 17 of Campbells letter to Johnstone Law dated 9 June 2025. "*As we have explained numerous times and attempted to demonstrate by way of our proposed reporting protocol, the CDM Entities, including the Fund, are operating in the ordinary course to support charitable causes and their assets do not need to be protected by the JOLs.*"

(b) Inclusion of the details which are to be provided in the Historical and Monthly Transaction Reports (which reflect the information requested at sections 3.1 and 4.12 of the JOLs' Protocol;

(c) Inclusion of wording at paragraph 2.6 which would require the JOLs to consult with the 'Directors' before unilaterally contacting our clients' third-party service providers. Unfortunately, given the JOLs repeated attempts to interfere with our clients' lawful operations (to which, see below regarding the Trustee Letter), we believe this is necessary;

(d) Extension of the date for the Historical Transaction Report to 1 July 2024 (we understand that the Skyview Group had access to the CDM Entities' financials through to 30 June 2024 so the JOLs can obtain any older financial information from other sources); and

(e) Reduction of the value threshold for the provision of advance notice from US$1m to US$250,000.

21. We invite the JOLs to consider the revised draft of the CDM Protocol and to engage with us to agree terms that are reasonable and proportionate. For the reasons outlined above, our clients are unwilling to accept the fundamentally disproportionate proposals set out in the JOLs' Protocol. However, they remain open to agreeing an appropriate protocol to facilitate the JOLs' ongoing investigations (which the Dallas Foundation no longer support or think necessary) and to avoid the need for unnecessary and costly Court proceedings.

22. Please confirm your agreement to, or provide any comments on, the revised CDM Protocol by **5pm on 4 July 2025**.

23. If, notwithstanding the proffered protocol, the JOLs consider it necessary to seek injunctive relief that is, of course, a matter for them, but given the extensive correspondence on this issue we would expect (i) any application for injunctive relief to be served on this firm where it would be plainly inappropriate to proceed on an ex parte basis; or (ii) at the very least, if the JOLs do seek injunctive relief on an ex parte basis, that this and previous correspondence regarding the protocol be provided to the Court in furtherance of the JOLs' duty of full and frank disclosure.

Trustee Letter

24. We refer to the Trustee Letter, which related to the *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith*, Case No. 19-34054-sgj11 (Bankr. N.D.Tex.) [Dkt. 4216] (the "**Settlement Motion**"). We understand that your firm were also copied to this correspondence.

25. The Trustee Letter, sent on the eve of the hearing of the Settlement Motion, requested an adjournment to afford the JOLs additional time to progress their investigations of the HMIT Entities, or alternatively, that the Trustees defer making distributions to the HMIT Entities to allow the JOLs time to carry out investigations "*without the risk of asset dissipation in connection with protocol discussions*". The protocol discussions were referred to in the JOLs' Letter, which notes that the JOLs "*are concerned to ensure the parameters of the protocol mitigate the risk of asset dissipation pending the completion of their investigations.*"

26. Quite how the JOLs were able to form the extraordinary view that a professionally qualified director acting with the benefit of legal and other professional advice seeking approval from the US Court to enter into a settlement with a resultant accretion to HMIT of $67 million might represent an attempt at asset dissipation calls for an explanation in and of itself, but particularly in light of the repeated attempts by the CDM Entities to engage in discussions with the JOLs and Johnstone Law about the terms of a protocol which was directly aimed at addressing the JOLs' (baseless) concerns in that regard.

27. To address unparticularised assertions in Johnstone Law's letters dated 30 May and 5 June 2025 of proprietary claims to certain assets of the CDM Entities, including in respect of assets which were the subject of the HMIT settlement agreement, our first letter dated 9 June 2025, to which we did not receive a reply, is worth repeating:

> "*Your reference to the so-called HMIT transaction is vague, speculative, and appears to rely on materials filed in separate bankruptcy proceedings in the United States concerning entities related to Mr James Dondero (the individual who swore evidence in support of FSD No. 99 seeking to have the Company and the Fund wound up on a just and equitable basis and who agreed to fund those proceedings). Given the assertions in your letter alleging the JOLs have received minimal cooperation, it is curious that you have such detailed knowledge of a transaction undertaken by entities which the JOLs have no interest in. Please confirm the source of this information.*
>
> *Further, it is clear that the Settlement Agreement benefits the HMIT Entities (as defined in your letter) and, accordingly, there is no question that assets of the CDM entities are being dissipated or misused. Taking your unfounded assertions in relation to the proprietary claims at their height, the HMIT transaction would inure to the benefit of the liquidation estate. It is perhaps telling that it is our understanding the HMIT transaction does not benefit Mr Dondero and his broader interests. In the circumstances, we do not understand*

why the JOLs would not support the HMIT transaction even if a proprietary claim has not been established.

Our clients do not accept that any transaction involving the HMIT Entities warrants the JOLs' oversight, and they are not aware of any basis on which the JOLs are entitled to be 'notified' or to 'approve' their lawful dealings. Your claim that HMIT was formerly the beneficiary of a fund in which the Company had an indirect interest does not confer any rights on the JOLs in relation to any of the assets involved in the HMIT transaction."

28. By failing to accurately address the correspondence relating to the CDM Protocol and any of the points made in our letter of 9 June 2025, the Trustee Letter was vague and misleading, and it is regrettably the case that the JOLs' attempt to interfere with the Settlement Motion in this manner can only be described as improper.

29. The fact that entities affiliated with Mr. Dondero immediately seized upon the Trustee Letter to support their own request for an adjournment, in circumstances where their previous application for an adjournment had been refused, leads to the impression that this was the true purpose of the Trustee Letter.

30. Similarly, the JOLs' initial failure to engage with the proposed protocol at all, and the insistence now that the protocol must replicate the effect of injunctive relief, do nothing to dispel the impression of a tendency towards bias in favour of the position of Mr. Dondero and his affiliates, particularly in light of Mr. Dondero's subsequent testimony at the Settlement Motion.

31. We reserve the right to refer to this and previous correspondence in any subsequent proceedings.

Yours faithfully

Campbells LLP

Campbells LLP

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. 116 OF 2025 (JAJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

PROTOCOL IN RESPECT OF CHARITABLE DAF FUND, LP

By a petition filed on 2 May 2025, the (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund (the "**Highland Foundations**") sought an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd ("**HoldCo**") continue under the supervision of the Court (the "**Supervision Application**") pursuant to s.131 Companies Act (2025 Revision) (the "**Act**").

By order of the Grand Court of the Cayman Islands (the "**Court**") in respect of FSD 116 of 2025 (JAJ) dated 6 May 2025 (the "**Order**"), the Court determined the Supervision Application and directed that Ms. Margot MacInnis and Mr. Sandipan Bhowmilk be appointed as Joint Official Liquidators (the "**JOLs**") of HoldCo.

Paragraph 6, 6(a) and 6(b) of the Order provide as follows:

> "*The JOLs are in addition authorised to exercise the following powers and to take the following steps without further sanction by the Court:*
>
> *(a) The power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;*
>
> (b) *The power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised…*"

(the "**DAF Provisions**")

Charitable DAF Fund, LP ("**DAF LP**") was not represented at the Supervision Application and understands that that the DAF Provisions were included in the Order "*on the basis of the evidence before* [the Court]".[1]

HoldCo was, and DAF LP is, part of a larger group of entities (collectively the "**DAF Structure**") whose establishment and aim is, according to its '**Mission Statement**', to "*make investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference*". "**CDM Entities**" means the DAF Structure entities listed on Annexure 1 hereto.

Preliminary statement

The purpose of this Protocol (the "**Protocol**") is to ensure the efficient and orderly administration of DAF LP, the CDM Entities, and the liquidation estate of HoldCo. The Protocol is designed to avoid conflict between the JOLs and DAF LP, to assuage any concerns the JOLs may have regarding the commercial activities of DAF LP with respect to the risk of dissipation / misuse of assets outside of the ordinary course of business, and, subject to the approval of the Court, to facilitate the removal of the DAF Provisions from the Order (without prejudice to the JOLs entitlement to seek sanction in the ordinary manner and in accordance with the Act and the Companies Winding Up Rules (2023 Consolidation)).

Background

DAF LP is a Cayman Islands limited partnership formed on 28 October 2011. CDH GP Ltd (the "**GP**"), is a Cayman Islands company incorporated in or around 7 February 2024 and is the general partner of DAF LP. Mark Patrick is the director of the GP and Paul Murphy and Mark Patrick are the directors of the Cayman-domiciled operating entities owned by DAF LP (the "**Directors**"). Holdco was incorporated and registered as a Cayman Islands exempted limited company on 27 October 2011. From its incorporation until March 2025 when it was placed in voluntary liquidation, Holdco was the direct or indirect limited partner of DAF LP through which it indirectly owned the other entities in the DAF Structure.

1. Notices

1.2 In the interests of expedience, the JOLs and the Directors agree that any notices or coummincation required under this Protocol shall be sent by email as follows:

a) To the JOLs:

Margot MacInnis - margot.macinnis@uk.gt.com
Sandipan Bhowmik - sandipan.bhowmik@uk.gt.com
CDAF Core - CDAF.Core@uk.gt.com

[1]Letter dated 22 May from Johnstone Law to Campbells.

b) To the Directors:

Mark Patrick - mpatrick@dafholdco.com
Paul Murphy - paul@gkmanagement.com.ky

2 Transactional Reporting

2.1 The CDM Entities have engaged Armanino LLP ("**Armanino**"), an independent accountancy firm to provide the financial statement reporting and accounting analysis required under this Protocol.

2.2 Within 14 days of the execution of this Protocol, the Directors shall provide to the JOLs a written report listing all Transactions (as defined below) undertaken by the CDM Entities between 1 July 2024 and the date of this Protocol (the "**Historical Transaction Report**"). For each Transaction in the Historical Transaction Report, the Directors shall include the following details:

(a) The date of the Transaction;

(b) The identity of any party(ies) depositing funds in respect of the Transaction;

(c) The identity of any party(ies) receiving funds in respect of the Transaction; and

(d) An explanation as to the nature and purpose of the Transaction.

"**Transaction(s)**" as used in this Protocol shall mean the acquisition or disposition of assets in a single transaction or series of related transactions that is equal to or exceeds US$10,000; provided, however, that "Transaction(s)" shall not include renumeration of employees, officers and directors, agents, advisors and / or service providers of the CDM Entities.

2.3 Within 21 days of the signing of this Protocol, the Directors shall provide a business plan to the JOLs (which can be revised from time-to-time if it is reasonably determined to be necessary by the Directors and within the ordinary course of busisness for DAF LP and the CDM Entities) (the "**Business Plan**"). The Business Plan shall set out the Directors' proposal as to the ongoing operations and management of DAF LP and the CDM Entities. Steps taken with respect to the management of DAF LP and the CDM Entities will be considered to be in the ordinary course of business if they are provided for in the Business Plan.

2.4 The Directors and their employees, officers, agents and advisors, will operate and conduct the ordinary, day-to-day, business of DAF LP and the CDM Entities in accordance with the Business Plan.

2.5 Armanino shall provide a monthly Transactions report and balance sheet (the "**Monthly Transaction Report**") to the JOLs so they have oversight of DAF LP's investment activity and financial performance, and the steps being taken by the Directors in the ordinary course of DAF LP's business. For each Transaction in the Monthly Transaction Report, Armanino shall include the following details:

(e) The date of the Transaction;

(f) The identity of any party(ies) depositing funds in respect of the Transaction;

(g) The identity of any party(ies) receiving funds in respect of the Transaction; and

(h) An explanation as to the nature and purpose of the Transaction.

2.6 If the JOLs have any doubt about whether a Transaction is or is not in the ordinary course of DAF LP's business, the JOLs shall consult with the Directors who agree to make reasonable efforts to provide clairfation. For the avoidance of doubt, the JOLs shall not unilaterally contact third party service providers of the CDM Entities in respect of any Transaction, or any any anticipated transaction which they have been put on notice of pursuant to paragraph 2.7, without first consulting with, and seeking clarifcation from, the Directors.

2.7 The Directors will use reasonable efforts to provide advance notice to the JOLs in respect of any disposition of assets in a single transaction or series of related transactions that is equal to or exceeds US$250,000 **SAVE THAT** advance notice is not required in relation to any disposition related to (i) the operation or administration of the DAF Structure in the ordinary course of business or (ii) the renumeration of employees, officers and directors, agents, advisors and / or service providers of the CDM Entities.

2.8 Notwithstanding anything to the contrary in this Protocol, the Directors shall be under no obligation to undertake any action or refrain from taking any action to the extent they deem it reasonably necessary to comply with their legal obligations to the CDM Entities.

3 Legal and Professional Fees

3.1 The JOLs acknowledge DAF LP's need to take legal and other professional advice with respect to the liquidation of HoldCo. Nothing in this Protocol is intended to restrict or fetter the ability of DAF LP or the CDM Entites to seek legal or professional advice.

4 Consultation

4.1 The JOLs shall provide notice to the Directors of any intended exercise of powers by them which would be consistent with the DAF Provisions, and the JOLs shall discuss and consult with the Directors in respect of any intended action against DAF LP or the CDM Entities.

5 Confidentiality

5.1 In respect of any information of whatever nature relating to any member of the CDM Entities, any of their assets, liabilities, management or business which is or has been provided to the JOLs (or their directors, employees, agents or advisors) pursuant to this Protocol (herinafter referred to as "**Confidential Information**"), the JOLs undertake that they will:

(a) keep the Confidential Information confidential and will not disclose it to anyone except as provided for by paragraph 5.2 below;

(b) not disclose any Confidential Information to Mr James Dondero, the Highland Foundations, or any known affiliates or service providers of these individuals / entities; and

(c) ensure that all Confidential Information is properly stored and protected with security measures and a degree of care of a standard at least as good as would apply to the JOLs' Confidential Information.

5.2 The JOLs may disclose Confidential Information:

(a) Subject to the restrictions in paragraph 5.1(b), to directors, employees, officers, advisors, or agents of the JOLs who are in each case desirable in the course of their duties to receive and consider the Confidential Information, who shall be made aware by the JOLs of their obligations under this Protocol and shall agree in writing to observe the same restrictions on the use of the Confidential Information as are contained in this Protocol;

(b) where required or requested by any court of competent jurisdiction or where required or requested by any competent governmental, supervisory or regulatory body or rating agency; or

(c) with the Directors' prior written consent.

6 Formalities

6.1 This Protocol may not be waived, varied or amended without consent in writing from all parties.

6.2 This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

6.3 For the avoidance of doubt this Protocol is governed by, and to be construed in accordance with, the laws of the Cayman Islands, and any dispute arising hereunder will be subject to the adjudication of the Grand Court of the Cayman islands.

6.4 In the event that either party considers that the other party has acted contrary to this Protocol, it shall first raise the matter by telephone or by email with an explanation of the basis for such complaint and thereafter allow a reasonable period for the other party to remedy the situation or provide an explanation for its conduct. If either party considers that the issue is not resolved then a conference call will be scheduled for a discussion between the Directors and the JOLs (and their respective legal advisors if necessary). Only in the event that there remains a dispute after these steps have been taken will either party refer the matter to the Court.

[SIGNATURES]

Annexure 1 – List of CDM Entities

(i) CDH GP, Ltd. (Cayman Islands)

(ii) CDMCFAD, LLC (Delaware)

(iii) Charitable DAF Fund 2, LP (Cayman Islands)

(iv) Charitable DAF Fund, LP (Cayman Islands)

(v) CLO HoldCo, Ltd. (Cayman Islands)

(vi) Liberty CLO HoldCo, Ltd. (Cayman Islands)

(vii) HCT Holdco 2, Ltd. (Cayman Islands)

(viii) MGM Studios Holdco, Ltd. (Cayman Islands)

(ix) Liberty CLO HoldCo, LLC (Delaware)

(x) Liberty Sub, Ltd. (Delaware)

(xi) Charitable DAF Holdings Corp. (Delaware)

(xii) DST Investco, LLC (Delaware)

(xiii) Allanon Capital Management LLC (Texas)

DRAFT

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. 116 OF 2025 (JAJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

PROTOCOL IN RESPECT OF CHARITABLE DAF FUND, LP

By a petition filed on 2 May 2025, the (1) the Highland Dallas Foundation, Inc., (2) the Highland Kansas City Foundation, Inc., (3) the Highland Santa Barbara Foundation, Inc., and (4) the HCMLP Charitable Fund (the "**Highland Foundations**") sought an order that the voluntary liquidation of Charitable DAF HoldCo, Ltd ("**HoldCo**") continue under the supervision of the Court (the "**Supervision Application**") pursuant to s.131 Companies Act (2025 Revision) (the "**Act**").

By order of the Grand Court of the Cayman Islands (the "**Court**") in respect of FSD 116 of 2025 (JAJ) dated 6 May 2025 (the "**Order**"), the Court determined the Supervision Application and directed that Ms. Margot MacInnis and Mr. Sandipan Bhowmilk be appointed as Joint Official Liquidators (the "**JOLs**") of HoldCo.

Paragraph 6, 6(a) and 6(b) of the Order provide as follows:

> "*The JOLs are in addition authorised to exercise the following powers and to take the following steps without further sanction by the Court:*
>
> *(a) The power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;*
>
> (b) *The power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised…*"

(the "**DAF Provisions**")

Charitable DAF Fund, LP ("**DAF LP**") was not represented at the Supervision Application and understands that that the DAF Provisions were included in the Order "*on the basis of the evidence before* [the Court]".[1]

HoldCo was, and DAF LP is, part of a larger group of entities (collectively the "**DAF Structure**") whose establishment and aim is, according to its '**Mission Statement**', to "*make investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference*". "**CDM Entities**" means the DAF Structure entities listed on Annexure 1 hereto.

Preliminary statement

The purpose of this Protocol (the "**Protocol**") is to ensure the efficient and orderly administration of DAF LP, the CDM Entities, and the liquidation estate of HoldCo. The Protocol is designed to avoid conflict between the JOLs and DAF LP, to assuage any concerns the JOLs may have regarding the commercial activities of DAF LP with respect to the risk of dissipation / misuse of assets outside of the ordinary course of business, and, subject to the approval of the Court, to facilitate the removal of the DAF Provisions from the Order (without prejudice to the JOLs entitlement to seek sanction in the ordinary manner and in accordance with the Act and the Companies Winding Up Rules (2023 Consolidation)).

Background

DAF LP is a Cayman Islands limited partnership formed on 28 October 2011. CDH GP Ltd (the "**GP**"), is a Cayman Islands company incorporated in or around 7 February 2024 and is the general partner of DAF LP. Mark Patrick is the director of the GP and Paul Murphy and Mark Patrick are the directors of the ~~GP~~Cayman-domiciled operating entities owned by DAF LP (the "**Directors**"). Holdco was incorporated and registered as a Cayman Islands exempted limited company on 27 October 2011. From its incorporation until March 2025 when it was placed in voluntary liquidation, Holdco was the direct or indirect limited partner of DAF LP through which it indirectly owned the other entities in the DAF Structure.

1. Notices

1.2 In the interests of expedience, the JOLs and the Directors agree that any notices or coummincation required under this Protocol shall be sent by email as follows:

a) To the JOLs:

Margot MacInnis - margot.macinnis@uk.gt.com
Sandipan Bhowmik - sandipan.bhowmik@uk.gt.com
CDAF Core - CDAF.Core@uk.gt.com

[1]Letter dated 22 May from Johnstone Law to Campbells.

b) To the Directors:

Mark Patrick - mpatrick@dafholdco.com
Paul Murphy - paul@gkmanagement.com.ky

2 Transactional Reporting

2.1 ~~Upon~~ The CDM Entities have engaged Armanino LLP ("**Armanino**"), an independent accountancy firm to provide the financial statement reporting and accounting analysis required under this Protocol.

~~2.1~~ Within 14 days of the execution of this Protocol, the Directors ~~will~~shall provide ~~a report~~ to the JOLs a written report listing all ~~transactions~~ Transactions (as defined below) undertaken by ~~DAF LP, or any of the CDM Entities, since 27 March 2025.~~

2.2 ~~The~~ the CDM Entities between 1 July 2024 and the date of this Protocol (the "**Historical Transaction Report**"). For each Transaction in the Historical Transaction Report, the Directors shall ~~provide a business plan within~~include the following details:

(a) The date of the Transaction;

(b) The identity of any party(ies) depositing funds in respect of the Transaction;

(c) The identity of any party(ies) receiving funds in respect of the Transaction; and

(d) An explanation as to the nature and purpose of the Transaction.

"**Transaction(s)**" as used in this Protocol shall mean the acquisition or disposition of assets in a single transaction or series of related transactions that is equal to or exceeds US$10,000; provided, however, that "Transaction(s)" shall not include renumeration of employees, officers and directors, agents, advisors and / or service providers of the CDM Entities.

~~2.2~~2.3 Within 21 days of the signing of this Protocol, the Directors shall provide a business plan to the JOLs (which can be revised from time-to-time if it is reasonably determined to be necessary by the Directors and within the ordinary course of ~~buisness~~busisness for DAF LP and the CDM Entities) (the "**Business Plan**"). The Business Plan shall set out the Directors' proposal as to the ongoing operations and management of DAF LP and the CDM Entities. Steps taken with respect to the management of DAF LP and the CDM Entities will be considered to be in the ordinary course of business if they are provided for in the Business Plan.

2.4 The Directors and their employees, officers, agents and advisors, will operate and conduct the ordinary, day-to-day, business of DAF LP and the CDM Entities in accordance with the ~~Mission Statement. The Directors~~Business Plan.

~~2.3~~2.5 Armanino shall provide a monthly ~~transactions~~Transactions report and balance sheet (the "Monthly Transaction Report") to the JOLs so they have oversight of DAF LP's investment activity and financial performance, and the steps being taken by the Directors in the ordinary course of DAF LP's business. For each Transaction in the Monthly Transaction Report, Armanino shall include the following details:

(e) The date of the Transaction;

(f) The identity of any party(ies) depositing funds in respect of the Transaction;

(g) The identity of any party(ies) receiving funds in respect of the Transaction; and

(h) An explanation as to the nature and purpose of the Transaction.

~~2.4~~2.6 If the JOLs have any doubt about whether a ~~transaction~~Transaction is or is not in the ordinary course of DAF LP's business, ~~they may contact~~ the JOLs shall consult with the Directors ~~for~~ who agree to make reasonable efforts to provide clairfation. For the avoidance of doubt, the JOLs shall not unilaterally contact third party service providers of the CDM Entities in respect of any Transaction, or any any anticipated transaction which they have been put on notice of pursuant to paragraph 2.7, without first consulting with, and seeking clarifcation from, the Directors.

~~2.5~~2.7 The Directors will ~~endeavour~~use reasonable efforts to provide advance notice to the JOLs in respect of any disposition of assets in a single transaction ~~of DAF LP exceeding US$ 1,000,000~~ or ~~any~~ series of related transactions ~~in an aggregate amount exceeding US$1,000~~that is equal to or exceeds US$250,000 **SAVE THAT** advance notice is not required~~,~~ in relation to any ~~single transaction or series of transactions in the ordinary course of business involving or~~ disposition related to (i) the ~~proper~~ operation ~~and~~or administration of the DAF Structure~~; and~~ in the ordinary course of business or (ii) the renumeration of employees, officers and directors, agents, advisors and / or service providers of the CDM Entities.

~~2.6~~2.8 Notwithstanding anything to the contrary in this Protocol, the Directors shall be under no obligation to undertake any action or refrain from taking any action to the extent they deem it reasonably necessary to comply with their legal obligations to the CDM Entities.

3 Legal and Professional Fees

3.1 The JOLs acknowledge DAF LP's need to take legal and other professional advice with respect to the liquidation of HoldCo. Nothing in this Protocol is intended to restrict or fetter the ability of DAF LP or the CDM Entites to seek legal or professional advice.

4 Consultation

4.1 ~~Save in exceptional circumstances, the~~The JOLs shall provide notice to the Directors of any intended exercise of powers by them which would be consistent with the DAF Provisions, and the JOLs shall

discuss and consult with the Directors in respect of any intended action against DAF LP or the CDM Entities. ~~The JOLs shall provide advice notice of any intended exercise of their powers without sanction by the Court with respect to DAF LP or any CDM Entity that could reasonably be expected to exceed the powers granted to the JOLs by the Court.~~

5 Confidentiality

5.1 In respect of any information of whatever nature relating to any member of the CDM Entities, any of their assets, liabilities, management or business which is or has been provided to the JOLs (or their directors, employees, agents or advisors) pursuant to this Protocol (herinafter referred to as "**Confidential Information**"), the JOLs undertake that they will:

(a) keep the Confidential Information confidential and will not disclose it to anyone except as provided for by paragraph 5.2 below;

(b) ~~Not~~not disclose any Confidential Information to Mr James Dondero, the Highland Foundations, or any known affiliates or service providers of these individuals / entities; and

(c) ensure that all Confidential Information is properly stored and protected with security measures and a degree of care of a standard at least as good as would apply to the JOLs' Confidential Information.

5.2 The JOLs may disclose Confidential Information:

(a) Subject to the restrictions in ~~paragrpah~~paragraph 5.1(b), to directors, employees, officers, advisors, or agents of the JOLs who are in each case desirable in the course of their duties to receive and consider the Confidential Information, who shall be made aware by the JOLs of their obligations under this Protocol and shall ~~be notified by the JOLs~~agree in writing to observe the same restrictions on the use of the Confidential Information as are contained in this Protocol;

(b) where required or requested by any court of competent jurisdiction or where required or requested by any competent governmental, supervisory or regulatory body or rating agency; or

(c) with the Directors' prior written consent.

6 Formalities

6.1 This Protocol may not be waived, varied or amended without consent in writing from all parties.

6.2 This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

6.3 For the avoidance of doubt this Protocol is governed by, and to be construed in accordance with, the laws of the Cayman Islands, and any dispute arising hereunder will be subject to the adjudication of the Grand Court of the Cayman islands.

6.4 In the event that either party considers that the other party has acted contrary to this Protocol, it shall first raise the matter by telephone or by email with an explanation of the basis for such complaint and thereafter allow a reasonable period for the other party to remedy the situation or provide an explanation for its conduct. If either party considers that the issue is not resolved then a conference call will be scheduled for a discussion between the Directors and the JOLs (and their respective legal advisors if necessary). Only in the event that there remains a dispute after these steps have been taken will either party refer the matter to the Court.

[SIGNATURES]

Annexure 1 – List of CDM Entities

(i) CDH GP, Ltd. (Cayman Islands)

(ii) CDMCFAD, LLC (Delaware)

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(ix) Liberty CLO HoldCo, LLC (Delaware)

(x) Liberty Sub, Ltd. (Delaware)

(xi) Charitable DAF Holdings Corp. (Delaware)

(xii) DST Investco, LLC (Delaware)

(xiii) Allanon Capital Management LLC (Texas)

DRAFT

EXHIBIT 82



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

(RPJ)

CAUSE NO: FSD 201 OF 2025 ( )

IN THE MATTER OF THE GRAND COURT ACT

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

SUMMONS

THIS SUMMONS was issued by Maples and Calder, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403.01/83663834)

LET THE PLAINTIFF AND THE DEFENDANTS attend before the Judge in Chambers at the Law Courts, George Town, Grand Cayman on the 31 day of July 2025 at 9:00 a.m. upon an application by the Plaintiff for Orders in terms of the draft annexed hereto.

DATED this 15th day of July 2025

Maples and Calder (Cayman) LLP

Maples and Calder (Cayman) LLP

TO: The Registrar of the Financial Services Division

AND TO:
(1) Mark Eric Patrick
(2) Paul Murphy
(2) CDMCFAD, LLC
(3) DFW Charitable Foundation
(4) CDH GP, Ltd. as general partner for and on behalf of Charitable DAF Fund, LP, and in its capacity as general partner
(5) CLO HoldCo, Ltd.

TIME ESTIMATE: The estimated length of the hearing of this summons is 1 day.

THIS SUMMONS was issued by Maples and Calder, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403.01/83663834)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 ( )

IN THE MATTER OF THE GRAND COURT ACT

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) **MARK ERIC PATRICK**

(2) **PAUL MURPHY**

(3) **CDMCFAD, LLC**

(4) **DFW CHARITABLE FOUNDATION**

(5) **CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER**

(6) **CLO HOLDCO, LTD.**

Defendants

[DRAFT] ORDER

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

PENAL NOTICE

IF YOU THE DEFENDANTS, AND EACH OF YOU, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO BE FINED OR TO HAVE YOUR ASSETS SEIZED AND (IF A NATURAL PERSON) BE LIABLE TO IMPRISONMENT.

ANY DIRECTOR, OFFICER OR MANAGER OF ANY CORPORATE DEFENDANT MAY BE LIABLE TO BE FINED OR TO HAVE YOUR ASSETS SEIZED AND (IF A NATURAL PERSON) ALSO BE LIABLE TO IMPRISONMENT IN RESPECT OF ANY CONTEMPT OF COURT BY THE CORPORATE DEFENDANT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS OR ANY OF THEM TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

UPON the Summons of the Plaintiff dated 15 July 2025 (the "**Summons**");

AND UPON hearing Counsel for the Plaintiff and Counsel for the [ ] Defendants;

AND UPON reading the sworn evidence listed in Schedule C to this Order;

IT IS ORDERED as follows:

1 **Preservation of Property**

1.1 Until trial or further Order, the Defendants will:

(a) Preserve and will not in any way dispose of, deal with, encumber, transfer or diminish the value of (as applicable) their or any interest (of whatsoever nature),

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whether held directly or indirectly, in Charitable DAF Fund, LP (the "**Fund**"), the Fund Entities (defined in Schedule A hereto) and/or any assets of the Fund;

(b) Procure that the Fund Entities and their wholly owned subsidiaries will not in any way dispose of, deal with, encumber, transfer or diminish the value of any of their assets; and

(c) Preserve and will not in any way dispose of, deal with, encumber, transfer or diminish any assets in their possession or control, whether they are in or outside the Cayman Islands, which were, are or may be received (whether directly or indirectly):

(i) by way of distribution, disposition, dividend, benefit, payment or other transfer from (as the case may be) the Plaintiff, the Fund, any of the Third to Fifth Defendants, the Fund Entities and/or their wholly owned subsidiaries; or

(ii) from any assets of the Fund, the Fund Entities and/or their wholly owned subsidiaries.

1.2 The Defendants shall not do anything to cause, procure, incite, promote or assist a breach by any other Defendant of the above clause 1.1.

2 **Disclosure of Information**

2.1 The Defendants (and each of them) must within 21 days of the date of this Order provide an affidavit (by themselves or by their proper officer) setting out (to the best of their ability):

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

(a) Full details of all entities owned by the Fund, whether through any Fund Entity or any other subsidiaries, whether directly or indirectly or solely or jointly owned, or otherwise.

(b) With respect to the Fund Entities and any other entities identified under paragraph (i) above, full details of the holders of shares or other membership interests, directors, officers or other controllers, and places and details of incorporation.

(c) Full details of every payment by way of salary, bonus, dividend, distribution, expenses, or other compensation made to the First or Second Defendants and/or any other officer or employee, or for their direct or indirect benefit, by the Plaintiff, the Fund, the Third Defendant, the Fourth Defendant, the Fifth Defendant, or any of the Fund Entities (or any other entities identified under paragraph 2.1(a) above) between 25 March 2021 and the date of this Order. Such information is to include the dates and amounts of each payment, the basis of the payment, the identity of the paying party, and full details of the account into which payment was made.

(d) Without prejudice to the above, full details of every payment to any attorney, lawyer, third party consultant, accountant, or external professional services advisor, whether a firm, partnership, company or individual, by the Plaintiff, the Fund, the Third Defendant, the Fourth Defendant, Fifth Defendant, or any of the Fund Entities (or any other entities identified under paragraph 2.1(a) above) between 25 March 2021 and the date of this Order. Such information is to include the dates and amounts of each payment, the basis of the payment, the identity of the paying party, and full details of the account into which payment was made.

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

2.2 In addition to the information in paragraph 2.1(a)-(d) above and insofar as not already covered above, the Fifth Defendant must include in its affidavit:

(a) Full details of all assets owned by the Fund (whether registered in the name of the Fund or in the name of the General Partner on behalf of the Fund) and their estimated current values.

(b) Full details of all disposals, assignments, transfers, sales, purchases or other transactions in respect of all or part of any asset owned by the Fund, for the period commencing on 25 March 2021 until the date of this Order. Such details must include (a) the date of the transaction; (b) the identity of any party(ies) depositing funds in respect of the transaction; (c) the identity of any party(ies) receiving funds in respect of the transaction; and (d) an explanation as to the nature and purpose of the transaction.

2.3 In addition to the information in paragraph 2.1(a)-(d) above and insofar as not already covered above, the Sixth Defendant must include in its affidavit:

(a) Full details of all assets owned by each of the Fund Entities or any of their wholly owned subsidiaries and their current estimated values.

(b) Full details of all disposals, assignments, transfers, sales, purchases or other transactions in respect of all or part of any asset owned by any Fund Entity or any of their wholly owned subsidiaries, for the period commencing on 25 March 2021 until the date of this Order. Such details must include (a) the date of the transaction; (b) the identity of any party(ies) depositing funds in respect of the transaction; (c) the identity of any party(ies) receiving funds in respect of the

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

transaction; and (d) an explanation as to the nature and purpose of the transaction

3 The affidavits required pursuant to paragraphs 2.1 to 2.3 above shall have exhibited to them true copy documents:

3.1 Full and complete copies of all existing financial statements or records, including statements prepared on a consolidated basis and/or management accounts and/or ledgers, prepared in respect of the Fund, the Third Defendant, the Fourth Defendant, the Fifth Defendant, the Sixth Defendant or any of the Fund Entities or any other entities identified under paragraph 2.1(a) above between 25 March 2021 and the date of this Order.

3.2 Full data and documents in support of the information required pursuant to paragraphs 2.1 to 2.3 above.

Copy documents shall be provided in electronic form but must be identified in clear terms (on a category basis) in the respective affidavit.

4 **Monthly Reports**

4.1 Until trial or further Order:

(a) The Defendants (and each of them) must within 7 days of the end of each calendar month after this Order is made, provide the Company with a written report, listing all transactions that have been undertaken by each of them, the Fund, and any of the Fund Entities or any other entities identified under paragraph 2.1(a) above during the calendar month just passed (the "**Monthly Transaction Report**").

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

(b) For each transaction in a Monthly Transaction Report, the following details shall be included:

(i) The date of the transaction;

(ii) The identity of any party(ies) depositing funds in respect of the transaction;

(iii) The identity of any party(ies) receiving funds in respect of the transaction; and

(iv) An explanation as to the nature and purpose of the transaction.

5 **Exceptions to this Order**

5.1 This Order does not prohibit:

(a) The Defendants, the Fund Entities or their wholly owned subsidiaries from making any payments in an amount of US$10,000 or less that are reasonably necessary in the ordinary course of business to keep the corporate Defendants, the Fund Entities or their wholly owned subsidiaries in good standing; or

(b) The Fifth Defendant or Sixth Defendant from making payment from Fund assets of their reasonable legal fees and expenses, but prior to making any such payment, the Fifth Defendant or Sixth Defendant (as applicable) must give 3 days' written notice to the Plaintiff setting out full details of where the money that is being used for the payment has been sourced from.

5.2 To the extent that any Defendant, Fund Entity or any of their wholly owned subsidiaries wishes to (i) make any payment or otherwise deal with its assets for the purpose of

preserving, improving or maintaining the value of its assets; or (ii) make any new investments, they may make a written request (in the case of a Fund Entity or one of their wholly owned subsidiaries, through the Sixth Defendant) to the Plaintiff to undertake the proposed transaction. Such request must include full supporting information and documentation as well as an explanation of the rationale for the transaction. The Plaintiff shall be required to give its approval or non-approval to the proposed transaction within 7 days of the request being made. Should the Plaintiff not approve the proposed transaction, the party making the request shall not consummate the proposed transaction.

6 **Effect of this Order**

6.1 A Defendant who is an individual who is ordered not to do something must not do it themselves or in any other way. The Defendant must not do it through others acting on that Defendant's behalf or on that Defendant's instructions or with that Defendant's encouragement.

6.2 Set off by Banks - This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to any Defendant before it was notified of the Order.

6.3 Withdrawals by any Defendant - No bank need enquire as to the application or proposed application of any money withdrawn by any Defendant if the withdrawal appears to be permitted by this Order.

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

7 **Parties other than the Plaintiff and Defendants**

7.1 Effect of this Order - It is a contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of the Order. Any person doing so may be sent to prison, fined, or have that person's assets seized.

7.2 Effect of this Order outside the Cayman Islands - The terms of this Order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable or is enforced by a court in the relevant country and then they are to affect such person only to the extent they have been declared enforceable or have been enforced UNLESS such person is:

(a) a person to whom this Order is addressed or an officer or an agent appointed by power of attorney of such a person; or

(b) a person who is subject to the jurisdiction of this Court and (i) has been given written notice of this Order at that person's residence or place of business within the jurisdiction of this Court and (ii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order.

7.3 Assets located outside the Cayman Islands -

(a) Nothing in this order shall, in respect of assets located outside the Cayman Islands, prevent any person other than the Defendants from complying with: (1) what that person reasonably believes to be their obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between that person and the Respondent; and (2) any orders of the courts of that country or state,

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provided that reasonable notice of any application for such an order, being not less than 28 days, is given to the Plaintiff's attorneys.

8 **Undertakings**

8.1 The Plaintiff gives to the Court the undertakings set out in Schedule B to this Order.

9 **Duration of this Order**

9.1 This Order will remain in force until after final judgment in these proceedings unless before then it is varied or discharged by further Order of the Court.

10 **Costs**

10.1 The Defendants shall be jointly and severally liable to pay the Plaintiff's costs of the Summons, such costs to be taxed if not agreed.

11 **Variation of this Order**

11.1 Any Defendant (or anyone notified of this Order) may apply to the Court at any time to vary this Order (or so much of it as affects that person), but anyone wishing to do so must first inform the Plaintiffs' attorneys in writing on not less than 28 days' notice.

12 **Leave to serve out of the jurisdiction**

12.1 The Plaintiff has leave to serve the Writ, the Statement of Claim, this Order, the Summons and evidence in support, and all other documents associated with these proceedings on:

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

(a) The First Defendant in the United States of America in accordance with the laws of that country as to service on individuals; and

(b) The Third and Fourth Defendants in the United States of America in accordance with the laws of that country as to service on corporations.

12.2 The First Defendant, the Third Defendant and the Fourth Defendant shall have 28 days after service to file their Acknowledgement of Service.

NAME AND ADDRESS OF PLAINTIFF'S ATTORNEYS

The Plaintiff's attorneys are: Maples and Calder (Cayman) LLP, Ugland House, PO Box 309, Grand Cayman, Cayman Islands KY1-1104

DATED this day of 2025

FILED this day of 2025

_____

THE HONOURABLE JUSTICE [SURNAME OF JUDGE]

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

SCHEDULE A: LIST OF FUND ENTITIES

(i) Charitable DAF Fund 2, LP (Cayman Islands)

(ii) Charitable DAF Fund, LP (Cayman Islands)

(iii) CLO HoldCo, Ltd. (Cayman Islands)

(iv) Liberty CLO HoldCo, Ltd. (Cayman Islands)

(v) HCT Holdco 2, Ltd. (Cayman Islands)

(vi) MGM Studios Holdco, Ltd. (Cayman Islands)

(vii) Liberty CLO HoldCo, LLC (Delaware)

(viii) Liberty Sub, Ltd. (Delaware)

(ix) Charitable DAF Holdings Corp. (Delaware)

(x) DST Investco, LLC (Delaware)

(xi) Allanon Capital Management LLC (Texas)

(xii) CLO HoldCo LLC (Delaware)

(xiii) Rand Advisors LLC (Delaware)

(xiv) CDHC Royse City Land LLC (Texas)

(xv) Royse City Land Company LLC (Texas)

(xvi) CDHC Assets LLC (Texas)

(xvii) CDHC Fort Worth Land LLC (Texas)

(xviii) CDHC Stewart Creek LLC (Texas)

(xix) BVP Property LLC (Delaware with CA registration)

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

SCHEDULE B: UNDERTAKINGS GIVEN BY THE PLAINTIFF

(1) Anyone notified of this Order will be given a copy of it by the Plaintiffs' attorneys.

(2) The Plaintiff will pay the reasonable costs of anyone other than any Defendant which have been incurred as a result of this Order including the costs of ascertaining whether that person holds any of such Defendant's assets and that if the Court later finds that this Order has caused such a person loss, and decides that the person should be compensated for that loss, the Plaintiffs will comply with any Order the Court may make above.

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

SCHEDULE C: SWORN EVIDENCE CONSIDERED BY THE JUDGE

The Judge read the following sworn evidence before making this Order:

(1) The First Affidavit of Margot MacInnis sworn on 15 July 2025 together with its exhibit MM-1;

(2) …

(3) …

THIS ORDER was filed by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/LRA/858403-01/83693213

EXHIBIT 83

Q Of all the people in the world, Mr. Scott decided to transfer it to you, correct?
A Yeah. Mr. Scott transferred those interests to me.
Q Okay. And you accepted them, right?
A Yes.
Q You're not getting paid anything for taking on this responsibility, correct?
A I am not paid by any of the entities depicted on this chart.
Q And Mr. Scott used to get $5,000 a month, didn't he?
A I believe that's what he testified to.
Q Yeah. But you don't get anything, right?
A Correct.
Q In fact, you get the exact same salary and compensation from Skyview that you had before you became the authorized representative of the DAF entities and CLO Holdco. Correct?
A Correct.

MR. MORRIS: Okay. Your Honor, if I may just take a moment, I may be done.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Your Honor, I have no further questions.

THE COURT: All right. Pass the witness. Any examination of the witness?

CROSS-EXAMINATION

EXHIBIT 84

EXHIBIT 4

intertrust GROUP

Registration No.: **53083**

Date of Incorporation: **28 October 2011**

Client No.: **KY059900**

REGISTER OF MEMBERS
FOR:
CHARITABLE DAF FUND, LP

Share Class: **General Partner**
Nominal Value: **USD 0.00**
Voting Rights: Yes
Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CHARITABLE DAF GP, LLC The Corporation Trust Company Corporation Trust Center 1209 Orange St New Castle 19801 Wilmington DE USA	25 Oct 2011	New Partner	1.00	25 Oct 2011 : Initial Exempted Limited Partnership Agreement dated 25 Oct 2011	No Cert			
						Nil	**1.00**	

Notes:

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

[1 / 1]

EXHIBIT 85

CAUSE NO. _____

THE HIGHLAND DALLAS FOUNDATION, INC., THE HIGHLAND KANSAS CITY FOUNDATION, INC., and THE HIGHLAND SANTA BARBARA FOUNDATION, INC., *Plaintiffs*, **v.** **MARK PATRICK and DFW CHARITABLE FOUNDATION, CDMCFAD, LLC, CHARITABLE DAF GP, LLC and CDH GP, Ltd.,** *Defendants.*	**IN THE TEXAS BUSINESS COURT** **1ST DIVISION** **DALLAS, TEXAS**

PLAINTIFFS' ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION, AND EMERGENCY REQUEST FOR APPOINTMENT OF RECEIVER

TO THE HONORABLE JUDGE OF SAID COURT: The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc., (collectively, the "Plaintiffs" or "Supporting Organizations") file this Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Application for Appointment of Receiver, and in support thereof, respectfully show the Court as follows:

I. PRELIMINARY STATEMENT

1.1 Defendant, Mark Patrick, through a host of corporate manipulations, took over $270 million in cash and assets that supported some of the most important community-based

charities in the country. In Patrick's own testimony from just last Wednesday, June 25th, the Supporting Organizations, plaintiffs here, were left with "nothing."[1]

1.2 Through the mechanism of Charitable DAF GP, LLC (organized in Delaware) and later via a secretly incorporated entity, CDH GP, Ltd., Mark Patrick held the sole control position of what was a $270 million charitable fund (Charitable DAF Fund, LP) that four charities and the Supporting Organizations relied on to perform vital and sustained philanthropic work in specific communities in the United States. Patrick flagrantly violated both his express and implied fiduciary duties to the Supporting Organizations. He did so in order to redirect the fund's beneficial ownership to a brand-new sham charitable organization controlled by him, DFW Charitable Foundation. These actions come against a backdrop and pattern of sustained self-aggrandizement by Patrick using the fund's resources and his technical authority over them. If the Defendants here are not immediately prevented from taking further adverse actions, then placed into receivership and subjected to judicial scrutiny, the Plaintiffs will be cut off from the lifeblood of their charitable work by the very person whose duty was to act in their interests. Accordingly, Plaintiffs seek a Temporary Restraining Order and Temporary Injunction freezing the funds, followed by the appointment of a Receiver over the funds and the organization holding them.

II. DISCOVERY CONTROL PLAN AND MONETARY RELIEF

2.1 Plaintiffs intend that discovery be conducted under Level 2 as set forth in Rule 190.3 of the Texas Rules of Civil Procedure. Plaintiffs reserve the right to request to conduct discovery pursuant to "Level 3" as set forth in Rule 190 of the Texas Rules of Civil Procedure.

[1] *See* Ex.5, June 25, 2025 Transcript of Proceedings; Testimony of Mark Patrick, p. 185:22-25; *In re Highland Capital Management, LP*, Case No. 19-34054-sgj-11 (App. Pg. 200)

2.2 Plaintiffs seek damages in excess of $5,000,000 exclusive of interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs.

III. PARTIES

3.1 **The Highland Dallas Foundation, Inc. ("HDF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. HDF provides funding to The Dallas Foundation, a Texas charitable entity established in 1929, which has awarded over $1 billion in charitable grants that support a broad range of public needs.

3.2 **The Highland Kansas City Foundation, Inc. ("HKCF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. HKCF provides funding to the Greater Kansas City Community Foundation, established in 1978, which has awarded over $7 billion in in charitable grants that support a broad range of public needs.

3.3 **The Highland Santa Barbara Foundation, Inc. ("HSBF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. HSBF provides funding to the Santa Barbara Foundation, established in 1928, that supports a broad range of public needs.

3.4 **DFW Charitable Foundation ("DFWCF")** is a Delaware non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. It was organized on December 9, 2024, with Defendant Mark Patrick as DFWCF's sole member. It purports to be a nonprofit nonstock corporation serving exclusively charitable purposes. DFWCF is headquartered at Mark Patrick's residence at 6716 Glenhurst Drive, Dallas, Texas 75254. DFWCF maintains a registered office at Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, where it may be served with process.

3.5 **Mark Patrick ("Patrick")** is an individual who resides in Texas and holds management control over the Fund structure, as explained more thoroughly below. Patrick resides and may be served with process at 6716 Glenhurst Drive, Dallas, Texas 75254, or served anywhere he may be found.

3.6 **CDMCFAD, LLC** is a Delaware limited liability company with headquarters at 6716 Glenhurst Drive, Dallas, Texas 75254. It may be served with process at Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

3.7 **CDH GP, Ltd**. is a Cayman Island limited company with its registered office at Campbells Corporate Services Limited, Floor 4 Willow House, Cricket Square, Grand Cayman Ky1-9010. It may be served with process through Patrick, its 100% owner and sole director, at 6716 Glenhurst Drive, Dallas, Texas 75254, or anywhere he may be found.

3.8 **CHARITABLE DAF GP, LLC** is a Delaware limited liability company registered as a foreign company in the Cayman Islands and having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands. It may be served with process at Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

IV. JURISDICTION AND VENUE

4.1 Pursuant to Government Code § 25A.004, this Court has jurisdiction over this matter because the amount in controversy exceeds $5 million excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs:

- and is an action regarding the governance, governing documents, or internal affairs of organizations, namely Charitable DAF Fund, L.P., and DAF HoldCo, Ltd;

- and is an action by an owner of an organization, namely the Supporting Organizations as participating and beneficial owners of DAF HoldCo, Ltd and thereby Charitable DAF, L.P., and is brought against a controlling person and managerial official of the organization, namely Patrick, Charitable DAF, GP, LLC, CDH GP, Ltd and Patrick's controlled entities, DFWCF, and CDMCFAD, LLC; and alleges numerous fiduciary and other breaches of Patrick's, Charitable DAF, GP, LLC's, and CDH GP, Ltd's obligations in the capacity of a controlling person and managerial official of DAF HoldCo, Ltd and Charitable DAF, L.P.;
- and is an action alleging that Patrick, as a controlling person, and managerial official, with the entities he dominated and used, breached a duty owed to the Supporting Organizations as a controlling owner of DAF HoldCo, Ltd, CDMCFAD, LLC, and Charitable DAF, L.P., DFW Charitable Foundation by reason of the Patrick's status as an owner of management interests, controlling person, and managerial official, including the breach of a duty of loyalty and good faith.

4.2 The Court also has related supplemental jurisdiction per Government Code § 25A.004.

4.3 The Court also maintains plenary power to appoint a receiver under Texas Government Code § 24.003, Texas Civil Practice and Remedies Code § 64.001(a)(3), Texas Business and Organizations Code §§ 11.401 and 11.410, and through the Court's inherent powers at equity.

4.4 Personal jurisdiction is proper by Texas courts pursuant to Texas Civil Practice & Remedies Code § 17.042 because Defendants committed tortious actions, including Texas resident,

Mark Patrick, who improperly took approximately $270 million in value, and other conduct within Texas, incorporated herein, which are the subject of this Petition. Defendants are therefore subject to specific personal jurisdiction because of the complained-of acts that they committed in Texas. Defendants all have substantial business operations, assets, and other connections to Texas. Defendants are subject to general personal jurisdiction in Texas because they both reside in, and have continuous and systematic contacts with, Texas. Defendants have also consented to the jurisdiction of Texas courts.

4.5 Venue is proper in this county under Texas Civil Practice & Remedies Code § 15.002 because Defendant Patrick is a resident of Dallas County, Texas and Patrick undertook and directed a substantial portion of the complained-of acts in Dallas County, Texas. On information and belief, DFWCF, CDH GP, Ltd. and CDMCFAD are headquartered in Dallas County. Dallas County is within the 1st Division of the Texas Business Court.

V. FACTUAL BACKGROUND

A. *The Fund Structure*

5.1 James Dondero was the President of Highland Capital Management, L.P. ("**Highland**"), an SEC registered investment advisor. At Mr. Dondero's direction, in 2010, the finance, accounting, and tax staff of Highland identified certain assets to be donated to a charitable foundation. The goal was to create a permanent, self-sustaining, self-governing charitable infrastructure to facilitate sustained philanthropic efforts in specific communities in the United States.

5.2 To that end, in 2011, "Charitable DAF Fund, L.P. ("**Charitable DAF Fund**") was formed to hold the donated assets.

5.3 The Charitable DAF Fund primarily holds assets through a wholly-owned subsidiary entity called CLO HoldCo, Ltd. ("**CLO HoldCo**").

5.4 At the same time the Charitable DAF Fund was created, Charitable DAF HoldCo, Ltd ("**Charitable DAF HoldCo**"), a Cayman Islands entity, was also organized. Charitable DAF HoldCo held all of the economic interest in the Charitable DAF Fund. In other words, Charitable DAF HoldCo was the beneficial owner of all monies flowing from the assets held in the Charitable DAF Fund.

5.5 The ultimate purpose of forming Charitable DAF Fund and Charitable DAF HoldCo was to benefit certain, substantial regional nonprofit charities and their supporting organizations in California, Kansas, and Texas. Participating shares in Charitable DAF HoldCo were therefore issued to four Supporting Organizations, which were the ultimate beneficial owners of the assets held in the Charitable DAF Fund. Together, the four Supporting Organizations owned 100% of Charitable DAF HoldCo. The four Supporting Organization held their beneficial ownership in the assets of the Charitable DAF Fund by virtue of those Participating Shares in Charitable DAF HoldCo. Put simply: the four Supporting Organizations owned 100% of Charitable DAF HoldCo, which was the beneficial owner of all the assets in the Charitable DAF Fund. Three of the four Supporting Organizations are the Plaintiffs in this Lawsuit.

5.6 In turn and as intended, the funds provided to the Plaintiff Supporting Organizations from the Charitable DAF Fund empowered them to provide funding directly to charitable foundations in three regions of the United States. Specifically, The Dallas Foundation, The Greater Kansas City Community Foundation, and The Santa Barbara Foundation (together, the "**Charities**") are each affiliated with one of the Supporting Organizations and receive regular grants for charitable work ultimately funded by Charitable DAF Fund.

5.7 Since the Charitable DAF Fund's inception, the Supporting Organizations have granted over $42 million to charitable organizations, including donations to 275 organizations, with average annual grant payments of $3.7 million. The Supporting Organizations and the charitable organizations perform irreplaceable philanthropic work in their respective communities, and do so in a steady, reliable manner that permits them to build progress on initiatives year after year.

B. ***Control of the Fund***

5.8 The founders of the Charitable DAF Fund and of Charitable DAF HoldCo wanted to ensure that the fund assets were professionally managed by experts. So, although the Supporting Organizations were the sole beneficiaries of the Charitable DAF Fund and together held all of the economic interest in it, management control of the Charitable DAF Fund and Charitable DAF HoldCo was vested not with those organizations but rather in "Management Shares," with general partner status. These "Management Shares" provided the only voting rights for any and all shareholders in Charitable DAF HoldCo. But they did not convey a right to any economic benefit of the assets in the Charitable DAF Fund, which belonged solely to the Supporting Organizations.

5.9 So, the "Management Shares" exercised control over the assets and over the operations of Charitable DAF HoldCo, even though they conveyed no economic benefit. In the interest of efficient management, the Management Shares and general partner status in the Charitable DAF Fund were concentrated in one person, the "**Control Position**." The Control Position was therefore responsible to manage the Charitable DAF Fund and Charitable DAF HoldCo for the economic benefit of their economic beneficiaries—the "Supporting Organizations," which held their "Participating Shares." The Control Position therefore owed the

Supporting Organizations fiduciary duties of candor, care, and loyalty, including a prohibition against any self-dealing.

5.10 In essence, the governing documents of Charitable DAF HoldCo grant complete control of Charitable DAF Fund structure to the holder of the 100 Management Shares in Charitable DAF HoldCo. Those shares have at all material times been held by a single individual, who as a result has substantial control over the entire Charitable DAF Fund structure.

5.11 The Charitable DAF Fund, however, is also expressly, separately controlled by the Control Position. Similar to control over Charitable DAF HoldCo, control over the Charitable DAF Fund is separate from the beneficial economic ownership of the Charitable DAF Fund (which belongs entirely to the Supporting Organizations). Control over the Charitable DAF Fund was reposited in the Control Position through its complete ownership of a Delaware entity named Charitable DAF GP, LLC[2] (the "**Delaware GP**"). The Delaware GP was the managing general partner in the Charitable DAF Fund.

5.12 The Amended and Restated Limited Partnership Agreement of the Charitable DAF Fund, dated November 7, 2011 (the "**ARLPA**"), and the Amended and Restated Memorandum and Articles of Association of the LP dated January 19, 2015 ("**Articles**"), govern the Charitable DAF Fund and its partners. The ARLPA makes it clear the Control Position is to exercise his powers for the sole benefit of the Supporting Organizations.

5.13 For example, the Preamble to the ARLPA states: "WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code

[2] The Charitable DAF GP, LLC, held all the general partnership shares in Charitable DAF Fund, which provided all management control over the Charitable DAF Fund, but conveyed no beneficial economic interest.

of 1986, as amended and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein[.]"

5.14 Likewise, Section 1.3 (Purpose and Powers) states that the Control Position must manage the fund assets "*for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners*."[3]

5.15 Section 1.6 (Powers) likewise emphasizes: "[T]he General Partner [Control Position] . . . is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; *provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner*."[4]

5.16 The ARLPA thus provides that Charitable DAF Fund was formed to make investments, directly or indirectly, "for the economic benefit of the Limited Partner [DAF HoldCo] and its Indirect Charitable Owners" and contemplates the engagement of investment (and other service) advisors to achieve this. In this context, the Control Position is responsible for the governance and management functions of the Charitable DAF Fund as required for it to carry out its sole purpose of benefiting the Supporting Organizations and the Charities they support. The ARLPA is infused throughout with the singular command: The Control Position has great authority but is required to act with fidelity in exercising it for the benefit of the Supporting Organizations.

5.17 Grant Scott was initially selected for the Control Position. Mr. Scott was a longtime friend of Mr. Dondero's and a lawyer in North Carolina. Mr. Dondero knew and trusted Mr. Scott.

[3] Emphasis added.
[4] Emphasis added.

Mr. Scott effectively served the Supporting Organizations' charitable purposes in his role in the Control Position. For this, Mr. Scott received $60,000 in annual compensation—a compensation rate that remained unchanged for the better part of decade. During this time, the Supporting Organizations and their respective charitable foundations made great strides in creating philanthropic, and charitable, work that was efficient, that was steady and reliable, and that grew and built on their progress year after year.

C. *Mark Patrick's Assumption of Control*

5.18 Highland filed for bankruptcy in October 2019 ("**Highland Bankruptcy**") and, as a result, the Charitable DAF Fund became engaged in certain disputes arising from the bankruptcy, increasing the time and responsibilities associated with the Control Position. Mr. Scott did not feel qualified to manage those disputes and decided to resign from the Control Position.

5.19 Mark Patrick, a tax attorney and employee of Mr. Dondero who had played a significant role in developing the overall Charitable DAF Fund structure while at Highland, suggested to Mr. Scott and Mr. Dondero that he was prepared to take on the Control Position and, in that role, to handle the litigation related to the Highland Bankruptcy as it affected Charitable DAF Fund. At the time, Patrick was an employee of Mr. Dondero's enterprises and was serving as Mr. Dondero's attorney and Mr. Dondero had no objection to Mr. Scott transferring the Control Position to Patrick. As a result of his attorney and employee status, Mr. Patrick owed significant fiduciary duties to Mr. Dondero's entities and to the Charitable DAF Fund structure—fiduciary duties that he has violated in a series of self-serving and self-dealing transactions.

5.20 On March 25, 2021, Mr. Scott resigned and appointed Patrick as director of DAF HoldCo, transferring all his management shares and membership interest to Patrick for nominal consideration. Patrick therefore assumed the Control Position from that date. Patrick then hired

Paul Murphy, a Cayman Islands' director, to join him in his efforts to abscond with the $270 million in assets.

5.21 At the time Patrick assumed the Control Position, he was employed at Skyview Partners, a service organization that provided support primarily to Mr. Dondero and entities in which Mr. Dondero had an interest. As an employee of Skyview, he owed fiduciary duties to his employer.

D. ***Patrick's Breaches of Fiduciary Duty***

5.22 In 2023, while still employed by Dondero entities, and as the sole fiduciary for the Charitable DAF Fund and DAF HoldCo, Patrick initiated a two-year pattern of malfeasance all culminating in his current effort to abscond with $270 million. His initial small infidelities quickly blossomed into a brazen, fraudulent play for the Charitable DAF Fund and its $270 million in holdings, putting at risk the charitable works supported by the Supporting Organizations.

E. ***Undisclosed Self-Dealing***

5.23 In June 2023, Patrick requested that The Highland Dallas Foundation, Inc. direct $10,000 to Creative HEARTS TX, a non-profit entity formed on June 13, 2023. Patrick expected this to be an annually recurring donation. Patrick failed to disclose that he, his wife, and daughter were the directors of this entity, which had been created approximately two weeks earlier. The Highland Dallas Foundation, Inc. funded an initial $10,000 contribution but declined to commit to doing so annually.

F. ***Attempted Fraudulent Kickback Scheme***

5.24 In September 2023, Patrick approached Kevin Cronin, CEO of Fortaris Capital Advisors, proposing a fraudulent kickback scheme to personally benefit Patrick. Fortaris previously provided legitimate services to the Charitable DAF Fund. Now, Patrick proposed that

the Charitable DAF Fund engage a new vendor controlled by Mr. Cronin. Patrick proposed that the Charitable DAF Fund pay this sham vendor a monthly fee of $25,000-$50,000. The sham vendor, however, would not provide any services to the Charitable DAF Fund. Instead, Patrick expected to collect half of the fee as undisclosed supplemental compensation. That is, he expected to collect something for nothing in a classic fraud.

5.25 Mr. Cronin declined and relayed what occurred to Mr. Dondero. Mr Dondero then confronted Patrick, who admitted that what Mr. Cronin reported was true.

5.26 Mr. Dondero ensured that Supporting Organizations were also informed about Patrick's kickback scheme. Despite significant concern, the Supporting Organizations had doubts about whether, based on the governing documents and Patrick's positions, they could remove Patrick from the Control Position.

G. ***Insider Trading***

5.27 In August 2024, Patrick tried to capitalize on material non-public information obtained through his employment at Skyview to advise The Dallas Foundation to exercise a put option in a NexPoint affiliated asset, constituting attempted violations of U.S. securities laws. The Dallas Foundation declined to trade on Patrick's improper tip.

5.28 Skyview's compliance department conducted an internal investigation that concluded Patrick's actions constituted serious breaches of compliance obligations and attempted serious breaches of U.S. securities laws.

5.29 Patrick resigned from Skyview immediately before the investigation was finalized and simultaneously terminated the Charitable DAF Fund's services agreement with Skyview without justification and against the Charitable DAF Fund's interests.

H. ***Financial Irregularities and Lack of Transparency***

5.30 After resigning from Skyview, Patrick began shrouding the Charitable DAF Fund structure's overall financial reporting and communications to the point that the Supporting Organizations were essentially cut off from any view into the financial transactions and soundness of the fund. As of September 2024, the Charitable DAF Fund held approximately $270 million strictly for the financial benefit of the Supporting Organizations and ultimately their supported Charities.

5.31 But a review of the Charitable DAF Fund's last accessible financial records showed dramatic and unexplained increases in expenditures:

- Directors' fees increased from $40,000 in 2022 to almost $600,000 in 2023, and to approximately $2.25 million in the first half of 2024 alone (a 12,400% increase from 2022 if annualized).
- Legal expenses increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022 (a 300% increase if annualized).
- Overall expenses for the first half of 2024 were around $18.3 million, compared to $18.6 million for all of 2023.

5.32 Despite repeated requests from the Supporting Organizations and their counsel and counsel for the Charitable DAF Fund, Patrick and Murphy have ignored and refused to provide requested financial information or explanations for these dramatic expenditure increases.

5.33 Patrick must have personally benefited from the dramatic increases in director's fees and, given Patrick's prior attempt to implement a kickback scheme through Mr. Cronin, the other remarkable increases in expenses raise deep concerns about potential self-dealing.

I. *Patrick Ignores the Supporting Organizations Concerns*

5.34 On November 11, 2024, given what the Supporting Organizations already knew, the three major Supporting Organizations drafted a letter to Murphy, the Cayman Islands director, stating that "we no longer have confidence that the governance structures of, including but not limited to Charitable DAF-GP, LLC, Charitable DAF HoldCo, Ltd., Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (collectively the "**DAF-related entities**"), can function appropriately. We believe a reorganization must occur or the DAF-related entities should be equitably wound up because the governance structure has become unworkable."[5]

5.35 The letter continued, "because we have substantial concerns, out of an abundance of caution, and until an accounting can be conducted, we believe it is inappropriate for anyone to authorize the depletion of further assets of DAF-related entities. We urge you to take our accounting and governance concerns seriously because depletion of assets in the DAF-related entities has a direct impact on our mission and the charitable good works in our communities."[6]

5.36 Patrick and Murphy never responded to the letter, other than a threat that if the Supporting Organizations did not withdraw it, then Patrick and Murphy would embark on an effort at the Internal Revenue Service to revoke the Supporting Organizations' charitable status.

5.37 In January 2025, the Supporting Organizations demanded Patrick and Murphy provide clarity into the Charitable DAF Fund's financial position, expressing dismay that Patrick and Murphy continued to ignore their repeated requests for information. Murphy responded via email to this request stating that he and Patrick would "present directly to the foundations/supporting organi[z]ations" to address some of the concerns in the No Confidence Letter. Murphy never did.[7]

[5] *See* Ex. 4-A, Ltr. of Nov. 11, 2024 (Appx. Pg. 162-163)
[6] *Id.*
[7] *See* Ex. 4-B, Email chain ending Jan. 23, 2025 (Appx. Pg. 171)

5.38 Counsel for the Supporting Organizations and for the Charitable DAF Fund exchanged further communications, but Patrick, Murphy, and the Charitable DAF Fund's counsel never provided answers and information in response to the Supporting Organizations' basic requests. Instead, they wrapped all their future communications in half-truths and subterfuge.[8] At the same time, they offered the Supporting Organizations vague assurances that all their maneuvers were to improve the structure, focus, and performance of the fund, for the benefit of the Supporting Organizations.

5.39 The Charitable DAF Fund's counsel promised a meeting to address the Supporting Organizations' concerns, but after the Supporting Organizations' counsel suggested dates, the Charitable DAF Fund and its counsel delayed and delayed until it eventually went silent.[9]

5.40 In the interim, Patrick accelerated his multi-year fraud.

J. ***Dilution Scheme and Liquidation Maneuver***

5.41 Between December 2024 and the present, Patrick executed a series of moves to dilute the Supporting Organization's interests in the Charitable DAF Fund, and alienate those same assets entirely away from them. The purpose and result of Patrick's moves was to entirely eliminate the Supporting Organization's ownership of the Charitable DAF Fund assets. In short, he stole them.

5.42 In December 2024, Patrick formed new entities (as described below) with Patrick as the sole director. He then replaced the current entities holding and controlling the Charitable DAF Fund with his own entities, essentially transferring all ownership and control to himself in a brazen act of self-dealing. He never notified the Supporting Organizations of this massive

[8] *See* Exs. 4-A, Ltr. of Feb. 14, 2025 & Ex. 4-C Ltr. of Feb. 27, 2025 (Appx. Pg. 162-182).
[9] *See* Ex. 4-C, Email chain ending April 9, 2025 (Appx Pg. 179-182).

reorganization of the Charitable DAF Fund. Indeed, the Supporting Organizations found out about this monumental reorganization only when Patrick and his counsel had to admit it in a Cayman court as part of the Supporting Organization's successful effort to appoint Cayman Liquidators to unravel Patrick's fraud in that jurisdiction.

5.43 In a move that would make most fraudsters blanch, and certainly continued to violate all his fiduciary duties, on December 9, 2024, Patrick formed Defendant DFWCF (also referred to herein as the "**Sham Charity**"), a Delaware nonprofit corporation. Patrick named himself the Sham Charity's sole member and its registered address was Patrick's home. Patrick then issued his charity a fifty-one percent (51%) interest in the charitable assets. In essence, Patrick awarded himself the ability to distribute over half of the Charitable DAF Fund's $270 million in economic interest to his own entity, from his living room in Dallas.

5.44 Three days later, on December 12, 2024, Patrick incorporated CDMCFAD, LLC, a Delaware limited liability company.

5.45 In secret, and without notice to the Supporting Organizations, on December 18, 2024, Charitable DAF HoldCo transferred to CDMCFAD, LLC 100 percent of its interest in Charitable DAF Fund, and Charitable DAF HoldCo acquired 100 percent of the interest in CDMCFAD, LLC. As a result, CDMCFAD effectively was inserted as a blocking company in between Charitable DAF HoldCo, owned by the Supporting Organizations, and the Charitable DAF Fund itself (where the assets resided). Suddenly, the Supporting Organizations no longer held a 100 beneficial interest in the entity that held the assets of Charitable DAF Fund. Instead, Patrick ensured a different and new entity (CDMCFAD) held Charitable DAF Fund.

5.46 Patrick's fraud continued to evolve in February 2025. On February 7, 2025, again without notice to the Supporting Organizations, DAF HoldCo (in an *ultra vires act)* allotted 318

participating shares to DFWCF, the Sham Charity controlled by Patrick. This sham dilution reduced the Supporting Organizations' cumulative holding in Charitable DAF HoldCo from 100% of the participation shares to 48.9%. Following the new issuance: (i) HDFI's interest was diluted from 32.787% to 16.05%; (ii) HKCF's interest was diluted from 32.787% to 16.05%; (iii) HSBFI's interest was diluted from 32.787% to 16.05% and (iv) the HCMLP Charitable Fund's[10] interest was diluted from 1.639% to 0.80%. Said another way, Patrick absconded with over half of the participating interest of the Supporting Organizations and other charitable funds. Before, during, and after this action—and at all times it was contemplated and executed—Patrick and Charitable DAF HoldCo still owed fiduciary duties to the Supporting Organizations.

5.47 In February 2025, the Sham Charity acquired IRS 501(c)(3) tax exempt status. The By-Laws of the Charitable DAF Fund required that its limited partnership interests be owned by an entity with such tax-exempt status. Therefore, obtaining 501(c)(3) status for the Sham Charity was a necessary step to effectuate Patrick's complete control of the assets of Charitable DAF Fund.

5.48 On March 27, 2025, Patrick caused CDMCFAD (the holder of $270 million in assets) to issue shares to the Sham Charity, *and only to the Sham Charity*. He issued no shares in CDMCFAD to the Supporting Organizations. His fraudulent scam was nearly complete. Now, Patrick's Sham Charity controlled all the direct economic interest in the entity Patrick had inserted between Charitable DAF HoldCo and the assets in Charitable DAF Fund, and the Supporting Organizations were left out in the cold.

5.49 On April 2, 2025, Patrick caused Charitable DAF HoldCo to redeem its interests in CDMCFAD for a total payment of $1.6 million. That is, he exchanged $270 million for $1.6

[10] The HCMLP Charitable Fund is a separate charity which provides funding for the North Texas Community Foundation. While it is not a named plaintiff, the damages it incurred because of the acts of Patrick are notable and relevant to show Patrick's impact across the State of Texas.

million, a ridiculous transaction bereft of reasonably equivalent value.[11] After the transaction, Charitable DAF HoldCo purportedly had no assets and no remaining interest in Charitable DAF Fund. As a result, Patrick's Sham Charity, Defendant DFWCF, was the sole limited partner and beneficial owner of Charitable DAF Fund, through its now-100% ownership of CDMCFAD, and CDMCFAD's 100% ownership of the fund. This final step completely severed the Supporting Organizations and their nonprofit charities from the assets of the Charitable DAF Fund. In Patrick's own words under oath, "the entity in liquidation [Charitable DAF Holdco, Ltd.] owns nothing."[12]

5.50 Before the start of these self-dealing transactions, in October 2024, the Supporting Organizations owned 100% of the Participation Shares representing the economic ownership of $270 million in assets. As of April 2025, the Supporting Organizations owned Participation Shares worth zero. While Patrick allegedly distributed a paltry portion of $1.6 million to the Supporting Organizations, receipt of those funds has yet to be verified. Again, all of his self-dealing activity took place with no clarity or transparency. Patrick converted the Supporting Organizations' assets to Patrick's personal benefit and ownership, and violated his fiduciary duties of care, candor, and loyalty that he owed to the Supporting Organizations.

K. ***The Cayman Island Proceedings***

5.51 On April 2, 2025, again unbeknownst to the Supporting Organizations, Patrick placed DAF HoldCo into *voluntary* liquidation in the Cayman Islands through written resolutions of directors executed by Patrick, with joint voluntary liquidators appointed.

5.52 But the Supporting Organizations already did know: that Patrick had (1) actively thwarted all financial transparency; (2) refused to address the Supporting Organizations well-

[11] *See* Ex. 3, p. 5, Written Resolutions of the Directors of the Company dated 2 April 2025 (Appx. Pg. 102-103)
[12] *See* Ex.5, June 25, 2025 Transcript of Proceedings; Testimony of Mark Patrick, p. 185:22-25; *In re Highland Capital Management, LP*, CaseNo. 19-34054-sgj-11; (Appx. Pg. 200).

founded concerns including their expression of no-confidence; (3) engaged in a pattern of fraudulent self-dealing; (4) taken all participating ownership from the Supporting Organizations without any approval or appropriate compensation; and (5) and restructured the underlying funds. This was enough to convince the Supporting Organizations to take action.

5.53 The Supporting Organizations filed an *involuntary* Petition for Winding Up in the Grand Court of the Cayman Islands (the "**Grand Court**"), Financial Services Division, Cause No. FSD 99 OF 2025 (JAJ), styled *In the Matter of Section 92 of the Companies Act (2025 Revision) and In the Matter of Charitable DAF HoldCo, Ltd.* Absent doing so, the Supporting Organizations would not have learned about Patrick's voluntary liquidation.

5.54 Cayman Islands counsel for the Supporting Organizations alleged essentially the same facts as recounted in this Petition before the Grand Court. However, Defendants DFWCF and CDMCFAD are Delaware-organized entities and were not expressly named in the Grand Court proceedings.

5.55 The Grand Court, after lengthy hearing and in consideration of written submissions and evidentiary exhibits, ordered among other things[13]:

> 5. The joint official liquidators are authorized to exercise the following powers in Part I of Third Schedule 3 to the Companies Act, without requiring further sanction by the Court:
>
> a) the power to commence legal proceedings in the name and on behalf of the Company to obtain the provision of information and/or documents and/or the examination of individuals in the Cayman Islands or the United States; and
>
> b) the power to apply in the Cayman Islands or the United States for the preservation, freezing or attachment of assets to which the Company is or may arguably be entitled.

[13] Ex. 8, Supervision Order (Appx. Pg. 244-246)

6. The joint official liquidators are in addition authorized to exercise the following powers and to take the following steps without further sanction by the Court:

a) the power to present a petition for the winding up of Charitable DAF Fund, LP (the Fund) if so advised;

b) the power to file a summons and to apply for an order appointing provisional liquidators of the Fund if so advised; and

c) the power to seek registration or recognition of themselves and/or the Official Liquidation in any State in the United States for any purpose connected with the exercise of the powers specified in paragraphs 5(a) or 5(b) of this Order.

5.56 While the Cayman Islands-appointed official liquidators now conduct their investigation of the assets and other matters pertaining to the Cayman Islands' proceedings, Defendants Patrick, DFWCF, and CDMCFAD (all sited in the United States, and more specifically Dallas County) remain in actual control and beneficial ownership of all assets that were held by the Charitable DAF Fund and DAF HoldCo. In the meantime, the rightful beneficial owners, the Supporting Organizations, are without the benefit of the considerable assets formerly held by the Charitable DAF Fund and without any insight into the current status and security of the assets. This not only damages the Supporting Organizations, but the charitable causes in their communities that rely on funding from the Charitable DAF Fund.

VI. CAUSES OF ACTION

Count I - Breach of Fiduciary Duty Against Patrick, CDH GP, Ltd., and Charitable DAF GP, LLC

6.1 Paragraphs 1.1 - 5.56 are incorporated as if fully restated herein.

6.2 In "a limited partnership, the general partner stands in the same fiduciary capacity to the limited partners as a trustee stands to the beneficiaries of a trust." *Hughes v. St. David's Support Corp.,* 944 S.W.2d 423, 425–26 (Tex. App.—Austin 1997, writ denied); *Feeley v. NHAOCG, LLC*, 62 A.3d 649, 661 (Del. Ch. 2012) (There "has never been any serious doubt that

the general partner of a Delaware limited partnership owes fiduciary duties."). Likewise, under traditional principles of equity, and various statutes generally hold that a manager of an LLC would qualify as a fiduciary of that LLC and its members. *Auriga Capital Corp. v. Gatz Properties,* 40 A.3d 839, 850 (Del. Ch. 2012), judgment entered sub nom. *Auriga Capital Corp. v. Gatz Properties, LLC* (Del. Ch. 2012), aff'd, 59 A.3d 1206 (Del. 2012); *Davis v. Crawford*, 700 S.W.3d 438, 449 (Tex. App.—Eastland 2024, no pet.) ("[T]he relationship between a managing member of an LLC and a nonmanaging member is similar to that of a general partner/limited partner relationship, and that such an arrangement thereby creates a fiduciary obligation on the part of the managing member.").

6.3 By virtue of Patrick's Control Positions related to the overall Charitable DAF Fund structure and specifically DAF HoldCo and the Charitable DAF Fund, Patrick owed fiduciary duties to the Plaintiffs.

6.4 Patrick breached his fiduciary duties to the Plaintiffs by stripping them of their legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit.

6.5 Patrick breached these duties through self-dealing, attempted secret profit schemes, use of inside information, financial mismanagement, orchestrating asset sales at below-market values, and transferring beneficial ownership to the Sham Charity.

6.6 Patrick breached his fiduciary duties by mismanaging the Charitable DAF Fund's finances, and dramatically increasing director compensation to his own benefit.

6.7 Patrick breached his fiduciary duty by successfully soliciting a charitable contribution ultimately from a Supporting Organization to a charity controlled by Patrick and his immediate family without disclosing the relationship.

6.8 The actions incorporated herein have wrongfully deprived the Plaintiffs of substantial economic support and assets, harming, and threatening irreparable harm to, the Plaintiffs and the Charities that they support. Plaintiffs have suffered damages as a result of Patrick's breach of his fiduciary duties.

Count II - Constructive Fraud Against Patrick

6.9 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

6.10 "Constructive fraud is the breach of a legal or equitable duty that the law declares fraudulent because it violates a fiduciary relationship." *Hubbard v. Shankle*, 138 S.W.3d 474, 483 (Tex. App.—Fort Worth 2004, pet. denied). "[I]n a claim for constructive fraud, the actor's intent is irrelevant." *Strobach v. WesTex Cmty. Credit Union*, 621 S.W.3d 856, 879 (Tex. App.—El Paso 2021, pet. denied). "[C]onstructive fraud is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests." *Id.*

6.11 As a fiduciary, Patrick's conduct in diluting the Plaintiffs' interests, selling assets at below-market values to undisclosed parties, and liquidating DAF HoldCo and transferring its interests to the Sham Charity without notice constitutes constructive fraud.

6.12 Patrick injured public interests by his conduct. Plaintiffs have suffered damages as a result of Patrick's fraud.

Count III - Unjust Enrichment Against Patrick, CDMCFAD, and DFWCF

6.13 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

6.14 A claim of unjust enrichment applies when a party obtains "a benefit from another by fraud, duress, or the taking of an undue advantage." *Sw. Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 921 (Tex. 2010)).

6.15 Patrick and DFWCF stripped the Plaintiffs of their rightful legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit.

6.16 Patrick and DFWCF took these interests and assets for their own benefit via fraud and taking undue advantage of the access available through the Control Positions and overlapping control with DFWCF.

6.17 Patrick also took undue advantage through self-dealing, attempted secret profit schemes, use of inside information, financial mismanagement, orchestrating asset sales at below-market values, and transferring beneficial ownership to the Sham Charity.

6.18 Patrick and DFWCF have been unjustly enriched at the expense of the Plaintiffs. Plaintiffs have been damages by Patrick's unjust enrichment.

Count IV – Conversion Against Patrick, CDMCFAD, and DFWCF

6.19 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

6.20 Conversion requires a showing that (1) the plaintiff owned, had legal possession, or was entitled to possession of the property, (2) the defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with the plaintiff's rights, and (3) the defendant refused the plaintiff's demand for return of the property. *Automek, Inc. v. Orandy*, 105 S.W.3d 60, 63 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

6.21 The Plaintiffs held legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit.

6.22 Patrick with DFWCF has unlawfully and without authorization, assumed and exercised dominion over the Plaintiffs' legal, equitable, and beneficial interests in the Charitable DAF Fund structure including their participation in DAF HoldCo, the Charitable DAF Fund, and Charitable DAF Fund assets through the dilution scheme that diverted all the legal and beneficial economic interests to Patrick's controlled entity, DFWCF.

6.23 The Plaintiffs requested distribution in kind of the Charitable DAF Fund structure assets, which Patrick and now, DFWCF, have ignored and refused. Plaintiffs have been damages as a result of these conversions.

Count V – Imposition of Constructive Trust Against Patrick, CDMCFAD, and DFWCF

6.24 Paragraphs 1.1 – 5.56 are incorporated as if fully restated herein.

6.25 "A constructive trust is considered a legal fiction and is a creation of equity to prevent a wrongdoer from profiting from his wrongful acts." *In re Harding*, 563 S.W.3d 366, 372 (Tex. App.—Texarkana 2018, no pet.). "[T]o obtain a constructive trust, [a party] must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and (3) tracing to an identifiable res." *Id.* (cleaned up).

6.26 Patrick through DFWCF has breached his fiduciary relationship with the Plaintiffs by converting legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit, resulting in the unjust enrichment of DFWCF and Patrick.

6.27 All the legal, equitable, and beneficial interests in the Charitable DAF Fund structure including DAF HoldCo, the Charitable DAF Fund, and ultimately the substantial assets held for the Plaintiffs' benefit in the overall Charitable DAF Fund structure should be imposed with a constructive trust running to the benefit of the Plaintiffs.

VII. EMERGENCY APPLICATION FOR RECEIVERSHIP

7.1 Paragraphs 1.1 - 5.56 are incorporated as if fully restated herein.

7.2 The Plaintiffs seek the immediate appointment of a receiver over Defendants DFWCF and CDMCFAD, LLC (the "**Receivership Entities**") under three independent bases: Texas Civil Practice & Remedies Code §§ 64.001(a)(3), (7), Texas Business and Organizations Code § 11.410, and the Court's inherent equitable powers.

A. *Texas Civil Practice & Remedies Code*

7.3 [U]nder section 64.001 of the Texas Civil Practice and Remedies Code ("**CPRC**"), a court may appoint a receiver in an action between "partners or others jointly owning or interested in any property or fund," CPRC §§ 64.001(a)(3) or "in any case in which a receiver may be appointed under the rules of equity." CPRC §§ 64.001(a)(7); *Elliott v. Weatherman*, 396 S.W.3d 224, 228 (Tex. App.—Austin 2013, no pet.).

7.4 A party with a probable interest or a right to the property or fund has standing to seek the appointment of a receiver. CPRC § 64.001(b). "[T]he property or fund must be in danger of being lost, removed, or materially injured." *Id.*

7.5 A probable interest exists by statute in actions between partners and in actions between joint owners of property. CPRC § 64.001(a)(3).

7.6 One purpose of a receivership is to preserve assets and resolve issues relating to an entity's affairs where there are allegations of fraud or improper activities. *See Floyd v. MMWKM*

Advisors, LLC, No. 05-23-00638-CV, 2024 WL 549036 at *2 (Tex. App. – Dallas 2024, pet. denied, reh'g denied).

B. *Texas Business and Organizations Code*

7.7 Like CPRC § 64.001, a court that has subject matter jurisdiction over specific property of a domestic or foreign entity in Texas may appoint a receiver for that property in several scenarios, including an action between "partners or others jointly owning or interested in the property or fund." Tex. Bus. & Orgs. Code § 11.403(a)(3).

7.8 Additionally, under Section 11.410 of the Texas Business and Organizations Code ("TBOC"), a court may appoint a receiver for all of the property, in and outside Texas, of a foreign entity doing business in Texas and its business if the court determines, in accordance with the ordinary usages of equity, that circumstances exist that necessitate the appointment of a receiver even if a receiver has not been appointed by another court. TBOC § 11.410(a).

C. *Rules of Equity*

7.9 In addition to specific statutory authority to appoint receivers, Texas courts retain inherent equitable power to do so. The CPRC, § 64.004 makes clear that the rules of equity control the appointment and power of a receiver unless inconsistent with a statutory provision.

D. *Receivership Standards Under Texas Law and Equity*

7.10 "The appointment of a receiver lies within the sound discretion of the trial court." *In re Estate of Herring*, 983 S.W.2d 61, 65 (Tex. App.—Corpus Christi–Edinburg 1998, no pet.). "The appointment of a receiver, either as authorized by statute or usages of equity, will not be disturbed on appeal unless the record reveals a clear abuse of discretion." *O & G Carriers, Inc. v. Smith Energy 1986-A P'ship*, 826 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1992, no writ).

7.11 The party submitting an application for appointment of a receiver bears the burden of proof to present evidence justifying the appointment. *Furgerson v. First Nat'l Bank*, 218 S.W.2d 1019, 1020 (Tex. Civ. App. – Texarkana 1949, no writ). The party can meet that burden by submitting a sworn verification supporting the claimed grounds for the appointment, *In re Estate of Herring*, 983 S.W.2d 61, 65 (Tex. App. – Corpus Christi 1999, no pet.), and a court may consider oral testimony as evidence in support of an application. *See Furgerson*, 218 S.W.2d at 1020.

7.12 An application seeking a receivership pursuant to a statutory provision must allege facts that meet the elements of the provision. *Associated Bankers Credit Co. v. Meis*, 456 S.W.2d 744, 748 (Tex. Civ. App. – Corpus Christi 1970, no writ). The facts alleged in the application will be construed as favorably as possible for the applicant. *Couch Mortgage Co. v. Roberts*, 544 S.W.2d 944, 946-47 (Tex. Civ. App. – Houston [1st Dist.], no writ).

7.13 Conduct that supports a cause of action for fraud or breach of fiduciary duties is often the same type of conduct that supports an application for a receivership. *Ritchie v. Rupe*, 443 S.W.3d 856, 873 (Tex. 2014).

E. *The Supporting Organizations are entitled to the Emergency Appointment of a Receiver to Oversee the Receivership Entities*

7.14 The Plaintiffs have an ownership interest in their participating shares in DAF HoldCo and thereby its economic ownership of the Charitable DAF Fund and the assets that were rightfully held by the Charitable DAF Fund and entrusted to the control of Patrick.

7.15 Patrick wrongfully caused the Plaintiffs' participation shares to be diluted and then caused the Plaintiffs' beneficial economic interests in the Charitable DAF Fund structure to be wrongfully transferred to a collection of sham entities wholly dominated by Patrick.

7.16 Charitable DAF Fund was valued at $270 million as recently as September 2024. Now no assets remain in the Charitable DAF Fund structure. The Plaintiffs have not received any

just compensation, participation, or other consideration for the conversion of their substantial interests in the Charitable DAF Fund structure.

7.17 Receivership Entities now maintain complete management control and beneficial rights over the Charitable DAF Fund structure's substantial assets or otherwise possess those assets to the exclusion of Charitable DAF Fund.

7.18 Patrick dominates and controls the Receivership Entities. As shown, Patrick has demonstrated a pattern of selling assets at below-market values, attempting to engage in self-dealing transactions, transacting assets at non-market terms in potential self-dealing transactions, dramatically increasing internal and professional administrative expenses that burdens and dissipates charitable assets, and secreting his activities while controlling assets dedicated to charitable causes. To preserve assets from further dissipation, a receiver should replace Patrick's oversight of the Receivership Entities and their assets, which were wrongfully acquired and held.

7.19 The Plaintiffs have been stripped of access to the benefit of assets meant to support charitable causes, resulting in financial distress and immediately threatening planned and ongoing support of countless charities including education, medical research, and community initiatives.

7.20 The Plaintiffs have demonstrated a strong likelihood of success on their claims given the documented pattern of breaches, financial irregularities and successful litigation in the Cayman Islands.

7.21 The Plaintiffs have demonstrated a clear and compelling need for immediate court oversight to prevent further injury and preserve the charitable assets at risk due to Patrick's actions via the Receivership Entities.

7.22 The participating shares in DAF HoldCo as well as assets valued at $270 Million are in danger of being lost, removed, or materially injured and circumstances exist to necessitate

the appointment of a receiver to conserve the property, fund, and avoid further, irreparable harm to Plaintiffs.

7.23 Given Patrick's demonstrated and recent malfeasance using the Receivership Entities as tools of fraud, no other adequate remedy exists under law.

Count VI – APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION PENDING APPROVAL OF RECEIVERSHIP

8.1. Plaintiffs seek immediate injunctive relief preventing the Defendants from further use, transfer, dispersal, and/or alienation of the assets that were held in the Charitable DAF Fund as of the instant date of this filing, regardless of where they are presently held. If not enjoined, Defendants' actions pose an immediate threat of irreparable harm and injury to Plaintiffs for which there is no adequate remedy at law because the harm cannot be undone by a damages award, as once the assets are spent or dispersed, Defendants will be unable to pay a judgment. This application is supported by the sworn declarations of Julie Diaz and James David Dondero.

8.2. A writ of injunction is proper where "the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant," or where "a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual," or where "irreparable injury to real or personal property is threatened, irrespective of any remedy at law." Tex. Civ. Prac. & Rem. Code § 65.011. "A temporary injunction pending trial on the merits 'may be and usually is issued in connection with any species of litigation where it is necessary to preserve the status quo pending a final adjudication of the rights of the parties.'" *Lometa Bancshares, Inc. v. Potts*, 952 S.W.2d 631, 633 (Tex. App.-Austin 1997) (*quoting Turcotte v. Alice Nat'l Bank*, 402 S.W.2d 894, 896 (Tex.1966)). "In cases like the present, an applicant for the writ must show (1) a probable right to

recover on the merits after final hearing and (2) a probable and irreparable injury unless the writ is issued." *Lometa*, 952 S.W.2d at 633 (citing Tex. Civ. Prac. & Rem. Code Ann. § 65.011 (West 1997); *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex.1993); *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex.1968)).

8.3. Texas courts universally recognize that in cases where dispersal or liquidation of assets required to pay a judgment is likely, temporary injunctive relief is proper to preserve the status quo and ensure that the efficacy of ultimate relief for the Plaintiffs is not defeated by financial machinations while the case is pending. In other words, "the adequacy of an available legal remedy must be judged in the circumstances of the particular case[,]" and "[i]n such circumstances, any legal remedy by way of a judgment for money damages is properly viewed as inadequate on the ground that the funds may be reduced pending final hearing and thus be unavailable in their entirety[.]" *Lometa*, 952 S.W.2d at 633; *see also Minexa Arizona, Inc. v. Staubach*, 667 S.W.2d 563, 567–68 (Tex.App.—Dallas 1984, no writ); *Sonics Int'l Inc. v. Dorchester Enters.*, 593 S.W.2d 390, 393 (Tex.Civ.App.—Dallas 1980, no writ); *Baucum v. Texam Oil Corp.*, 423 S.W.2d 434, 442 (Tex.Civ.App.—El Paso 1967, writ ref'd n.r.e.).

8.4. The above authorities support the award of the temporary injunctive relief requested herein, because the assets formerly held in the Charitable DAF Fund for the benefit of the Plaintiffs are already being alienated from their beneficial owners and the conduct of Defendants demonstrates the likelihood of their continued transfer, alienation, expenditure, and dispersal while this case is pending and before the rights of the Plaintiffs to those funds can be vindicated.

8.5. Unless enjoined, Patrick and the other Defendants will cause and continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law; including, without

limitation, the dispersal, expenditure, transfer, and further alienation of more than $270 Million that can never be replaced because the Defendants will lack the means to do so.

8.6. Plaintiffs will therefore suffer immediate and irreparable injury without adequate remedy at law if a Temporary Restraining Order ("**TRO**") is not granted against the Defendants. Accordingly, Plaintiffs request the Court issue a TRO that freeze:

(a) all assets that were held in the Charitable DAF Fund as of the instant date of this filing, and

(b) prohibiting Patrick and the other Defendants, or anyone acting in concert with them or at their direction, from any use, expenditure, transfer, dispersal, dilution, encumbrance, or alienation of any of those funds pending resolution of Plaintiff's Motion for Temporary Injunction.

8.7. The harm to Plaintiffs is imminent, and if the Court does not issue a TRO and injunctive relief, it will be irreparably injured, as set forth herein. Conversely, the granting of a TRO will merely require Defendants to refrain from doing anything with the funds for two weeks. If the Defendants prevail on the merits, the funds will still be available to them for their use in future. The balance of burdens thus strongly favors Plaintiffs, who stand to lose everything absent immediate injunctive relief—over Defendants, who will at most suffer a minor inconvenience if they ultimately prevail.

8.8. The issuance of injunctive relief will not disserve the public interest. Balancing the equities and other factors, including the significant potential for irreparable harm to the Plaintiffs and the lack of harm to Defendants due to the entry of a TRO, demonstrates that the relief will not disserve the public interest. Indeed, freezing the funds at issue in place to ensure that this fraudulent

scheme is not permitted consummation absent judicial scrutiny serves the public interest by protecting vital charitable interests.

8.9. A temporary restraining order is necessary to maintain the *status quo* during the pendency of this action. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) ("defining the status quo as "the last, actual, peaceable, non-contested status which preceded the pending controversy.") The facts above establish the required elements for Plaintiffs to obtain a TRO against Defendant, specifically: (1) a cause of action against Defendants with a probable right to relief; (2) a probable, imminent, and irreparable injury to Plaintiffs in the interim; (3) the threatened injury outweighs any damage the injunction might cause the opposing party; and (4) the injunction will not disserve the public interest. *See Butnaru v. Ford Motor Co*., 84 S.W.3d 198. 204 (Tex. 2002).

A. *Plaintiffs have a Probable Right to the Relief Sought in their Claims Against Defendants.*

8.10. Plaintiffs easily satisfy this test. Establishing a probable right to relief does not require the applicant for a TRO to establish that it will prevail at trial. *See Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993). Instead, this element requires only that the applicant allege a cause of action and present evidence that tends to sustain that cause of action. *See Miller Paper Co. v. Roberts Paper Co*., 901 S.W.2d 593, 597 (Tex. App.— Amarillo 1995, no writ). The cause of action itself need not involve permanent injunctive relief—the trial court "[has] discretion to preserve the status quo so long as [a movant] demonstrate[s] his probable right to recover damages." *Metcalfe*, 863 S.W.2d at 58; *see also Gryphon Master Fund, L.P. v. Path 1 Network Technologies, Inc*., No. 3:06 CV 0107 D, 2007 WL 1723703, at *5 (N.D. Tex., Jun. 14, 2007) (citing *Metcalfe*).

8.11. Plaintiffs have a probable right to the relief sought on its claims for breach of fiduciary duty, constructive fraud, unjust enrichment, and conversion. As alleged in more detail

above, Defendants have committed and continue to commit acts that have raided four vital charitable organizations of $270 Million that forms the lifeblood of vital philanthropic efforts relied upon by key communities across the nation. The evidence summarized herein thus establishes that these injuries arise as a direct result of Defendants' conduct.

B. *Plaintiffs Will Suffer Immediate, Irreparable Injury in the Absence of a Temporary Restraining Order and Temporary Injunction.*

8.12. Plaintiffs will suffer immediate, irreparable injury in the absence of a temporary restraining order and temporary injunction, as summarized above. Plaintiffs will suffer precisely the sort of irreparable injuries Texas courts have sought to prevent by granting temporary injunctive relief. *Lometa*, 952 S.W.2d at 633; see also *Minexa Arizona, Inc. v. Staubach*, 667 S.W.2d 563, 567–68 (Tex.App.—Dallas 1984, no writ); *Sonics Int'l Inc. v. Dorchester Enters.*, 593 S.W.2d 390, 393 (Tex.Civ.App.—Dallas 1980, no writ); *Baucum v. Texam Oil Corp.*, 423 S.W.2d 434, 442 (Tex.Civ.App.—El Paso 1967, writ ref'd n.r.e.).

8.13. Plaintiffs have no adequate remedy at law. Without injunctive relief, the assets intended to benefit the Plaintiffs will be spent, dispersed, transferred, and alienated while this litigation unfolds. These losses, as well as others which will inevitably occur if Defendants are not enjoined, cannot be compensated in monetary terms once the funds are dispersed, and are the types of harm for which injunctive relief is particularly necessary and appropriate.

8.14. Accordingly, and in order to preserve the status quo during the pendency of this action, Defendants should be cited to appear and show cause why the funds at issue should not be frozen for the pendency of this Action, and why Defendants should not be temporarily restrained during the pendency of this action from directly or indirectly using, spending, transferring, encumbering, dispersing, or further alienating the funds and assets that were held in the Charitable DAF Fund as of as of the instant date of this filing.

8.15. Plaintiffs seek a temporary restraining order and temporary injunction against Defendants freezing all funds and assets that were held in the Charitable DAF Fund as of as of the instant date of this filing, and enjoining Defendants and any others acting by, for, or in concert with them, including but not limited to their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive notice of the order by personal service or otherwise, from either directly or indirectly: spending, dispersing, using, encumbering, transferring, or alienating those funds and assets.

8.16. Plaintiffs further seeks a receivership over the funds and assets and the entities holding the funds and assets, whereupon the temporary injunctive relief sought here may properly expire because the assets will then be under the control of a receiver answering to this Court.

8.17. Plaintiffs is willing to post a bond in an amount directed by the Court.

VIII. PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Appoint a receiver to take possession and control of all assets, properties, and operations of DFW Charitable Foundation and CDMCFAD, LLC;

B. Enjoin Defendants from further disposing of, transferring, encumbering, or dissipating any Charitable DAF Fund and DAF HoldCo assets;

C. Require the reversal of the dilution scheme and unauthorized asset transfers;

D. Impose a constructive trust over the res of DAF HoldCo, CDMCFAD, LLC and the Charitable DAF Fund wrongfully taken from the Plaintiffs;

E. Award actual damages in an amount to be proven at trial;

F. Award exemplary damages as permitted by law;

G. Award attorneys' fees and costs;

H. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

McCarty Law PLLC

/s/ Darren L. McCarty
Darren L. McCarty
State Bar No. 24007631
darren@mccartylawpllc.com
316 West 12th Street
Suite 400
Austin, Texas 78701
512-827-2902

- and -

DUANE MORRIS LLP

Craig M. Warner
State Bar No. 24084158
cmwarner@duanemorris.com
Joseph M. Cox
State Bar No. 04950200
jmcox@duanemorris.com
Jason E. Boatright
State Bar No. 24048138
jeboatright@duanemorris.com
100 Crescent Court, Suite 1200
Dallas, Texas 75201
(214) 257-7213 – Telephone
(214) 292-8442 – Facsimile

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by electronic means on this day, July 1, 2025, on all counsel or parties of record.

/s/ Darren L. McCarty
Darren L. McCarty

VERIFICATION

I, Julie Diaz, Vice President of Highland Dallas Foundation, Inc., and President of The Dallas Foundation, have read the above and foregoing Petition and the facts stated therein are true and correct to the best of my knowledge and belief.

Julie Diaz

My name is Julie Diaz, my date of birth is 3/23/64, and my address is 5711 Prestwick Lane, Dallas. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Barnstable County, State of MA, on the 1 day of July, 2025

Julie Diaz

EXHIBIT 86

Paul Murphy

Independent Director

Charitable DAF Holdco, Ltd.

4th December 2024

Introduction

This discussion is intended to give beneficiaries of Charitable DAF Holdco, Ltd ("DAF") an insight into the leadership and governance of the charity since the appointment of Mark Patrick and Paul Murphy as directors in 2021.

We will discuss:

- Legacy issues the DAF faced.
- Resolution of those issues since 2021.
- Future of the DAF

Whilst we welcome an open dialogue, there are certain matters that are confidential to the DAF and we mean no discourtesy to the foundations by refusing to provide information on certain issues.

Legacy Issues (pre-2021)

Grant Scott was the sole managing member and director of the DAF from its incorporation in 2012.

Mark Patrick was transferred the management shares in 2021 and appointed as a director immediately after.

Mr. Patrick identified a number of issues facing the DAF:

- Fund transfers to Mr. Dondero's affiliates for services that were not performed:
  - Tall Pines transaction in HCM LP Ch. 11 (19-34054-sgj11) (US. Bankruptcy N.D. TX.).
  - US$1m to Issac Leventon, Scott Ellington and others.
- Mr. Scott authorizing the DAF to commence actions against Josh Terry and affiliated entities to bolster claims brought by Mr. Dondero.
- Improper payment of US$300,000 from Mr. Terry to DAF at Mr. Scott's direction.

Legacy Issues (pre-2021)

Mr. Patrick was aware that serious allegations had been brought against the DAF that it was Mr. Dondero's "alter ego" and entities, including the DAF, were used as "lifeboats" to defeat creditor claims:

- Bankruptcy proceedings in Texas District Court (Case no: 3:21-cv-00880-X, 00881-X, 01010-X. 01378-X and 01379-X).
- UBS proceedings in New York Supreme Court (Index No: 650744/2023).

These claims, if successful, could potentially result in all of the DAF's assets being paid to the Trustee in Bankruptcy for distribution to creditors and/or UBS.

Legacy Issues (pre-2021)

Finally, upon investigation, it was evident that:

- There were no independent directors or advisors to the DAF.
- There was a lack of corporate governance.
- Investments had been made with Nexpoint Advisors, Mr. Dondero's investment manager, that were not reflective of market standards, were not risk adjusted, generated below market returns and, in some cases, seemed to "shore up" failing or illiquid investments. This includes purchasing Midwave debt under Mr. Scott's tenure which the DAF has historically extended to the equity holders in the position but to the detriment of the DAF.

In these circumstances, and with particular regard to the allegations made in bankruptcy proceedings and by UBS, it was clear that the DAF had to impose policies and procedures to mitigate these allegations, protect the DAF's assets and generate risk adjusted returns to ensure the foundations would continue to receive distributions into the future.

Resolution of Legacy Issues

Since becoming managing member and a director, Mr. Patrick has:

- Appointed Paul Murphy as an independent director. Mr. Murphy:
  - was called to the Bar of England and Wales in 2004 and Cayman Bar in 2012.
  - practiced as a litigation, insolvency and restructuring attorney handling cases predominantly with connections to the USA. He was a "recommended attorney" in the Legal 500 in 2017.
  - Since 2018, has worked as an independent director and been general counsel for a BNY Mellon backed US reinsurance company with a focus on asset management strategies.
- Brought in third-party law firms and valuation experts to negotiate deal terms, substantially improving DAF's investment protections and overall returns.

Resolution of Legacy Issues

Both Mr. Patrick and Mr. Murphy, since their appointment as directors, have:

- Adopted institutional grade investment committee guidelines.
- Formed an investment committee to advise on investments with best-in-class mangers including the former head of Harvard's fixed income portfolio.
- Adopted a mission statement.
- Terminated Skyview Group's servicing contract (a Scott Ellington owned and controlled entity) saving the DAF US$1m p.a. in servicing fees and creating distance from existing litigation.
- Overseen the dismissal of the UBS action in New York supreme court (the only defendant to have defeated UBS' allegations).

Issues Currently Facing the DAF

In addition to the pre-2021 issues, the DAF has several threats to its charitable mission and assets:

- Nov 2023, Mr. Dondero demanded that the DAF pay $1.5m for services from Skyview Group to Sentinel Reinsurance Ltd. (both Mr. Dondero affiliated entities). These services were not requested by the DAF and it received no benefit from them. Upon advice of counsel no payment was made.
- Upon Mr. Patrick's resignation from Skyview in 2023, there are various facts which suggest Mr. Dondero is attempting to impose his will on the DAF including:
  - Using the participating shareholders to exercise leverage over the DAF including sending "lack of confidence" correspondence to Mr. Murphy (although not received directly by Mr. Murphy).
  - Aggressive communication with Mr. Patrick.
  - Small Bay II, an investment managed by Nexpoint Advisors, has withheld payment of $8.25m.

Future of the DAF

It is Mr. Patrick and Mr. Murphy's intention to:

- Wind down any lawsuits which were encouraged by or caused by an affiliation with Mr. Dondero.
- Rebalance the DAF's investment portfolio over the next three years to maximize returns for DAF and its shareholders.
- Continue to work to prevent future litigation and protect DAF and its shareholders.
- Build on the existing corporate governance to ensure the DAF's assets generate attractive but risk adjusted yields to maximize distributions to its shareholders.

EXHIBIT 87

Rachel Baxendale

From: David N. Corkern <DCorkern@CCSB.com>
Sent: 18 December 2024 11:24 PM
To: Brandon R. Schaller
Cc: Bart Higgins; Brian P. Shaw
Subject: DAF--proposed reorganization

CAUTION: This email originated from outside of the organization.

Brian,

In accordance with our conversation this morning with Mark Patrick, here are my initial thoughts regarding the U.S. tax issues that merit a reorganization of Charitable DAF Holco, Ltd. ("DAF"). It is my understanding that DAF currently has four (4) non-voting participating shareholders/supporting organizations, each of which is an IRC Section 501(c)(3) organization (per filings with the IRS) and controlled, directly or indirectly, by James Dondero ("Dondero"). You have detailed instances in which you believe Dondero has acted in ways that create a per se conflict of interest between him and each of the participating shareholders that he controls, as well as DAF. For example, it is my understanding that as recently as November, 2023, Dondero requested the current manager of DAF to transfer approximately $1,000,000 to Sentinel Reinsurance, Ltd. (a Dondero-controlled entity) in payment of legal fees unrelated to DAF or its charitable purposes. It is my further understanding that Grant Scott, the prior manager of DAF and a college friend of Dondero, had a history of using DAF funds to benefit Dondero personally. While the current manager has been acting independently of Dondero and those under Dondero's influence and/or control, this pattern of Dondero's using DAF as his personal "piggy bank" has caused the perception among many of Dondero's creditors that DAF has been or is as his financial alter ego. As such, DAF runs an increased risk of being embroiled in litigation directed against Dondero and his entities.

To the extent that the participating shareholders/supporting organizations have either encouraged or acquiesced in Dondero's accessing DAF funds for his personal benefit, either directly or through the entities that he controls or in which he has considerable financial interest, those organizations run the risk of losing their tax-exempt status with the IRS. Each IRC Section 501(c)(3) organization must be organized and operating primarily for charitable purposes. Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will not be compliant with the operational test "if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." Additionally, an IRC Section 501(c)(3) organization cannot be operated for the benefit of an individual or entity—private benefit/private inurement prohibition.

Given what has been detailed about Dondero's past and continued actions with the participating shareholders/supporting organizations and DAF, there is a heightened risk that the IRS could revoke the tax-exempt status of one or more of said participating shareholders/supporting organizations, which could imperil the status and assets of DAF. To help insulate DAF from any such exposure and to facilitate and expand its charitable purposes, DAF is considering a two-prong restructure/reorganization that will bring in additional participating shareholders and create a Delaware blocking LLC. Clearly, expanding the number of shareholders of DAF will dilute the influence of Dondero and the entities controlled by him and, as such, will broaden the charitable scope of DAF for the benefit of the public. The IRS will look favorably upon any and all attempts for DAF to maintain its independence from what seems to be persistent attempts by Dondero and the entities controlled by him to use DAF for his private benefit and private inurement.

David

David N. Corkern
Senior Counsel

CARRINGTON COLEMAN

O 214.855.3099
DCorkern@CCSB.com / ccsb.com

Carrington, Coleman, Sloman & Blumenthal, L.L.P.
901 Main St / Suite 5500 / Dallas, TX 75202

Admitted in Texas, Louisana, and D.C.
LLM in Taxation
Board Certified Tax Law Specialist —
Louisiana Board of Legal Specialization

David N. Corkern
Senior Counsel

CARRINGTON COLEMAN

O 214.855.3099
DCorkern@CCSB.com / ccsb.com

Carrington, Coleman, Sloman & Blumenthal, L.L.P.
901 Main St / Suite 5500 / Dallas, TX 75202

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EXHIBIT 88

CAUSE NO. _____

THE HIGHLAND DALLAS FOUNDATION, INC., THE HIGHLAND KANSAS CITY FOUNDATION, INC., and THE HIGHLAND SANTA BARBARA FOUNDATION, INC.,, *Plaintiffs*, **v.** **MARK PATRICK and DFW CHARITABLE FOUNDATION, CDMCFAD, LLC, CHARITABLE DAF GP, LLC and CDH GP, Ltd.,** *Defendants.*	**IN THE TEXAS BUSINESS COURT** **1ST DIVISION** **DALLAS, TEXAS**

TEMPORARY RESTRAINING ORDER
AND ORDER SETTING HEARING FOR TEMPORARY INJUNCTION

After considering the application for temporary restraining order filed by The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc., (collectively, the "Plaintiffs"), Plaintiff's Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Application for Appointment of Receiver (the "Petition"), the Affidavit of Julie Diaz in support of the injunctive relief sought in the Petition (the "Affidavit"), and statements of counsel, the Court finds there is evidence that harm is imminent to Plaintiffs, and if the Court does not issue the temporary restraining order, Plaintiffs will be irreparably injured because they will be denied their rights to realize the full value of the assets that were held in the Charitable DAF Fund, L.P. (the "Charitable DAF Fund") expressly held for the Plaintiffs' as indirect charitable owners if Defendants transfer, conceal, encumber or endanger those assets or liquidate or modify the governance or ownership

of Charitable DAF Fund or any of its affiliates or subsidiaries, or the DFW Charitable Foundation, or any of its affiliates or subsidiaries, CDMCFAD, LLC, or any of its affiliates or subsidiaries, Charitable DAF GP, LLC, or any of its affiliates or subsidiaries, and CDH GP, Ltd. or any of its affiliates or subsidiaries (collectively the "Covered Entities") and that the injury to Plaintiffs will be irreparable because of the inability to recover the assets coupled with the likely insolvency of Defendants.

Therefore, by this order, the Court:

(a) restrains, enjoins, and prohibits Defendants and Defendants' respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for Defendants, from transferring, concealing, withdrawing, alienating, expending, dispersing, or otherwise disposing of any and all funds, assets, receivables, or shares ever held by the Covered Entities, regardless of where they are presently held;

(b) restrains, enjoins, and prohibits Defendants and Defendants' respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for Defendants, from taking any action to dissolve, winddown, liquidate, or otherwise alter the corporate standing of Covered Entities;

(c) restrains, enjoins, and prohibits Defendants and Defendants' respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for Defendants, from taking any action to modify or alter the corporate governance of the Covered Entities, including but not limited to any amendment to their respective bylaws or organizational documents;

(d) restrains, enjoins, and prohibits Defendants and Defendants' respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for Defendants, from taking any action to modify or alter the current ownership of the Covered Entities, including but not limited to the admission of new shareholders, partners, members, or other equity interest holders or the transfer of any shares, partnership interests, member interests, or other equity interests to any other party;

(e) restrains, enjoins, and prohibits Defendants and Defendants' respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for Defendants, from altering, concealing, or destroying any business records concerning the Defendants, including any transfers of funds, assets, receivables, or shares to the Defendants;

(f) restrains, enjoins, and prohibits Defendants and Defendants' respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for Defendants, from exercising any control over the Covered Entities;

(g) orders the clerk to issue notice to Defendants, that the hearing on Plaintiff's application for temporary injunction is set for July ____, 2025, at _____ a.m./p.m. to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits; and

(h) Sets bond at $_____, which may be paid by Plaintiff with check (or by attorney or law firm check) payable to the [Dallas County District Clerk], approved and conditioned as the law requires.

Once effective, this temporary injunction shall remain in full force and effect until it expires fourteen (14) days after the date and hour of issue reflected below, unless extended by this Court or by agreement of the parties.

SO ORDERED.

SIGNED on July ___, 2025, at _____ a.m./p.m.

_____
JUDGE PRESIDING

EXHIBIT 89

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July 11, 2025

Mr. Brian Shaw
Carrington, Coleman, Sloman, & Blumenthal
901 Main Street, Suite 5500
Dallas, Texas 75202
bshaw@ccsb.com

Sent via email

Re: The Highland Dallas Foundation, Inc, et al v. Mark Patrick, et al,
Cause No. 25-BC01B-0027
Rule 11 Agreement

Dear Mr. Shaw:

Pursuant to Texas Rule of Civil Procedure 11, the parties in this matter The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc. (collectively "Plaintiffs"), and Mark Patrick, DFW Charitable Foundation, CDMCFAD, LLC, and CDH GP, Ltd. (collectively "Defendants"), agree to the following:

(1) The "Covered Entities" as referred to herein is defined to include collectively Charitable DAF Fund, LP and/or any of its subsidiaries, the DFW Charitable Foundation and/or any of its subsidiaries, CDMCFAD, LLC and/or any of its subsidiaries, and/or any of its subsidiaries, and CDH GP, Ltd. and/or any of its subsidiaries.

(2) Defendants shall have until Monday, July 14, 2025, to file a challenge to the court's jurisdiction (the "Plea").

(3) Plaintiffs shall have until Monday, July 21, 2025, to file a response to the Plea.

(4) Defendants shall have until Thursday, July 24, 2025, to file a reply to the Plea.

(5) The Parties agree to the following limits on discovery prior to any hearing on Plaintiffs' application for temporary injunction/appointment of receiver (the "Temporary Injunction")

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in this matter (these limits shall have no effect on any discovery conducted after the Temporary Injunction is decided):

a. Plaintiffs and Defendants each (not per party) may serve 25 requests for production to the other, may serve 5 interrogatories, may serve 10 requests for admission, and may take 3 depositions (2 of which shall be limited to 3 hours, and one of which shall be limited to 6 hours, the selection of the witness for the six hour deposition to be determined by the party seeking the deposition).

b. The Parties shall serve all discovery requests no later than Wednesday, July 16, 2025.

c. Responses to the written discovery and substantial completion of related any related document production shall be served as follows: (1) if the Court denies the Plea as to any Defendant, seven business days after the Court order denying the Plea is entered; (2) if the Court grants the Plea as to all Defendants, then responses to written discovery shall not be due, if at all, until seven business days after the Court's order granting the Plea is reversed or overturned.

Depositions shall take place within seven days after the written discovery responses and documents are served as set forth in c. above.

(6) If the Court denies the Plea, the Temporary Injunction shall be heard as reasonably practicable after the ruling, unless stayed by an appellate court. If the Plea is granted, but is later reversed or overturned, the same timelines for discovery provided in (5) above shall be followed and the Parties shall then seek to expeditiously set a hearing before the Court.

(7) Pending the Court's decision on the Temporary Injunction or grant of the Plea relating to the Temporary Injunction or Plea), the Covered Entities and their respective agents, servants, employees, representatives, and all other persons acting under the aegis of, in concert with, or for any Covered Entity, agree:

a. not to transfer, conceal, withdraw, alienate, redeem, expend, encumber, disperse, or otherwise dispose of any and all funds, assets, receivables, or shares outside of the ordinary course of business;

b. not take any action to increase the compensation paid to any employee of the Covered Entities;

c. not to take any action to dissolve, winddown, liquidate, or otherwise alter the corporate standing of Covered Entities;

d. not to take any action to modify or alter the corporate governance of the Covered Entities, including but not limited to any amendment to their respective bylaws or organizational documents;

e. not to take any action to sell, exchange, or dispossess any asset of one of the Covered Entities unless (i) the sale is to a bona third party purchaser for reasonably equivalent value, (ii) except in the case of marketable securities, the bona fide

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purchaser is made aware of this Rule 11 Agreement, and (iii) the proceeds from that sale, exchange, or disposition remain owned by the Covered Entities;

f. not to alter, conceal, or destroy any business records concerning the Defendants, including any transfers of funds, assets, receivables, or shares to the Defendants;

(8) This Agreement shall be filed with the Court and, as provided in the first sentence of this letter, constitutes an enforceable agreement pursuant to Texas Rule of Civil Procedure 11. This Agreement shall expire and be of no force or effect on the earlier of (a) thirty days after a final order of the Court dismissing this case or (b) the Court's ruling on Plaintiffs' current request for a temporary injunction (or as subsequently amended). This does not prevent a party from requesting that a court of appeals issue an order to keep this Rule 11 Agreement in place during the pendency of such appeal or any objection to such request.

If the terms above accurately reflect our agreement, please acknowledge your agreement by signing below.

Best regards.

Sincerely,

Joseph M. Cox

AGREED TO FORM AND CONTENT:

Brian Shaw, Counsel for Defendants

JMC/kr
cc: (all via email)
Darren McCarty, Esq.
Craig Warner, Esq.
Clients

EXHIBIT 90

Case 19-34054-sgj11 Doc 4508-30 Filed 07/28/25 Entered 07/28/25 12:42:39 Desc
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E-filed in the Office of the Clerk
for the Business Court of Texas
7/14/2025 11:05 PM
Accepted by: Alexis Jennings
Case Number: 25-BC01B-0027

THE HIGHLAND DALLAS FOUNDATION, INC., THE HIGHLAND KANSAS CITY FOUNDATION, INC., and THE HIGHLAND SANTA BARBARA FOUNDATION, INC., Plaintiffs, v. MARK PATRICK, DFW CHARITABLE FOUNDATION, CDMCFAD, LLC, CHARITABLE DAF GP, LLC, and CDH GP, LTD., Defendants.	§	THE BUSINESS COURT OF TEXAS FIRST DIVISION Cause No. 25-BC-01B-0027

DEFENDANTS' MOTION TO DISMISS AND PLEA TO THE JURISDICTION

Brian P. Shaw
Texas Bar No. 24053473
Monica E. Gaudioso
Texas Bar No. 24084570
Andrea C. Reed
Texas Bar No. 24121791
Emily H. Owen
Texas Bar No. 24116865
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.
901 Main Street, Suite 5500
Dallas, Texas 75202

Attorneys for Defendants

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TABLE OF ABBREVIATIONS AND DEFINED TERMS

Term	Definition	Pages
Charitable DAF	The Charitable DAF Entities collectively	8
Charitable DAF Entity	DFW Charitable Foundation, CDMCFAD, LLC, Charitable DAF GP, LLC, or CDH GP, Ltd. individually	8
The Charitable DAF Fund	Charitable DAF Fund, L.P.	16
Charitable DAF HoldCo or Debtor	Charitable DAF HoldCo, Ltd.	9
Dondero Organizations	Plaintiffs The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc. collectively	8
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Defendants Mark Patrick, DFW Charitable Foundation, CDMCFAD, LLC, Charitable DAF GP, LLC, and CDH GP, Ltd. (each a "Charitable DAF Entity," and collectively the "Charitable DAF" or "Charitable DAF Entities") ask the Court to dismiss this action because the Court lacks subject matter jurisdiction over the claims brought by Plaintiffs The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc. (all of which James Dondero swore he serves on the board of directors for—and swore that he is funding this litigation—collectively the "Dondero Organizations").

SUMMARY OF THE MOTION

This Court lacks subject matter jurisdiction over the claims asserted by the Dondero Organizations on at least two bases: (1) the claims do not fall under the Court's subject matter jurisdiction under the Government Code, and (2) the Dondero Organizations lack standing to bring these claims.

First, the Dondero Organizations' pleading demonstrates that the Government Code's jurisdictional requirements are not met. The Dondero Organizations admit they are not an owner of any Charitable

DAF Entity, only that they had "participating shares" in Charitable DAF HoldCo, Ltd., a different entity in wind-up proceedings in the Cayman Islands ("Charitable DAF HoldCo" or the "Debtor"), which is not a party here. Yet they argue at the same time that their lawsuit falls under this Court's jurisdiction as (1) an action by an owner of an organization brought against that organization; (2) an action alleging the breach of a duty owed to them as owners of an organization; and (3) an action regarding the governance, governing documents, or internal affairs of an organization. It is none of those on its face.

While *someone* could pursue Dondero's unfounded and unmeritorious claims against the Charitable DAF, the Dondero Organizations cannot—they are not the class of litigants entitled to bring an action complaining about the governance, governing documents, or internal affairs of organizations that *they do not own* by their own admission. This Court lacks a statutory basis to exercise subject matter jurisdiction under the Government Code.

The Court also lacks subject matter jurisdiction because the Dondero Organizations do not have standing to bring their claims. The Dondero Organizations do not have a justiciable interest in the claims

they assert because they do not have a sufficient relationship to any Charitable DAF Entity. The only entity that (a) has any relationship to any Charitable DAF Entity and (b) arguably has standing to assert the claims brought by the Dondero Organizations, are the Cayman liquidators of the non-party Debtor.[1] Accordingly, the Charitable DAF respectfully requests that the Court dismiss this suit for lack of subject matter jurisdiction.

FACTUAL BACKGROUND

A. The Dondero Organizations pleaded themselves out of this Court's jurisdiction.

The Dondero Organizations' Petition, including Dondero's attached sworn declaration, provides this Court with all it needs to find that it lacks subject matter jurisdiction over *these* claims between *these* parties.

To aid the Court's review of this jurisdictional challenge, the Charitable DAF therefore summarizes the portions of the Dondero Organizations' pleading and sworn proof that pleaded them out of this Court's jurisdiction.

[1] Even if these claims were brought by the Cayman liquidators, the Charitable DAF denies that any wrongdoing occurred.

This factual background relies only on the Dondero Organizations' Original Petition and attachments, published and unpublished court opinions and rulings, and other facts subject to judicial notice. It is organized in three sections: (1) general background of this dispute, (2) a brief statement regarding Dondero's oft-repeated, years-old and pretextual false allegations of wrongdoing, and (3) the facts that show the Dondero Organizations pleaded themselves out of this Court.

B. Faced with mounting litigation losses, Dondero seeks to control the Charitable DAF to use its resources for his own ends.

One of the most extraordinary things so far in this case is Dondero's admission in his Declaration that he alone is financing this litigation. Ex. 6 to Orig. Pet. ¶¶ 35-36, Appx. 219-210. Dondero of course claims altruistic intentions. *Id.*

Dondero originally set up the Charitable DAF for "efficient management" such that power over it was "concentrated in one person." Orig. Pet. ¶ 5.9. Initially Dondero put Grant Scott in place, "Dondero's long-time friend, college housemate, and best man at his wedding" who later "resigned from that role [] after apparent disagreements with Mr. Dondero." *In re Highland Capital Mgmt., L.P.*, No. 19-34054-SGJ11,

2021 WL 3418657, at *1 (Bankr. N.D. Tex. Aug. 4, 2021), *vacated and remanded sub nom. Matter of Highland Capital Mgmt., L.P.*, 98 F.4th 170 (5th Cir. 2024). Now the control person is Mark Patrick, who was *not* Dondero's long-time friend, college housemate, or best man at his wedding. Instead, Mr. Patrick is a tax attorney who Dondero swore is "well-qualified tax counsel." Orig. Pet. ¶ 5.19; *see also id.* Ex. 6 to Orig. Pet ¶ 34, Appx. 219.

Mark Patrick is not in sole control of the Charitable DAF—he ceded unilateral control to "a person named Paul Murphy based in the Cayman Islands …" Ex. 6 to Orig. ¶ 19, Appx. 214. So two individuals currently control the Charitable DAF. *Id.*

Dondero swears that Mr. Patrick "became openly hostile towards the Charities, my affiliated companies, and me." *Id.* ¶ 33, Appx. 219. It is true that, among other things, entities controlled by the Charitable DAF requested that entities controlled by Dondero pay substantial obligations owed to the Charitable DAF, and Dondero refused. *E.g.* Cause No. 25-BC01B-004; *Atlas IDF, LP v. NexPoint Real Estate Partners, LLC, et al*; In the Texas Business Court, First Division (where a Charitable DAF controlled entity demands payment on ~$12M demand notes; Dondero's

entity and sister, as trustee of his trust, refuse to pay the Charitable DAF; and Dondero's sister cross claims against Mark Patrick and Shawn Raver).[2] Seeking payment on ~$12M demand notes—money that would further the Charitable DAF's philanthropic mission—is in no way improper. *See, e.g. Matter of Highland Capital Mgmt., L.P.*, 116 F.4th 422, 429, 439 (5th Cir. 2024) (affirming summary judgment in favor of Highland, the payor, against Dondero and his entities, the payees, on promissory notes for "more than $60 million of unpaid principal and interest").[3]

It is also true that "communications between Mr. Patrick, Skyview, and [Dondero] began to become less frequent" as Mark Patrick and Paul Murphy sought to fortify the independence of the Charitable DAF. Ex. 6 to Orig. Pet. ¶ 20, Appx. 214. For example, NexPoint is Dondero's newest "alternate investment firm," after his former alternative investment

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[2] Atlas is not owned by the Charitable DAF. A Charitable DAF Subsidiary is the investment manager of Atlas.

[3] In addition to the $60 million notes judgment against him and his entities affirmed by the Fifth Circuit Court of Appeals, and the bankruptcies of Highland and Acis Capital Management, Dondero also faces an action in New York State Court by UBS AG for over $1 billion. Index No. 650744/2023; *UBS Securities LLC v. Dondero et al*, In the Supreme Court of the State of New York, New York County; https://news.bloomberglaw.com/banking-law/ubs-sues-highlands-dondero-over-1-billion-it-won-in-long-fight.

firm, Highland Capital Management, L.P. ("Highland"), was forced to file bankruptcy. *Highland Capital*, 116 F.4th at 429; Ex. 6 to Orig. Pet. ¶ 3, Appx. 210-211. As Dondero notes in his Declaration, at one point "NexPoint provided, without charge, investment ideas to" the Charitable DAF. Ex. 6 to Orig. Pet. ¶ 20, Appx. 214. In the best interests of the Charitable DAF, the Charitable DAF no longer accepts Dondero's "investment ideas," *i.e.* investing in Dondero's deals. Ex. 6 to Orig. Pet. ¶ 20, Appx. 214. In addition, Mark Patrick resigned from his position at Skyview, "a service organization that provided support primarily to Mr. Dondero and entities in which Mr. Dondero had an interest." Orig. Pet. ¶ 5.21; *see also In re Highland Capital Mgmt., L.P.*, No. 19-34054-SGJ11, 2022 WL 3959550, at *16 (Bankr. N.D. Tex. Aug. 30, 2022) ("Skyview being owned and operated by individuals previously employed by Highland"). Mark Patrick had no legal obligation to work for Dondero's companies, or to accept their services on behalf of the Charitable DAF, or to have the Charitable DAF make investments in Dondero's self-interested transactions, *i.e.* his "investment ideas." Ex. 6 to Orig. Pet. ¶ 20, Appx. 214.

C. Seeking to gain control of the Charitable DAF for his own purposes, Dondero manufactures allegations of wrongdoing, many of them years old.

For purposes of this Motion, the Court is to "construe the plaintiff's pleadings liberally, taking all factual assertions as true …" *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012). Thus the Charitable DAF will not address here the Dondero Organizations' false allegations regarding Mark Patrick. Orig. Pet. ¶¶ 6.1-6.27.

However, as the Dondero Organizations are aware—because they are a party to the proceeding—Mark Patrick refuted in detail and under oath these false allegations in the Cayman proceeding for the Debtor on June 4, 2025. Notably, the other independent director, Paul Murphy, continues to serve the Charitable DAF alongside Mr. Patrick. Ex. 6 to Orig. Pet. ¶ 19, Appx. 214.

D. The Dondero Organizations do not own any of the Charitable DAF entities or allege standing facts to support jurisdiction.

The following sections demonstrate each instance where the Dondero Organizations admit they have no ownership interest in any of the Charitable DAF Entities they sued in Business Court, or where the evidence attached to the Petition rebuts their allegations, such that they

cannot rely on the Business Court jurisdictional Sections 25A.004(b)(2), (b)(4), or (b)(5) of the Government Code.

1. The Charitable DAF Fund

The Dondero Organizations correctly identify that $270 million in allegedly "stolen" assets are held by non-party Charitable DAF Fund, L.P. ("The Charitable DAF Fund"). Orig. Pet. ¶ 5.2. But as shown in more detail in the chart below, the only direct ownership interests any of the Dondero Organizations ever held were "Participating Shares" in non-party Charitable DAF HoldCo, Ltd. (the Debtor), which was the *limited partner* of the Charitable DAF Fund. *Id.* ¶ 5.3; *see also* Ex. 2-A to Orig. Pet., Appx. 49.[4]

Pls.' Allegation	Evidence
"Non-Party] Charitable DAF Fund, L.P. ("Charitable DAF Fund") was formed to hold donated assets." (Orig. Pet. ¶ 5.2) "The Charitable DAF Fund primarily holds assets through a [non-party] wholly owned subsidiary called CLO HoldCo, Ltd. ("CLO HoldCo")." (¶ 5.3)	The Dondero Organizations do not allege that they have a direct ownership interest in the Charitable DAF Fund itself. *See generally* Orig. Pet.

[4] The Dondero Organizations expressly state that they had no ownership interest in the general partner of Charitable DAF Fund, Defendant Charitable DAF Fund GP, LLC. Orig. Pet. §§ 1.2, 3.8, 5.11.

Pls.' Allegation	Evidence
"At the same time the Charitable DAF Fund was created, [non-party] Charitable DAF HoldCo, Ltd ("Charitable DAF HoldCo"),[5] a Cayman Island entity, was also organized. Charitable DAF HoldCo held all of the economic interest in the Charitable DAF Fund. In other words, Charitable DAF HoldCo was the beneficial owner of all monies flowing from the assets held in the Charitable DAF Fund." (¶ 5.4)	Charitable DAF HoldCo was the limited partner of the Charitable DAF Fund. (Ex. 2-A, Appx. 49). In other words, the Dondero Organizations held "Participating Shares" (described more fully below) in the former limited partner of the Charitable DAF Fund.
"Participating shares in Charitable DAF HoldCo were therefore issued to four Supporting Organizations,[6] which were the ultimate beneficial owners of the assets held in the Charitable DAF Fund. Together, the four Supporting Organizations owned 100% of Charitable DAF HoldCo." (¶ 5.5)	The only "economic interest" Charitable DAF HoldCo possessed in the Charitable DAF Fund was to **discretionary** distributions—"Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner[.]" (*Id.* ¶ 4.2(a), Appx. 58)
"Control over the Charitable DAF Fund was reposited in the Control Position through its complete ownership of a Delaware entity named Charitable DAF GP, LLC (the 'Delaware GP'). The Delaware	As the former limited partner in the Charitable DAF Fund, Charitable DAF Holdco was prohibited from participating in the "management of or have any control over [Charitable DAF

[5] Defendants also define Charitable DAF HoldCo as the Debtor, but the Charitable DAF Entities use "Charitable DAF HoldCo" in the charts because that is how the Dondero Organizations refer to it in the Original Petition.

[6] The "Supporting Organizations" are defined as Plaintiffs The Highland Dallas Foundation, Inc., The Highland Kansas City Foundation, Inc., and The Highland Santa Barbara Foundation, Inc. Orig. Pet. at 1.

Pls.' Allegation	Evidence
GP was the managing general partner in the Charitable DAF Fund." (¶ 5.11)	Fund]'s business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership." (*Id.* ¶ 1.6(b), Appx. 51) Charitable DAF HoldCo expressly "consent[ed] to the exercise by the General Partner of the Powers conferred on it by this Agreement." (*Id.*) Beyond that consent, Charitable DAF HoldCo had **no** voting or consent rights, or rights to information, related to the management of Charitable DAF Fund. (*See generally id.*)

Based on the Dondero Organizations' own pleadings and evidence, the Dondero Organizations held "Participating Shares" (the limited nature of which is described in Section B below) in the limited partner of the Charitable DAF Fund. In essence, the Dondero Organizations were a limited partner of a limited partner of the Charitable DAF Fund. And Charitable DAF HoldCo, as the former limited partner in the Charitable DAF Fund, was only entitled to discretionary distributions from Charitable DAF Fund, determined by the General Partner in its *sole discretion*.

2. Charitable DAF HoldCo—the Debtor

Based on the pleadings and evidence presented by the Dondero Organizations themselves, their so-called "Participating Shares" in a non-party—the Debtor currently in wind-up proceedings in the Cayman Islands—entitled them to discretionary dividends determined by the Control Position of the Debtor in their sole discretion. And their continued participation in the Debtor was far from guaranteed.

Pls.' Allegations	Evidence
"[M]anagement control of the Charitable DAF Fund and Charitable DAF HoldCo was vested not with those [Supporting] Organizations but rather in 'Management Shares,' with general partner status. These 'Management Shares' provided the only voting rights for any and all shareholders in Charitable DAF HoldCo. But they did not convey a right to any economic benefit of the assets in the Charitable DAF Fund, which belonged solely to the Supporting Organizations." (¶ 5.8)	Management Shares are defined as "a voting non participating share in the capital of [Charitable DAF HoldCo][.]" (Ex. 2-B at Appx. 71). Management Shares "carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company." (*Id.* ¶ 11) "Participating Shares" are defined as "a non-voting, participating, non-redeemable share in the capital of [Charitable DAF HoldCo][.]" (*Id.* at Appx. 72). Participating Shares "shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-

Pls.' Allegations	Evidence
	up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles." (*Id.* ¶ 19)
"So, the 'Management Shares' exercised control over the assets and over the operations of the Charitable DAF HoldCo, even though they conveyed no economic benefit. [T]he Management Shares and general partner status in the Charitable DAF Fund were concentrated in one person, the 'Control Position.'" (¶ 5.9, *see also* ¶ 5.10)	The Director(s) of Charitable DAF HoldCo had considerable power: "[T]he Directors **may** from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorize payment of the same out of the funds of the Company lawfully available therefor." (*Id.* ¶ 108) "[A]ll dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares." (*Id.* ¶ 113) There is no restriction on the dilution of any shares, including Participating Shares, in Charitable DAF Holdco, nor did the Dondero Organizations have any right to notice or input on any dilutive event:

Pls.' Allegations	Evidence
	• "[T]he Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them[.]" (*Id.* ¶ 7_ • "[A]ll Shares for the time being unissued shall be under the control of the Directors who may: issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine." (*Id.* ¶ 7(a)) • "The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not . . . be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company." (*Id.* ¶ 21)

Pls.' Allegations	Evidence
	The Dondero Organizations had no information rights—"[N]o Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorized by the Directors or by Ordinary Resolution." (*Id.* ¶ 118.)

Thus, the Dondero Organizations' so-called "Participating Shares" in the non-party Debtor entitled them to very little except for *discretionary* dividends determined by the Control Position of Debtor in their sole discretion. And Debtor, in turn, was only entitled to discretionary distributions from Charitable DAF Fund as determined by the General Partner in its sole discretion.

3. The Current Charitable DAF Fund

James Dondero and Julie Diaz's declarations are riddled with mischaracterizations and mistruths regarding the alleged "dilution scheme and liquidation maneuver" vetted by a bevy of outside counsel and advisors by which the Charitable DAF was restructured beginning

in December 2024.[7] The Charitable DAF denies it committed any wrongdoing in connection with the restructure. As noted above, the Dondero Organizations, as Participating Shareholders *only* in the Debtor, had no right to vote on these transactions, nor did they have any right to any information or notice about them. *See supra* § B. Furthermore, the Participating Shares are subject to express dilution and liquidation rights, which the Dondero Organizations conveniently ignore:

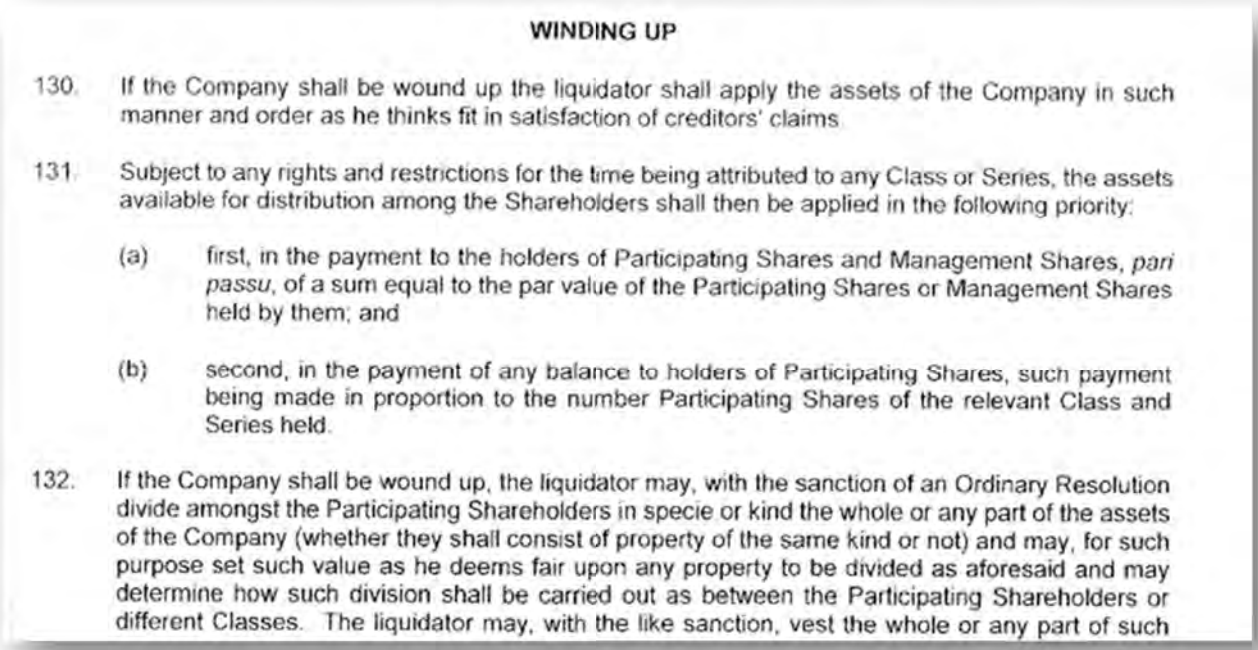
> 21. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company.

See Ex. 2-B to Orig. Pet. § 21, Appx. 76.

> **POWERS AND DUTIES OF DIRECTORS**
>
> 80. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.

Id. § 80, Appx. 83.

[7] For purposes of this Motion, the Charitable DAF will not address the Dondero Organizations' false allegations regarding Mark Patrick's actions, all of which were done in the best interests of the Charitable DAF, and specifically to uphold its charitable purpose.



WINDING UP

130. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

131. Subject to any rights and restrictions for the time being attributed to any Class or Series, the assets available for distribution among the Shareholders shall then be applied in the following priority:

(a) first, in the payment to the holders of Participating Shares and Management Shares, *pari passu*, of a sum equal to the par value of the Participating Shares or Management Shares held by them; and

(b) second, in the payment of any balance to holders of Participating Shares, such payment being made in proportion to the number Participating Shares of the relevant Class and Series held.

132. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Participating Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such

Id. § 132, Appx. 91.

But even so, what is clear from the Dondero Organizations' allegations is they *do not own* any interest in any Charitable DAF Entity. The Dondero Organizations repeatedly disclaim ownership in any Charitable DAF Entity:[8]

- "The purpose and result of Patrick's moves was to entirely eliminate the Supporting Organization's ownership of the Charitable DAF Fund assets." Orig. Pet. § 5.41.

- "In December 2024, Patrick formed new entities (as described below) with Patrick as the sole director. He then replaced the current entities holding and

[8] While the Dondero Organizations bring claims against CDH GP, Ltd., there are no real factual allegations contained in their Petition about this Charitable DAF Entity. *See generally id.* But they do allege that they have no ownership interest in CDH. *Id.* § 3.7; Ex. 1-C.

controlling the Charitable DAF Fund with his own entities, essentially transferring all ownership and control to himself[.]" *Id.* § 5.42.

- "Patrick formed Defendant DFWCF [], a Delaware non-profit corporation. Patrick named himself [DFWCF's] sole member[.]" *Id.* § 5.43; *see also id.* § 3.4 and Ex. 1-A.

- "On April 2, 2025, Patrick caused Charitable DAF HoldCo to redeem its interests in CDMCFAD for a total payment of $1.6 million. . . . As a result . . . Defendant DFWCF, was the sole limited partner and beneficial owner of Charitable DAF Fund, through its now-100% ownership of CDMCFAD, and CDMCFAD's 100% ownership of the fund." *Id.* § 5.49 (emphasis added).

Thus, nothing in the 71 paragraphs of factual allegations in the Petition changes the fact that the Dondero Organizations have only ever owned one thing—Participating Shares (with extremely limited rights) in the Debtor, which is not a party to this suit and is currently in wind-up proceedings in the Cayman Islands.

E. This case is Dondero's latest attempt to take control over the Charitable DAF so that he can misuse its assets for his own personal benefit.

Dondero admits he is personally financing this litigation and that he sits on the board of his Organizations. Ex. 6 to Orig. Pet. ¶¶ 35-36, Appx. 219-210. He controls this litigation.

LEGAL STANDARDS

When subject matter jurisdiction is in question, the trial court must determine at its earliest opportunity whether it has jurisdiction before allowing the litigation to proceed. *Tex. Dept. of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). "To establish subject matter jurisdiction, a plaintiff must allege facts that affirmatively demonstrate the court's jurisdiction to hear the claim." *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019).

When a plea to the jurisdiction is based on the pleadings, the trial court must determine if the plaintiffs have alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). "If the pleadings do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and the plaintiffs should be afforded the opportunity to amend." *Miranda*, 133 S.W.3d at 226-27. However, if as here "the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend." *Id.* at 227.[9]

[9] The Court may consider evidence that the Dondero Organizations attached to their Original Petition. *Bland Indep. School Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000).

ARGUMENT AND AUTHORITIES

A. This Court does not have statutory subject matter jurisdiction.

The Dondero Organizations allege this Court has jurisdiction under Government Code § 25A.004(b)(2), (b)(4), and (b)(5). Orig. Pet. ¶ 4.1. But they cannot establish subject matter jurisdiction under any of these subdivisions based on their own pleading. They admit they are not owners of any Charitable DAF Entity, precluding jurisdiction under § 25A.004(b)(4). And as non-owners, they do not have a valid cause of action, and thus cannot invoke jurisdiction, under § 25A.004(b)(2). And the Dondero Organizations failed to sufficiently plead derivative standing to invoke jurisdiction under § 25A.004(b)(5).

1. The Dondero Organizations cannot establish subject matter jurisdiction under § 25A.004(b)(4) because they are not "owners."

Under § 25A.004(b)(4), the Business Court has jurisdiction over "an action *by an organization, or an owner of an organization*, if the action: (A) is brought *against* an owner, controlling person, or managerial official of *the organization*; and (B) alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial

official of the organization." TEX. GOV'T CODE § 25A.004(b)(4) (emphasis added).

An "owner" is defined as "an owner of an organization" and includes: "(A) a shareholder or stockholder of a corporation or other organization; (B) a general or limited partner of a partnership or an assignee of a partnership interest in a partnership; (C) a member of, or an assignee of a membership interest in, a limited liability company; and (D) a member of a nonprofit organization." TEX. GOV'T CODE § 25A.001(11).

The Dondero Organizations do not fit this definition. The Dondero Organizations name DFW Charitable Foundation, CDMCFAD, LLC, Charitable DAF GP, LLC, and CDH GP, Ltd. as Defendants. But the Dondero Organizations' pleadings show they are not "owners" of any of these entities. According to the Original Petition, DFW Charitable Foundation's "sole member" is Mark Patrick. Orig. Pet. ¶ 3.4. CDMCFAD, LLC is "100% own[ed]" by DFW Charitable Foundation. *Id.* ¶ 5.49. Charitable DAF GP, LLC, before its dissolution, was owned by Mark Patrick as its sole managing member. *Id.* ¶ 5.11. And CDH GP, Ltd.'s "100% owner and sole director" is Mark Patrick. *Id.* ¶ 3.7. Thus, §

25A.004(b)(4) does not apply because the Dondero Organizations are not owners, controlling persons,[10] or managerial officials of any Charitable DAF Entity.

Because the Dondero Organizations pleaded they are not "owners" of each of the four Charitable DAF Entities—as that term is defined in the statute—they pleaded themselves out of this Court's jurisdiction under § 25A.004(b)(4).

2. This Court lacks jurisdiction under § 25A.004(b)(2) because the Dondero Organizations don't have standing to sue over the Charitable DAF's governance, governing documents, or internal affairs.

Under § 25A.004(b)(2), the Business Court has jurisdiction over an "action regarding the governance, governing documents, or internal affairs of an organization." TEX GOV'T CODE § 25A.004(b)(2). This ground fails because the Dondero Organizations do not have § 25A.004(b)(2) standing to maintain a cause of action regarding the Charitable DAF's governance, governing documents, or internal affairs.

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[10] The Dondero Organizations affirmatively plead that "management control of the Charitable DAF Fund and Charitable DAF HoldCo was vested not with [the Dondero Organizations] but rather in 'Management Shares,'" which "provided the only voting rights for any and all shareholders in Charitable DAF HoldCo." Orig. Pet. ¶ 5.8. So even to the extent the Dondero Organizations may attempt to argue some version of "they have indirect control over the Charitable DAF Entities through the non-party Charitable DAF HoldCo" could confer jurisdiction under these sections, the Dondero Organizations have pleaded out of such jurisdiction.

As discussed above, the Dondero Organizations are not owners of any of the Charitable DAF Entities. Instead, the Dondero Organizations were the limited partner of a non-party limited partner (the Debtor—Charitable DAF HoldCo) of the Charitable DAF Fund, originally set up by Dondero in 2011, that received discretionary distributions to be used for charitable donations. Orig. Pet. ¶¶ 5.1-5.6. Charitable donations, of course, receive favorable tax treatment ultimately benefiting Dondero. *E.g.* 26 U.S.C.A. § 170(a)(1).

Yet the Dondero Organizations now claim this Court has jurisdiction by complaining about the governance, governing documents, or internal affairs of distinct legal entities—the Charitable DAF Entities. *Genssler v. Harris Cnty.*, 584 S.W.3d 1, 8 (Tex. App.—Houston [1st Dist.] 2010, no pet.) ("Generally, a business entity exists as a separate legal entity . . ."). But a person does not have a cause of action to complain about the internal affairs of distinct entities in which it has no interest. That's the gist of the Dondero Organizations' argument—that they can somehow complain in this Court about the governance, governing documents, or internal affairs of a stranger. No such cause of action exists now, nor was one created by Government Code § 25A.004. The Dondero

Organizations essentially ask this Court to read such a cause of action into the Government Code. The Court cannot.

Standing to sue may be predicated on either statutory or common law. *Bickham v. Dallas County*, 612 S.W.3d 663, 669 (Tex. App.—Dallas 2020, pet. denied). "The legislature may grant private standing to bring [an] action[], but it must do so clearly." *Id*. Courts "apply a strict rule of construction to statutory enforcement schemes and imply causes of action only when the drafter's intent is clearly expressed from the language written." *Id*. (citation modified).

Texas courts are hesitant to read a cause of action into a statute if one is not explicitly created. *See Ritchie v. Rupe*, 443 S.W.3d 856, 875 (Tex. 2014) (refusing to read a cause of action for certain remedies into a statute where such a remedy was not explicitly specified). In line with this hesitation, courts regularly reason that jurisdictional statutes do not create causes of action. *See e.g., Williams v. Stevens*, No. 05-22-00440-CV, 2023 WL 5621835 at *5 (Tex. App.—Dallas Aug. 31, 2023, no pet.) (noting that a "jurisdictional statute establishing that district courts shall have original jurisdiction of civil actions … does not create a cause of action"); *In re Estate of Devitt*, 758 S.W.2d 601, 607 (Tex. App.—Amarillo 1988,

writ denied) (reasoning that a statute providing the appropriate court with jurisdiction to hear a will contest does not create a cause of action for a will contest).

Here the jurisdictional statute provides the Business Court with "civil jurisdiction concurrent with district courts" over a limited list of actions. TEX. GOV'T CODE § 25A.004(b). In other words, it provides that the Business Court is an appropriate forum to litigate certain *existing* causes of action. The jurisdictional statute does not provide a source of duty or otherwise create causes of action. Instead, it simply delineates what falls within the Business Court's limited jurisdiction.

"Without a breach of a legal right belonging to the plaintiff, no cause of action can accrue to his benefit." *JSFN, LLC. V. SJ Properties, LLC*, No. 10-16-00362-cv, 2018 WL 1867105 at *2 (Tex. App.—Waco Apr. 18, 2018, no pet.) (citing *Nobles v. Marcus*, 533 S.W.2d 923, 927 (Tex. 1976)). Plenty of existing causes of action can be maintained in the Business Court under § 25A.004(b)(2). An action by Dondero's Organizations complaining that wholly separate and distinct entities are not being run the way Dondero wishes is not one of them.

Under the Dondero Organizations' interpretation of § 25A.004(b)(2), any stranger to an entity who does not agree with a decision of that entity can challenge that entity's governance, governing documents, or internal affairs. The consequence of such an interpretation would be chaos. Exxon could file suit in this Court against Chevron because its CEO declined to do business with Exxon, under the auspices that Exxon disagreed with the corporate governance decisions and governing documents of Chevron. Such an absurd result was not the legislature's intent when it drafted the Business Court's limited jurisdiction. *See Jose Carreras, M.D., P.A. v. Marroquin*, 339 S.W.3d 68, 73 (Tex. 2011) ("We also interpret statutes to avoid an absurd result"). Because the Dondero Organizations do not have standing to bring a claim that invokes § 25A.004(b)(2) (and because the provision itself does not create a private right of action that would trigger this Court's jurisdiction), § 25A.004(b)(2) does not confer subject matter jurisdiction over this lawsuit. *See Bickham*, 612 S.W.3d at 670.

3. The Dondero Organizations do not have standing under § 25A.004(b)(5).

The Dondero Organizations allege that the Court has jurisdiction under § 25A.004(b)(5)—"an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith." *Id.* § 25A.004(b)(5). But the Dondero Organizations: (1) do not state anywhere in their Petition that they are bringing this action derivatively on behalf of any entity in which they had an interest (which may in turn give rise to a fiduciary duty); (2) do not cite to any provision of either the Texas Business Organizations Code, or another state's laws, that would authorize the filing of this suit on behalf of any entity in which they had any interest, and (3) do not demonstrate that they have met any prerequisites for derivative standing under any state's laws. Accordingly, the Dondero Organizations failed to sufficiently plead that the Court has jurisdiction under § 25A.004(b)(5).

But even if they sufficiently pleaded a derivative action on behalf of an entity in which they had an interest, they do not have standing to

bring those claims by virtue of the Cayman wind-up proceeding, addressed in Section B below.

B. The Dondero Organizations do not have standing because their claims, if they had any merit, would belong solely to the Debtor.

The Dondero Organizations also lack traditional standing to bring their claims, depriving the Court of subject matter jurisdiction.

"A plaintiff must have both standing and capacity to bring a lawsuit." *Austin Nursing Center v. Lovato,* 171 S.W.3d 845, 848 (Tex. 2005). "The issue of standing focuses on whether a party has a sufficient relationship with the lawsuit so as to have a 'justiciable interest' in its outcome." *Id.*

As they state in their Petition, the Dondero Organizations already filed an involuntary Petition for Winding Up the Debtor—Charitable DAF HoldCo—in the Grand Court of the Cayman Islands.[11] Orig. Pet. ¶ 5.53. And as they admit, the Dondero Organizations "alleged essentially the same facts recounted in this Petition before the Grand

[11] As the attachments to the Dondero Organizations' Petition demonstrate, Mark Patrick made no objection to the voluntary liquidation being brought under the supervision of the Grand Court. Orig. Pet. App. 154.

Court." *Id.* ¶ 5.54.[12] The proceedings in the Cayman Islands culminated in the appointment of independent liquidators. *Id.* ¶ 5.51. These liquidators are already empowered to wind-up the Debtor and distribute its assets, if any. The liquidators, appointed by the Grand Court of the Cayman Islands, have *exclusive* standing and power to pursue any claims against the Charitable DAF on behalf of the Debtor arising out of the actions the Dondero Organizations complain of here, if they choose to do so.

This situation is similar to when a domestic entity enters bankruptcy. A bankrupt debtor's assets, including its claims against third-parties, are vested in the bankruptcy estate. *See Moser, Trustee of Estate of Mason v. Dillon Investments, LLC*, 649 S.W.3d 259, 263 (Tex. App.—Dallas 2022, no pet.) (citing 11 U.S.C. § 541(a) and *Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008)). The property of

[12] This appears to be the Dondero Organizations' pattern—recycle its allegations against Mark Patrick in as many forums as possible and hope they are successful in one of them. As another example, the Dallas Foundation filed an objection to a settlement in the Highland bankruptcy, objecting to the transfer of a promissory note to an entity controlled by the Charitable DAF on similar grounds. *See* Objection of the Dallas Foundation and Crown Global Life Insurance, Ltd, ECF No. 4231, *In re Highland Capital Mgmt., L.P.*, (No. 19-34054-SGJ11). This was withdrawn at the hearing on June 25, 2025, and the settlement was approved by the Bankruptcy Court, the week before this suit was filed in the Business Court. *See* Order Approving Settlement between Highland Entities and the HMIT Entities, ECF No. 4297, *In re Highland Capital Mgmt., L.P.*, (No. 19-34054-SGJ11).

a bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "The phrase 'all legal or equitable interests of the debtor in property' has been construed broadly, and includes 'rights of action' such as claims based on state or federal law." *Highland Capital Mgmt. LP v. Chesapeake Energy Corp.*, 522 F.3d 575, 584 (5th Cir. 2008). Where a legal claim is vested in a bankruptcy estate, the trustee of that estate "has exclusive standing to bring a claim on behalf of the bankruptcy estate." *Moser*, 649 S.W.3d at 265 (citation modified).

With respect to claims asserted against a corporation's directors and officers, the bankruptcy estate "succeeds to any right of action the debtor corporation may have to recover damages for misconduct, mismanagement, or neglect of duty by a corporate officer or director." *In re Educators Group Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994). Therefore "the trustee may prosecute a cause of action based on the fraud of the officers, directors, or shareholders for fiduciary misconduct, unlawful diversion of assets, or upon a statutory liability created by the law of the state of incorporation." *Id.* If under the law of

the state of formation[13] of an entity in bankruptcy, "the debtor could have raised these claims at the commencement of its case—that is, in these particular circumstances, if the claims are derivative to the corporation—*the claims will belong to the estate*." *In re Dexterity Surgical, Inc.*, 365 B.R. 690, 695 (Bankr. S.D. Tex. 2007) (emphasis added) (citing *In re Educators Group Health Trust,* 25 F.3d 1281, 1284 (5th Cir.1994); *In re MortgageAmerica Corp.,* 714 F.2d 1266, 1276 (5th Cir.1983)). "If a cause of action belongs to the estate, then the Trustee has exclusive standing to assert the claim." *In re NC12, Inc.*, 478 B.R. 820, 831 (Bankr. S.D. Tex. 2012) (citing *Schertz–Cibolo–Universal City, Indep. Sch. Dist. (In re Educators Grp. Health Trust*), 25 F.3d 1281, 1284 (5th Cir.1994)). The court in *NC12* consequently held "[i]f the Plaintiffs and Intervenors lack standing to bring claims, the Court must dismiss the claims for lack of subject matter jurisdiction." *Id.* (citing *Highland Capital Mgmt. LP v. Chesapeake Energy Corp. (In re Seven Seas*

[13] Here, the place of formation of the Debtor is the Cayman Islands. Orig. Pet. ¶ 5.4. Under Cayman law, an organization owns a claim where it sustains an actionable loss, not the organization's owner. *Foss v. Harbottle*, (1843) 67 Eng. Rep. 189, 202 (Eng.). In fact, if an owner wants to pursue a derivative claim before the Grand Court, the owner must obtain leave from the Grant Court. Grand Court Rules, O. 15 r. 12A (Cayman Islands 2022). Therefore, under the law of the place of formation, the claims brought by the Dondero Organizations belong to the Debtor. *See Dexterity Surgical*, 365 B.R. at 695.

Petroleum), 522 F.3d 575, 583 (5th Cir.2008) ("If the claims belong to the estate, then it was not error for the bankruptcy court to deny remand (because it has jurisdiction over all property of the estate) and dismiss the claims (because the trustee has exclusive standing to assert claims belonging to the estate)."); *Cobb v. Cent. States,* 461 F.3d 632, 635 (5th Cir.2006) ("[T]he issue of standing is one of subject matter jurisdiction."). In other words, the derivative claims of a debtor's owners belong to the bankruptcy estate, and no one else has standing to assert those claims.

The same is true under the law of the Cayman Islands. In a wind-up conducted under Cayman law, when a court supervised liquidation begins, the debtor is divested of the beneficial ownership of its assets and a statutory trust applies to those assets. *Ayerst (Inspector of Taxes) v. C&K (Construction) Ltd.* [1975] AC 167, 179. The Grand Court appoints joint official liquidators, who are officers of the Grand Court. Companies Act, 2025, s.108. These liquidators have the power to investigate the debtor's affairs, collect and realize the debtor's assets (if any), and distribute those realizations to those that are entitled to them. Companies Act, 2025, s.110. The liquidators can also (1) bring legal

proceedings in the debtor's name; and (2) take possession of the debtor's property, including taking all proceedings required for this purpose. Companies Act, 2025, s.110, p.1.1 and p.2.1.

In fact, United States courts regularly characterize Cayman liquidation proceedings as "foreign main proceedings" deserving of recognition under chapter 15 of the United States Bankruptcy Code. *See, e.g.*, *In re Ascot Fund Limited*, 603 B.R. 271, 278 (Bankr. S.D.N.Y. 2019) ("[C]ourts in this district have consistently recognized Cayman Islands liquidation proceedings as 'foreign proceedings' for purposes of chapter 15 of the Bankruptcy Code."). This recognition is sweeping. "[U]pon recognition of the foreign proceeding as a 'foreign main proceeding…' the foreign representative may operate the debtor's business and exercise the rights and powers of a trustee under Bankruptcy Code sections 363 and 552." *In re SPhinX, Ltd.*, 351 B.R. 103, 115 (Bankr. S.D.N.Y. 2007) (citing 11 U.S.C. § 1520(a)(1)-(3)). In other words, a Cayman liquidator in a foreign main proceeding under Chapter 15 has the sole right to prosecute a debtor's claims. And Dondero is well aware of this fact—in 2017, when he was President of Highland, a United States bankruptcy court ruled that Cayman liquidation proceedings were foreign main proceedings

under Chapter 15, over Highland's objection. *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 690 (Bankr. S.D.N.Y. 2017); Orig. Pet. Apx. 210 ¶ 3.

The Dondero Organizations' claims center on the Charitable DAF's alleged manipulation of the Debtor by redeeming the Dondero Organizations' Participating Shares in the Debtor for $1.6 million. Orig. Pet. ¶ 5.49. Setting aside (a) that the organizational documents expressly permit this and (b) the Dondero Organizations did not sue in the Business Court derivatively on behalf of the Debtor, because the Debtor is in wind-up proceedings in the Caymans, all of its claims (including the ones here) belong to the insolvency estate. The fact that the liquidation proceedings are pending in the Cayman Islands does not change this fact. *See In re Bullmore*, 300 B.R. 719, 724 (Bankr. D. Neb. 2003) (noting a winding-up proceeding in the Cayman Islands is "analogous" to the filing of a United States bankruptcy case and that the appointment of liquidators "terminated the authority of the directors of the company and put the operation of the company into the hands of the [liquidators] pending final order."); *see also* Companies Act, 2025, s.110. The liquidators, as the Cayman Islands' equivalent to a bankruptcy trustee, have exclusive authority and standing to pursue the claims alleged by the Dondero

Organizations on behalf of the Debtor. The Dondero Organizations therefore lack standing, and the Court does not have subject matter jurisdiction over this lawsuit.

CONCLUSION

The Charitable DAF stands ready to defend every action it took in the best interests of the Charitable DAF and to uphold its charitable purpose, in the face of a multi-pronged effort by Dondero—often through his proxies—to take control of the Charitable DAF for Dondero's own purposes.

But *who*, if anyone, brings those claims, and *where* they must be brought, are foundational. The Dondero Organizations cannot proceed in this Court because they fail to establish a statutory basis for its jurisdiction. The Dondero Organizations are not owners of the Charitable DAF and lack standing to bring claims against the DAF in the Business Court. If anyone, the Caymanian liquidators on behalf of the Debtor would have exclusive standing to bring the claims asserted by the Dondero Organizations. The Charitable DAF therefore requests that the Court dismiss this case for lack of subject matter jurisdiction.

Respectfully submitted,

/s/ *Brian P. Shaw*

Brian P. Shaw
Texas Bar No. 24053473
Email: bshaw@ccsb.com
Monica E. Gaudioso
Texas Bar No. 24084570
Email: mgaudioso@ccsb.com
Andrea C. Reed
Texas Bar No. 24121791
Email: areed@ccsb.com
Emily H. Owen
Texas Bar No. 24116865
Email: eowen@ccsb.com
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.
901 Main Street, Suite 5500
Dallas, Texas 75202
(214) 855-3000 – Telephone
(214) 580-2641 – Facsimile

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to BCLR 5 that, exclusive of the contents identified in BCLR 5(a) and inclusive of all footnotes and endnotes, this document contains 7436 words as counted by the word count function of Microsoft Word. I further certify this document complies with the Court's judge-specific guidelines regarding word limits and formatting.

/s/ *Brian P. Shaw*
Brian P. Shaw

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2025, a copy of the foregoing document was electronically served on all counsel of record in accordance with TEX. R. CIV. P. 21a.

/s/ Brian P. Shaw
Brian P. Shaw

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Brian Shaw on behalf of Brian Shaw
Bar No. 24053473
bshaw@ccsb.com
Envelope ID: 103122585
Filing Code Description: Motions - All Other
Filing Description: DEFENDANTS MOTION TO DISMISS AND PLEA TO THE JURISDICTION
Status as of 7/15/2025 8:57 AM CST

Associated Case Party: The Highland Dallas Foundation, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Jason E.Boatright		JEBoatright@duanemorris.com	7/14/2025 11:05:56 PM	SENT
Dylan JAnderson		DJAnderson@duanemorris.com	7/14/2025 11:05:56 PM	SENT
Joseph MCox		JMCox@duanemorris.com	7/14/2025 11:05:56 PM	SENT
Benjamin Warden		BWarden@duanemorris.com	7/14/2025 11:05:56 PM	SENT
Katherine Ramos		KRamos@duanemorris.com	7/14/2025 11:05:56 PM	SENT
Craig M.Warner		CMWarner@duanemorris.com	7/14/2025 11:05:56 PM	SENT
James Billingsley		JBillingsley@duanemorris.com	7/14/2025 11:05:56 PM	SENT
Darren McCarty	24007631	darren@mccartylawpllc.com	7/14/2025 11:05:56 PM	SENT

Associated Case Party: DFW Charitable Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Monica G.Gaudioso		mgaudioso@ccsb.com	7/14/2025 11:05:56 PM	SENT
Emily Owen		eowen@ccsb.com	7/14/2025 11:05:56 PM	SENT
Brian P.Shaw		bshaw@ccsb.com	7/14/2025 11:05:56 PM	SENT
Andrea Reed		areed@ccsb.com	7/14/2025 11:05:56 PM	SENT
Rhonda LThomas		rthomas@ccsb.com	7/14/2025 11:05:56 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Judy Garrison		jgarrison@ccsb.com	7/14/2025 11:05:56 PM	SENT
Sherry Stewart		sstewart@ccsb.com	7/14/2025 11:05:56 PM	SENT

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Brian Shaw on behalf of Brian Shaw
Bar No. 24053473
bshaw@ccsb.com
Envelope ID: 103122585
Filing Code Description: Motions - All Other
Filing Description: DEFENDANTS MOTION TO DISMISS AND PLEA TO THE JURISDICTION
Status as of 7/15/2025 8:57 AM CST

Case Contacts

Sherry Stewart		sstewart@ccsb.com	7/14/2025 11:05:56 PM	SENT
Business Court 1B		BCDivision1B@txcourts.gov	7/14/2025 11:05:56 PM	SENT
Angie Barrera		abarrera@ccsb.com	7/14/2025 11:05:56 PM	SENT

EXHIBIT 91

EXHIBIT 3

MEMORANDUM

Date: July 9, 2021

To: Mark Patrick

Company: Charitable DAF Holdco, Ltd. and CLO Holdco, Ltd.

From: Haynes and Boone, LLP, by Kenneth Bezozo

Subject: Donor Advised Funds ("*DAFs*"), Sponsoring Organizations and Supporting Organizations -- The Reasons for Making Investments in Offshore Jurisdictions

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1. ***What are Donor Advised Funds, Sponsoring Organizations and Supporting Organizations?***

A donor advised fund, or DAF, is a separately managed charitable investment account established by a donor within a public charity (a section 501(c)(3) organization), which is generally referred to as a sponsor. Sponsors may include a community foundation, university, religious organization, or financial institution. The donor (or the donor's designee) typically maintains certain advisory privileges over the DAF funds or account – specifically with respect to charities that should receive donations, although the DAF account is fully and completely owned and controlled by the sponsor.

In some cases, a sponsor can create as a subsidiary a "supporting organization" which also is a Section 501(c)(3) public charity. A supporting organization is a separate entity controlled by the sponsor through its ability to elect a majority of the supporting organization's governing board. Because of this control, a supporting organization is treated financially as part of a consolidated unit with the sponsor.

Here, for example, The Dallas Foundation formed, and owns and controls, a supporting organization named Highland Dallas Foundation, Inc. ("***Highland Dallas Foundation***") to assist The Dallas Foundation in carrying out its charitable mission in helping support a wide variety of community affairs. Donations were made to the Highland Dallas Foundation as both the sponsor and the supporting organization. The Highland Dallas Foundation from time to time makes distributions of funds to The Dallas Foundation which in turn makes further distributions to local public charities. ***Exhibit 1*** attached shows these above-described entities, as well as other entities referenced herein that are pertinent to this donor advised fund.

2. ***How Does a Donor Establish a DAF Account?***

To establish a DAF fund or account, a donor must make an irrevocable contribution of assets, such as cash, stock or securities or other business or financial assets, to a sponsoring public charity. The donor's contribution is recorded and recognized as a donation to the sponsoring

public charity of the DAF. A donor can make additional contributions to the sponsoring organization whenever they choose.

Because a contribution to a sponsoring organization is, for tax purposes, the equivalent of a contribution to a public charity and because the donor gets an immediate tax benefit for the contribution, the contribution, when made, is permanent and irrevocable. This is true even though the donor contribution to the sponsoring organization is in an account that grows tax-free and the donor has advisory rights as to where to invest the assets and donations made from these assets.

Here, the Highland Dallas Foundation is the sponsor of the DAF account which it fully owns and controls. Although the donor has advisory rights regarding investments and donations to charities (by way of a board seat he fills in the supporting organization), the Highland Dallas Foundation has full authority and control over all such decision-making.

3. ***What Type of Investments Can be Made by a Sponsor/Supporting Organization?***

A sponsor and its supporting organization, such as The Dallas Foundation and Highland Dallas Foundation, are able to invest in a wide variety of assets including, but not limited to, marketable securities, financial assets, businesses, real estate, private equity and hedge funds. But because the sponsor and supporting organization are both public charities that are tax-exempt organizations, their investments must take into account all laws that could possibly effect their tax-exempt status.

a. ***Can a Sponsor and its Supporting Organization Invest in a Hedge Fund, Private Equity Fund or Similar Investment Vehicle?***

The short answer is yes, but as stated above, a sponsor and its supporting organization, such as The Dallas Foundation and Highland Dallas Foundation, are both public charities that are tax-exempt organizations. As a strong general rule, a tax-exempt organization will avoid any investments that will subject it to federal or state taxes. A tax-exempt organization is generally exempt from all federal and state taxes except to the extent it receives income classified as unrelated business taxable income (UBTI), which would be taxed at a 21% rate. The term "unrelated business taxable income" generally means the income derived from an unrelated trade or business regularly conducted by the tax-exempt organization. UBTI also can arise from the receipt of income from debt-financed investments, which is why hedge and private equity funds generally utilize a special investment structure to ensure tax-exempt investors do not have UBTI.

To prevent UBTI from flowing through to a tax-exempt organization, a corporation can be utilized to "block" this income at the corporate level, which is accomplished by having a corporation interposed between the tax-exempt organization and the hedge fund, such as The Charitable DAF Holdco, Ltd. (a corporate blocker) from the Charitable DAF Fund, L.P. Using a structure in this manner is often described as using a "blocker" because the UBTI is blocked out and does not flow through to the tax-exempt investor. Instead, the UBTI is included in the income of, and subject to tax in, the blocker corporation. The blocker corporation thereafter distributes the income to the tax-exempt

investor through the payment of dividends which are not UBTI and therefore not taxable to a tax-exempt organization.

Although using a domestic corporate blocker can avoid the problem of having UBTI passed through to a tax-exempt sponsor or its supporting organization, a U.S.-based blocker corporation will be required to pay corporate and state-level income tax on the income they receive from an investment fund.

b. ***Are There Particular Jurisdictions in Which Hedge and Private Equity Funds form Investment Partnerships and Blocker Corporations for their tax-exempt investors?***

It is common for hedge and private equity funds that have tax-exempt investors such as The Dallas Foundation and Highland Dallas Foundation to utilize an offshore structure to form its investment partnership. In addition, these funds may form offshore blocker corporations as well as for other reasons including the ability to make non-U.S. investments or U.S. investments that do not give rise to U.S. tax for foreign investors (i.e., U.S. investments that do not cause the investor to be "engaged in a U.S. trade or business.") Jurisdictions such as Bermuda and the Cayman Islands are typically used because those countries do not have an income tax regime.

By utilizing an offshore structure with corporate blockers, hedge and private equity funds can ensure their tax-exempt investors will not receive any UBTI from investments held by The Dallas Foundation or Highland Dallas Foundation. In addition, to the extent the sole source of UBTI is through debt financing (which is often the case in a hedge fund), then using an offshore corporate blocker can eliminate this type of UBTI (because the debt financing will not flow through the corporate blocker to taint the income received by the tax-exempt investor). This allows the sponsor (i.e., Highland Dallas Foundation), as well as any other charities that receive distributions from Highland Dallas Foundation or The Dallas Foundation, to receive the largest possible distributions.

Utilizing an offshore structure for hedge and private equity funds in the manner described above for tax-exempt investors is a best practice used by many U.S. law firms representing U.S. hedge and private equity funds. In fact, if a U.S. law firm didn't use offshore blockers in the manner described above, it could be considered a poor practice.

In summary, using an offshore blocker corporation, such as Charitable DAF Holdco, Ltd. and CLO Holdco, Ltd., for many hedge funds minimizes taxes and increases the net after-tax cash flow to the tax-exempt investors because investments grow tax-free, giving a sponsor, such as Highland Dallas Foundation, the potential to create even more capital for philanthropic giving.

4. ***Who Has Control and Authority over the Assets Held by the Sponsor?***

Because a DAF is an account within a sponsor organization, the sponsoring organization has full, complete and final control over the funds in the DAF, which is the case here with the sponsor, the Highland Dallas Foundation. Although the supporting organization permits the donor or the donor's designee to recommend how funds should be invested and how funds should be

distributed to other public charities, Highland Dallas Foundation must approve any investments and all distributions to charities.

In this case, the donor of the charitable DAF, or his designee, is able to appoint a representative to the board of the Highland Dallas Foundation, which allows the donor to recommend investments or distributions to charitable organizations, i.e., organizations that are tax-exempt under Internal Revenue Code section 501(c)(3) and classified as public charities under Internal Revenue Code section 509(a). But the donor (or the donor's designee) only has advisory privileges over making investments and the distribution of funds.

5. ***What Are the Benefits to a Donor of a Contribution to a DAF account?***

A DAF account allows a donor who makes an irrevocable charitable contribution to the DAF account to receive an immediate tax deduction, and with the ability to recommend distributions be made by the sponsor to specific charities either presently or in the future. Also, if the donor contributes certain appreciated assets to the DAF account, such as stock or securities, the donor avoids the recognition of any gain in these appreciated assets. This is a significant additional benefit to donors made available in the Internal Revenue Code.

The DAF assets that are not immediately distributed to charities are then invested and depending on the type of investments and the jurisdiction in what the investments are made, the assets may grow tax-free.

EXHIBIT 3

Exhibit 1

Charitable DAF/CLO Holdco
Structure Chart

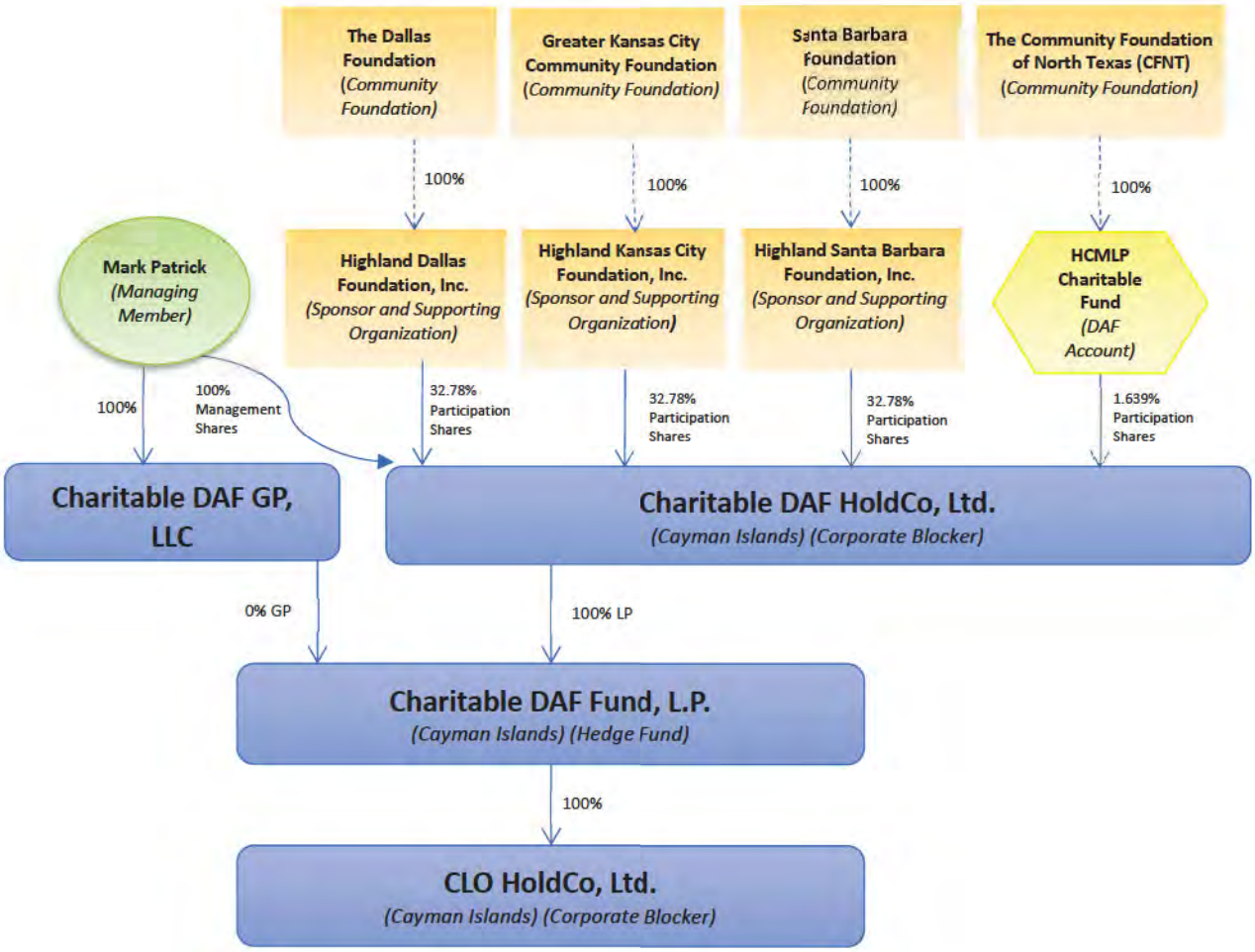


EXHIBIT 92

EXECUTIVE EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "**Agreement**") is made and entered into effective as of March 24, 2021 (the "**Effective Date**"), by and between MARK PATRICK ("**Executive**") and CHARITABLE DAF HOLDCO, LTD., a Cayman Islands company (the "**Company**"), as a "**Party**" or collectively as the "**Parties**".

WHEREAS, the Company has employed Executive on the terms and conditions set forth herein since March 24, 2021; and

WHEREAS, Executive agrees to be employed by the Company on such terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the Parties agree as follows:

1. Employment Term. Executive's employment hereunder shall be effective as of the Effective Date and shall continue until terminated pursuant to Section 5 of this Agreement.

2. Position and Duties.

2.1 Position. During the Employment Term, Executive shall serve as the President and CEO, Chief Investment Officer, Chief Financial Officer, and General Counsel of the Company, reporting to the Directors of the Company (the "**Directors**"). In such position, Executive shall have such duties, authority, and responsibilities as shall be determined from time to time by the Directors, which duties, authority, and responsibilities are consistent with Executive's position.

2.2 Duties. During the Employment Term, Executive shall perform such duties, as are reasonably assigned to Executive and devote a reasonable amount of Executive's business time and attention to the performance of Executive's duties, including, without limitation, service as an officer for other affiliates and subsidiaries of the Company.

3. Place of Performance. The principal place of Executive's employment shall be the place as determined by the Parties; however, Executive shall be permitted to work remotely so long as doing so does not interfere with the Executive's responsibilities under this Agreement. Executive may also be required to travel on Company business during the Employment Term. The Company may provide a remote travel office, or transportation, to accommodate the Executive in his performance of his duties.

4. Compensation.

4.1 Base Salary. Beginning with the 2023 calendar year, the Company shall pay Executive an annual base salary of $850,000 (the "**Base Salary**") in periodic installments in accordance with customary payroll practices and applicable wage payment laws. Notwithstanding the foregoing, the Executive's annual base salary may be advanced in one or more installments from time to time pursuant to a Director's resolution, but in such amounts not to exceed one year of Base Salary. The Base Salary may be adjusted within the first sixty

(60) days of any calendar year by an amendment to this Agreement in accordance with Section 14 below.

4.2 **Annual Bonus**. For each fiscal year of the Employment Term, Executive shall be eligible to earn an annual bonus (the "**Annual Bonus**"). The decision to provide an Annual Bonus and the amount and terms of such Annual Bonus shall be in the sole and absolute discretion of the Directors, which may be paid in advance of the close of any one year. The Directors may establish and approve written criteria or guidelines that may be taken into account when determining whether an Annual Bonus should be paid and the amount in which it is paid. In exercising their discretion, the Directors will take into account industry standards in relation to annual bonuses awarded to people employed in comparable positions to Executive.

4.3 **Discretionary Bonuses**. At any time and from time to time during the Employment Term, the Executive shall be eligible to earn discretionary bonuses (each a "**Discretionary Bonus**"). Such Discretionary Bonuses shall be at the sole and absolute discretion of the Directors.

4.4 **Long Term Incentive Plan**: Executive shall participate in the Long Term Incentive Plan ("**LTIP**"). The LTIP will cover a period of three (3) years. For purposes of this agreement, the LTIP will cover the period from March 24, 2021 through March 24, 2024 (the "**First LTIP**") and is awarded in the total amount of $4,759,000. The second LTIP period will cover the period from March 25, 2024 through March 24, 2027 (the "**Second LTIP**"). The Second LTIP may be awarded at the discretion of the Directors through a cash payment made at the end of 2027, or by periodic awards in the equity of investments of the Company, or a combination of both.

4.5 **Retirement Incentive Plan**. At the discretion of the Directors, the Company may authorize a "Retirement Incentive Plan" to be put into place on behalf of the Executive.

4.6 **Employee Benefits**. During the Employment Term, Executive shall be entitled to participate in an employee benefit plan, including but not limited to health insurance, disability benefits, and retirement plan or other benefit practices and programs as may be implemented from time to time by the Company (collectively, "**Employee Benefit Plans**"), to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.7 **Vacation; Paid Time Off**. During the Employment Term, Executive shall be entitled to forty (40) days of paid vacation per calendar year (prorated for partial years). Executive shall receive other paid time off in accordance with Company policies as may exist from time to time or as otherwise determined by the Directors.

4.8 **Business Expenses**. Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by Executive in connection with the performance of Executive's duties hereunder.

4.9 Indemnification. In the event that Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**"), other than any Proceeding initiated by Executive or the Company related to any contest or dispute between Executive and the Company or any of its affiliates or subsidiaries with respect to this Agreement or Executive's employment hereunder, by reason of the fact that Executive is or was a director or officer of the Company, or any affiliate or subsidiary of the Company, or is or was serving at the request of the Company as a director, officer, member, employee, or agent of another corporation or a partnership, joint venture, trust, or other enterprise, Executive shall be indemnified and held harmless by the Company from and against any liabilities, costs, claims, and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys' fees).

5. Employment Term and Termination of Employment. The initial term of employment of Executive shall be the period from the Effective Date until December 31, 2021, and thereafter shall automatically renew from year-to-year for additional one (1) year periods, unless either Party provides written notice of non-renewal to the other Party within sixty (60) days prior to the expiration of the applicable Employment Term, or Executive's employment is otherwise terminated in accordance with this Section 5 below (the "**Employment Term**"). In the event of non-renewal of the Employment Term by either Party, Executive shall be entitled to payment of the Severance Payment Amount (as defined in Section 5.2(d) below). The Employment Term and Executive's employment hereunder may be terminated by either the Company or Executive at any time and for any reason; provided that, unless otherwise provided herein, either Party shall be required to give the other Party at least sixty (60) days advance written notice of any termination of Executive's employment. On termination of Executive's employment during the Employment Term, Executive shall be entitled to the compensation and benefits described in this Section 5 and shall have no further rights to any compensation or any other benefits from the Company or any of its affiliates.

5.1 For Cause or Without Good Reason.

(a) Executive's employment hereunder may be terminated by the Company for Cause or by Executive without Good Reason. If Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary and accrued but unused vacation which shall be paid on the Termination Date (as defined below);

(ii) any earned but unpaid Annual Bonus with respect to any completed calendar year immediately preceding the Termination Date, which shall be paid on the otherwise applicable payment date; provided that, if Executive's employment is terminated by the Company for Cause, then any such accrued but unpaid Annual Bonus shall be forfeited;

(iii) reimbursement for unreimbursed business expenses properly incurred by Executive in accordance with Section 4.8 of this Agreement; and

(iv) such employee benefits, if any, to which Executive may be entitled under the Company's employee benefit plans as of the Termination Date; provided that, in no event shall Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein; and

(v) accrued and unpaid First or Second LTIP.

Items 5.1(a)(i) through 5.1(a)(v) are referred to herein collectively as the "**Accrued Amounts**". For the avoidance of doubt, any LTIP that has awarded any exposure to an investment such as equity shall be deemed vested if not vested already.

(b) For purposes of this Agreement, "**Cause**" shall mean:

(i) Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent);

(ii) Executive's material breach of the provisions of this Agreement in the course of performing Executive's duties that results in material harm to the Company; or

(iii) Executive is deemed by a court of competent jurisdiction to have engaged in any act or omission constituting willful misconduct, gross negligence, or fraud in the course of performing Executive's duties.

Notwithstanding the foregoing, for subsections (i) to (iii), the Employment Term and Executive's employment shall not be deemed to have been terminated for Cause unless the Company shall have given Executive: (A) written notice setting forth the reasons for the Company's intention to terminate Executive's employment for Cause, and (B) a reasonable opportunity, not to exceed thirty (30) days, to cure such default.

(c) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of any of the following, in each case during the Employment Term, without Executive's written consent:

(i) a material reduction of, or failure to pay, Executive's Base Salary; or

(ii) a material, adverse change in Executive's authority, duties, or responsibilities (other than (i) temporarily while Executive is physically or mentally incapacitated, (ii) where, if applicable, in Executive's capacity as a director, officer, managing member or other position to exert control or influence in the Company or subsidiary (**"Controlling Position"**), the Executive has directed or caused a material adverse change himself, (iii) where the Company's business has materially changed through no fault of the Company, (iv) or as required by applicable law); or

(iii) Company's material breach of the provisions of this Agreement.

Executive cannot terminate employment for Good Reason unless: (i) Executive has provided written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within fifteen (15) days of the initial existence of such grounds, and (ii) the Company has had at least thirty (30) days from the date on which such notice is provided to cure such circumstances. Executive agrees and acknowledges that if he holds a Controlling Position he is obliged to act in good faith and with all due diligence and expedition to help the Company cure any such grounds.

5.2 Without Cause or for Good Reason. The Employment Term and Executive's employment hereunder may be terminated by Executive (i) for Good Reason, (ii) by the Company without Cause, or in the event of non-renewal of the Employment Term in accordance with Section 5. In the event of such termination, Executive shall be entitled to receive the Accrued Amounts and, subject to Executive's compliance with Section 6, Section 7, and Section 8 of this Agreement, Executive shall be entitled to receive the following:

(a) continued Base Salary for twelve (12) months following the Termination Date payable in equal installments, but no less frequently than monthly;

(b) a payment equal to the product of (i) the Annual Bonus, if any, that Executive would have earned for the fiscal year in which the Termination Date (as determined in accordance with Section 5.5) occurs based on achievement of the applicable performance goals for such year and (ii) a fraction, the numerator of which is the number of days Executive was employed by the Company during the year of termination and the denominator of which is the number of days in such year (the "**Pro-Rata Bonus**"), plus any accrued but unpaid Discretionary Bonuses as determined by the Directors. These amounts shall be paid on the date that Annual or Discretionary Bonuses are normally paid;

(c) If Executive timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"), the Company shall reimburse Executive for the monthly COBRA premium paid by Executive for Executive and Executive's dependents. Such reimbursement shall be paid to Executive on the seventh (7th) day of the month immediately following the month in which Executive timely remits the premium payment. Executive shall be eligible to receive such reimbursement until the earliest of: (i) the date Executive is no longer eligible to receive COBRA continuation coverage; and (ii) the date on which Executive becomes eligible to receive substantially similar coverage from another employer or other source; and

(d) An early termination payment in the nature of a severance payment in the amount of $10,000,000 payable at termination (the "**Severance Payment Amount**").

5.3 Death or Disability.

(a) Executive's employment hereunder shall terminate automatically on Executive's death during the Employment Term, and the Company may terminate Executive's employment on account of Executive's Disability.

(b) If Executive's employment is terminated during the Employment Term on account of Executive's death or Disability, Executive (or Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the following:

(i) the Accrued Amounts; and,

(ii) a lump sum payment equal to the Pro-Rata Bonus, and any accrued but unpaid discretionary bonuses, if any, that Executive earned for the fiscal year in which the termination date occurs which shall be payable on the date that annual bonuses are normally paid to the Company's executives, but in no event later than three (3) months following the end of the fiscal year in which the termination date occurs; and,

(iii) in the event of the Executive's death or disability, the Company shall pay the Executive's estate an amount equal to the Severance Payment Amount.

Notwithstanding any other provision contained herein, all payments made in connection with Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "**Disability**" shall mean a condition that entitles Executive to receive long-term disability benefits under the Company's long-term disability plan, or if there is no such plan, Executive's inability, due to physical or mental incapacity, to perform the essential functions of Executive's job, with or without reasonable accommodation, for a period of ninety (90) consecutive days or a period of ninety (90) days in any one hundred eighty (180) day period. Any question as to the existence of Executive's Disability as to which Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to Executive and the Company. If Executive and the Company cannot agree as to a qualified independent physician, each shall appoint such a physician and those two physicians shall select a third who shall make such determination in writing. The determination of Disability made in writing to the Company and Executive shall be final and conclusive for all purposes of this Agreement.

5.4 Notice of Termination. Any termination of Executive's employment hereunder by the Company or by Executive during the Employment Term (other than termination pursuant to Section 5.3(a) on account of Executive's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 20 herein. The Notice of Termination shall specify:

(a) The termination provision of this Agreement relied upon;

(b) To the extent applicable, the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated;

(c) To the extent applicable, the date notice of intention to terminate Executive's employment was provided or the date notice of existence of the circumstances providing grounds for termination for Good Reason was provided; and

(d) The applicable Termination Date.

5.5 Termination Date. Executive's "**Termination Date**" shall be:

(a) If Executive's employment hereunder terminates on account of Executive's death, the date of Executive's death;

(b) If Executive's employment hereunder is terminated on account of Executive's Disability, the date that it is determined that Executive has a Disability;

(c) Unless otherwise indicated herein, if the Company terminates Executive's employment hereunder for Cause, the date the Notice of Termination is delivered to Executive. If the Company is required to give notice of intention to terminate Executive's employment and an opportunity to cure, and Executive fails to cure same, the date on which the cure period expires;

(d) If the Company terminates Executive's employment hereunder without Cause, the date specified in the Notice of Termination, which shall be no less than sixty (60) days following the date on which the Notice of Termination is delivered;

(e) If Executive terminates Executive's employment hereunder without Good Reason, the date specified in Executive's Notice of Termination, which shall be no less than sixty (60) days following the date on which the Notice of Termination is delivered;

(f) If Executive terminates Executive's employment hereunder with Good Reason, and subject to Executive providing written notice to Company of the existence of the circumstances providing grounds for termination for Good Reason within fifteen (15) days of the initial existence of such grounds, and (ii) the Company having had at least thirty (30) days from the date on which such notice is provided to cure such circumstances and fails to cure same, the date on which the cure period expires; and

(g) In the event of non-renewal of the Employment Term by either Party, the date specified in the Notice of Termination, which shall be no less than sixty (60) days following the date on which the Notice of Termination is delivered

5.6 Resignation of All Other Positions. On termination of Executive's employment hereunder for any reason, Executive shall be deemed to have resigned from all positions that Executive holds as an officer or director of the Company or any of its affiliates or subsidiaries.

6. **Cooperation**. The parties agree that certain matters in which Executive will be involved during the Employment Term may necessitate Executive's cooperation in the future. Accordingly, following the termination of Executive's employment for any reason, to the extent reasonably requested by the Directors, Executive shall cooperate with the Company, its affiliates and subsidiaries in connection with matters arising out of Executive's service to the Company; its affiliates or subsidiaries, provided that, the Company shall make reasonable efforts to minimize disruption of Executive's other activities. The Company shall reimburse Executive for reasonable expenses incurred in connection with such cooperation.

7. **Confidential Information**. Executive understands and acknowledges that during the Employment Term, Executive will have access to and learn about Confidential Information, as defined below.

7.1 **Confidential Information Defined**.

(a) Definition.

For purposes of this Agreement, "**Confidential Information**" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, device configurations, embedded data, compilations, metadata, technologies, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, manufacturing information, factory lists, distributor lists, and buyer lists of the Company, or its businesses including its affiliates and subsidiaries, or any existing or prospective customer, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company or its businesses including its affiliates and subsidiaries in confidence.

Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

Executive understands and agrees that Confidential Information includes information developed by Executive in the course of employment by the Company, its affiliates or subsidiaries as if the Company, its affiliates or subsidiaries furnished the same Confidential Information to Executive in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to Executive; provided that, such disclosure is through no direct or indirect fault of Executive or person(s) acting on Executive's behalf.

(b) Disclosure and Use Restrictions.

Executive agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Company, its affiliates or subsidiaries) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company, its affiliates or subsidiaries and, in any event, not to anyone outside of the direct employ of the Company, its affiliates or subsidiaries, except as required in the performance of Executive's authorized employment duties to the Company or with the prior written consent of the Directors acting on behalf of the Company, its affiliates or subsidiaries, as applicable, in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, its affiliates or subsidiaries except as required in the performance of Executive's authorized employment duties to the Company, its affiliates or subsidiaries or with the prior consent of the Directors acting on behalf of the Company, its affiliates or subsidiaries, as applicable, in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent).

(c) Permitted Disclosures. Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Executive shall promptly provide written notice of any such order to the Directors.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("DTSA"). Notwithstanding any other provision of this Agreement:

(i) Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:

(A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed under seal in a lawsuit or other proceeding.

(ii) If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the Company's trade secrets to Executive's attorney and use the trade secret information in the court proceeding if Executive:

(A) files any document containing trade secrets under seal; and

(B) does not disclose trade secrets, except pursuant to court order.

8. Restrictive Covenants.

8.1 Acknowledgement. Executive understands that the nature of Executive's position gives Executive access to and knowledge of Confidential Information and places Executive in a position of trust and confidence with the Company, its affiliates and subsidiaries. Executive understands and acknowledges that the services Executive provides to the Company, its affiliate and subsidiaries are unique, special, or extraordinary.

Executive further understands and acknowledges that the Company's ability to reserve these for the exclusive knowledge and use of the Company, its affiliates and subsidiaries is of great competitive importance and commercial value to the Company, its affiliates and subsidiaries and that improper use or disclosure by Executive is likely to result in unfair or unlawful competitive activity.

8.2 Non-Competition. Because of the Company's legitimate business interest as described herein and the good and valuable consideration offered to Executive, during the Employment Term and for a period of one (1) year, beginning on the last day of Executive's employment with the Company, Executive agrees and covenants not to engage in Prohibited Activity within the areas in which the Company has conducted business.

For purposes of this Section 8.2, "**Prohibited Activity**" is activity in which Executive contributes Executive's knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, advisor, consultant, agent, employee, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar business as the Company, or its affiliates. Prohibited Activity also includes activity that may require or inevitably requires disclosure of trade secrets, proprietary information, or Confidential Information.

Nothing herein shall prohibit Executive from purchasing or owning less than one percent (1%) of the publicly traded securities of any corporation, provided that such ownership represents a passive investment and that Executive is not a controlling person of, or a member of a group that controls, such corporation.

This Section 8 does not, in any way, restrict or impede Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. Executive shall promptly provide written notice of any such order to the Directors.

8.3 **Non-Solicitation of Employees**. Executive agrees and covenants not to directly or indirectly solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment of any employee of the Company, or attempt to do so, for a period of one (1) year, to run consecutively, beginning on the last day of Executive's employment with the Company.

8.4 **Non-Solicitation of Customers**. Executive understands and acknowledges that because of Executive's experience with and relationship to the Company, its affiliates and subsidiaries, Executive will have access to and learn about the Company's, its affiliates' and subsidiaries' customer information. "**Customer Information**" includes, but is not limited to, names, phone numbers, addresses, email addresses, order history, order preferences, chain of command, decisionmakers, pricing information, and other information identifying facts and circumstances specific to the customer and relevant to services.

Executive understands and acknowledges that loss of this customer relationship and/or goodwill will cause significant and irreparable harm.

Executive agrees and covenants, for a period of one (1) year, not to directly or indirectly solicit, contact (including but not limited to email, regular mail, express mail, telephone, fax, instant message, or social media), attempt to contact, or meet with the Company's, its affiliates' or its subsidiaries' customers for purposes of offering or accepting goods or services similar to or competitive with those offered by the Company, its affiliates or subsidiaries.

9. **Acknowledgement**. Executive acknowledges and agrees that the services to be rendered by Executive to the Company, its affiliates and subsidiaries, are of a special and unique character; that Executive will obtain knowledge and skill relevant to the Company's, its affiliates' and subsidiaries' industries, their methods of doing business and marketing strategies by virtue of Executive's employment; and that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interest of the Company, its affiliates and subsidiaries.

Executive further acknowledges that the benefits provided to Executive under this Agreement, including the amount of Executive's compensation, reflects, in part, Executive's obligations and the Company's rights under Section 7 and Section 8, of this Agreement; that

Executive has no expectation of any additional compensation, royalties, or other payment of any kind not otherwise referenced herein in connection herewith; and that Executive will not suffer undue hardship by reason of full compliance with the terms and conditions of Section 7 and Section 8 of this Agreement or the Company's enforcement thereof.

10. Remedies. In the event of a breach or threatened breach by Executive of Section 7 and Section 8 of this Agreement, Executive hereby consents and agrees that the Company, its affiliates and subsidiaries shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, and that money damages would not afford an adequate remedy, without the necessity of showing any actual damages, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

11. Proprietary Rights.

11.1 Work Product. Executive acknowledges and agrees that all right, title, and interest in and to all writings, works of authorship, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived, or reduced to practice by Executive individually or jointly with others during the Employment Term and relate in any way to the business or contemplated business, products, activities, research, or development of the Company, its affiliates or subsidiaries or result from any work performed by Executive for the Company, its affiliates or subsidiaries (in each case, regardless of when or where prepared or whose equipment or other resources are used in preparing the same), all rights and claims related to the foregoing, and all printed, physical and electronic copies, and other tangible embodiments thereof (collectively, "**Work Product**"), as well as any and all rights in and to US and foreign (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights, all improvements thereto and all similar or equivalent rights or forms of protection in any part of the world (collectively, "**Intellectual Property Rights**"), shall be the sole and exclusive property of the Company, its affiliates or subsidiaries, as applicable.

11.2 Work Made for Hire; Assignment. Executive acknowledges that, by reason of being employed by the Company, its affiliates or subsidiaries, at the relevant times, to the extent permitted by law, all of the Work Product consisting of copyrightable subject matter is "work made for hire" as defined in 17 U.S.C. § 101 and such copyrights are therefore owned by the Company, its affiliates or subsidiaries, as applicable. To the extent that the foregoing does not apply, Executive hereby irrevocably assigns to the Company, its affiliates or subsidiaries, as applicable, for no additional consideration, Executive's entire right, title, and interest in and to all Work Product and Intellectual Property Rights therein, including the right

to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's, its affiliates' or subsidiaries' rights, title, or interest in any Work Product or Intellectual Property Rights so as to be less in any respect than that the Company, its affiliates, subsidiaries or assigns, would have had in the absence of this Agreement.

11.3 Further Assurances; Power of Attorney. During and after the Employment Term, Executive agrees to reasonably cooperate with the Company, its affiliates, subsidiaries and assigns to (a) apply for, obtain, perfect, and transfer to the Company, its affiliates or subsidiaries, as applicable, the Work Product as well as any and all Intellectual Property Rights in the Work Product in any jurisdiction in the world; and (b) maintain, protect and enforce the same, including, without limitation, giving testimony and executing and delivering to the Company, its affiliates and subsidiaries, as the case may be, any and all applications, oaths, declarations, affidavits, waivers, assignments, and other documents and instruments as shall be requested by the Company, its affiliates or subsidiaries. Executive hereby irrevocably grants the Company, its affiliates or subsidiaries, as applicable, power of attorney to execute and deliver any such documents on Executive's behalf in Executive's name and to do all other lawfully permitted acts to transfer the Work Product to the Company, its affiliates or subsidiaries, as the case may be. The power of attorney is coupled with an interest and shall not be affected by Executive's subsequent incapacity.

11.4 No License. Executive understands that this Agreement does not, and shall not be construed to, grant Executive any license or right of any nature with respect to any Work Product or Intellectual Property Rights or any Confidential Information, materials, software, or other tools made available to Executive by the Company.

12. Security.

12.1 Security and Access. Executive agrees and covenants (a) to comply with all security policies and procedures as in force from time to time including without limitation those regarding the Company's, its affiliates' or subsidiaries' facilities, IT resources and communication technologies ("**Facilities and Information Technology Resources**"); (b) not to access or use any Facilities and Information Technology Resources except as authorized by the Company, its affiliates or subsidiaries; and (iii) not to access or use any Facilities and Information Technology Resources in any manner after the termination of Executive's employment by the Company, its affiliates or subsidiaries whether termination is voluntary or involuntary. Executive agrees to promptly notify the Company, its affiliates or subsidiaries, as applicable, in the event Executive learns of any violation of the foregoing by others, or of any other misappropriation or unauthorized access, use, reproduction, or reverse engineering of, or tampering with any Facilities and Information Technology Resources or other Company, affiliate or subsidiary property or materials by others.

13. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The

parties mutually agree that the Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of the Agreement.

14. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by Executive and the Director of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

15. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law.

The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

16. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

17. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

18. Section 409A.

18.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from

service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by Executive on account of non-compliance with Section 409A.

18.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to Executive in connection with Executive's termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date following the six-month anniversary of the Termination Date or, if earlier, on Executive's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which Executive's separation from service occurs shall be paid to Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

18.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(b) any reimbursement of an eligible expense shall be paid to Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

18.4 Tax Gross-ups. Any tax gross-up payments provided under this Agreement shall be paid to Executive on or before December 31 of the calendar year immediately following the calendar year in which Executive remits the related taxes.

19. Successors and Assigns. This Agreement is personal to Executive and shall not be assigned by Executive. Any purported assignment by Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or

substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

20. **Notice**. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

CHARITABLE DAF HOLDCO, LTD.

PAUL MURPHY
paul@gkmanagement.com.ky

If to Executive:

MARK PATRICK
Mpatricktax1040@gmail.com

21. **Representations of Executive**. Executive represents and warrants to the Company that:

(a) Executive's acceptance of employment with the Company and the performance of duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which Executive is a party or is otherwise bound.

(b) Executive's acceptance of employment with the Company and the performance of duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer.

22. **Withholding**. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

23. **Survival**. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

24. **Governing Law and Jurisdiction.** This agreement is governed by and shall be construed in accordance with the laws of Cayman Islands. Each of the parties hereto irrevocably agrees that the courts of Cayman Islands shall have exclusive jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this agreement and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts.

25. **Acknowledgement of Full Understanding**. EXECUTIVE ACKNOWLEDGES AND AGREES THAT EXECUTIVE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. EXECUTIVE ACKNOWLEDGES AND AGREES THAT EXECUTIVE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF EXECUTIVE'S CHOICE BEFORE SIGNING THIS AGREEMENT.

[***SIGNATURE PAGE FOLLOWS***]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

COMPANY:

CHARITABLE DAF HOLDCO, LTD.

By: _____
Name: Paul Murphy
Title: Director

EXECUTIVE:

_____
MARK PATRICK

EXHIBIT 93

VALUATION ANALYSIS OF
100% MEMBERSHIP INTEREST IN
CDMCFAD, LLC

AS OF
MARCH 25, 2025

Prepared for:

Mr. Bart F. Higgins
Attorney
Shields Legal Group

VALUESCOPE
a marshall + stevens company

VALUESCOPE
a marshall + stevens company

March 26, 2025

Mr. Bart F. Higgins
Attorney
Shields Legal Group
16400 Dallas Parkway
Dallas, Texas 75248

RE: Valuation Analysis of Membership Interest in CDMCFAD, LLC

Dear Mr. Higgins:

Pursuant to your request, we were retained to perform an independent valuation analysis to determine the fair market value of the 100% non-controlling membership interest (the "Subject Interest" or the "Membership Interest") in CDMCFAD, LLC (the "Company") as of March 25, 2025 (the "Valuation Date").[1] This valuation analysis was conducted for internal reporting, transaction support (including the issuance and redemption of membership interests), dispute resolution, regulatory compliance, or any other context where a fair market valuation is required.

DEFINITION AND PREMISE OF VALUE

The standard of value is fair market value. Fair market value is defined by IRS Revenue Ruling 59-60, 1959-1 C.B. 237 as the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.

To develop our conclusion of value for the Subject Interest, we considered all of the factors listed in Revenue Ruling 59-60. These factors include:

1. The nature of the business and its history from inception.
2. The economic outlook in general and the condition and outlook of the specific industry in which it operates.
3. The book value and the financial condition of the business.
4. The earning capacity of the business.
5. The dividend-paying capacity of the business.
6. Whether the enterprise had goodwill or other intangible value.

[1] Our analysis assumes that the Company and CLO HoldCo's financial position remains materially consistent between September 30, 2024 and the Valuation Date.

7. The market prices of the stocks of corporations engaged in the same or similar line of business having their stocks actively traded on an exchange or over the counter.
8. The marketability, or lack thereof, of the securities.

The valuation is conducted under the assumption that the Company will continue as a going concern.[2] The liquidation premise of value was considered but deemed inapplicable, as the going-concern premise reflects the "highest and best use" of the Membership Interest. The Membership Interest does not confer control and has an extremely limited claim to the underlying net asset value of CLO HoldCo, Ltd ("CLO HoldCo"). Economic benefits are contingent on discretionary distributions made by the Company's manager ("Management"). Given these characteristics, the going concern approach appropriately reflects their value.

SCOPE OF WORK

To gain an understanding of Company's operations, we reviewed the Company's financial and operational data and spoke with Management. To understand the environment in which Company operates, we researched relevant information concerning the US private equity, hedge funds & investment vehicles industry. We also studied economic conditions as of the Valuation Date and their impact on the Company and its industry.

We valued the Subject Interest in accordance with generally accepted valuation standards and included such valuation tests and procedures that we considered necessary under the circumstances. Our conclusion of value reflects these findings, our judgment and knowledge of the marketplace, and our expertise in valuation.

In performing our work, we were provided with and/or relied upon various sources of information, including (but not limited to):

- Balance sheet for CLO HoldCo as of September 30, 2024
- The Limited Liability Company Agreement of CDMCFAD, LLC, as of December 18, 2024
- Information regarding the Company's history and current operations

[2] The *International Glossary of Business Valuation Terms* defines "Going Concern" as "an ongoing operating business enterprise," and "Going Concern Value" as "the value of a business enterprise that is expected to continue to operate into the future. The intangible elements of going concern value result from factors such as having a trained workforce, an operational plant, and the necessary licenses, systems, and procedures in place."

- Historical distributions from CLO HoldCo
- The organizational structure chart for CDMCFAD, LLC
- Discussions with Management
- Pepperdine 2024 Private Capital Markets Report, dated June 10, 2024
- IBISWorld Industry Report 52599, *Private Equity, Hedge Funds & Investment Vehicles in the US*, October 2024

The procedures employed in valuing the Subject Interest included such steps that we considered necessary, including (but not limited to):

- An analysis of the general economic environment and industry as of the Valuation Date
- An interview with Management regarding expectations for future distributions
- An application of appropriate valuation techniques and procedures, including the income approach
- An analysis of other pertinent facts and data influencing our conclusion of value

We relied on information received as indicative of the Company as of the Valuation Date. We made limited investigation as to the accuracy and completeness of such information and did not verify this information as part of our valuation. Therefore, we express no opinion or other form of assurance regarding the accuracy of the source data. Our analysis was based in part on this information, as well as on other data we developed.

CONCLUSION OF VALUE

Based on the procedures outlined herein and the corresponding analysis, it is our opinion that the fair market value of the Subject Interest as of the Valuation Date can be reasonably stated as:

$1,637,192
ONE MILLION SIX HUNDRED THIRTY-SEVEN THOUSAND ONE HUNDRED NINETY-TWO DOLLARS

Fair Market Value Summary			
		Value	Reference
Income Approach			
Value of Subject Interest, Minority, Marketable		$2,045,531	*Schedule B.1*
Less: Discount for Lack of Marketability	*20.0%*	($408,339)	*Schedule C.4*
Value of Subject Interest, Minority, Non-Marketable		**$1,637,192**	

We are independent of the Company and its affiliates and have no current or prospective economic interest in the assets that are the subject of this analysis. Our fee for these valuation services was in no way influenced by the results of our analysis. The content of this valuation report is subject to the Assumptions and Limiting Conditions and the Appraisal Certification at the end of this report. If you have any questions concerning this report, please contact Steven C. Hastings, CPA/ABV/CFF, CGMA, ASA, CVA.

Very truly yours,

ValueScope

ValueScope, LLC

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ENGAGEMENT OVERVIEW

DESCRIPTION OF THE ASSIGNMENT

We were retained to perform an independent valuation analysis to determine the fair market value of the 100% non-controlling membership interest (the "Subject Interest" or the "Membership Interest") in CDMCFAD, LLC (the "Company") as of March 25, 2025 (the "Valuation Date").[3] This valuation analysis was conducted for internal reporting, transaction support (including the issuance and redemption of membership interests), dispute resolution, regulatory compliance, or any other context where a fair market valuation is required.

SCOPE

This report provides a detailed discussion of the valuation analysis we performed and is divided into six major sections. The first section outlines the description, scope, and procedures of our analysis. The second section provides a brief description of the Company and the Subject Interest. The third section includes a discussion of the national economy and the industry in which the Company operates. The fourth section details a discussion of valuation theory and methodology. The fifth section presents our valuation analysis, and the sixth section presents our conclusion of the fair market value of the Subject Interest.

PROCEDURES

This valuation analysis was conducted in accordance with generally accepted valuation procedures. These procedures included such substantive valuation tests that we considered necessary and appropriate under the circumstances. We relied upon information received regarding the Company's operations and we made limited investigation as to the accuracy and completeness of such information. Our analysis was based in part on this information, as well as on other data obtained through additional research. A full discussion of the methodologies employed appears in the following sections of this report.

[3] Our analysis assumes that the Company and CLO HoldCo's financial position remains materially consistent between September 30, 2024 and the Valuation Date.

COMPANY OVERVIEW

CDMCFAD, LLC OVERVIEW[4]

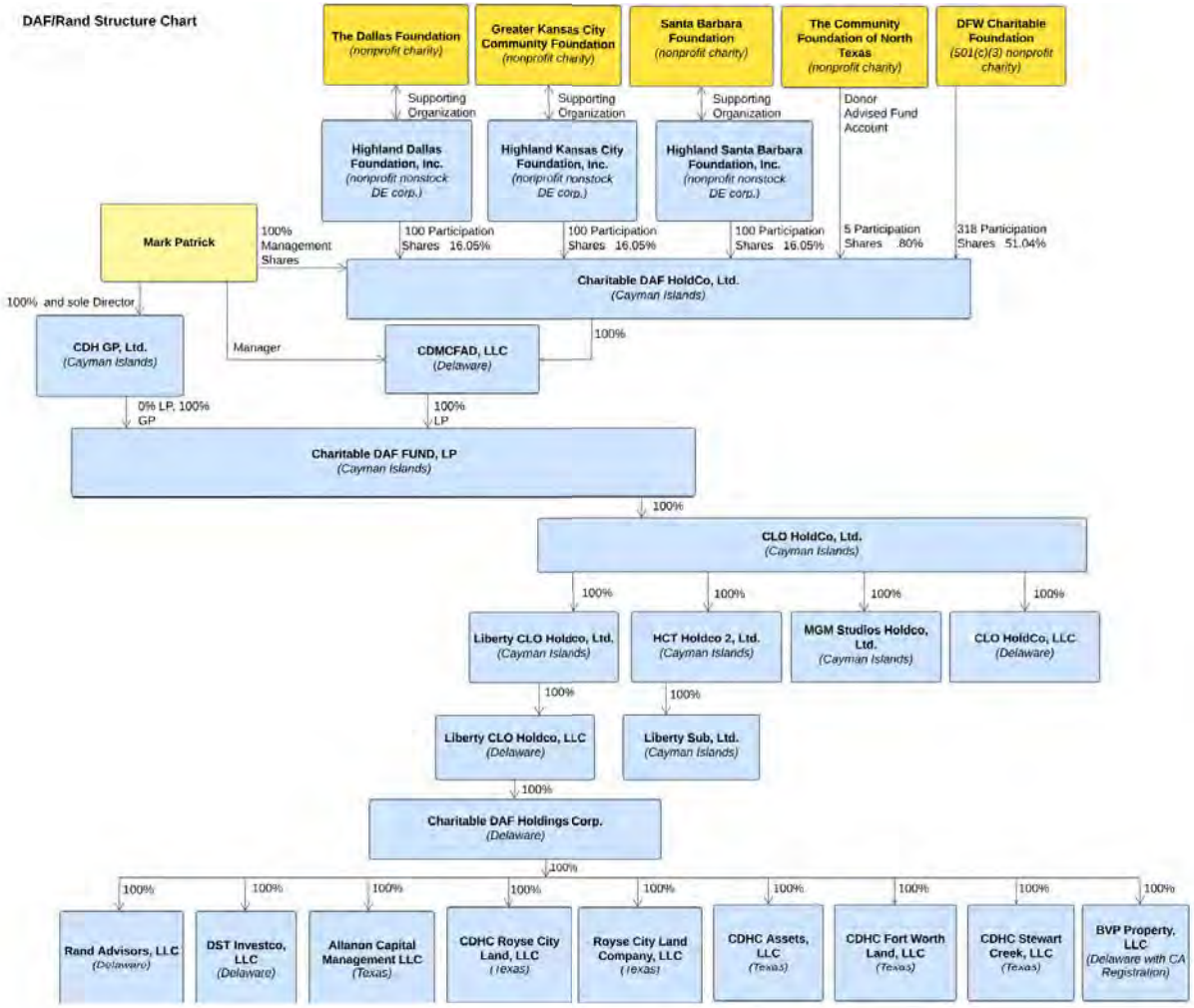
CDMCFAD, LLC is a Delaware limited liability company formed in December 2024. Upon the members' acceptance of the interest, the members agreed to the provisions of the Limited Liability Company Agreement of CDMCFAD, LLC (the "Company Agreement") and the Companies Law of the state of Delaware (as amended from time to time, the "Law"). As a holding company, the Company's underlying assets have been allocated across a broad range of asset classes, including but not limited to cash and cash equivalents, public equity, private equity, private credit, real estate, and other alternative investments.

CAPITALIZATION TABLE

The Company's membership interest is held by Charitable DAF HoldCo, Ltd. Mark Patrick is the Manager of the Company.

[4] Based on the Company Agreement and a discussion with Management.

COMPANY STRUCTURE CHART



FINANCIAL POSITION

The Company's only asset stems from its indirect interest in CLO HoldCo, Ltd ("CLO HoldCo"). The Company provided an unaudited balance sheet (the "Balance Sheet") for CLO HoldCo as of September 30, 2024. Based on a review of the Balance Sheet, CLO HoldCo reported total assets of $316.3 million, including $138.4 million of cash & cash equivalents, $175.3 million of other investments, and $2.5 million of other assets. CLO HoldCo reported total liabilities of $47.2 million. CLO HoldCo has net assets of $269.1

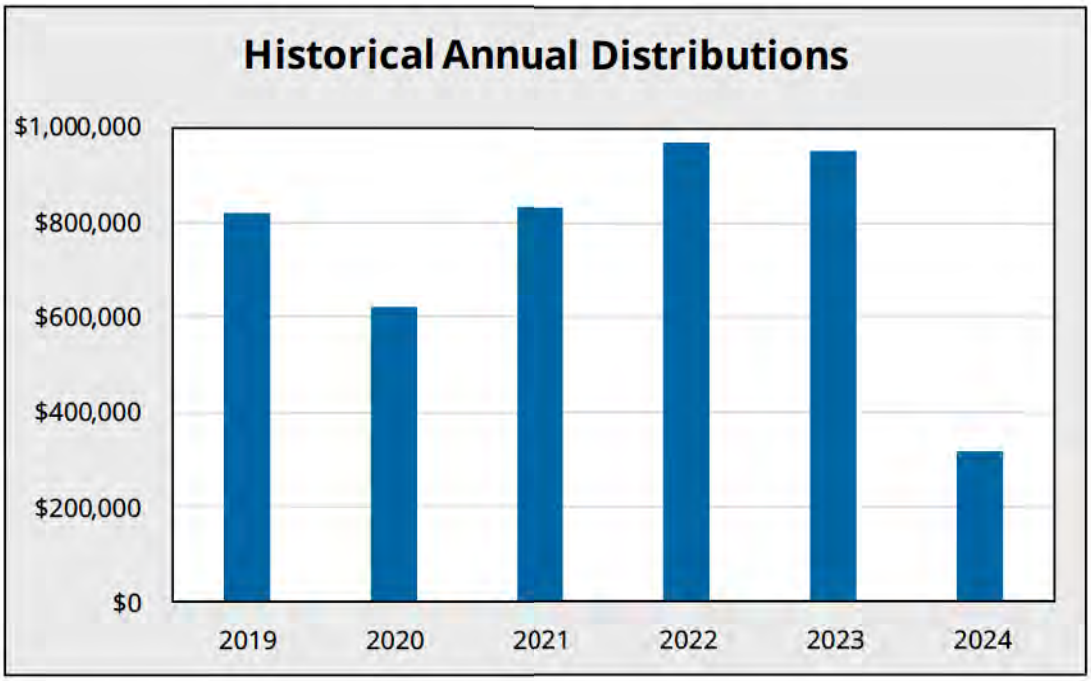
million on its books as of September 30, 2024. The Balance Sheet is presented below and in Schedule A.3.

CLO HoldCo, Ltd - Summary Balance Sheet

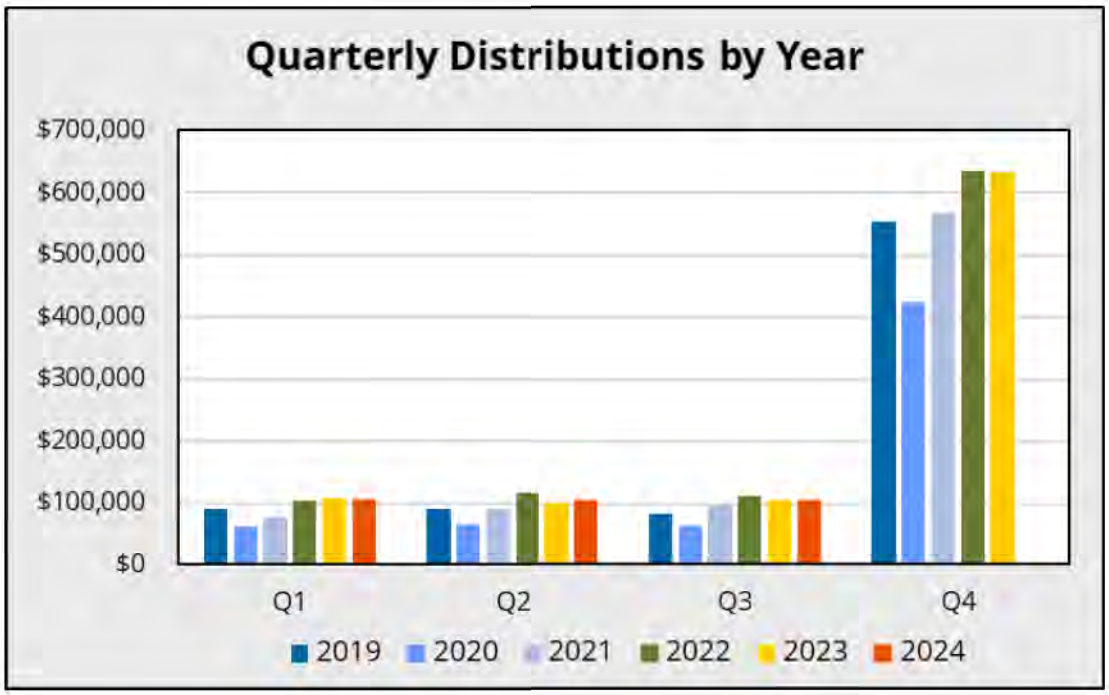
	Balance Sheet as of: 9/30/2024	
	Actual	%
Current Assets		
Cash & Equivalents	$138,419,315	43.8%
Total Current Assets	138,419,315	43.8%
Other Assets		
Other Investments	175,328,461	55.4%
Cash Collateral	81,419	0.0%
Interest Receivable	0	0.0%
Dividends Receivable	0	0.0%
Note Receivable	1,321,109	0.4%
Due from Affiliate	470,000	0.1%
Due from Broker	637,419	0.2%
Total Assets	316,257,723	100.0%
Total Liabilities	47,204,916	14.9%
Total Equity	269,052,808	85.1%
Total Liabilities & Equity	316,257,723	100.0%

CLO HoldCo historically paid distributions of $819,050 in 2019, $619,050 in 2020, $834,450 in 2021, $968,950 in 2022, $950,881 in 2023, and $317,796 in the first three quarters of 2024. Fourth quarter distributions were historically larger than in the first three quarters.[5] Historical Distributions are presented in the following charts and in Schedules A.1 and A.2.

[5] Distributions are typically paid a few months following the end of a quarter. As a result, fourth quarter distributions may be paid in the first or second quarter of the following calendar year.



Note: Q4 2024 distributions have not yet been paid



SUBJECT INTEREST OVERVIEW

The Subject Interest consists of a 100% non-controlling membership interest in the Company. The Subject Interest may receive discretionary cash distributions from time to time. The rights and limitations of the Membership Interest are defined by the Company Agreement and are directly influenced by the discretion and actions of Management.

The Company Agreement grants Management substantial discretion over distributions, interest allocation, governance, and financial transparency, leaving members with little influence over corporate decisions. The Membership Interest is subject to transfer restrictions and limited access to information, with limited voting rights and no ability to amend governing documents. Given these extensive limitations, the Membership Interest represents a highly restricted and passive financial interest with little control or enforceable rights.

Limited Rights Over Distributions

Members do not have:

- The right to cause, vote on, or receive distributions.
- The right to annual, timed, or guaranteed distributions.
- The ability to amend the Company Agreement to modify distribution rights.

Governance and Voting Limitations

Members do not have:

- The right to remove or appoint Management.
- The right to vote on the issuance of additional membership interest, receive notice of such issuance, or exercise pre-emption rights.
- The right to vote on or receive notice of membership redemptions.

The appointed Management has full control over the management, operations, and affairs of the Company, including the reallocation of the membership interests on terms they determine. Since members do not have voting or approval rights over reallocation, the membership interest may be reallocated at any time, potentially impacting the economic interests associated with existing interest. Additionally, the transfer of membership interest requires Management consent, and Management may reject transfers at their discretion. Furthermore, Management may cause any membership interest to be redeemed by the Company for any reason.

Restrictions on Meetings and Information Access

Members do not have:

- The right to receive notice of, attend, speak at, or vote at general meetings.
- The right to inspect company records, accounts, or documents, except at Management's sole discretion.
- The ability to modify or amend the Company Agreement in any capacity.

For further details, refer to Appendix A for key provisions of the Company Agreement.

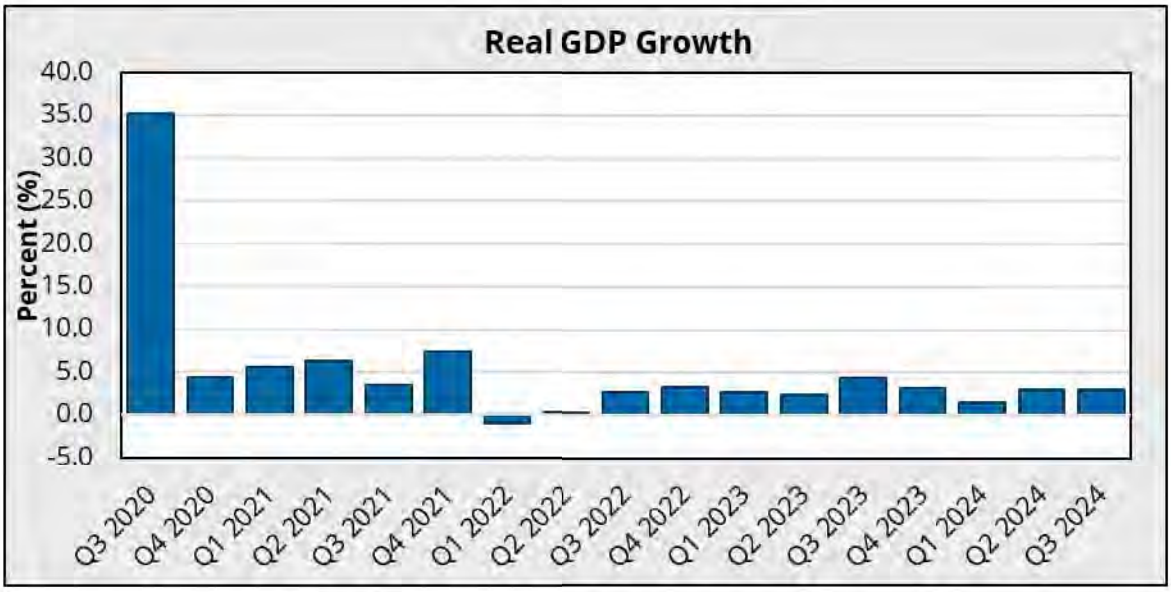
ECONOMIC AND INDUSTRY OVERVIEW

OVERVIEW OF THE U.S. ECONOMY

In the third quarter of 2024, the US economy expanded at a faster pace than in the second quarter. Inflation, which peaked at 8.99% in June 2022, declined to 2.73% by November 2024, reflecting progress toward the Federal Reserve's target. After a prolonged period of elevated interest rates to curb inflation, signs of a cooling labor market and stable prices led the Fed to cut rates by 25 basis points in December. The rate hikes that began in 2023 initially resulted in an inverted yield curve, signaling investor concerns about an economic slowdown, but the curve has since normalized following the presidential election. Meanwhile, US equity markets gained momentum, with major indices ending the year higher, supported by easing inflation and expectations of further monetary policy accommodation.

Gross Domestic Product[6]

Real gross domestic product (GDP) increased at an annual rate of 3.1 percent in the third quarter of 2024, following an increase of 3.0 percent in the second quarter. The acceleration in real GDP in the third quarter primarily reflected accelerations in exports, consumer spending, and federal government spending. These movements were partly offset by a downturn in private inventory investment and a larger decrease in residential fixed investment.

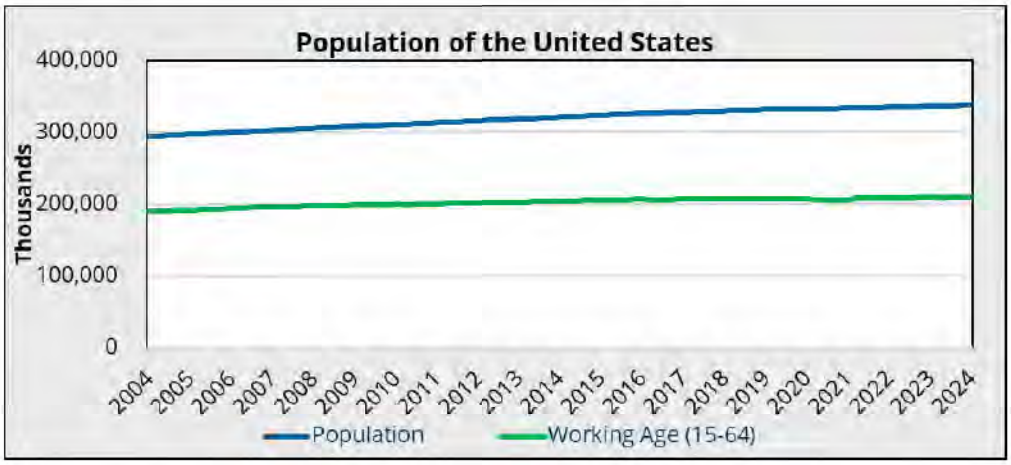


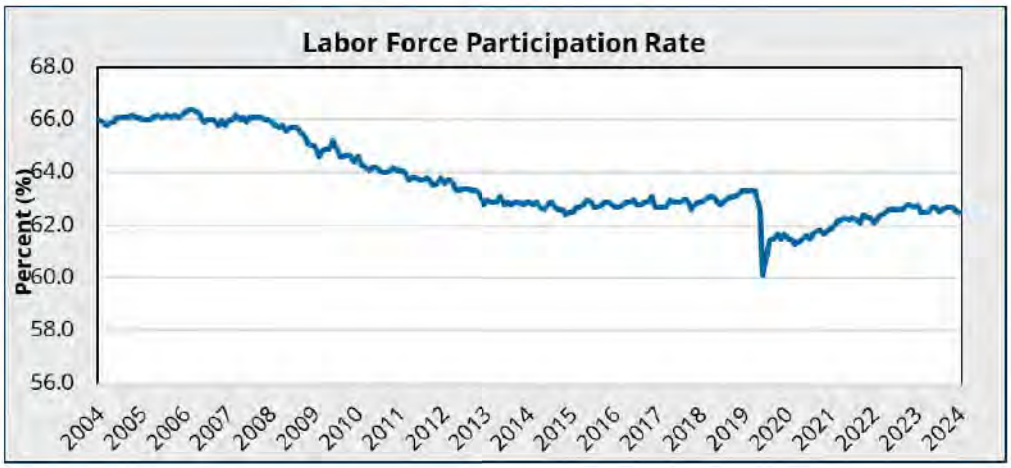
[6] U.S. Department of Commerce, Bureau of Economic Analysis, Gross Domestic Product (Third Estimate), Corporate Profits (Revised Estimate), and GDP by Industry, Third Quarter 2024. (Release Date: 12/19/2024).

Population

Population growth is an important driver of long-term growth in an economy. The total population increased from 335.9 million in November 2023 to 337.7 million in November 2024.[7] The working-age population (15-64) increased from 208.9 million in November 2023 to 209.0 million in November 2024.[8]

Labor force participation had a sharp decline at the onset of the COVID-19 pandemic. It partially recovered in just several months and has been trending upward/flat. In November 2023, the civilian labor force participation rate was 62.8% and stands at 62.5% as of November 2024.[9]





7 U.S. Bureau of Economic Analysis, Population [POPTHM], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

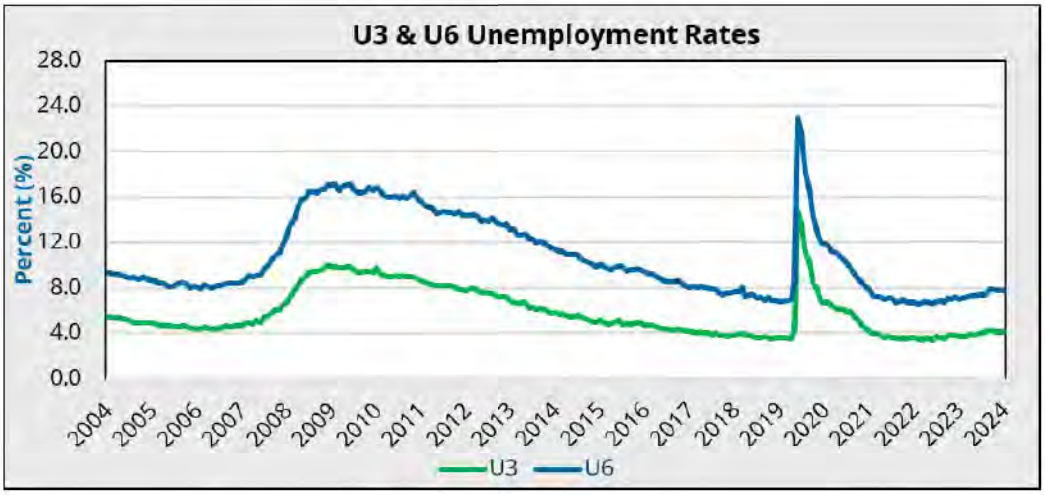
8 Organization for Economic Co-operation and Development, Working Age Population: Aged 15-64: All Persons for the United States [LFWA64TTUSM647N], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

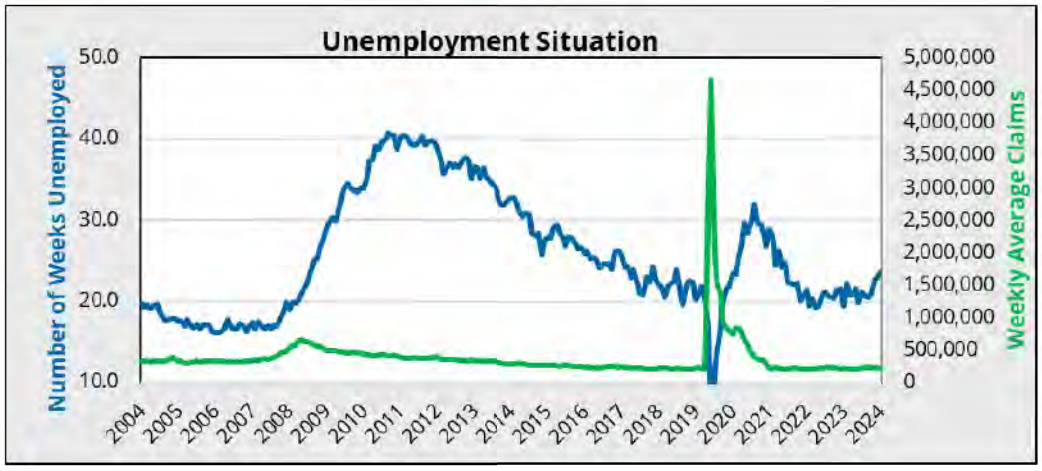
9 U.S. Bureau of Labor Statistics, Civilian Labor Force Participation Rate [CIVPART], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

Employment

Nonfarm payroll employment, according to the Bureau of Labor Statistics (BLS), rose by 227,000 in November 2024 and the unemployment rate changed little at 4.2 percent. Employment trended up in health care, leisure and hospitality, government, and social assistance. Retail trade lost jobs.

The U6 unemployment rate, which includes all marginally attached workers and those employed part-time for economic reasons, increased from 7.0% in November 2023 to 7.7% in November 2024.[10]





Forecasters surveyed by the Federal Reserve Bank of Philadelphia predicted the unemployment rate will increase from 4.0 percent in 2024 to 4.3 percent in 2025 and then decrease to 4.1 percent in 2027.

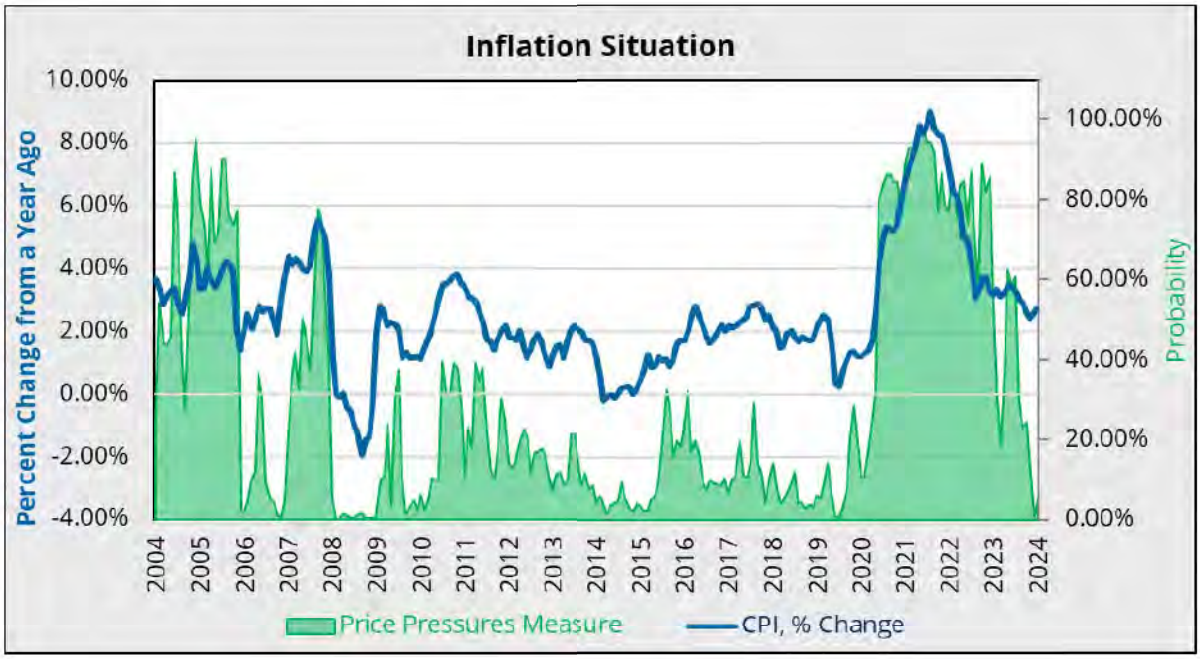
[10] U.S. Bureau of Labor Statistics, Total unemployed, plus all marginally attached workers plus total employed part time for economic reasons [U6RATE], Civilian Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

Inflation

According to the BLS, The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.3 percent in November on a seasonally adjusted basis, after rising 0.2 percent in each of the following 4 months. Over the last 12 months, the all-items index increased 2.7 percent before seasonal adjustment.[11]

The index for shelter rose 0.3 percent in November and was the main factor in the all items increase. The food index increased 0.4 percent in November. The index for food away from home rose 0.5 percent over the month, while the index for food at home rose 0.3 percent. The energy index fell 0.2 percent over the month, after being unchanged in the preceding month.

The price pressures measure estimates the probability that the personal consumption expenditures price index inflation rate will exceed 2.5% over the next twelve months. This price pressures measure has declined significantly since a year ago, November 2023, declining from 53.20% to 5.10% in November 2024[12].The forecasters predict current-quarter headline CPI inflation will average 2.2 percent at an annual rate, down from the prediction of 2.5 percent in the previous survey[13].



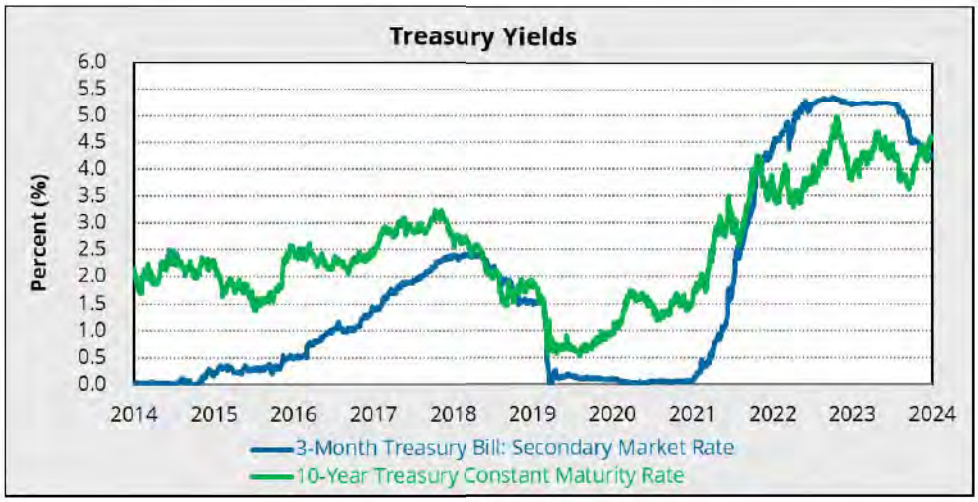
11 Federal Reserve Bank of St. Louis, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

12 Federal Reserve Bank of St. Louis, Price Pressures Measure [STLPPM], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

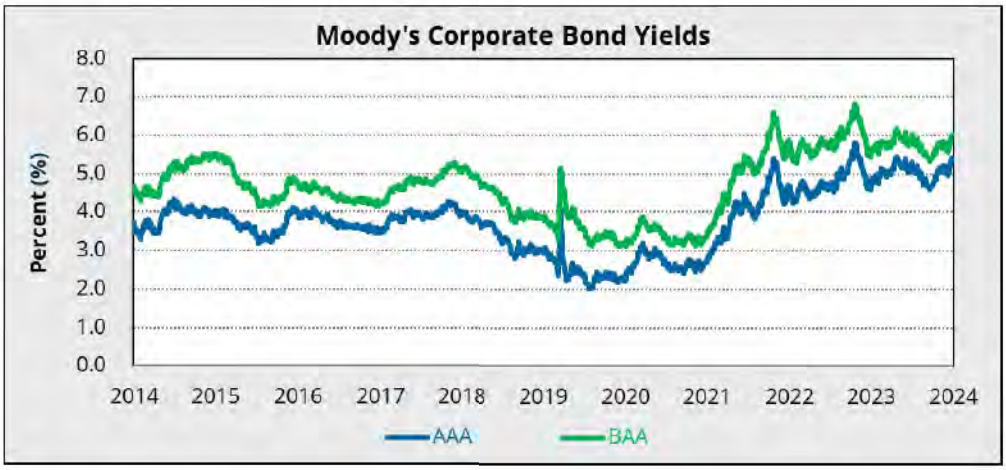
13 Federal Reserve Bank of Philadelphia, *Survey of Professional Forecasters,* November 15, 2024.

Interest Rates

The interest rate on the three-month Treasury bill declined from 5.20% as of December 29, 2023, to 4.23% as of December 31, 2024.[14] The interest rate on the ten-year Treasury note increased from 3.88% as of December 29, 2023, to 4.58% as of December 31, 2024.[15]



The interest rate on Moody's Aaa-rated corporate bonds increased from 4.65% as of December 29, 2023, to 5.40% as of December 31, 2024.[16] The interest rate on the Moody's Baa-rated corporate bonds increased from 5.49% to 6.00% over the same time.[17]



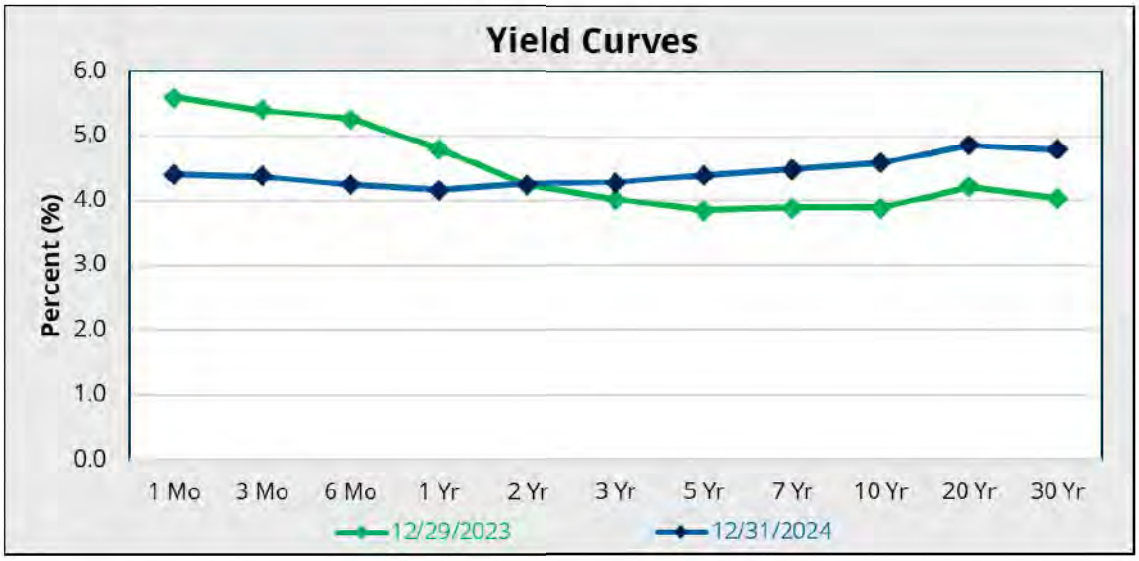
14 Board of Governors Federal Reserve System, 3-Month Treasury Bill: Secondary Market Rate [DTB3MS], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

15 Board of Governors Federal Reserve System, 10-Year Treasury Constant Maturity Rate [DGS10], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

16 Moody's, Moody's Seasoned Aaa Corporate Bond Yield© [DAAA], Moody's Seasoned Aaa Corporate Bond Yield© [DAAA], retrieved from FRED, Federal Reserve Bank of St. Louis, last January 10, 2025.

17 Moody's, Moody's Seasoned Baa Corporate Bond Yield© [DBAA], Moody's Seasoned Baa Corporate Bond Yield© [DBAA], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

In the last twelve months, the yield curve transitioned from being inverted to normal, with the spread between the twenty-year Treasury Bond and the one-year Treasury Bill increasing between December 29, 2023, to December 31,2024 from -0.59% to a positive 0.70%.[18]



Corporate Profits

Profits from current production (corporate profits with inventory valuation and capital consumption adjustments) decreased slightly by 15 billion in the third quarter of 2024 from the second quarter of 2024.



[18] U.S. Department of the Treasury, *Daily Treasury Yield Curve Rates*, last accessed January 10, 2025.

Stock Markets[19]

The stock markets gained momentum from December 29, 2023, to December 31, 2024. The S&P 500 Index (SPY) closed at 475.31 on December 29, 2023, and closed higher at 586.08 on December 31, 2024. The Dow Jones Industrial Average Index (DIA) closed at 376.87 on December 29, 2023, and closed higher at 425.50 on December 31, 2024. The NASDAQ Composite Index (QQQ) closed at 409.52 on December 29, 2023, and closed higher at 511.23 on December 31, 2024. In the graph below, the December 30, 2022, values were set to 100.



Construction & Housing Starts

Construction spending and housing starts are two other important indicators for the economy. Construction spending may indicate the sentiment in real estate markets and the soundness of the economy while housing starts are an alternative indicator of consumer sentiment. Increases in demand for newly constructed homes can lead to job growth in the construction industry, increased demand for appliances and furniture, and have ripple effects throughout the economy. Housing starts decreased from 1.510 million units in November 2023 to 1.289 million units in November 2024.[20] Construction spending, a seasonally adjusted annual figure, increased from $2.09 trillion in November 2023 to $2.15 trillion in November 2024.[21]

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19 CapIQ Database, last accessed January 10, 2025.

20 U.S. Census Bureau and U.S. Department of Housing and Urban Development, Housing Starts, New Privately-Owned Housing Units Started [HOUST], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.

21 U.S. Census Bureau, Total Construction Spending, Seasonally Adjusted Annual Rate [TTLCONS], retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed January 10, 2025.



Consumer Sentiment

The University of Michigan Survey of Consumers reported that the Index of Consumer Sentiment has increased from 61.30 a year ago in November 2023 to 71.80 in November 2024. Although it has increased significantly from a year ago, the index is still well below the pre-COVID high of 101.0 in February 2020.[22] The index is based on a survey of consumer perceptions of present economic conditions and expectations of future conditions. The survey is based on a sample of 500 phone interviews consisting of 50 core questions conducted across the continental U.S. This is considered a leading indicator of future consumer expenditures and economic activity.



[22] University of Michigan, *Surveys of Consumers*, November 2024

OVERVIEW OF THE PRIVATE EQUITY, HEDGE FUNDS & INVESTMENT VEHICLES INDUSTRY[23]

This industry is composed of private equity funds, hedge funds, closed-end funds, unit investment trusts and other financial vehicles. Entities in this industry manage securities or other assets on behalf of shareholders, unit holders or other beneficiaries to achieve high returns on targeted investments. This industry excludes insurance and employee-benefit funds, open-end investment funds and trusts, estates and agency accounts.

Executive Summary

In recent years, industry assets have become increasingly integral to institutional investors' portfolios and the larger asset management market. Institutional investors are individuals or organizations that trade securities in such substantial volumes that they qualify for lower commissions and fewer protective regulations since it's assumed that they're knowledgeable enough to protect themselves. Increasing demand from institutional investors has contributed to the surge in the industry's assets under management (AUM) and revenue during the current period.

In recent years, the industry has continued to enmesh itself more deeply within the broader financial ecosystem despite the challenges posed at the onset of the period. The pandemic, mainly in the first quarter of 2020, contributed to revenue declines for many operators. Many portfolios, previously thought to be sound investments, were reevaluated and businesses pivoted their strategies due to the unprecedented nature of the crisis. However, as inflation was rampant in the latter part of the period, the FED increased interest rates to control high inflation, although as inflationary pressures eased in 2024, the FED cut interest rates, which will increase liquidity in financial markets. The Fed is anticipated to cut rates further in 2025, increasing liquidity and driving the shift of investments into equities from fixed-income securities. Overall, over the past five years, industry revenue grew at a CAGR of 4.2% to $310.1 billion, including an increase of 2.5% in 2025 alone. Industry profit has climbed significantly and will comprise 49.6% of revenue in the current year.

Industry revenue will grow at a CAGR of 2.7% to $353.7 billion over the five years to 2030. The Federal Reserve is anticipated to cut interest rates as inflationary pressures continue to ease. These declining interest rates will increase liquidity in the markets. Private equity firms and hedge funds will have less difficulty raising capital for investments. As characteristics of the financial system change in light of post-financial crisis banking regulations and regulators' recognition of the importance of hedge funds within the financial system, hedge funds will likely experience heightened oversight.

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[23] IBISWorld Industry Report 52599, March 2025, *Private Equity, Hedge Funds & Investment Vehicles in the U.S.*

VALUATION METHODOLOGY

There are three conceptually distinct methodologies that can be applied to estimate indications of value of a business or asset: (a) the income approach, (b) the market approach, and (c) the cost approach.

VALUATION APPROACHES

Income Approach

The income approach quantifies the present value of anticipated future income generated by a business or an asset. Forecasts of future income require analyses of variables that influence income, such as revenues, expenses, and taxes. One form of the income approach, the discounted cash flow (DCF) analysis, defines future economic income as net cash flow and takes into account not only the profit-generating abilities of a business but also the investment in capital equipment and working capital required to sustain the projected net cash flow. The forecasted net cash flow is then discounted to present value using an appropriate rate of return or discount rate. The income approach is unique in its ability to account for the specific contribution to the overall value of various factors of production.

Market Approach

The market approach considers the implied pricing in third-party transactions of comparable businesses or assets. Transactions are analyzed in order to identify pricing patterns or trends that can be used to infer value on the subject business or asset. Adjustments are made to the transaction data to account for relative differences between the subject and the comparable transactions. The primary strength of the market approach is that it offers relatively objective pricing evidence from the market at large and, aside from certain adjustments to the transaction data, requires few assumptions to be made.

Asset-Based (Cost) Approach

The asset-based approach considers the value of a business or security based on the value of its assets net of its liabilities. Replacement cost is often a primary indicator of the value of a business' assets. The asset-based approach is based on the reasoning that a prudent investor would not pay more for a business or asset than the cost to the investor to replace or re-create it. Historical cost data and reported book values are often used as initial indications of value, with certain adjustments made for physical deterioration, obsolescence, input costs, appreciation, or other factors. The asset-based approach makes fewer assumptions than the income approach, but its primary limitation is its inability to capture the value of many categories of intangible assets.

VALUATION METHODS

The following are common valuation methods used under the three approaches:

A. Income Approach
1. Discounted Cash Flow Method (multi-period model)
2. Direct Capitalization Method (single period model)
3. Excess Earnings Method

B. Market Approach
1. Guideline Public Company Method
2. Merger and Acquisition Method

C. Asset-Based Approach
1. Reproduction Cost Method
2. Replacement Cost Method
3. Net Asset Value Method

SUMMARY OF THE VALUATION APPROACHES AND METHODS

For the valuation of non-controlling interests in holding companies such as the Company, the asset-based approach is most commonly used. When applied to such companies, the approach consists of measuring the underlying net asset value (NAV) of an entity (the fair market value of the entity's assets less the fair market value of its liabilities). The NAV is then discounted as appropriate to determine the fair market value of the fractional interest in the entity.

However, in the case of the Membership Interest under consideration, the asset-based approach is not applicable. The Subject Interest does not confer control and only have a claim in respect of the underlying assets of CLO HoldCo in a winding up. Unlike equity interests that derive value from an allocable portion of the entity's net assets, the economic benefits of this interest are contingent upon discretionary distributions by Management. As such, the value is not directly tied to the entity's NAV, and an alternative valuation approach is required to appropriately reflect their characteristics and economic reality.

Given the nature of the Membership Interest, the income approach, specifically the discounted cash flow (DCF) method, is the most appropriate valuation methodology.[24] This approach estimates the present value of expected future distributions, if any, based

[24] The market approach was considered but deemed inapplicable due to the absence of comparable transactions involving securities with characteristics similar to the Membership Interest.

on reasonable assumptions regarding Management's discretion in making such distributions. If no future distributions are expected, the value of the Subject Interest would be nominal. The DCF method captures the time value of money and the risk associated with the uncertainty of future distributions, providing a more accurate measure of the fair market value of the Membership Interest.

VALUATION ANALYSIS

INCOME APPROACH ANALYSIS

The income approach estimates the fair market value of an interest based on the present value of expected future economic benefits. In the case of the Membership Interest, these economic benefits are exclusively tied to discretionary distributions made by Management, rather than earnings or cash flows of the underlying NAV of the Company or CLO HoldCo. The approach involves forecasting expected future distributions and discounting them to present value using a rate of return that reflects the risk associated with the uncertainty and discretionary nature of these distributions. The resulting present value represents the fair market value of the Subject Interest.

Discounted Cash Flow Method

We developed a DCF model to determine the fair market value of the Subject Interest as of the Valuation Date. The DCF method projects the distributions that the member is expected to receive. Each projected distribution is discounted to present value using a rate that reflects the risk associated with the uncertainty and discretionary nature of these payments.

Projected Distributions

Distributions to the holders of the Subject Interest were projected based on discussions with Management and a review of historical distributions. Management indicated that the timing and size of future distributions will be discretionary, and that the Company does not intend to establish reserves for distributions.

Despite this discretion, Management currently intends to maintain distributions to the holders of the Subject Interest at levels consistent with those paid by CLO HoldCo over the past 12 to 24 months. We projected distributions to occur quarterly, with the next four quarters reflecting the average distribution of the corresponding quarters from the prior two years, totaling approximately $950,000. Beyond this period, distributions were assumed to grow at an annual rate of 2.5%, consistent with expected inflation, in perpetuity.

Cost of Equity

A cost of equity of 68.3% was applied to discount the expected discretionary distributions to the holders of the Subject Interest, reflecting their high-risk profile, lack of claim on underlying NAV, and absence of control over distributions. This rate was selected based on the third quartile of required returns for pre-seed venture capital investments from the Pepperdine 2024 private capital markets report, aligning with the speculative nature

of potential cash flows, significant legal and governance risks, and the inability to force a sale or liquidity event. The Subject Interest exhibits characteristics similar to early-stage equity investments, where cash flows are highly uncertain, illiquidity risks are substantial, and investor returns are largely dependent on discretionary managerial decisions. Given these factors, a higher-end venture capital return benchmark was deemed appropriate.

Conclusion – Income Approach Analysis

Based on the forecasts and methodologies presented in this analysis, the income approach indicated a minority and marketable value of the Subject Interest of $2,045,531 as of the Valuation Date.

This conclusion of value implies a discount for lack of control (DLOC) of 99.2%, calculated as the concluded marketable value of the Subject Interest divided by the NAV of CLO HoldCo.[25]

To assess the impact of the discount rate, a sensitivity analysis was performed under the hypothetical assumption that projected distributions followed the risk profile of a risk-free perpetual bond with identical expected cash flows. In this scenario, a 4.65% discount rate, equivalent to the 30-year US Treasury yield as of the Valuation Date, was applied. Under this assumption, the minority, marketable value of the Subject Interest would be $44.7 million, resulting in an implied DLOC of 83.4%. However, this analysis does not reflect the substantial risks associated with the Subject Interest.

[25] Discounts for lack of control are applied based on the premise that an asset or interest in an entity in which an owner lacks decision making control would sell for less to a hypothetical buyer than an identical asset or interest which the same owner controls. Lack of control removes the investor's ability to make key decisions, including how to best manage the business, whether and how much cash to distribute to shareholders, or whether to pursue an acquisition or sale of the business.

CONCLUSION OF VALUE - SUBJECT INTEREST

Based on the methodologies presented in this analysis, it is our opinion that the value of the Subject Interest on a minority and marketable basis, as of the Valuation Date, can reasonably be stated as $2,045,531.

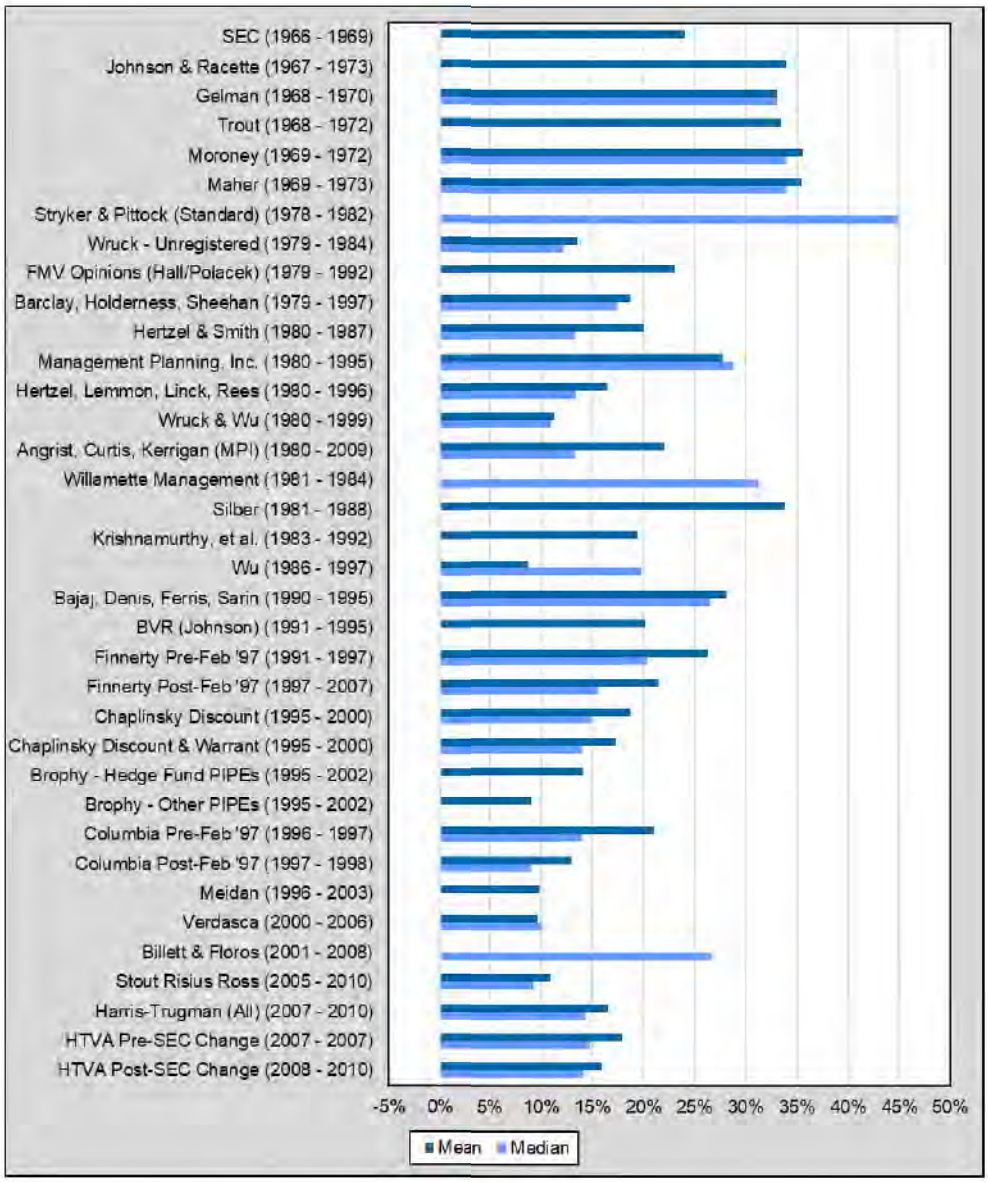
DISCOUNT FOR LACK OF MARKETABILITY

A discount for lack of marketability (DLOM) is necessary to determine the fair market value of the Subject Interest, as it cannot be readily sold or liquidated in an active market. The absence of a public exchange and transfer restrictions further constrain liquidity. A review of restricted stock studies was conducted to support the DLOM, examining the price differences between freely traded shares and comparable shares with resale restrictions. These studies provide empirical evidence of the impact of illiquidity on value, reinforcing the rationale for applying a marketability discount.

Restricted Stock Studies

The restricted stock studies reviewed included data from 1966 through 2010. The studies analyzed the difference in prices between publicly traded stock and restricted stocks of the same entity. The restricted stocks were identical to the traded stock except for marketability. A summary of the mean and median discounts of the restricted stock studies is presented in the following figure.

Summary of Restricted Stock Studies



SEC Institutional Investor Study[26]

The SEC Institutional Investor Study is a comprehensive restricted stock study with 398 transactions from January 1, 1966, through October 22, 1969. The study analyzed differences in discounts based on the following categories: trading market, type of institution purchasing the security, transaction size, sales of the issuer, and earnings of the issuer. The study found significant differences in discounts for type of exchange, sales, and earnings of the issuer. Stocks listed on the major exchanges had lower

[26] U.S. Securities and Exchange Commission, "Institutional Investor Report," 92nd Congress, 1st Session, House Documents No. 92-4, Part 5, 1971.

discounts than smaller exchanges and over-the-counter stocks. The study found higher discounts for companies with smaller sales and lower earnings.

Johnson & Racette Study[27]

Richard Johnson and George Racette performed a study on restricted securities purchased by registered investment companies between 1967 and 1973. The study included 86 observations sent from 75 investment companies that met the selection criteria. Johnson and Racette's analysis indicated an average marketability discount of 34%, in line with the range with the most common observations of 30-40%.

Gelman Study[28]

Milton Gelman of National Economic Research Associates, Inc. conducted a study of 89 restricted stock transactions executed by four investment companies from 1968 to 1970. The investment companies were formed in 1968 to specialize in restricted securities. A significant portion of the funds of the investment companies were invested in restricted stock transactions consisting of shares of large and small companies listed on large and small exchanges, over the counter, purchased directly from the companies, or from selling stockholders. Gelman's analysis found mean and median discounts of approximately 33%. In addition, 59% of the transactions had discounts of 30% or more and 36% of the transactions had discounts of 40% or more.

Trout Study[29]

Robert R. Trout, a principal of Trout, Shulman & Associates, analyzed 60 transactions involving the purchase of restricted stock by mutual funds from 1968 to 1972. Trout performed a regression analysis to determine the relationship between discounts and certain variables such as exchange listing, number of shares outstanding, and transaction size relative to total outstanding shares. Trout's findings suggested an intercept or implied mean and median discount of 43.5%.

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27 Richard D. Johnson and George A. Racette, "Discounts on Letter Stock Do Not Appear to Be a Good Base on Which to Estimate Discounts for Lack of Marketability on Closely Held Stocks," *Taxes—The Tax Magazine*, August 1981, 574-581.

28 Milton Gelman, "An Economist-Financial Analyst's Approach to Valuing Stock of a Closely-Held Company, "*The Journal of Taxation*, June 1972, 353-354.

29 Robert R. Trout, "Estimation of the Discount Associated With the Transfer of Restricted Securities," *Taxes—The Tax Magazine*, June 1977, 381-385.

Moroney Study[30]

Robert E. Moroney of Moroney, Beissner & Co. in Houston presented his restricted stock study to the Texas CPA Tax Institute in November 1972. The study was subsequently published in 1973. The analysis focused on 146 transactions in restricted securities by 10 registered investment companies. The discounts ranged from a 30% premium to a 90% discount with a mean and median discount of 35.8% and 32.8%, respectively.

Maher Study[31]

Michael Maher, a former estate and gift tax agent with the Internal Revenue Service, published his study results in 1976. The study observed discounts for 34 restricted stock transactions from 1966 to 1973. The results of his study suggested a mean discount for his total and adjusted analyses of 35.4% and 34.7%, respectively.

Standard Research Consultants Study[32]

A 1983 study by two Standard Research consultants, William F. Pittock and Charles H. Stryker, CPA, observed discounts relating to 28 private placements of common stock from October 1978 to June 1982. The discounts varied from 7% to 91% with a median of 45%. The results of the study tend to suggest higher discounts for companies with smaller revenues.

Wruck Study[33]

Karen Wruck's Harvard University study on firm value analyzed 83 sales of unregistered securities from 1979 to 1984, 37 of which were observable and included in the study's sample. On average, the offering price of the unregistered securities was set at 86.5% of the market price of the stock on the day before the announcement, indicating a discount of 13.5%. The median discount indicated was similar at 12.2%.

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30 Robert E. Moroney, "Most Courts Overvalue Closely Held Stocks," *Taxes—The Tax Magazine*, March 1973, 144-155.

31 J. Michael Maher, "Discounts for Lack of Marketability for Closely Held Business Interests," *Taxes—The Tax Magazine*, September 1976, 562-570.

32 William F. Pittock and Charles H. Stryker, "Revenue Ruling 77-287 Revisited," *SRC Quarterly Reports*, Spring 1983, 1-3, cited in Quantifying Marketability Discounts by Z. Christopher Mercer, 63.

33 Karen H. Wruck, "Equity Ownership Concentration and Firm Value, Evidence From Private Equity Financings," *Journal of Financial Economics*, Vol. 23. 1989, 3-1.

FMV Opinions Study[34]

The FMV Study included over 230 transactions from 1980 through April 1997, the date of the most recent amendment of Rule 144. The mean and median discounts were 22.3% and 20.1%, respectively. The authors of the study made the following generalization regarding their analysis:

- Companies with higher revenues resulted in lower discounts and vice versa
- Companies with unrestricted stock traded on exchanges exhibited lower discounts
- Discounts were higher for blocks exceeding 10% of ownership
- Discounts for companies with capitalization under $50 million ranged from 30% to 40%

Barclay, Holderness, Sheehan Study[35]

Michael J. Barclay, Clifford G. Holderness, and Dennis P. Sheehan's study observed private placements of large-percentage blocks of stock from 1980 to 1996. Specifically, the study analyzed private placements to a variety of different types of investors, namely active investors, passive investors, and management. Active investors were found to be willing to pay higher prices in their placements, indicating lower discounts, while management placements had the highest discounts, although they were found to not have a statistically significant difference from private placements. In total, the average discount across all private placements was 18.7% while the median discount was 17.4%.

Hertzel & Smith Study[36]

A 1993 study by Michael Hertzel and Richard L. Smith analyzed private placements between 1980 between 1987. The study's sample included private placements of 106 companies listed on the NYSE and AMEX exchanges as well as OTC firms. While the mean and median indicated discounts were 20% and 13%, respectively, more than 35% of the private placements observed had discounts greater than 25%.

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34 Hall, Lance S., and Timothy C. Polacek, "Strategies for Obtaining the Largest Valuation Discounts," *Estate Planning*, January/February 1994. pp. 38-44.

35 Michael J. Barclay, Clifford G. Holderness, and Dennis P. Sheehan, "Private Placements and Managerial Entrenchment," *The Journal of Corporate Finance*, 2007, Vol. 13, Issue 4, 461-484.

36 Michael Hertzel and Richard L. Smith, "Market Discounts and Shareholder Gains for Placing Equity Privately," *The Journal of Finance*, Vol. 48, No. 2. June 1993, 459-485.

Management Planning Study[37]

Management Planning, Inc. published the results of a study performed from 1980-1996 by Robert P. Oliver, ASA and Roy H. Meyers, ASA, CFA. They started with a base on 231 transactions and looked at discounts from the total sample, discounts from 53 transactions without registration rights, and discounts from 27 transactions with registration rights. A summary of the mean and median discounts from their study is presented in the following table.

Results of Management Planning Study

Discount	Entire Sample of 231 Transactions	53 Transactions without Registration Rights	27 Transactions with Registration Rights
Low	N/A	3.0%	N/A
Mean	29.0%	27.0%	12.8%
Median	28.0%	25.0%	9.1%
High	N/A	58.0%	N/A

The authors cite the difference between discounts with and without registration rights as evidence of the lack of marketability on an investment. Certain factors were also cited by the authors as the most influential in determining discounts. The factors include:

- Companies with higher revenues tend to have lower discounts
- Companies with higher earnings tend to have lower discounts
- Higher per share prices tend to have lower discounts
- Lower price volatility tends to result in lower discounts
- Block sizes representing a higher percentage of average trading volume tend to have higher discounts
- Large dollar blocks tend to have lower discounts

Hertzel, Lemmon, Linck, Rees Study[38]

A 2001 study by Michael Hertzel, Michael Lemmon, James Linck, and Lynn Rees analyzed private placements from 1980 to 1996. A total of 619 private placements were ultimately selected for the sample, which primarily consisted of small-cap, technology companies as 79% of the sample companies were traded on the NASDAQ exchange and the mean market value of equity for the companies was $188 million. Of the 619 private

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37 A Study by Management Planning Inc. published in Z. Christopher Mercer, "Analysis of Restricted Stocks of Public Companies 1980-1995," *Quantifying Marketability Discounts*, Peabody Publishing, 1997, Chapter 12, 345-370. Retrieved from John J. Stockdale Sr., *BVR's Guide to Discounts for Lack of Marketability*. 5th ed. Vol. 1. Portland, OR: Business Valuation Resources, LLC, 2013.

38 Michael Hertzel, Michael Lemmon, James S. Linck, and Lynn L. Rees, "Long-Run Performance Following Private Placements of Equity," workpaper, Dec. 21, 2001.

placements in the sample, 404 had sufficient information and disclosures to determine relevant discounts. The study indicated a mean discount of 16.5% and a median discount of 13.4%.

Wruck & Wu Study[39]

A study by Karen Wruck and YiLin Wu in 2008 supplemented Ms. Wruck's 1989 study and analyzed private placements of companies between 1980 and 1999. 1,976 private placements were selected in the sample. Of these, 1,854 had data for observed discounts. The study found a mean discount of 11.33% and a median discount of 10.96%.

Angrist, Curtis, Kerrigan (MPI) Study[40]

A study by Ezra Angrist, Harry Curtis, III, CFA, ASA, and Daniel Kerrigan, CFA in 2011 grouped a total of 402 transactions of unregistered stock into four groups based on the timing of the issuances in respect to the changes in holding period restrictions per Rule 144 as follows:

Results of Angrist, Curtis, Kerrigan (MPI) Study

Period	Observations	Mean Discount	Median Discount
Pre-1990	79	30.5%	32.3%
1990 - Apr 1997	110	25.1%	22.5%
May '97 - Feb '08	164	20.8%	16.6%
Feb '08 - Dec '08	49	5.9%	5.0%
Total	402	22.1%	19.6%

Results of the study show that as restriction periods have declined, so have discounts.

Willamette Management Associates Study[41]

Willamette performed an analysis of 33 private placements of restricted stock from January 1, 1981 through May 27, 1984. There was a brief overlap in the latter part of the period included in the Standard Research Consultants Study. The Willamette study resulted in a mean discount of 31.2%.

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39 Karen H. Wruck and Yi Lin Wu, "Business Relationships, Corporate Governance, and Performance: Evidence From Private Placements of Common Stock," *Journal of Corporate Finance*, 15, 2009, 30-47.

40 Ezra Angrist, Harry Curtis III, and Daniel Kerrigan, "Regression Analysis and Discounts for Lack of Marketability," *Business Valuation Review*, Vol. 30, No. 1 Spring 2011, 36-48.

41 Shannon Pratt, Robert F. Reilly, and Robert P. Schweihs, *Valuing a Business*, 2nd edition, 247.

Silber Study[42]

William L. Silber, a professor of finance and economics at the Stern School of Business at New York University analyzed 69 private placements from 1981 through 1989. Silber's study results ranged from a 12.7% premium to an 84% discount with a mean discount of 33.8%. Silber also cited in his findings that discounts are larger when the block of restricted stock is large relative to the total shares outstanding and the dollar size is inversely related to the discount.

Krishnamurthy, et al. Study[43]

Srinivasan Krishnamurthy, Pual Spindt, Venkat Subramaniam, and Tracie Woidtke's 2001 study analyzed private placements from 1983 to 1992. The study performed different discount calculations for the following classifications: 1) restricted shares, 2) shares with registration pending, 3) shares not known to be restricted, and 4) shares with pending registration or not known to be restricted (groups 2 and 3 combined). The mean discounts for Groups 1-4 were 34.0%, 23.3%, 15.4%, and 16.0%, respectively. The overall mean discount was 19.4%.

Wu Study[44]

YiLin Wu's study on private placements was published in the Journal of Financial Economics in 2004. The study analyzed 301 private placements taking place from 1986 to 1997. Mean and median discounts of 8.7% and 19.8%, respectively, were observed.

Bajaj Study[45]

The Bajaj study expands on previous restricted stock studies, namely by Wruck and by Hertzel and Smith. This study analyzed 88 private placements occurring between 1990 and 1995. The 88 observations revealed results ranging from a premium of approximately 14% to a discount of 68%, with mean and discounts of 22% and 21%, respectively. The authors note four characteristics to consider regarding the target firm and private placement itself when analyzing discounts: the percentage of total shares offered, business risk, financial distress, and total proceeds.

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42 William L. Silber, "Discounts on Restricted Stock: The Impact of Illiquidity on Stock Prices," *Financial Analysts Journal*, July-August 1991, 60-64.

43 Srinivasan Krishnamurthy, Paul Spindt, Venkat Subramaniam, and Tracie Woidtke, "Does Investor Identity Matter in Equity Issues? Evidence From Private Placements," *Journal of Financial Intermediation*, 14, 2005, 210–238.

44 Yi Lin Wu, "The Choice of Equity Selling Mechanisms," *Journal of Financial Economics*, 74, 2004, 93-119.

45 Mukesh Bajaj, David J. Denis, Stephen P. Ferris, and Atulya Sarin, "Firm Value and Marketability Discounts," *Journal of Corporation Law*, Vol. 27, Fall 2001, 89-115.

Johnson Study (Business Valuation Review)[46]

Bruce A. Johnson, ASA of Munroe, Park & Johnson conducted a restricted stock study from 1991 to 1995. The study included 72 private placements with results varying from a 10% premium to a 60% discount with a mean discount of 20%. Johnson also cited four important factors to consider when evaluating potential discounts: positive net income, sales volume, transaction value, and net income strength.

Finnerty Study[47]

John D. Finnerty, professor of finance at Fordham University, performed two studies to compare the impact of the changes in law regarding restriction periods for private placements that occurred in 1997 and 2008. The first study focused on private placements from 1991 to 1997 and resulted in mean and median discounts of 26% and 20%, respectively. The second study focused on private placements from 1997 to 2008 and resulted in mean and median discounts of 22% and 16%, respectively.

Chaplinsky Purchase Discount and Warrant Study[48]

Susan Chaplinsky's and David Haushalter's 2010 study analyzed private placements with a concentration on contract terms. The study asserts that companies that are riskier and have poorer performance more commonly have private placement contracts with contingency terms rather than just offering a pure discount. The indicated mean discount considering only the purchase discount was 19%, and the median was 15%. The indicated mean discount considering purchase discounts as well as warrants was 17%, and the median was 14%.

Brophy PIPE Study[49]

David J. Brophy, Paige P. Ouimet, and Clemens Sialm of the University of Michigan performed a 2006 study that compared the effects of issuing private placements to hedge fund investors versus other investors. The study indicated a mean discount of 14% when private placements were issued to hedge funds, but the mean discount when the issuance involved other investors was just 9%.

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46 Bruce A. Johnson, "Quantitative Support for Discounts for Lack of Marketability," *Business Valuation Review*, Vol. 18, No. 4, December 1999, 152-155.

47 John D. Finnerty, "An Average-Strike Put Option Model of the Marketability Discount," *The Journal of Derivatives*, April 19, 2012, 53-69.

48 Susan Chaplinsky and David Haushalter, "Financing Under Extreme Risk: Contract Terms and Returns to Private Investments in Public Equity," *Review of Financial Studies*, 2010, 23 (7), 2,789-2,820.

49 David Brophy, Paige Ouimet, and Clemens Sialm, "Hedge Funds as Investors of Last Resort?" workpaper, 2006, papers.ssrn.com/sol3/papers.cfm?abstract_id=782791.

Columbia Financial Advisors Study[50]

This study focused on the effect of the Rule 144 holding period reduction to one year. The study considered two periods: January 1, 1996, to April 30, 1997, and May 1, 1997, to December 31, 1998. The one-year holding period became effective April 29, 1997. A summary of the study results is presented in the following table.

Summary of Columbia Financial Advisors Study

	January 1, 1996 to April 30, 1997	May 1, 1997 to December 31, 1998
Number of Transactions	23	15
Low	0.8%	0.0%
Mean	21.0%	13.0%
Median	N/A	9.0%
High	67.5%	30.0%

Meidan Study[51]

Danny Meidan's 2006 study observed PIPE transactions between 1996 and 2003. The study categorized a total of 1,726 total private placement transactions into three groups: placements issued at discounts greater than 30%, placements issued between a 30% discount and 5% premium, and placements issued at a premium greater than 5%. The majority of these transactions fell into the 30% discount to 5% premium category at 1,278 placements, or roughly 74% of the total sample. The weighted average of the mean discounts was calculated as 9.8%.

Verdasca Study[52]

Andrew Verdasca of the Leonard N. Stern School of Business of New York University performed a 2007 study on a sample of 771 private placement transactions. The study found a discount range from a 78% discount to a 93% premium, but both the mean and median results indicated discounts of approximately 10%.

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50 Kathryn F. Aschwald, "Restricted Stock Discounts Decline as Result of 1-Year Holding Period," *Shannon Pratt's Business Valuation Update*, Vol. 6, No. 5, May 2000, 1-5.

51 Danny Meidan , "The Informativeness of Offer Characteristics Versus Investor Identity in PIPE Transactions," April 2, 2006, papers.ssrn.com/sol3/papers.cfm?abstract_id=894689.

52 Andrew Verdasca , "Common Stock PIPE Discounts and Long-Term Performance," April 2, 2007, www.stern.nyu.edu/cons/groups/content/documents/webasset/uat_024319.pdf.

Billett & Floros Study[53]

Matthew T. Billett and Ioannis V. Floros' 2012 study focuses on two key features of financial relationships, contract terms and investor identity, in regard to private placements between 2001 and 2008. These factors were found to both complement and substitute for the other depending on individual circumstances. By analyzing 12,004 transactions in the PlacementTracker and PrivateRaise databases, the study concluded a median discount of 26.7%.

Stout Risius Ross Study[54]

Aaron M. Stumpf, CPA/ABV, Robert L. Martinez, and Christopher T. Stallman of the valuation firm Stout Risius Ross performed a study of restricted stock transactions from September 2005 through May 2010, focusing on discounts associated with shorter holding periods. The chosen time period includes transactions both before and after Rule 144 implementation. The study found that for all transactions considered, the average and median discounts were 10.9% and 9.3%, respectively. Stout Risius Ross also found that the most significant and reliable factors influencing discounts were subject company volatility, block size, dividends, profitability, growth, and size.

Harris-Trugman Study[55]

William Harris, AM of Trugman Valuation Associates, Inc.'s study was performed to analyze the impact of the economic recession on implied restricted stock discounts and the statistical relationships between implied restricted stock discounts and various company-specific variables. The study originally included 80 transactions of restricted stock sales that took place in 2007-2008. Due to the volatility of the Rule 144 holding period implementation, an additional 56 transactions were included in 2011. For the 47 transactions that took place prior to Rule 144 implementation, the average and median discounts were 17.9% and 14.8%, respectively. The 89 transactions analyzed after the rule implantation had average and median discounts of 15.9% and 14.3%, respectively. The overall group indicated mean and median discounts of 16.6% and 14.3%, respectively. The Harris-Trugman study noted that the only company-specific variable that had a notable statistical relationship with the implied discounts was volatility.

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53 Matthew Billett and Ioannis Floros, "Do Investor Identity and Contract Terms Interact? Evidence From the Wealth Effects of Private Placements," workpaper, April 2012, papers.ssrn.com/sol3/papers.cfm?abstract_id=1784498.

54 Aaron Stumpf, Robert Martinez, and Christopher Stallman, "The Stout Risius Ross Restricted Stock Study: A Recent Examination of Private Placement Transactions From September 2005 Through May 2010," *Business Valuation Review*, Vol. 30, No. 1, Spring 2011, 36-48.

55 William Harris, "Trugman Associates, Inc. (TVA) Restricted Stock Study—An Update," *Business Valuation Review*, Vol. 30, No. 4, Winter 2011, 132-139.

Summary of Restricted Stock Studies

The restricted stock studies previously mentioned were performed based on data from 1966 to 2010. Reported mean discounts range from 8.7% to 35.6%. The average of reported mean discounts was 20.8%, while the median was 19.4%. Reported median discounts range from 9.0% to 45.0%. The average of reported median discounts was 19.9%, while the median was 15.3%.

Some of the variation in the studies has to do with the specific periods analyzed. Prior to April 1997, the SEC-required holding period for restricted stocks was two years. That was decreased to one year on April 29, 1997. Similarly, the holding period was reduced from one year to six months effective February 15, 2008.

The following table shows the summary statistics for studies based upon the period studied.

Analysis of Restricted Stock Studies for Different Periods

Descriptive Statistics for Reported Mean and Median Discounts		
	Mean	**Median**
All Studies		
Low	8.7%	9.0%
Median	19.4%	15.3%
Mean	**20.8%**	19.8%
High	35.6%	45.0%
Standard Deviation	8.2%	9.4%
All Studies Prior to Feb 1997		
Low	8.7%	12.2%
Median	23.3%	23.4%
Mean	24.4%	24.4%
High	35.6%	45.0%
Standard Deviation	7.9%	10.1%
All Studies after 1997 and before 2008		
Low	9.7%	9.0%
Median	15.5%	14.8%
Mean	15.5%	15.2%
High	21.5%	26.7%
Standard Deviation	5.2%	7.0%
All Studies Encompassing 1997		
Low	9.0%	11.0%
Median	14.1%	14.5%
Mean	14.6%	14.9%
High	22.1%	19.6%
Standard Deviation	4.9%	3.6%
All Studies Encompassing 2008		
Low	10.9%	9.3%
Median	13.8%	11.8%
Mean	13.8%	11.8%
High	16.6%	14.3%
Standard Deviation	4.0%	3.5%
Indicated Discount for Lack of Marketability	**20.8%**	

The studies also cited several company and security specific factors in determining the estimated discount.

PRE-IPO STUDIES

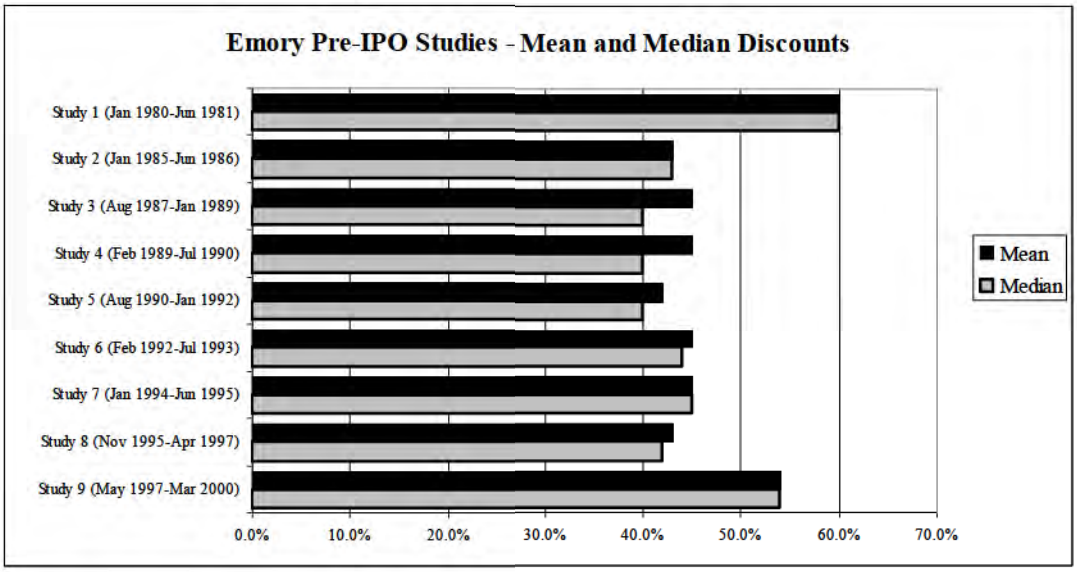
In recent years, a number of pre-IPO studies were performed to support marketability discounts. The methodology applied in these studies is based on the initial offering price (the price prior to public trading). This price is reduced by the price per share at the time of the last private transaction (which must be less than five months prior to the initial offering to qualify for the study) and adjusted by an appropriate index to account for related market or sector movements over the five-month period. The resulting amount is divided by the initial offering price to arrive at the appropriate discount. The pre-IPO methodology of determining marketability discounts is a relevant method as private stockholders experience an inability to freely sell their stock in the open market, similar to restricted stockholders. Furthermore, private stockholders differ from unrestricted public stockholders, much like restricted stockholders, because there is not a public forum in which investments can be easily liquidated (which is only one of the differences between private and public stockholders).

Emory Studies

John Emory, Sr., ASA began his pre-IPO studies with Baird & Co. and continued his studies with his own firm, Emory Business Valuation, LLC. Emory has completed nine studies with the original published in June 1986. The first eight studies eliminated development-stage companies, companies with historical operating losses and companies with IPO prices less than $5 per share. The ninth study deviated from the previous studies as follows:

- Included only companies with “com” in their names
- Review period was increased from 18 months in the previous studies to 35 months
- All transactions were actual sales as opposed to the previous studies that included options
- Most of the companies did not have earnings

The study consisted of 53 transactions. The mean and median discounts by study are presented in the following chart.



Willamette Management Associates Pre-IPO Study

This study observed 556 companies and 1,007 transactions from 1975 through 1997. The adjusted mean discount[56] for each time period varied from 28.9% to 56.8%. The mean for the entire review period was 44.2%. The median discount range was from 31.8% to 73.1% with the overall median at 50.4%. The Willamette study found the standard mean discount was greater than 35% for all but three of the 14 periods in the study and that median discounts exceeded 40% in all but one year.

Valuation Advisors Pre-IPO Study

Two studies were conducted by Valuation Advisors for the calendar years of 1999 and 2000. The mean discount of these studies was 48.9%. The key feature of this study was the inclusion of holding period based upon the length of time between the private transaction and the IPO. The study confirmed the author's initial hypothesis that higher discounts accompany longer holding periods.

APPLICATION OF RESTRICTED STOCK STUDIES TO THE SUBJECT INTEREST

While there are potential application problems associated with various studies, especially the pre-IPO studies, a review of these studies is helpful in assessing a reasonable marketability discount for the Subject Interest. The mean and median discounts from the restricted stock studies ranged from 9% to 45%. The findings of the restricted stock studies as well as additional private placement studies by Hertzel and Smith suggest discounts can vary greatly depending on size, profitability and other company or security specific factors.

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[56] Excluded highest and lowest deciles of indicated discounts

The latest restricted stock studies indicate mean and median marketability discounts in 14% range. We view the latest restricted stock studies as shorter term and therefore have taken the full sample of restricted stock studies into account in our analysis. Our analysis compares these interests to the comparable transactions and makes adjustments from the baseline discounts noted in the comparable transactions. Since the latest one-year study does not measure restricted securities with similar hold periods relative to the vast majority of other discount studies and since it has a relatively small sample size, we relied upon all the restricted stock studies' findings as the basis for our comparison.

The pre-IPO studies may be less indicative of appropriate marketability discounts, as much of the differences in the transaction prices between pre-IPO and IPO may include event premiums, such as the securing of additional capital which promotes the viability of the company. We did not use these studies for our analysis.

Factors Affecting Marketability

Based on the SEC Study, we noticed that as company size and profitability decreases, the marketability discount associated with restricted stock in these companies increase. We also note that various other factors affected discounts observed in the other studies. Most notably, the following affect marketability discounts:

- Increase in dividend payment decreases marketability discounts
- Increase in the size of interest and amount of control decreases discounts
- Increase in financial strength of the company decreases discounts
- Increase in restrictions increases marketability discounts

Given the characteristics of size, lack of distribution history, etc., we concluded a 20.8% marketability discount, with a standard deviation of 8.2%, as the baseline observed from all the restricted stock studies we reviewed.

DISCOUNT ADJUSTMENT DISCUSSION

In the following sections, we adjust the marketability discount to reflect the attributes of the Subject Interest.

The analysis originates with the baseline discount concluded in the previous section. Then, our analysis reviews several factors that affect marketability for both the interests being valued and the comparable interest which provides the base of comparison. Each interest is assigned a ranking from 1 to 5 (from Poor to Strong) based upon the respective feature. Then, the feature ranking for the Subject Interest is subtracted from the feature ranking from the comparable interest. This results in a range of outputs from -4 to +4

(from significantly worse to significantly better). The output is then multiplied by the standard deviation of the restricted stock studies (lack of marketability) to give an indication as to the adjustment necessary to the baseline discount based upon this feature. An importance factor (from low to high) is also attributed to each feature to provide a final scaling factor for the specific feature.

Once the individual feature scaling factors are computed, the baseline discounts are adjusted upward and downward by multiplying the baseline discount by the product of all relevant feature scaling factors.

SUBJECT INTEREST DISCOUNT CALCULATION

Adjustment Analysis – Marketability

The Subject Interest is characterized by a lack of rights and, is therefore, somewhat riskier and more volatile. The Membership Interest has restrictions on the transfer of the interest and only have a claim in respect of the underlying assets in a winding up.

The 20.8% baseline lack of marketability discount of the comparable investments reflects the discount that would apply to the Subject Interest if it had illiquidity features similar to restricted stock. Since the Subject Interest did not exhibit these exact characteristics, further adjustments were necessary to conclude fair market value.

Schedule C.3 summarizes the differences between the Subject Interest and the comparable investments used in our analysis. Overall, these factors resulted in a modest decrease in the discount from the baseline.

Based on the analyses and procedures outlined herein, we concluded that a lack of marketability discount of 20.0% is appropriate for the Subject Interest.

FAIR MARKET VALUE CONCLUSION

Based on the procedures outlined herein and the corresponding analysis, it is our opinion that the fair market value of the Subject Interest as of the Valuation Date can be reasonably stated as:

$1,637,192
ONE MILLION SIX HUNDRED THIRTY-SEVEN THOUSAND ONE HUNDRED NINETY-TWO DOLLARS

Fair Market Value Summary			
		Value	Reference
Income Approach			
Value of Subject Interest, Minority, Marketable		$2,045,531	*Schedule B.1*
Less: Discount for Lack of Marketability	*20.0%*	($408,339)	*Schedule C.4*
Value of Subject Interest, Minority, Non-Marketable		**$1,637,192**	

Our conclusion of value implies an expected payback period of 1.27 years for the Subject Interest. Our conclusion of value is presented in the Summary Schedule as well as in the chart above.

This conclusion is subject to the Assumptions and Limiting Conditions and to the Appraisal Certification found at the end of this report. We relied on information received as indicative of the Company as of the Valuation Date. We made limited investigation as to the accuracy and completeness of such information and did not verify this information as part of our valuation. Therefore, we express no opinion or other form of assurance regarding the accuracy of the source data. Our analysis was based in part on this information as well as on other data we developed. We have no obligation to update this report or our conclusion of value for information that comes to our attention after the date of this report.

ASSUMPTIONS AND LIMITING CONDITIONS

This valuation by ValueScope, LLC is subject to and governed by the following Assumptions and Limiting Conditions and other terms, assumptions and conditions contained in the engagement letter.

LIMITATION ON DISTRIBUTION AND USE

The report, the final estimate of value, and the prospective financial analyses included therein are intended solely for the information of the person or persons to whom they are addressed and solely for the purposes stated. They should not be relied upon for any other purpose, and no party other than the Company may rely on them for any purpose whatsoever. Notwithstanding the foregoing, the valuation report and its contents may be disclosed to third parties, including potential investors, acquirers, and advisors, to establish the fair market value of the Company or in connection with transactions involving the Company, without requiring prior written consent from ValueScope, LLC. Additionally, the Company may distribute this report to outside professional accounting and legal advisors, and to the Company's shareholders and their professional accounting and legal advisors.

No change of any item in this report shall be made by anyone other than ValueScope, LLC, and we shall have no responsibility for any such unauthorized change.

The valuation report has been prepared based on specific assumptions, methodologies, and data outlined herein. This report may be used alongside other appraisals or studies for comparative or analytical purposes. The value conclusion(s) stated in this appraisal is based on the program of utilization described in the report and may not be separated into parts. The report may not be reproduced, in whole or in part, and the findings of the report may not be utilized by a third party for any purpose, other than as expressly permitted herein, without the express written consent of ValueScope, LLC.

NOT A FAIRNESS OPINION

Neither our opinion nor our report are to be construed as an opinion of the fairness of an actual or proposed transaction, a solvency opinion, or an investment recommendation but, instead, are the expression of our determination of value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, including our analysis whether impairment of goodwill exists.

OPERATIONAL ASSUMPTIONS

Unless stated otherwise, our analysis (i) assumes that as of the valuation date, the Company and its assets will continue to operate as configured as a going concern, (ii) is based on the past, present, and future projected financial condition of the Company and its assets as of the valuation date, and (iii) assumes that the Company has no undisclosed real or contingent assets or liabilities, other than in the ordinary course of business, that would have a material effect on our analysis.

We did not make an onsite visit to Company facilities.

COMPETENT MANAGEMENT ASSUMED

It should be specifically noted that the valuation assumes the property will be competently managed and maintained over the expected period of ownership. This appraisal engagement does not entail an evaluation of management's effectiveness, nor are we responsible for future marketing efforts and other management or ownership actions upon which actual results will depend.

NO OBLIGATION TO PROVIDE SERVICES AFTER COMPLETION

Valuation assignments are accepted with the understanding that there is no obligation to furnish services after completion of this engagement. If the need for subsequent services related to a valuation assignment (e.g., including testimony, preparation for testimony, other activity compelled by legal process, updates, conferences, reprint or copy services, document production or interrogatory response preparation, whether by request of the Company or by subpoena or other legal process initiated by a party other than the Company) is requested, special arrangements for such services acceptable to ValueScope, LLC must be made in advance. ValueScope, LLC reserves the right to make adjustments to the analysis, opinion, and conclusion set forth in the report as we deem reasonably necessary based upon consideration of additional or more reliable data that may become available.

In all matters that may be potentially challenged by a Court or other party, we do not take responsibility for the degree of reasonableness of contrary positions that others may choose to take nor for the costs or fees that may be incurred in the defense of our recommendations against challenge(s). We will, however, retain our supporting work papers for your matter(s) and will be available to assist in defending our professional positions taken, at our then current rates plus direct expenses at actual and according to our then current Standard Professional Agreement.

NO OPINION IS RENDERED AS TO LEGAL FEE OR PROPERTY TITLE

No opinion is rendered as to legal fee or property title. No opinion is intended in matters that require legal, engineering, or other professional advice that has been or will be obtained from professional sources.

LIENS AND ENCUMBRANCES

ValueScope will give no consideration to liens or encumbrances except as specifically stated. We will assume that all required licenses and permits are in full force and effect, and we make no independent on-site tests to identify the presence of any potential environmental risks. We assume no responsibility for the acceptability of the valuation approaches used in our report as legal evidence in any particular court or jurisdiction.

INFORMATION PROVIDED BY OTHERS

Information furnished by others is presumed to be reliable; no responsibility, whether legal or otherwise, is assumed for its accuracy and cannot be guaranteed as being certain. All financial data, operating histories, and other data relating to income and expenses attributed to the business have been provided by management or its representatives and have been accepted without further verification except as specifically stated in the report.

PROSPECTIVE FINANCIAL INFORMATION

Valuation reports may contain prospective financial information, estimates, or opinions that represent reasonable expectations at a particular point in time, but such information, estimates, or opinions are not offered as forecasts, prospective financial statements or opinions, predictions or as assurances that a particular level of income or profit will be achieved, that events will occur, or that a particular price will be offered or accepted. Actual results achieved during the period covered by our prospective financial analysis will vary from those described in our report, and the variations may be material.

Any use of management's projections or forecasts in our analysis will not constitute an examination, review, or compilation of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants (AICPA). We will not express an opinion or any other form of assurance on the reasonableness of the underlying assumptions or whether any of the prospective financial statements, if used, are presented in conformity with AICPA presentation guidelines.

REGULATORY AND ENVIRONMENTAL CONSIDERATIONS

The report assumes all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any local, state or national government, or private entity or organization have been or can be obtained or reviewed for any use on which the opinion contained in the report are based.

ValueScope is not an environmental consultant or auditor, and it takes no responsibility for any actual or potential environmental liabilities. Any person entitled to rely on this report, wishing to know whether such liabilities exist or the scope and their effect on the value of the property, is encouraged to obtain a professional environmental assessment. ValueScope does not conduct or provide environmental assessments and has not performed one for the subject property.

ValueScope has not determined independently whether the Company is subject to any present or future liability relating to environmental matters (including but not limited to CERCLA/Superfund liability) or the scope of any such liabilities. ValueScope's valuation takes no such liabilities into account, except as they have been reported to ValueScope by the Company or by an environmental consultant working for the Company, and then only to the extent that the liability was reported to us in an actual or estimated dollar amount. Such matters, if any, are noted in the report. To the extent such information has been reported to us, ValueScope has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.

Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.

ValueScope has not made a specific compliance survey or analysis of the subject property to determine whether it is subject to, or in compliance with, the American Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.

ValueScope expresses no opinion for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by business appraisers.

POTENTIAL FUTURE SALES

Any decisions to purchase, sell, or transfer any interest in the subject company or its subsidiaries shall be your sole responsibility, as well as the structure to be utilized and the price to be accepted.

The selection of the price to be accepted requires consideration of factors beyond the information we will provide or have provided. An actual transaction involving the subject business might be concluded at a higher value or at a lower value, depending upon the circumstances of the transaction and the business and the knowledge and motivations of the buyers and sellers at that time. Due to the economic and individual motivational influences which may affect the sale of a business interest, the appraiser assumes no responsibility for the actual price of any subject business interest if sold or transferred.

INDEMNIFICATION BY THE COMPANY

The following indemnifications apply only to the extent that any losses, claims, damages, judgments, or liabilities are not caused by fraud, bad faith, gross negligence, or willful malfeasance on the part of ValueScope.

The Company agrees to indemnify and hold harmless ValueScope and its respective principals, affiliate, agents, and employees ("Indemnified Party") against any losses, claims, damages, judgments, or liabilities arising out of or based upon any professional advisory services rendered pursuant to this agreement. Furthermore, the Company agrees to indemnify ValueScope and any Indemnified Party against any losses, claims, damages, judgments, or liabilities incurred as a result of a third party initiating a lawsuit against any Indemnified Party based upon any consulting services rendered to the Company pursuant to this agreement. In consideration for this indemnification agreement, ValueScope will provide professional advisory services.

The Company agrees to reimburse ValueScope and any Indemnified Party for any necessary and reasonable expenses, attorneys' fees, or costs incurred in the enforcement of any part of the indemnity agreement 30 days after receiving written notice from ValueScope.

The obligations of ValueScope under this agreement are solely corporate obligations, and no officer, director, employee, agent, shareholder, or controlling person in ValueScope shall be subjected to any personal liability whatsoever to any person, nor will any such claim be asserted by or on behalf of you or your affiliates.

APPRAISAL CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. We have not inspected certain assets, properties, or business interests encompassed by this appraisal.
2. We have no present or prospective future interest in the assets, properties, or business interests that are the subject of this appraisal report.
3. We have no personal interest or bias with respect to the subject matter of this report or the parties involved.
4. Our compensation for conducting the appraisal is in no way contingent upon the value reported or on any predetermined value.
5. To the best of our knowledge and belief, the statements of facts contained in this report, on which the analyses, conclusions, and opinions expressed herein are based, are true and correct.
6. No persons other than us have provided significant professional assistance regarding the analyses, opinions, and conclusions set forth in this report.
7. The reported analyses, opinions, and conclusions are limited only by the reported contingent and limiting conditions, and they represent our unbiased professional analyses, opinions, and conclusions.
8. This report and analysis were prepared under the direction of Steven C. Hastings.
9. I am in compliance with all professional appraisal certifications and licensing.
10. The National Association of Certified Valuators and Analysts (NACVA) has a mandatory recertification program for its accredited members and I am in compliance with that program.

By: ValueScope, LLC



Steven C. Hastings, CPA/ABV/CFF, CGMA, ASA, CVA
Principal
ValueScope, LLC

APPENDIX A
KEY COMPANY AGREEMENT PROVISIONS

1. With the meaning and for purposes of the Act, the purpose and scope of the Company shall include any lawful action or activity permitted to a limited liability company under the Act, as determined by the Manager. [Section 2.3]

2. Except as otherwise provided in this Agreement, Profits and Losses for each Fiscal Period shall be allocated as follow: (a) Profits shall be allocated among the Members in the following order and priority: (i) First, among the Members on a pro rata basis so as to reverse prior allocations of Losses for prior Fiscal Periods under Sections 4.1(b)(ii) until cumulative Profit allocated under this Section 4.1(a)(i) equals the cumulative Losses allocated under Section 4.1(b)(ii); and (ii) Second, among the Members in proportion to their Allocation Percentages. [Section 4.1(a)]

3. The Manager may at any time in its sole discretion to the extent the Company has cash and any property available for distribution taking into account current and anticipated needs (including without limitation operating expenses, debt service, guaranteed payments and a reserve for future operating costs), distribute such excess cash and any property available for distributions to the Members in accordance with their respective Allocation Percentages. [Section 5.1(b)]

4. Except as otherwise specifically provided in this Agreement, the Company and its business shall be managed, controlled and operated exclusively by the Manager, which shall be the "manager" of the Company within the meaning of Section 18-101 of the Act and shall have all of the powers and authority in respect of the Company permitted to managers under the Act. [Section 6.1]

5. The initial Manager shall be Mark Patrick. In the event that Mark Patrick dies or is unable to serve as such, the will or other testamentary documentation for Mark Patrick shall designate a successor Manager. To the extent that the will or other related documentation for Mark Patrick fails to provide for a successor Manager or if any such designated individual shall be unable or is unwilling to fill such position, the managing shareholder of Charitable DAF HoldCo, Ltd., shall appoint a successor Manager. To the extent that Mark Patrick desires to resign as Manager, he shall appoint his successor. [Section 6.2]

6. Notwithstanding any provision of this Agreement to the contrary, any contract agreement, deed, lease, note or other document or instrument executed on

behalf of the Company by a Manager shall be deemed to have been duly executed by the Company; no Member's signature shall be required in connection with the foregoing and third parties shall be entitled to rely upon the Manager's power to bind the Company without otherwise ascertaining that the requirements of this Agreement have been satisfied. [Section 6.3(a)]

7. To the fullest extent permitted by law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Agreement the Manager is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Manager shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, or (ii) in its "good faith" or under another express standard, the Manager shall act under such express standard and shall not be subject to any other or different standard. [Section 6.3(c)]

8. Except as set forth in Section 6.2, no Member shall have any right to vote with respect to any Company action. [Section 6.4]

9. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that the Manager shall owe no fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing. [Section 6.5]

10. The Company shall maintain true and proper books, records, reports, and accounts in which shall be entered all transactions of the Company. The Company shall also maintain all schedules to this Agreement and shall update such schedules promptly upon receipt of new information relating thereto. Notwithstanding anything in Section 18-305 of the Act, except as provided in Section 6.8(b), no Member shall have any right to review or inspect any of the books or records of the Company or receive any other Company information. [Section 6.8(a)]

11. To the fullest extent permitted by law, a Member shall not Transfer all or any portion of its Interest without the prior written consent of the Manager, which consent may be granted or withheld in the Manager's sole discretion. [Section 7.1]

12. No Member shall resign from the Company or otherwise cease to be a Member without the consent of the Manager, which consent may be granted or withheld in the Manager's sole discretion. [Section 7.2]

13. The Manager, in its sole discretion, may cause any Member's Interest to be redeemed by the Company for any reason. Any Interest of a Member to be redeemed by the Company shall be redeemed for the Fair Market Value of such Interest, as determined by the Manager in its sole discretion. Such payment to the Member shall either be made in cash or pursuant to a promissory note. Such promissory note shall: (i) provide for interest at the lowest rate necessary to avoid the imputation of additional interest under the Code; and (ii) have a stated principal amount of the Fair Market Value of such Member's Interest being redeemed, as determined by the Manager in its sole discretion. [Section 7.3]

14. There shall be no requirement of annual or periodic meetings of the Company's members or managers within the meaning of the Act. [Section 10.1]

15. Any action of the Manager may be taken by written consent of the Manager. Any consent or approval required by this Agreement to be "written" may also be made by the use of electronic transmission. [Section 10.2]

16. This Agreement may be amended, in whole or in part, only through a written amendment executed by the Manager. [Section 10.4]

APPENDIX B
QUALIFICATIONS OF THE APPRAISER

Steven C. Hastings, MBA, CPA/ABV/CFF, CGMA, ASA, CVA
Principal
shastings@valuescopeinc.com, 817-481-4901

Mr. Hastings has conducted valuations of common and preferred stock, other equity, and debt instruments of banks and privately held companies.

EMPLOYMENT HISTORY

2006 – Present *ValueScope, LLC*

Principal
Mr. Hastings joined the company as a principal to provide valuation and financial modeling and expert advisory services to a select group of clients that expect a high level of accurate financial analysis. As a CPA with significant valuation and financial reporting experience, Mr. Hastings bridges the gap between deal structuring, valuation and the requirements of financial reporting.

2001 – 2006 *Value Capital, LLC*

Principal
Mr. Hastings served as a principal with Value Capital, LLC. During his tenure at Value Capital Mr. Hastings gained extensive experience in business financings, as well as the analysis of market dynamics in various industries. He provided services to clients in several transactions involving mergers and acquisitions and consulted on and was party to several creative financing transactions. His clients include: health care providers; software development, India outsource services, pre-media print services, and e-learning; video productions and TV show producers; finance companies; restaurant development companies; and other service industries.

Public Service - 1994 to 2000 *Finance Commission of Texas*

Director
The Commission provides overall policy and supervisory control for three key state agencies: the Banking Department, the Savings and Loan Department and the Office of Consumer Credit Commissioner. As the CPA member of the Finance Commission, Mr. Hastings was responsible for testifying to the Texas Senate on the validity and achievability of bi-annual budgets. Mr. Hastings served as chairman of the Audit Committee for the Texas Department of Banking, which provided the guidance and oversight for compliance with Texas's banking rules and regulations. He was

instrumental in assisting the Savings and Loan Department in writing new Mortgage Broker regulations and worked closely with the Consumer Credit Commissioner in clarifying the Texas payday lending regulations.

1994 – 2001 *MedCare Financial Solutions, Inc.*

President
Mr. Hastings served as an officer of MedCare Financial Solutions, Inc. and MedCapital Funding Corporation. MedCapital provided Medicare, Medicaid and private pay receivable financing to health care providers. MedCare Financial Solutions provided other financial and operational services to health care providers. These services included: divestitures; mergers and acquisitions; claims processing; educational/training; financial consulting; and financing advice regarding working capital, subordinated debt and equity lending. Mr. Hastings developed several reimbursement and financing training courses and is an accomplished speaker on topics related to health care reimbursement and financing systems.

1986 – 1994 *H.D. Vest Financial Services*

Executive Vice President and CFO
As executive vice president and CFO of H.D. Vest Financial Services, Mr. Hastings assisted in placing over $1.5 billion annually in investment. Responsible for day-to-day financial operations and capital structuring, Mr. Hastings gained experience in a wide variety of industries and gained strategic relationships with other investment bankers and business brokers. Mr. Hastings was instrumental in taking HD Vest public.

As a general securities principal, Mr. Hastings supervised stockbrokers' and investment advisors' day-to-day activities. As a securities financial and operations principal, he was responsible for filing net capital reports and other types of certifications with the NASD, SIPIC and other state and federal regulating bodies. Being licensed in life, disability, health, property and casualty insurance, Mr. Hasting was instrumental in implementing this line of business at HD Vest.

1979 – 1986 *Arthur Andersen & Co.*

Senior Manager
Mr. Hastings served as a senior manager with significant responsibilities in the several industries. He consulted on accounting, finance, tax, operations, and systems issues.

FORMAL EDUCATION

Master of Business Administration - Arizona State University, Tempe, Arizona

Bachelor of Science - Indiana University, Bloomington, Indiana

CERTIFICATIONS AND LICENSES

Certified Public Accountant (CPA)
Accredited Senior Appraiser (ASA)
Certified Valuation Analyst (CVA)
Accredited in Business Valuations, AICPA (ABV)
Certified in Financial Forensics, AICPA (CFF)
Chartered Global Management Accountant, AICPA (CGMA)
Former, Certified Health Insurance Claims Professional (NACAP)
Former, Securities Financial and Operations Principal
Former, General Securities Principal
Former, Registered Investment Advisor Principal
Former, Life, Disability, Health, Property and Casualty Licenses

ORGANIZATIONS AND PROFESSIONAL ASSOCIATIONS

American Institute of CPAs (CPA license, ABV and CFF credential)
Texas Society of CPAs (CPA license)
Dallas Society of CPAs (Past: Secretary, Ethic Committee Chairman, Financial Planning Committee Chairman)
American Society of Appraisers (ASA credential)
National Association of Certified Valuation Analysts (CVA credential)
AICPA Business Valuation & Forensic Litigation Support (CFF Credential)
Financial Executive Institute

RECENT IRS CASES - OFFICE OF CHIEF COUNSEL

Expert Witness – United States Tax Court (New York) 2018, Consolidated T.C. Docket No. 23516-16, Marc Chrem & Esther Chrem v. Commissioner of Internal Revenue, Economic interest in a corporation for gift tax purposes.

- Expert Report April 2018

Expert Witness – United States Tax Court (Nashville) 2009, T.C. Docket No. 30515-09, Nancy Sue Hawk, Transferee, Petitioner v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report April 2016
- Testimony June 2016
- Court Opinion November 2017

Expert Witness – United States Tax Court (Dallas) 2016, T.C. Docket No. 3030-14, Red River Ventures, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report September 2015
- Stipulated Tax Court Opinion December 2016

Expert Witness – United States Tax Court (Washington DC) 2016, T.C. Docket No. 1045-13, Estate of Jinana M. Bowey, et al, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report September 2015
- Stipulated Tax Court Opinion December 2016

Expert Witness – United States Tax Court (Boston) 2014, T.C. Docket No. 8401-13, Estate of Edward S. Redstone, Petitioner, v. Commissioner of Internal Revenue, Respondent. Economic interest in a corporation for gift tax purposes.

- Expert Report June 2014
- Testimony August 2014
- Tax Court Opinion October 2015

Expert Witness – United States Tax Court (Washington DC) 2014, T.C. Docket No. 223630-12, Michael Tricarichi, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report April 2014
- Testimony June 2014
- Tax Court Opinion October 2015

Expert Witness - United States Tax Court (Chicago, IL) 2014, T.C. Docket No. 6936-10, et al, John M. Alterman, et al, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.

- Expert Report March 2014
- Testimony May 2014
- Tax Court Opinion December 2015

Expert Witness – United States Tax Court (Los Angeles), 2013 - 2014, Docket No. 8097-13, *Sumner Redstone, Petitioner, v. Commissioner of Internal Revenue, Respondent. Economic interest in a corporation for gift tax purposes.*

- Expert Report January 2014
- Testimony March 2014
- Tax Court Opinion December 2015

Expert Witness – IRS & DOJ, United States Tax Court (Houston) 2013, Docket No. 20177-11, *Richard H. Cullifer, Petitioner, v. Commissioner of Internal Revenue, Respondent. Transferee of a transferee liability issues.*

- Expert Report August 2013
- Testimony November 2013
- Tax Court Opinion October 2014

RECENT IRS CASES – LMSB AUDIT DIVISION

Expert Witness for the IRS LSMB Audit Division – Plantation, FL, 2016, International debt transactions subject to IRC Sections 163(a) and 385.

- Federal Tax Appeals Testimony – Houston, TX, November 2016.

Expert Witness for the IRS LSMB Audit Division – Houston, TX, 2016, International financing transactions subject to IRC Section 482.

- Federal Tax Fast Track Appeals Testimony – Houston, TX, January 2016.

Expert Witness for the IRS LSMB Audit Division – Houston, TX, 2015, Split-dollar life insurance policy dealing with IRC Sections 1.7872, 1.61-22 and 20.2031.

- Federal Tax Appeals Testimony – Houston, TX, August 2015.

Expert Witness for the IRS LSMB Audit Division – Detroit, MI, 2015, International Inversion Case dealing with IRC Section 7874.

- Federal Tax Appeals Testimony – Detroit, MI, June 2015.

RECENT DEPARTMENT OF JUSTICE CASE

Expert Witness – United States District Court for the Northern District of Texas, Civil Cause No. 3:17-cv-0609-B, Tony and Mii's, Inc, et al, v. United States of America. Fraudulent valuation issues report, October 2018.

Expert Witness – United States District Court for the Southern District of Texas, Civil Action No. 4:16-cv-03302, ALPC Services of Texas, Inc. v. United States of America and Internal Revenue Service. Valuation issues report, 2017.

- Stipulated Settlement, 2017

Expert Witness – Federal Court, Case No. 12-844, *The Estate of David W. Longaberger v. The United States.* Valuation issues report, 2014.

RECENT CIVIL COURT REPORTS, TESTIMONY AND DEPOSITIONS

Expert Witness – The U.S. District Court for the District of Delaware, C.A. No. 06-451-SLR, Alcoa v. Alcan, Century Aluminum, Pechiney, et al. Deferred tax benefits and the improper recording of revenue and expenses for federal tax purposes.

- Expert Report June 2018
- Deposition Testimony May 2019

Expert Witness - Dallas County District Court, Texas, Cause No. DC-15-00923, Enterprise Financial Group, Inc. v. NAVISS, LLC et al. Fraudulent transfer, solvency and economic damages.

- Expert Report April 2018
- Daubert Hearing Testimony May 2018 (Report and Testimony Accepted by Court)

Expert Witness – Dallas County District Court, Texas, Cause No. DC-16-00270, Victor Bernal, et al v. DK8, LLC, et al (Honda of Burleson). Shareholder buyout dispute.

- Expert Report November 2016

Expert Witness – Dallas County, Texas, Cause No. CC-14-06294-C, Caden Clark v. Columbia Medical Center of Arlington et al. Economic damages related to lost wages.

- Expert Report February 2016
- Deposition May 2016
- Jury Trial August 2016

Expert Witness – State of Louisiana Division of Administrative Law, Docket No. 2015-4059-HH, Department of Health and Hospitals in the Matter of General Medicine. Medicaid claims coding issues.

- Expert Report February 2016
- Trial Testimony March 2016

Expert Witness – Federal Magistrate, Washington D.C., Case No. 14-671C. Always at Market, Inc. v. United States of America (DOD/DOJ). Army & Air Force Exchange Service economic damages.

- Expert Report September 2015
- Deposition February 2016
- Stipulated Settlement August 2016

Expert Witness – Circuit Court of Jefferson County, Alabama, Civil Action No. CV-05-1483, General Medicine, PC v. Healthsouth Corporation v. General Medicine, PC. Economic damages related to contract dispute.

- Expert Report April 2014
- Deposition June 2014
- Jury Trial February 2015

SPEAKING ENGAGEMENTS

"How to Finance Your Company" – National Med Trade

"Employee Stock Ownership Plans – When They Make Sense" – TAHC

"Documentation Linking Systems" – Oklahoma Healthcare Association

"CORF – What You Need to Know to Run A Successful Business" – PT Association

"Surviving a Prospective Payment System" – TAHC

"Diversification Strategies for Healthcare Providers" – Missouri Healthcare Association

"Diversification Strategies" – NAHC

"Cost Reporting Under IPS and PPS" –TAHC

"Key Survival Strategies under the Balanced Budget Act of 1997" – NAHC

"Financing Receivables" – Kitchens, Lambert & Associates

"Getting Paid" – NAHC

"The Cost Reimbursement System – Achieving Your Goals" – Amedisys Corporation Annual Client Seminar

"Cost Reporting – What You Need to Know to Run A Successful Business" – The Southwest Region AHH

"The Political Process and Your Business" – The Dallas/Fort Worth Association of Mortgage Brokers

"Underwater Stock Options: A Drag on the Company's Financial Performance" – Polaris International

"Estate & Gift Tax Discount Issues – Case Studies" – Internal Revenue Service

"Discounted Cash Flow Analysis: The Four-Step Process" – Internal Revenue Service

"Purchase Price Allocation: Valuation Challenges During Due Diligence" – Strafford Publications

"What's It Worth" – Financial Executives International

WHITE PAPERS

Attaining Reasonable Certainty in Economic Damages Calculations
Healthcare Compensation Arrangements at Risk - OIG Issues Alert on Physician Compensation
An Easy Tool for Determination of Personal v. Enterprise Goodwill
Common Transfer Pricing Mistakes
Possible Changes to Valuation Discount Rules is Unlikely
Common Transfer Pricing Mistakes
Audit Risk for Captive Insurance Companies

SCHEDULES

CDMCFAD, LLC
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CDMCFAD, LLC — **Summary Schedule**
Valuation Summary and Conclusion — **Valuation Date: March 25, 2025**

Synthesis of Fair Market Value

Fair Market Value Summary			
		Value	**Reference**
Income Approach			
Value of Subject Interest, Minority, Marketable		$2,045,531	*Schedule B.1*
Less: Discount for Lack of Marketability	*20.0%*	($408,339)	*Schedule C.4*
Value of Subject Interest, Minority, Non-Marketable		**$1,637,192**	

CDMCFAD, LLC	Schedule A.1
Historical Financial Analysis	Valuation Date: March 25, 2025

Historical Distributions Table

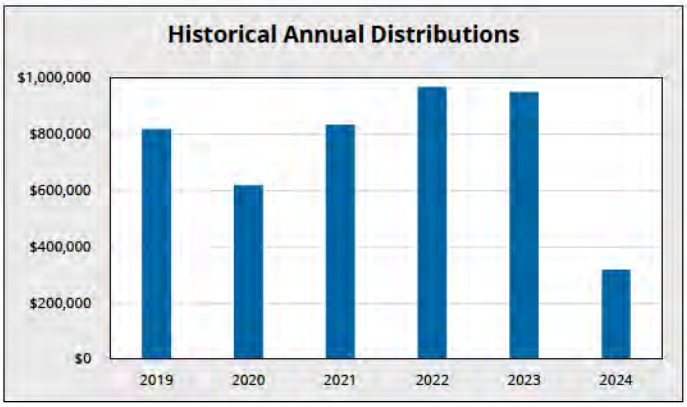
Quarterly Distributions - Previous 5 Years	
Quarter	Total
31-Mar-19	$90,750
30-Jun-19	90,125
30-Sep-19	84,875
31-Dec-19	553,300
2019 Subtotal	$819,050
31-Mar-20	62,750
30-Jun-20	66,500
30-Sep-20	65,500
31-Dec-20	424,300
2020 Subtotal	$619,050
31-Mar-21	77,625
30-Jun-21	91,375
30-Sep-21	97,375
31-Dec-21	568,075
2021 Subtotal	$834,450
31-Mar-22	104,125
30-Jun-22	116,125
30-Sep-22	112,750
31-Dec-22	635,950
2022 Subtotal	$968,950
31-Mar-23	107,875
30-Jun-23	102,750
30-Sep-23	106,625
31-Dec-23	633,631
2023 Subtotal	$950,881
31-Mar-24	106,467
30-Jun-24	105,127
30-Sep-24	106,202
31-Dec-24	TBD
2024 Subtotal	$317,796
Grand Total (2019 - 2024)	$4,510,177

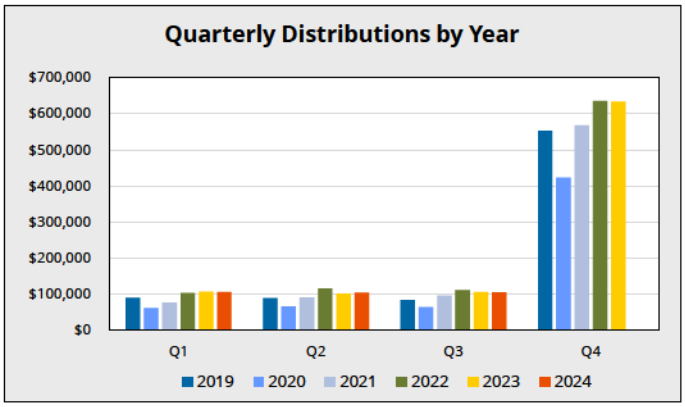
Note: Payments are typically made two to three months following the end of each period.

CDMCFAD, LLC
Historical Financial Analysis

Schedule A.2
Valuation Date: March 25, 2025

Historical Distributions Charts





Note: Q4 2024 distributions have not yet been paid

CDMCFAD, LLC Historical Financial Analysis	Schedule A.3 Valuation Date: March 25, 2025

CLO HoldCo, Ltd - Summary Balance Sheet

	Balance Sheet as of: 9/30/2024	
	Actual	%
Current Assets		
Cash & Equivalents	$138,419,315	43.8%
Total Current Assets	138,419,315	43.8%
Other Assets		
Other Investments	175,328,461	55.4%
Cash Collateral	81,419	0.0%
Interest Receivable	0	0.0%
Dividends Receivable	0	0.0%
Note Receivable	1,321,109	0.4%
Due from Affiliate	470,000	0.1%
Due from Broker	637,419	0.2%
Total Assets	316,257,723	100.0%
Total Liabilities	47,204,916	14.9%
Total Equity	269,052,808	85.1%
Total Liabilities & Equity	316,257,723	100.0%

CDMCFAD, LLC
Income Approach Analysis

Schedule B.1
Valuation Date: March 25, 2025

Synthesis of Net Cash Flow

		For the Projected Period Ending:											
		18-Apr-25	30-Jun-25	30-Sep-25	31-Dec-25	31-Mar-26	30-Jun-26	30-Sep-26	31-Dec-26	31-Mar-27	30-Jun-27	30-Sep-27	31-Dec-27	Residual (Annual)
Projected Distributions		$634,791	$107,171	$103,939	$106,413	$650,660	$109,850	$106,537	$109,074	$666,927	$112,596	$109,200	$111,801	$1,025,537
Period		0.07	0.32	0.57	0.82	1.07	1.32	1.57	1.82	2.07	2.32	2.57	2.82	
PV Factor @ WACC =	68.3%	*0.9663*	*0.8484*	*0.7449*	*0.6540*	*0.5742*	*0.5041*	*0.4426*	*0.3886*	*0.3412*	*0.2995*	*0.2630*	*0.2309*	
Present Value (PV) Net Cash Flow		**$613,430**	**$90,926**	**$77,423**	**$69,593**	**$373,598**	**$55,377**	**$47,153**	**$42,384**	**$227,533**	**$33,726**	**$28,718**	**$25,813**	
PV net cash flow		$1,685,675												
PV residual value		$359,856												
Value of Subject Interest, Minority, Marketable		**$2,045,531**												
Less: Discount for Lack of Marketability *(see schedule C-4)*		20.0%												
Value of Subject Interest, Minority, Non-Marketable		**$1,637,192**												

Key Valuation Statistics	
CLO HoldCo Net Asset Value	$269,052,808
Implied Discount for Lack of Control	99.2%
Valuation as a % of NAV	0.6%
Estimated Payback Period (Years)	1.27

Residual Value - Gordon Growth Model

Residual annual net cash flow :	$1,025,537
Residual discount rate (k) :	68.3%
Residual growth rate (g) :	2.5%
x Gordon multiple [1 / (k-g)] :	1.5x
Residual value :	$1,558,568
x PV factor :	*0.2309*
PV residual value :	$359,856

CDMCFAD, LLC
Income Approach Analysis

Schedule B.2
Valuation Date: March 25, 2025

Sensitivity Analysis - Hypothetical Risk-Free Bond

		For the Projected Period Ending:												
		18-Apr-25	30-Jun-25	30-Sep-25	31-Dec-25	31-Mar-26	30-Jun-26	30-Sep-26	31-Dec-26	31-Mar-27	30-Jun-27	30-Sep-27	31-Dec-27	Residual (Annual)
Projected Distributions		$634,791	$107,171	$103,939	$106,413	$650,660	$109,850	$106,537	$109,074	$666,927	$112,596	$109,200	$111,801	$1,025,537
Period		0.07	0.32	0.57	0.82	1.07	1.32	1.57	1.82	2.07	2.32	2.57	2.82	
PV Factor @ Risk Free Rate =	4.7%	*0.9970*	*0.9858*	*0.9746*	*0.9636*	*0.9527*	*0.9420*	*0.9313*	*0.9208*	*0.9104*	*0.9001*	*0.8899*	*0.8799*	
Present Value (PV) Net Cash Flow		**$632,896**	**$105,644**	**$101,300**	**$102,540**	**$619,894**	**$103,473**	**$99,219**	**$100,433**	**$607,158**	**$101,348**	**$97,180**	**$98,370**	

PV net cash flow	$2,769,456
PV residual value	$41,969,350
Value of Subject Interest, Minority, Marketable	**$44,738,806**
Less: Discount for Lack of Marketability *(see schedule C.4)*	20.0%
Value of Subject Interest, Minority, Non-Marketable	**$35,807,821**

Key Valuation Statistics	
CLO HoldCo Net Asset Value	$269,052,808
Implied Discount for Lack of Control	83.4%
Valuation as a % of NAV	13.3%
Estimated Payback Period (Years)	26.53

Residual Value - Gordon Growth Model

Residual annual net cash flow :	$1,025,537
Residual discount rate (k) :	4.7%
Residual growth rate (g) :	2.5%
x Gordon multiple [1 / (k-g)] :	46.5x
Residual value :	$47,699,415
x PV factor :	*0.8799*
PV residual value :	$41,969,350

CDMCFAD, LLC
Discount for Lack of Marketability (DLOM) Analysis
Schedule C.1
Valuation Date: March 25, 2025

DLOM Determination - Restricted Stock Studies

Restricted Stock Studies

	Name of Study	Study Date	Period Covered From	To	Sub-Sample	Observations	Reported Mean	Reported Median
1	SEC Overall Average	1971	1966	1969	Prior to Feb 1997	338	24.0%	NA
2	Johnson and Racette	1981	1967	1973	Prior to Feb 1997	86	34.0%	NA
3	Milton Gelman	1972	1968	1970	Prior to Feb 1997	89	33.0%	33.0%
4	Robert R. Trout	1977	1968	1972	Prior to Feb 1997	60	33.5%	NA
5	Robert E. Moroney	1973	1969	1972	Prior to Feb 1997	146	35.6%	33.0%
6	J. Michael Maher	1976	1969	1973	Prior to Feb 1997	34	35.4%	34.0%
7	Stryker and Pittock (Standard Research Consultants)	1983	1978	1982	Prior to Feb 1997	28	NA	45.0%
8	Wruck, Karen H. (Unregistered only)	1989	1979	1985	Prior to Feb 1997	37	13.5%	12.2%
9	FMV Opinions (Hall/Polacek)	1994	1979	1992	Prior to Feb 1997	>100	23.0%	NA
10	Barclay, Holderness, and Sheehan	2006	1979	1997	Prior to Feb 1997	594	18.7%	17.4%
11	Hertzel and Smith	1993	1980	1987	Prior to Feb 1997	106	20.1%	13.3%
12	Management Planning, Inc.	1997	1980	1995	Prior to Feb 1997	49	27.7%	28.9%
13	Hertzel, Lemmon, Linck, and Rees	2001	1980	1996	Prior to Feb 1997	404	16.5%	13.4%
14	Wruck and Wu	2008	1980	1999	Encompassing 1997	1,854	11.3%	11.0%
15	Angrist, Curtis, and Kerrigan (MPI) (Unregistered only)	2011	1980	2009	Spanning 1997	402	22.1%	19.6%
16	Willamette Management Associates	1989	1981	1984	Prior to Feb 1997	33	NA	31.2%
17	Silber (1981-1988)	1991	1981	1988	Prior to Feb 1997	69	33.8%	NA
18	Krishnamurthy, Spindt, Subramanium, and Woidtke:	2001						
	All		1983	1992	Prior to Feb 1997	391	19.4%	NA
	Restricted Shares		1983	1992	Prior to Feb 1997	75	34.0%	NA
	Shares with Registration Pending		1983	1992	Prior to Feb 1997	23	23.3%	NA
	Shares Not Known to Be Restricted		1983	1992	Prior to Feb 1997	293	15.4%	NA
	Shares with Pending Registration or Not Known		1983	1992	Prior to Feb 1997	316	16.0%	NA
19	Wu	2003	1986	1997	Prior to Feb 1997	301	8.7%	19.8%
20	Bajaj, Denis, Ferris, Sarin (Unregistered only)	2001	1990	1995	Prior to Feb 1997	51	28.1%	26.5%
21	BVR (Johnson)	1999	1991	1995	Prior to Feb 1997	72	20.2%	NA
22	Finnerty:	2012						
	Pre-February 1997		1991	1997	Prior to Feb 1997	41	26.3%	20.3%
	Post-February 1997		1997	2007	After 1997 & Before 2008	176	21.5%	15.6%
23	Chaplinsky and Haushalter:	2010	1995	2000				
	Purchase Discount Only				Encompassing 1997	382	18.7%	15.0%
	Purchase Discount and Warrant				Encompassing 1997	235	17.3%	14.0%
24	Brophy, Ouimet, and Sialm:	2006						
	Hedge Funds - Traditional PIPEs		1995	2002	Encompassing 1997	586	14.1%	NA
	Other Investors - Traditional PIPEs		1995	2002	Encompassing 1997	1,559	9.0%	NA
25	Columbia Financial Advisors:	2000						
	Pre-February 1997		1996	1997		23	21.0%	14.0%
	Post-February 1997		1997	1998	After 1997 & Before 2008	15	13.0%	9.0%
26	Meidan	2006	1996	2003	Encompassing 1997	1,726	9.8%	NA
27	Verdasca	2007	2000	2006	After 1997 & Before 2008	711	9.7%	10.1%
28	Billett and Floros	2012	2001	2008	After 1997 & Before 2008	12,004	NA	26.7%
29	Stout Risius Ross	2011	2005	2010	Encompassing 2008	98	10.9%	9.3%
30	Harris-Trugman Valuation Associates:	2011						
	All		2007	2010	Encompassing 2008	136	16.6%	14.3%
	Pre-SEC Rule Change		2007	2007	After 1997 & Before 2008	47	17.9%	14.8%
	Post-SEC Rule Change		2008	2010	Post 2008	89	15.9%	14.3%

CDMCFAD, LLC
Discount for Lack of Marketability (DLOM) Analysis **Valuation Date: March 25, 2025**

DLOM Determination - Restricted Stock Studies Summary Statistics

Descriptive Statistics for Reported Mean and Median Discounts		
	Mean	**Median**
All Studies		
Low	8.7%	9.0%
Median	19.4%	15.3%
Mean	**20.8%**	19.8%
High	35.6%	45.0%
Standard Deviation	8.2%	9.4%
All Studies Prior to Feb 1997		
Low	8.7%	12.2%
Median	23.3%	23.4%
Mean	24.4%	24.4%
High	35.6%	45.0%
Standard Deviation	7.9%	10.1%
All Studies after 1997 and before 2008		
Low	9.7%	9.0%
Median	15.5%	14.8%
Mean	15.5%	15.2%
High	21.5%	26.7%
Standard Deviation	5.2%	7.0%
All Studies Encompassing 1997		
Low	9.0%	11.0%
Median	14.1%	14.5%
Mean	14.6%	14.9%
High	22.1%	19.6%
Standard Deviation	4.9%	3.6%
All Studies Encompassing 2008		
Low	10.9%	9.3%
Median	13.8%	11.8%
Mean	13.8%	11.8%
High	16.6%	14.3%
Standard Deviation	4.0%	3.5%
Indicated Discount for Lack of Marketability	**20.8%**	

CDMCFAD, LLC — **Schedule C.3**
Discount for Lack of Marketability (DLOM) Analysis — **Valuation Date: March 25, 2025**

DLOM Qualitative Scoring

Feature	Restricted Stock	Rating	Discount for Lack of Marketability (DLOM) Analysis	Rating	Advantage
Asset liquidity	Securities examined in marketability studies often are of smaller industrial operating companies, often with poor cash flows.	Fair	A majority of investments are in illiquid securities with poor cash flows. However, CLO HoldCo has approximately $91 million in net cash, representing approximately 34% of net asset value.	Strong	Better
Cash flow expectations	Restricted securities typically have a lower likelihood of paying dividends since they are associated with emerging companies.	Fair	Distributions are entirely dependent on manager discretion as to the timing and amount. Distributions are not required. Howevever, regular distributions have been made over the last five years.	Good	Slightly better
Contingent liabilities	Moderate probability of contingent liabilities depending on type of company and size. Smaller companies can fall prey to securities litigation.	Fair	Higher probability of contingent liabilities. CLO HoldCo has been engaged in numerous litigation matters.	Weak	Slightly worse
Debt capacity	Company leverage is usually on the higher side, as they are typically in the emerging stage.	Weak	CLO HoldCo has a small amount of debt representing 15% of net asset value.	Good	Better
Redemption/ withdrawal	No redemption rights.	Poor	No redemption rights.	Poor	Equal
Transfer restrictions	Transfer restrictions are limited to securities laws, with holding periods of two years. Holding period was shortened to one year in 1997, but studies generally relate to two year holds. Once the restriction time period is complete, no restrictions on transfer exist. Markets are liquid for non-restricted shares.	Fair	Transfers must be approved by the managers.	Poor	Worse
Value of entity	Companies range in size, however, restricted securities are more commonly utilized by smaller companies in the development stage. Approximately 50 percent of the companies issuing restricted stock included in the Silber study had sales less than $40 million.	Fair	Members have extremely limited rights to the underlying net asset value. CLO HoldCo is expected to generate revenue well in excess of the expected distributions.	Good	Slightly better
Value of interest	Purchasers of restricted securities tend to be institutional or private investors that are active in the public markets. The analysis associated with these types of securities precludes small holders from purchasing. Size of interests tend to be moderate.	Fair	At the manager's discretion, members may be diluted through the issuance of additional membership interests to non-existing members.	Poor	Worse

CDMCFAD, LLC **Schedule C.4**
Discount for Lack of Marketability (DLOM) Analysis **Valuation Date: March 25, 2025**

Calculation of Marketability Discounts

Feature	Net Advantage	Gross Adjustment	Importance	Weight	Adjustment	Scaling Adjustment	Final Adjustment
	A (Schedules B)	B = F(A)	C	D = F(C)	E = B x D	F = 1+E or 1/(1-E)	
Marketability Factors							
Asset liquidity	Better	-16%	High	100%	-16%	86%	-2.9%
Cash flow expectations	Slightly better	-8%	High	100%	-8%	92%	-1.4%
Contingent liabilities	Slightly worse	8%	High	100%	8%	108%	1.4%
Debt capacity	Better	-16%	Low	25%	-4%	96%	-0.7%
Redemption/ withdrawal	Equal	0%	High	100%	0%	100%	0.0%
Transfer restrictions	Worse	16%	High	100%	16%	116%	2.8%
Value of entity	Slightly better	-8%	Medium	50%	-4%	96%	-0.8%
Value of interest	Worse	16%	Low	25%	4%	104%	0.8%
Net Scaling Adjustment	**G = Product (F_i), i = 1 to n**					**96%**	**-0.8%**
Marketability Discount							
Unadjusted discount	H (See Report)				20.8%		
Scaling adjustment	G (See above)				96%		
Concluded Marketability Discount	**I = G x H**					**20.0%**	

CDMCFAD, LLC	Schedule C.5
Discount for Lack of Marketability (DLOM) Analysis	Valuation Date: March 25, 2025

DLOM Footnotes and Comments

A) Our comparison matrix ranks the features of the Subject Interest and the comparable interests on a scale from 1 to 5.
1 = Poor 2 = Weak 3 = Fair 4 = Good 5 = Excellent
We then subtract the Subject Interest feature score from the comparable feature score to determine the advantage.
0 = Equal 1 = Slightly Better 2 = Better 3 = Much Better 4 = Significantly Better
-1 = Slightly Worse -2 = Worse -3 = Much Worse -4 = Significantly Worse

B) B is calculated as the weighted average standard deviation of the comparable investments in closed end funds multiplied by the Advantage Score.

C) The importance of the feature is assessed.
1 = Low 2 = Medium 3 = High

D) Weights are allocated as follows:
Low = 25% Medium = 50% High = 100%

E) To compute the adjustment, B is multiplied by D.

F) The scaling adjustment is computed as 1+E if E > 0 or 1/(1-E) if E < 0 for the particular feature.

G) The net scaling adjustment for marketability factors is the product of all marketability features' scaling adjustments.

H) This is the concluded baseline marketability discount determined for comparable investments.

I) This is the baseline marketability discount multiplied by the scaling factor.

EXHIBIT 94

CB-407515

Certificate Of Incorporation

*I, **JOY A. RANKINE** Assistant Registrar of Companies of the Cayman Islands DO HEREBY CERTIFY, pursuant to the Companies Act, that all requirements of the said Act in respect of registration were complied with by*

CDH GP, Ltd.

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the 27th day of February Two Thousand Twenty-Four

Given under my hand and Seal at George Town in the Island of Grand Cayman this 27th day of February Two Thousand Twenty-Four

REGISTRAR OF COMPANIES EXEMPTED CAYMAN ISLANDS

Assistant Registrar of Companies,
Cayman Islands.

Authorisation Code : 241009667437
www.verify.gov.ky
28 February 2024

e e r

1 Supervision Order in the Grand Court of the Cayman Islands FSD2025-0116 (A)
2 Curriculum Vitae of Margot MacInnis
3 Certificate of Incorporation - Charitable DAF Holdco, Ltd
4 Charitable DAF HoldCo Articles of Association
5 Amended and Restated Memorandum and Articles of Association of Charitable DAF HoldCo, Ltd
6 Register of Members Charitable DAF Holdco Ltd
7 Resolutions of the Sole Director (100 mgmt shares)
8 Share Transfer (100 Mgmt Shares) from Grant ames Scott to Mark E. Patrick
9 Director Resolutions - Appointment of Paul Murphy
10 Director Report of Charitable DAF Holdco, Ltd
11 IRS Determination Letter to Highland Dallas Foundation
12 Share Transfer Form
13 Highland Dallas Foundation Share Transfer
14 IRS Determination Letter to Highland Kansas City Foundation
15 Highland Kansas City Foundation Share Transfer
16 IRS Determination Letter to Highland Santa Barbara Foundation
17 Highland Santa Barbara Foundation Share Transfer
18 IRS Determination Letter to CFNT
19 Share Transfer Form of CFNT
20 DFW Share Transfer
21 Director Resolutions (Share Issuance to DFW)
22 December 2023 Register of Directors of Charitable DAF Holdco Ltd
23 Highland Dallas Foundation SO Agreement
24 Highland Kansas City Foundation SO Agreement
25 Highland Santa Barbara Foundation SO Agreement
26 Highland Dallas Foundation Certificate of Formation
27 Highland Kansas City Foundation Certificate of Formation
28 Highland Santa Barbara Foundation Certificate of Formation
29 Highland Dallas Foundation By-Laws
30 Highland Kansas City Foundation By-Laws
31 Highland Santa Barbara Foundation By-Laws
32 Structure chart of the DAF Structure prior to the Relevant Transactions
33 Structure chart of the DAF Structure after to the Relevant Transactions
34 Certificate of Registration of Charitable DAF Fund LP
35 A R Exempted Limited Partnership Agreement of Charitable DAF Fund, LP
36 Second A R Exempted Limited Partnership Agreement of Charitable DAF Fund, LP
37 Charitable DAF GP LLC Managing Member Consent to Assignment to CDH GP Ltd
38 Section 10- Replacement of Charitable DAF GP LLC
39 Register of Members for CDH GP Ltd
40 CLO HoldCo, Ltd Register of Members as of 5.19.2021
41 CLO HoldCo, Ltd CORIS Report
42 CLO HoldCo, Ltd - Members Articles of Association
43 CLO HoldCo, Ltd Certificate of Incorporation
44 Director Resolutions to Transfer Fund from HoldCo to CDM for CDM Shares
45 Deed of Assignment Assumption to CDM
46 Director Resolutions - Redemption of CDM Shares
47 CDM Certificate of Formation
48 CDM LLC Agreement
49 Certificate of Incorporation of DFW Charitable Foundation
50 March 2025 ValueScope Valuation of Participation Shares of HoldCo
51 September 2024 ValueScope Valuation
52 Letter Agreement
53 CDM Redemption Agreement (Amendment 1)
54 CDM Redemption Agreement (Amendment 2)
55 CDM Manager Consent to Admission and Redemption
56 Expenses
57 09.13.2024 Director Resolutions re. M. Patrick Compensation
58 10.01.2024 - Director Resolutions re. M. Patrick Compensation
59 Statement of Claim
60 No Confidence Letter
61 Email from Mr Murphy to Mr Patrick
62 Email from Walkers to the Directors
63 Walkers Presentation - Participating Shareholder Rights Charitable DAF HoldCo Ltd
64 Emails (ulie Diaz, Paul Murphy, Michael Stockham)
65 Charitable DAF Holdco Resolutions re Voluntary Liquidation
66 Walkers Letter re Charitable DAF Holdco in Voluntary Liquidation
67 Supervision Petition in the Grand Court of the Cayman Islands FSD 2025-0116 (A)
68 Charitable DAF HoldCo - Gazette - Notice of Appointment OL
69 Charitable DAF HoldCo - Compass - Notice of First Meeting of Contributories
70 February 14, 2025 Seyfarth Letter
71 February 27, 2025 H K Letter
72 Seyfarth Letter to IRS
73 Director Resolutions - Assignment of Contracts to CDM

74 Sole Voting Shareholder Resolutions (Voluntary Liquidation)
75 March 2025 Emails (D. Mancion D. Rosenberg)
76 April 2025 Emails (D. Mancion D. Rosenberg)
77 E Petition
78 Companies Act
79 Winding Up Rules
80 Filed Resolutions re Change of Registered Office - Charitable DAF Holdco, Ltd
81 Various May une 2025 Letters and Drafts of the Protocol
82 Injunction Application
83 Hr g Tr. 132:10-11, In re Highland Capital Management, L.P., No. 19-34054-sgj-11, Bankr. N.D. Tex. (Dallas Div.) un. 8, 2021, ECF No. 2440
84 Charitable DAF Fund, LP Register of Members as of 5.19.2021
85 Supporting Organizations Texas Business Court TRO Petition
86 Paul Murphy 12.4.2024 Presentation Slides
87 12.18.2024 Carrington Coleman Email
88 Proposed Order (Rule 11 Agreement)
89 Final Rule 11 Agreement
90 Defendants MTD Plea to the urisdiction
91 Haynes Boone Memo
92 Mark Patrick Employment Agreement
93 March 2025 ValueScope Valuation Membership Interests of CDM
94 Certificate of Incorporation - CDH GP, Ltd.

EXHIBIT 70

Plaintiff
M MacInnis
Third Affidavit
November 2025
Exhibit MM-3

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 (RPJ)

IN THE MATTER OF THE GRAND COURT ACT

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

THIRD AFFIDAVIT OF MARGOT MACINNIS

I, **MARGOT MACINNIS** of Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, Century Yard, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands MAKE OATH AND SAY as follows:

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: LRA/858403-000002/85175762)

1 I am the same Margot MacInnis who swore affidavits in these proceeding on 15 July 2025 ("**MacInnis 1**") and 24 July 2025 ("**MacInnis 2**"). Capitalised terms used in this affidavit have the same meaning as in MacInnis 1 and the other affidavits referred to below, to which I reply in this affidavit.

2 I am Managing Director of Grant Thornton Specialist Services (Cayman) Limited ("**Grant Thornton**"). I am one of the joint official liquidators ("**JOLs**") of Charitable DAF HoldCo, Ltd (in Official Liquidation) (the "**Company**"), alongside Sandipan Bhowmik also of Grant Thornton. Mr Bhowmik and I were appointed as JOLs of the Company by an order of this Honourable Court dated 6 May 2025 in Cause No. FSD 116 of 2025 (JAJ) (the "**Appointment Order**").

3 I am duly authorised by my fellow JOL, Sandipan Bhowmik, to make this affidavit on the JOLs' behalf in support of the JOLs' summons dated 15 July 2025 (the "**Application**"). The purpose of this affidavit is to set out the JOLs' evidence in reply to the following affidavits filed by the Defendants:

3.1 First Affidavit of Paul Murphy sworn 18 September 2025 ("**Murphy 1**")[1] and its exhibit PM-1.

3.2 Second Affidavit of Mark Eric Patrick sworn 17 October 2025 ("**Patrick 2**") and its exhibit MEP-2.

3.3 Third Affidavit of Mark Eric Patrick sworn 17 October 2025 ("**Patrick 3**") and its exhibit MP-3.

3.4 The unsworn First Affidavit of Douglas M. Mancino dated 30 July 2025 ("**Mancino 1**") and its exhibits.

[1] I shall refer to the first affidavit of Paul Murphy dated 4 June 2025, filed in the Company's liquidation proceedings, as the "**Murphy Liquidation Affidavit**"

3.5 First Affidavit of Alexander L. Reid sworn 17 October 2025 ("**Reid 1**") and its exhibit AR-1.

4 The facts and matters set out in this affidavit that are within my own personal knowledge are true and correct. Where the contents of this affidavit are not within my own personal knowledge, I have stated the source of my knowledge and such facts are true and correct to the best of my information and belief.

5 There is now produced and shown to me a paginated exhibit marked "**MM-3**". This contains true copies of certain documents to which I refer in this affidavit. Where I refer to a page in this affidavit, I am referring to a page in "**MM-3**".

6 This affidavit is structured as follows:

A REPLY TO MURPHY 1 AND PATRICK 2**Error! Reference source not found.**

A1 Purported Justifications for the "DAF Restructuring"

A2 The correspondence with the Supporting Organisations leading up to the DAF Restructuring

A3 The Significant Increases in Mr Patrick's and Mr Murphy's Compensation

A4 D&O Insurance, Indemnification, and Payment of Legal Fees

A5 Interim Undertakings

A6 Injunction Application

A7 Other Matters

B REPLY TO PATRICK 3

C REPLY TO MANCINO AND REID AFFIDAVITS

A REPLY TO MURPHY 1 AND PATRICK 2

A1 Purported Justifications for the "DAF Restructuring"

7 In MacInnis 1 at paragraphs 65 to 78, I went through the justifications provided by the Defendants for the DAF Restructuring in their evidence filed in the Company's liquidation proceedings to that point. Having now read the Defendants' responsive evidence, there do not appear to be any new justifications given for the DAF Restructuring beyond those I have already addressed in MacInnis 1.

The 'No Economic Interest Justification'

Murphy 1

8 In Murphy 1, Mr Murphy makes several assertions as to the nature of the Supporting Organisations' rights and interests in the Company including:

8.1 At paragraph 13.2 – the Company's Participating Shares "*confer qualified rights to participate in the profits or assets of the Company*".

8.2 At paragraph 16 – the Supporting Organisations were "*gifted [their] shares around the time of the Company's incorporation*".

8.3 At paragraph 21 - "*I do not believe that it is disputed that the circa US$270 million in assets held by CLO and its subsidiaries (the "DAF Entities") were contributed neither by the Supporting Organisations nor the U.S. Charities*".

9 I understand these assertions to be directed at the Defendants' argument that the DAF Restructuring was justifiable because, on their case, the Supporting Organisations did not have

an economic interest in the Company but, rather, the Company's purpose was to act as a throughput for discretionary, charitable donations to qualifying recipients (which were not necessarily the Supporting Organisations or the Charities) (i.e. the 'No Economic Interest Justification'). Why the JOLs believe the 'No Economic Interest Justification' does not stand up to scrutiny is set out at paragraphs 66 to 69 of MacInnis 1. Mr Murphy has made no attempt to address the points made therein.

10 At paragraph 68 of Murphy 1, Mr Murphy relies on a single email exchange between Mr Dondero and Mr Patrick from over 10 years ago to support the proposition that the Supporting Organisations had no economic interest in the Company and its underlying assets[2]. The JOLs find this to be an unconvincing attempt to seek to justify retrospectively Mr Murphy's and Mr Patrick's conduct in transferring away the Company's only significant asset. It is not clear if Mr Murphy was even aware of that email exchange at the time of undertaking the DAF Restructuring. In any event, Mr Murphy has made no attempt to explain why, even if the Supporting Organisations' participating shares only entitled them to discretionary cash distributions for charitable uses[3], he thought it in their best interests to completely extinguish that right by way of the DAF Restructuring, which left the Company with no assets that would generate income to be able to make said discretionary distributions[4].

11 Furthermore, I note that pursuant to amendments to the Company's Articles approved by Mr Patrick and Mr Murphy in 2025, which appear to have been made without notice to or with the engagement of the Supporting Organisations, the Company's object was amended to benefitting "*community-focused non-profit foundations globally or for purposes recognised as charitable*", as determined by the directors (which did not exist in the prior iterations of the

[2] Page 1

[3] As set out in the first affidavit of Mark Patrick in his capacity as Management Shareholder dated 4 June 2025 filed in the Company's liquidation proceedings at paragraph 67, where the email exchange from 2014 referred to by Mr Murphy is referred to.

[4] i.e. the Partnership Interest

Articles).[5] The JOLs are concerned that this amendment was passed by Mr Patrick and Mr Murphy in an attempt to give them a purported basis to transfer the Company's sole valuable asset to another entity under their control, so long as they continued to expend some of the Fund's assets on charitable donations, whilst simultaneously paying themselves excessive compensation.

12 At paragraphs 28 to 29 of Murphy 1, he acknowledges that the express purpose of the Fund under the LPA was to benefit the "*Indirect Charitable Owners*". As Mr Patrick observes at paragraph 64 of Patrick 2, distributions from the Fund were expressly intended to address the financial needs of the "*Indirect Charitable Owners*":

> "*Distributions shall be made to the Limited Partner* [the Company] *at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses…*." [emphasis added]

13 It does not appear to be in dispute that before the DAF Restructuring, the "*Indirect Charitable Owners*" were the Supporting Organisations or the Charities in their capacity as the indirect equity owners of the sole "*Limited Partner*", which under the LPA was defined as the Company. I understand one of the arguments put forward by Mr Patrick and Mr Murphy to be that because the definition of "*Limited Partner*" referred to the Company "*and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of the LPA*", this gave them the authority to approve the transfer of the Partnership Interest from the Company to CDM at a significant undervalue. In other words, they claim their actions were lawful because

[5] Similarly, the JOLs are concerned that Mr Patrick appears to have relied on the provision of the Company's Articles permitting the Company "*to do all such things [that] in the opinion of the Directors are or may be incidental or conducive to*" the Company's 'Mission Statement' as a broad mandate allowing him to effect the DAF Restructuring under the pretense of serving charitable purposes - see paragraph 44, footnote 11 of Patrick 2.

the LPA did not forbid the admission of new limited partners and they were fulfilling the Fund's purpose. The JOLs find that to be an entirely unconvincing argument.

14 In any event, nowhere has it been explained in Mr Murphy's evidence or Mr Patrick's evidence how they satisfied themselves that it was in the Company's best interests and fulfilling of the Company's purpose in its Articles (being to provide donations to the "Indirect Charitable Owners" of the Company[6]) to transfer away the Company's only asset worth in the vicinity of US$270 million for minimal consideration. The most that is offered by Mr Murphy is at paragraphs 32 and 33 of Murphy 1:

> "*32. If a Participating Shareholder became a Restricted Person, they could be forced to transfer their shares under Article 21 of the 2025 AOA* ***[MM-1/13]****. Therefore an "Indirect Charitable Owner" effectively meant a qualifying Participating Shareholder of the Company who was not a Restricted Person.*
>
> *33. I believe this had the effect of enabling the Company and its directors to uphold and give primacy to the charitable purpose of the CDAF Fund, and required the directors of the Company to discharge their fiduciary obligations in the interests of that purpose rather than particular beneficiaries.*"

15 The JOLs are of the view that Mr Murphy and Mr Patrick's "Restricted Person" concerns were greatly overblown and likely manufactured by Mr Patrick and Mr Murphy as a means of justifying their conduct in approving the DAF Restructuring. I refer to paragraph 43.10(c) below and paragraphs 70, 72, and 74 to 75 of MacInnis 1 on this issue.

[6] As Mr Murphy acknowledges at paragraph 18 of Murphy 1

Patrick 2

16 Mr Patrick also appears to advance the 'No Economic Interest Justification' at paragraphs 62 to 70 of Patrick 2 under the heading "Discretionary Nature of Participating Shares", and at paragraphs 71 to 79 in relation to Mr Patrick and Mr Murphy's decision to cause the Company to issue a majority shareholding to DFW as part of the DAF Restructuring. The JOLs do not believe that any of the points made by Mr Patrick therein stand up to scrutiny, let alone justify the DFW Share Issuance.

17 At paragraph 71 of Patrick 2, he reasons that issuing a majority shareholding in the Company to DFW "*would have the effect of diluting the holdings of the Highland Foundations and safeguarding the [Fund's] charitable mission*". The JOLs find it concerning that Mr Patrick has admitted in sworn evidence that he intentionally diluted the holdings of the Company's existing Participating Shareholders. The JOLs also do not understand how that dilution could "safeguard the Fund's charitable mission". In particular, whilst the dilution would introduce other shareholders into the Company, it would not sever any link between the Company and Mr Dondero through the Supporting Organisations, which remained Participating Shareholders. Further, it seems to the JOLs that the Defendants' explanations are inconsistent; on the one hand, they say that the Supporting Organisations had no economic interest in the Company and were merely the recipient of discretionary distributions, but, on the other, say that, through the Supporting Organisations Mr Dondero exercised power and control over the Fund. The two propositions cannot both be true. In reality, the position is that the Supporting Organisations had valuable economic rights in the Company, including upon winding up, but they did not have the ability to control the management of the Company.

18 Whilst Mr Patrick refers to his purported concerns that the Supporting Organisations had become 'Restricted Persons' to justify the DFW Share Issuance, the JOLs believe that the true

purpose of the DFW Share Issuance was to seek to weaken the prospects of any just and equitable winding up petition filed by the Supporting Organisations against the Company[7].

19 At paragraphs 66 to 68 of Patrick 2, Mr Patrick makes the points that: (i) payment of dividends by the Company to its Participating Shareholders (the Supporting Organisations) was at the discretion of the directors; and (ii) the Charities had contractual rights[8] to fees or distributions from their respective Supporting Organisations that were calculated as a percentage of the Company's NAV.

20 As regards (i), it is commonplace for the articles of association of Cayman Islands companies to give directors discretion as to the payment of dividends to participating shareholders. As regards (ii), I note that Mr Patrick confirms that the quantum of the dividends that the Company historically paid to the Supporting Organisations mirrored those that the Supporting Organisations were obligated to pay to their respective Charities pursuant to their contractual rights: "*the quantum of their annual distributions [from the Company] was dependent on the contractual terms which governed the relationship between each of the Highland Foundations and their underlying charities.*" Yet at the same time, Mr Patrick appears to assert that because the Articles provide that dividends are at the discretion of the directors, this permitted the directors to entirely disregard the interests of the Supporting Organisations (and their respective Charities contractual rights to distributions) by transferring away the Company's sole valuable asset for minimal consideration. The result of which was to reduce the Company's NAV by approximately 99%; rendering the Charities' contractual rights to distributions from their Supporting Organisations effectively worthless. The JOLs believe that to be a wholly unsustainable assertion.

[7] See the advice Mr Patrick and Mr Murphy sought from Walkers on the DFW Share Issuance and the correspondence referred to in paragraphs 38 to 39 of MacInnis 1

[8] Under the 'Legal Relationship Agreement' for Highland Kansas City and the 'Operating Agreements' for Highland Dallas and Highland Santa Barbara, as described in paragraph 18.5 of MacInnis 1

21 As regards paragraph 72 of Patrick 2, contrary to what Mr Patrick asserts, the advice from Walkers *is* contested by the JOLs to the extent that Mr Patrick is relying on it to suggest that the DFW Share Issuance was lawful because the Supporting Organisations had no economic interest in the Company. In this regard, the second advice from Walkers referred to in paragraph 73 of Patrick 2 expressly acknowledges that the DFW Share Issuance would not have been in the best interests of the Company's existing shareholders[9]. I also note that, having read the two Walkers' advices, they are silent on whether the Directors were acting for an improper purpose in issuing a majority shareholding to DFW. Accordingly, the JOLs believe that the DFW Share Issuance was undertaken for an improper purpose in circumstances where the Directors had advice that it would not be in the best interests of the Company's existing Participating Shareholders but proceeded to do so in any event. In the premises, the JOLs believe the DFW Share Issuance amounted to a wilful breach of the Directors' fiduciary duties.

22 Further, Mr Patrick's suggestion that the Supporting Organisations had no economic interest in the Company appears to the JOLs to be at odds with the fact that the Articles expressly provide that the Participating Shareholders are entitled to share in the profits of the Company (as Mr Patrick admits). The Articles also provide that in the event of a liquidation, the assets of the Company shall be distributed to the Participating Shareholders and holder of the management shares *pari passu* after satisfaction of creditor claims (Article 122, internal page 146 of Exhibit MEP-2). The JOLs consider that this makes quite clear that the Participating Shareholders did hold a real economic interest in the Company. The JOLs believe that the Directors' decision to transfer the Company's major asset away without notice or fair value consideration, to the detriment of the Participating Shareholders, is a wilful breach of their duties.

23 As regards paragraph 74 of Patrick 2, he refers to email advice given by Maples in response to questions by Shields Legal ("**Shields**") (on instructions from Mr Patrick and Mr Murphy) as

[9] Exhibit MM—1 at page 498, paragraph 18 of Walkers' draft advice memorandum

to the Directors' powers to issue shares under the Articles. Having read these emails, it appears to the JOLs that Shields provided Maples with no factual context for the proposed share issuance. Also, Maples were not asked to opine on whether the directors would be in breach of their duties by carrying out the share issuance. Shields simply asked Maples to advise on whether the directors had the power to issue new shares, and "*if the basis for that decision is the best interest of [the Company], what are some of the reasons they could cite for doing so?*". In other words, Shields asked Maples to *assume* that the Directors' decision was in the best interests of the Company. In the premises, the JOLs believe that this is yet another example of the Directors deliberately limiting the information provided to the Company's advisors as a means of obtaining the specific advice they were seeking in order to justify the DAF Restructuring.

24 At paragraph 81 of Patrick 2, Mr Patrick refers to the FTI Report and the ValueScope Reports and asserts that they "*concluded that the DAF's NAV was not a suitable method to value the Participating Shares*". However, from my reading of Patrick 2, Mr Patrick has not addressed any of the issues with those reports that I identified at paragraph 77 of MacInnis 1.

The 'Dondero Control Justification'

25 In Murphy 1, Mr Murphy also makes several assertions that appear to be directed at the Defendants' argument that the DAF Restructuring was justified because it was necessary to create distance between the Fund and Mr Dondero, whom they allege was exercising dominion and control over the Supporting Organisations (i.e. the 'Dondero Control Justification'). One example is at paragraph 23 of Murphy 1:

> "*As noted at paragraphs 46 to 97 of my June Affidavit, a corporate restructuring (the "**DAF Restructuring**") took place in late 2024 and early 2025 because Mr. Patrick and I were concerned that James Dondero was seeking to exert improper dominion and control over the assets of CDAF Fund through the Supporting Organisations, which*

(amongst other value-destructive things such as the UBS litigation noted at paragraph 46.2 of my June Affidavit) could expose the Company (and, as its directors, Mr. Patrick and me) to potential breaches of U.S. tax laws and regulations"

26 At paragraph 60 of Murphy 1, Mr Murphy asserts that the JOLs "*seem to have summarily discounted these critical matters, although it is unclear to me why they have done* so", and that the JOLs have "*align[ed] themselves with Mr Dondero*". Contrary to this assertion - the JOLs have not aligned themselves with Mr Dondero – I have never met or spoken to Mr Dondero and I understand from my fellow JOL Mr Bhowmik that he has never met or spoken to Mr Dondero either. The JOLs have analysed the facts of the DAF Restructuring objectively and taken appropriate advice, which has led the JOLs to decide that action should be taken to recover the Partnership Interest that has been misappropriated from the Company by the Defendants. Mr Patrick and Mr Murphy's explanations for the DAF Restructuring have not been "summarily discounted" - the JOLs have thoroughly investigated them and taken advice on them. The JOLs' findings on each of those explanations are as set out in paragraphs 65 to 78 of MacInnis 1 (paragraphs 70 to 76 with respect to the "Dondero Control Justification"). In the JOLs' view, Mr Murphy and Mr Patrick have not provided any credible answers to the points made therein.

27 The list of purported 'Dondero Concerns' are repeated at paragraph 44 of Patrick 2. I address each of them below insofar as they are addressed in Murphy 1 and Patrick 2.

The purported tax concerns arising from Mr Dondero's alleged attempts to exercise "dominion and control"

28 At paragraphs 63.2, 68 and 74 of MacInnis 1, I referred to the Carrington Coleman Memo, which Mr Patrick and Mr Murphy relied upon to complete the DAF Restructuring. As I explained, the JOLs have serious concerns about the veracity of the Carrington Coleman Memo. On 18 September 2025, the JOLs obtained an order for provisional relief in the United

States Bankruptcy Court for the District of Delaware against various of the Company's former service providers, including Carrington Coleman, for turnover of copies of all books and records in the service providers' possession generated or received in their representation of, or engagement by the Company ("**US Discovery Order**") (pages 2 to 9). The documents that have been produced have reinforced the JOLs' concerns about the Carrington Coleman Memo and the Directors' reliance on it. For example, Carrington Coleman have produced:

28.1 An earlier version of the Carrington Coleman Memo dated 17 March 2025 (pages 10 to 26), of which the JOLs were not previously aware, which indicates that the author had not independently verified the facts that had been provided by Mr Patrick and Shields to Carrington Coleman in order to prepare their US law tax advice: "*I have not been asked to nor have I independently verified the facts that you [the memo is addressed to Charitable DAF Holdco Ltd] have provided to me as they relate to DAF, Dondero, SOs (individually or collectively, including tax-exempt status by the IRS), and other individuals or entities associated therewith or who may have contracted or interacted therewith.*" (page 10). The 17 March 2025 version of the Carrington Coleman Memo also contains the statement: "*I cannot opine as to how the IRS will treat DAF's supporting organisations, as I do not have enough information about their internal operations*" (page 831)

28.2 An undated document entitled "Carrington Coleman Tax Legal Advice" (pages 27 to 28), which was supplied to Carrington Coleman by Shields by way of data-room upload. The exact date and author of the memo is unknown. However, the JOLs believe it can be reasonably inferred from the following text that Mr Patrick and Mr Murphy were specifically seeking advice to support their rationalisation for, and the propriety of, the DAF Restructuring, which they anticipated would be challenged in the Cayman Islands Court:

> *"1. Problem: avoid Cayman judge determines the MidCo Contribution Transaction (the "Contribution") is viewed as prejudicial to the participating shareholders and ignores the management's purported reliance and reasoning availing itself of Delaware law. The concern is the judge will likely say management has entrenched itself in light of the timing of the Contribution and the supporting organization letter.*
>
> *2. Solution: provide info such that Cayman court will be less inclined to second guess U.S. legal advice that management received to undertake the Contribution."*

29 I also note on the subject of Mr Patrick and Mr Murphy's purported tax concerns that at paragraph 19 of Patrick 2, Mr Patrick refers to certain correspondence between him and Mr Mancino between 2011 and 2013[10], which he asserts demonstrates that: "*an overarching consideration when structuring and staffing the DAF, the Company and the Highland Foundations, was "to avoid a potential IRS argument that Mr Dondero would have indirect de facto control over the three supporting organizations [i.e. the Highland Foundations] as prohibited by section 509(a)(3)*". Mr Patrick appears to be referring specifically to the memo of advice issued by Mr Mancino to Mr Patrick dated 12 September 2013 with subject line "*Charitable DAF HoldCo, Ltd. and Highland Supporting Organizations – Succession Issues*"[11]. The full quote from the memo, which is largely omitted from Patrick 2, is as follows:

> "*Whichever approach is utilized, the question remains who can properly succeed Grant Scott as owner of the Management Shares and as the sole director of [the Company]. The designated successor should not be Mr. Dondero, a business partner, an entity more than 35% controlled by Mr. Dondero, an employee of such a controlled entity, or*

[10] At pages 49 to 61 of Exhibit MP-1

[11] At pages 62 to 66 of Exhibit MP-1

certain family members (not including siblings). This is to avoid a potential IRS argument that Mr. Dondero thereby would have indirect de facto control over the three supporting organizations as prohibited by section 509(a)(3). Subject to these limitations, we believe that one workable approach would be for Mr. Dondero's sister to succeed Grant Scott as the owner of the Management Shares and as the sole director of HoldCo. His sister could be authorized to designate her own successor (or this could be handled in an amendment to the Articles of HoldCo), and thereafter the selection of the successor owner of the Management Shares could fall to the board of an entity over which Mr. Dondero does not have voting control (perhaps the board of one or more of the three supporting organizations)."

30 The footnote to the third sentence of the above extract of the memo reads:

"*The concern would be that if Mr. Dondero (or a person or entity under his control) owns the Management Shares of HoldCo, he would then be in a position to cut off all funding to the three supporting organizations and, therefore, at least indirectly have the ability to influence the election of the "independent" directors of each SO by the Institutional Member.*"

31 It therefore appears to the JOLs that the "potential IRS argument" of indirect *de facto* control by Mr Dondero over the Supporting Organisations was raised in relation to a hypothetical scenario whereby Mr Dondero or an entity controlled by him was to be transferred the management shares in the Company and take over as sole director of the Company from Mr Scott. However, Mr Dondero did not become the sole management shareholder and did not become the sole director of the Company in place of Mr Scott - Mr Patrick did.

32 The JOLs have now filed the affidavit of Marvin Bradford Bedingfield sworn on 14 November 2025 in reply to Mancino 1 and Reid 1 ("**Bedingfield Affidavit**"). The Bedingfield Affidavit addresses matters of US tax law relevant to the purported tax concerns relied upon by Mr

Patrick and Mr Murphy to justify the DAF Restructuring. I have read the Bedingfield Affidavit and note that, *inter alia*, Mr Bedingfield concludes the following (at paragraphs 41 and 42):

> "*Both Mr. Mancino and Mr. Reid note generally that an IRS investigation could result in significant costs*[12] *– but as noted above, those are costs to the Supporting Organization(s), not to the Company. Were the Supporting Organizations to lose their supporting organization status and become private foundations, they would still be 501(c)(3) private foundations (as is the DFW Foundation), and that would have no negative US tax consequences to the Company itself. Even if the IRS were to revoke entirely the 501(c)(3) status of one or more of the Supporting Organizations, that would not by itself result in liabilities or material negative consequences to the Company under US tax law – the Supporting Organization that lost its 501(c)(3) status might be forced to dissolve, and under its governing documents would be required to transfer its remaining assets to its Supported Organization (the community foundation that controls it), which could continue holding the participating shares. If for some reason the Supporting Organization were to find itself in receivership, the receiver would at most step into the shoes of the Supporting Organization as participating shareholder, but would not by virtue of such receivership have any more rights to access the underlying assets of the Company than did the Supporting Organization as participating shareholder.*
>
> *Regardless of the potential result of the filing of the Form 13909 by Mr. Mancino on the potential public charity or 501(c)(3) status of the Highland Dallas Foundation, I do not see any material risk under US tax law to the underlying assets of the Company arising from any potential change in the tax-exempt status of one or more of the Supporting Organizations*"

[12] Mancino DM-1, paragraph 14; Reid AR-1, paragraph 70.

33 The Bedingfield Affidavit has reinforced the JOLs' already strong belief that, when properly analysed, Mr Patrick's and Mr Murphy's purported concerns about the tax status of the Supporting Organisations are self-serving and do not justify their drastic actions in effecting the DAF Restructuring.

The purported 'alter ego' concerns

34 At paragraph 38 of Patrick 2, Mr Patrick refers to the "UBS Litigation" involving Mr Dondero and UBS. The Company is not a party to the UBS Litigation and therefore the JOLs do not have a complete understanding of it. However, the JOLs understand that the 'alter ego' claims made by UBS against CLO HoldCo (the Sixth Defendant) were dismissed pursuant to an order of the New York Supreme Court dated 8 July 2024 (page 29). Mr Patrick asserts that the fact that CLO HoldCo was originally a defendant to the UBS Litigation "*caused Mr Murphy and I to be concerned that UBS (and/or other creditors) might seek collection from the DAF Structure on the basis that it constituted the 'alter ego' of Mr Dondero, and, as outlined in Murphy 1, was an important consideration when evaluating the DAF Restructuring*." The JOLs have taken US law advice on the test for a corporate entity to be treated as an individual's 'alter ego' under US law (privilege over which is not waived), from which the JOLs believe that the purported 'alter ego' concerns held by Mr Patrick and Mr Murphy were overstated and also did not justify the DAF Restructuring.

The purported concerns about Mr Dondero misappropriating the assets of the DAF Structure and/or making demands to use those assets for certain transactions

35 At paragraphs 34 and 35 of Patrick 2, Mr Patrick refers to an alleged incident in or around November 2023, when Mr Dondero asked Mr Patrick "*to transfer approximately US$1.5 million of the DAF's assets to offshore entities owned by Mr Dondero*" in order to settle Mr Dondero and Mr Ellington's legal fees relating to the UBS Litigation. Mr Patrick states that he refused to effect the transfer of funds requested by Mr Dondero because to do so would pose "*a real risk*

to the integrity of the DAF Structure". Mr Patrick's account therefore appears to be that Mr Dondero had no authority to issue commands or directives to Mr Patrick as to the use of the Fund's assets, and Mr Patrick had the power and authority to refuse to follow Mr Dondero's instructions (which he says he in fact did). With that being so, the JOLs do not understand why Mr Patrick contends that it was necessary to implement the DAF Restructuring in order to remove the Fund and its assets from the control of Mr Dondero. By Mr Patrick's own admission, Mr Dondero did not have control over decision-making with respect to the assets of the Company, the Fund, and the broader Fund structure prior to the DAF Restructuring - Mr Patrick did.

36 At paragraph 36 of Patrick 2, Mr Patrick refers to paragraphs 111 to 119 of his first affidavit filed in the Company's liquidation proceedings ("**Patrick 1**") wherein he listed potential transactions that he asserts would have ultimately benefitted Mr Dondero and related entities to the detriment of the Fund structure. I note that Patrick 1 confirms that Mr Patrick rejected all such potential transactions proposed to him after his appointment as the "Control Person" (as he refers to it)[13]. The JOLs believe this further demonstrates that there was no risk of Mr Dondero exercising control over the Fund structure in circumstances where Mr Patrick had the power to refuse to implement Mr Dondero's requested transactions (and did in fact refuse to implement them). In short, once Mr Scott had ceased to hold the control position, and Mr Patrick had assumed it, any historic control alleged to have been exerted by Mr Dondero (through his close relationship with Mr Scott) was irrelevant.

37 The JOLs also find it ironic that Mr Patrick cites his concern that Mr Dondero was attempting to misappropriate the assets of the DAF Structure and use it "*as his own personal piggy-bank*" when that is precisely what appears to have been done by Mr Patrick (and Mr Murphy) through the DAF Restructuring. That is, Mr Patrick has:

[13] See for example, paragraphs 113 to 116 of Patrick 1 in relation to transactions proposed by Mr Dondero or NexPoint that Mr Patrick on behalf of the Fund declined to proceed with.

37.1 Misappropriated the Company's asset (the Partnership Interest) by transferring it to an entity owned and controlled by him (CDM);

37.2 Abused his control of the Fund and its subsidiary entities in the Fund structure by causing them to pay him grossly excessive salaries and bonuses using money that would otherwise be available for making distributions to the Supporting Organisations and onwards to the supported Charities (see paragraphs 52 to 57 below); and

37.3 Made token donations through DFW of approximately US$10,000 each to various charities for the months of July and August 2025[14] totalling US$266,323.58, and a further single donation of US$157,120.50 in September 2025, but by this stage Mr Patrick had already caused various Fund entities to pay him US$10,548,778 and US$3,325,000 in purported salaries and bonuses in 2024 and the first half of 2025 alone, respectively.

38 Mr Patrick also contradicts himself when seeking to explain the reasons for the DAF Restructuring where he states at paragraph 45 of Patrick 2 that "*I firmly believe that the steps undertaken as part of the DAF Restructuring were necessary to protect the DAF and its charitable mission…from retaliatory actions by Mr Dondero*", but then at paragraph 47 states that he anticipated that the DAF Restructuring would be met by retaliatory actions by Mr Dondero. This is yet another reason why the JOLs believe the true purpose of the DAF Restructuring was to benefit Mr Patrick and Mr Murphy personally rather than any legitimate reason involving Mr Dondero.

39 In relation to the first step of the DAF Restructuring, at paragraph 58 of Patrick 2, Mr Patrick asserts that it was necessary to insert CDM into the structure between the Company and the Fund "*as a pre-emptive measure to enhance governance, mitigate alter-ego risk, and preserve*

[14] Pages 30 to 31. The JOLs have obtained this information from DFW pursuant to the Interim Undertakings, which require retrospective disclosure of monthly transactions below US$50,000 and advance notice of payments over US$50,000.

compliance with U.S. charitable-tax requirements by guarding against improper interference by Mr Dondero." Mr Patrick does not provide any detail of why inserting CDM into the structure would achieve the above outcomes. It is unclear to the JOLs how or why inserting a new entity into the structure beneath the Company would in any way "enhance governance" or guard against any alleged improper interference by Mr Dondero in the Supporting Organisations' and/or Company's affairs. The only examples Mr Patrick has provided of the alleged improper interference are instances where Mr Dondero asked Mr Patrick to undertake certain transactions on behalf of Fund entities, which Mr Patrick says he refused. Mr Patrick retained the same power and authority to refuse to follow Mr Dondero's instructions as to the use of Fund assets both before and after CDM was inserted into the structure, which suggests to the JOLs that there was no actual risk of external interference in the Company's affairs by Mr Dondero whilst Mr Patrick was in control. However, the interposition of CDM did enable Mr Patrick to procure the redemption of the Company's interest in it, whereas the Company held an unredeemable interest in the Fund prior to that point. The JOLs believe that this was the real purpose that lay behind the insertion of CDM into the Fund structure.

The Redemption

40 At paragraph 84 of Patrick 2, he refers to a retrospective fairness opinion that CDM obtained from Weaver as to the fairness of the proceeds paid by the Company (under Mr Patrick and Mr Murphy's control) to the Supporting Organisations for the redemption of their Participating Shares (the "**Weaver Opinion**")[15]. I note that Mr Patrick criticises the JOLs for not referring to the Weaver Opinion in MacInnis 1 (or the JOLs' evidence in support of the application for sanction to commence these proceedings) in circumstances where it was provided to the JOLs on 1 July 2025. As to this:

[15] At pages 382 to 384 of Exhibit MEP-2

40.1 The Weaver Opinion was provided to the JOLs by Shields as part of the JOLs' efforts to obtain the Company's books and records. It was one document of many uploaded by Shields to the JOLs' data room on 1 July 2025 as part of Shields' second batch of uploaded documents. No specific attention was drawn to the Weaver Opinion by Shields or any of the Defendants at that time.

40.2 Having since reviewed the Weaver Opinion, the JOLs' have serious doubts as to its reliability, particularly considering that it was sought and obtained by CDM after the Redemption had already occurred. The Weaver Opinion is three pages long and appears to be mostly a series of disclaimers and caveats to the opinion, such as the following –

> "*We have not been asked to undertake, and have not undertaken, an independent verification of any information provided to or reviewed by us, nor have we been furnished with any such verification performed by Management or any other party and we do not assume any responsibility or liability for the accuracy or completeness thereof. …*
>
> *We did not perform either a selected public company analysis or a precedent transaction analysis because we were unable 1.1 to find public companies or precedent transactions with publicly disclosed financial information that we deemed sufficiently comparable to the Company or the Transaction, respectively. …*
>
> *The Opinion does not address any other aspect or implication of the Transaction, the Agreement, or any other agreement or understanding entered into in connection with the Transaction or otherwise, including: (a) the relative merits of the Transaction as compared to other business strategies that might have been available to the Company; (b) the Company's underlying business*

decision to effect the Transaction; (c) the fairness of any portion or aspect of the Transaction to creditors or other constituencies of the Company, or to any other party, and (d) the fairness of any portion or aspect of the Transaction to any one class or group of the Company's or any other party's security holders or other constituents vis-à-vis any other class or group of the Company's or such other party's security holders."

40.3 The Weaver Opinion also expressly relies on the FTI Report, which in turn was explicitly not to be distributed and was not to be used to support a transaction.

40.4 The Weaver Opinion was also referred to and relied upon in the evidence in support of DFW's application to remove the JOLs filed in the Company's liquidation proceedings (the "**Removal Application**"). On 5 September 2025, Maples sent a letter to Baker & Partners which set out the JOLs' position that the Removal Application was bound to fail (pages 32 to 42). In that letter, Maples addressed the Weaver Opinion as follows –

"*(iv) Your client alleges that, in seeking sanction to commence FSD Proceedings, the JOLs failed to disclose the Weaver Opinion (which opined that the proceeds paid to the Highland Foundations in their capacity as Participating Shareholders following the DAF Restructuring were fair). It is worth remembering that, in opposition to the JOLs' sanction application with respect to the engagement of counsel, your client, Mr Patrick, and Mr Murphy produced three voluminous affidavits (running to 142 pages of text and 1,699 pages of exhibits) outlining their justifications for the transactions in issue, all of which were sworn very shortly after the date of the Weaver Opinion. It is telling that in the volume of evidence filed, the Weaver Opinion was not mentioned once. Clearly that indicates that neither your client (nor Mr Patrick nor Mr Murphy) considers it material. We agree.*

(v) Your client's recent reliance on the Weaver Opinion (obtained after the date of the JOLs' appointment) completely misses the point. The interposition of CDM between the Company and its interest in the Fund was part of the overall scheme that removed the Company's interest in the Fund from its economic stakeholders. The fact that CDM has managed to obtain a fairness opinion with respect to CDM's redemption of the Company does not answer the question of the propriety of interposing CDM between the Company and the Fund in the first place (or the broader transactions)."

A2 The correspondence with the Supporting Organisations leading up to the DAF Restructuring

41 At paragraph 23 of Murphy 1, he states that:

"*It is important to note that Mr. Patrick and I took a staged approach towards the DAF Restructuring, which was responsive to increasingly aggressive actions taken by the Supporting Organisations, their legal advisors, and other parties associated with Mr. Dondero. We had hoped that the Supporting Organisations would engage with us to allay our concerns about Mr. Dondero's overreach. It was only when it became clear that Mr. Dondero, through the Supporting Organisations, had no intention of engaging with us in good faith that the final stages of the DAF Restructuring were implemented*".

42 Similarly, at paragraphs 59 and 60 of Patrick 2, he asserts that he and Mr Murphy decided to implement the DAF Restructuring because:

"*…it became increasingly clear that the Highland Foundations were adopting a hostile position and seemed determined to impugn my and Mr Murphy's management of the Company. Mr Mancino exchanged several emails and letters with H&K during this period, culminating in his letter dated 14 February 2025. In this letter, Mr Mancino addressed the Highland Foundation's incorrect assertions regarding director fees and*

legal expenditure, the provision of financial information to the Highland Foundations, and flagged his concerns regarding Mr Dondero's influence and control over the Highland Foundations…

Having received no response to Mr Mancino's letter [dated 14 February 2025], Mr Murphy and I concluded that it would be prudent to implement the CDM Restructuring"

43 Those statements do not accord with the contemporaneous correspondence between representatives of the Supporting Organisations and Mr Murphy and Mr Patrick. Whilst that correspondence is referred to in general terms in Murphy 1 and Patrick 2, from the JOLs' review, neither of them have squarely addressed the substance of the concerns raised by the Supporting Organisations in that correspondence and why their requests for information about the Company's affairs were refused (beyond asserting that they had no rights to the information). Whilst the JOLs have not been provided with a full set of Mr Patrick or Mr Murphy's emails from their Company email addresses[16], the JOLs have in their possession the following correspondence between the Supporting Organisations on the one hand and Mr Murphy and Mr Patrick on the other in the period 11 November 2024 to 14 February 2025:

43.1 On 11 November 2024, the Supporting Organisations (minus CFNT), sent a letter to Mr Murphy in his capacity as a director of the Company and Charitable DAF Holdings Corp which set out that they "*no longer have confidence that the governance structures of, including but not limited to Charitable DAF-GP, LLC, Charitable DAF HoldCo, Ltd., Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (collectively the DAF-related entities, can function appropriately*" (pages 43 to 44) (which I refer to as the "No Confidence Letter" in MacInnis 1). The No Confidence Letter referred to "*conflicting information*" that they had been provided with as to the "*financial inner workings of the DAF-related entities*", which gave rise to "*significant concerns about how the corpus of these funds*

[16] "@CharitableDAF.com" and "@dafholdco.com", as well as emails sent by either of Mr Patrick or Mr Murphy from other email addresses where they were acting qua director of the Company (e.g. "paul@gkmanagement.com.ky")

is administered and spent". The No Confidence Letter also conveyed that their efforts to obtain information from the Company on these matters had been "*rebuffed*", and suggested that "*because we have substantial concerns, out of an abundance of caution, and until an accounting can be conducted, we believe it is inappropriate for anyone to authorize the depletion of further assets of DAF-related entities*".

43.2 On 23 January 2025, Ms Julie Diaz of the Highland Dallas Foundation sent an email to Mr Patrick on behalf of herself and the other CEOs of the Highland Santa Barbara Foundation and the Highland Kansas City Foundation (pages 45 to 58). In her email, Ms Diaz stated that: "*We have been discussing the need for a better understanding of the assets and thought it would be helpful if you could provide us with several detailed reports now that the new structure is in place*". Her email then requested (i) income statements for the Company for the previous four years; (ii) a listing of the Company's underlying assets; (iii) the Company's audited financial statements; and (iv) an explanation of the current structure of the Company and its subsidiaries.

43.3 On 28 January 2025, Ms Diaz sent a further email to Mr Patrick and Mr Murphy noting that a response had not been received to her 23 January 2025 email and asserting that: "*[t]his failure to provide the courtesy of a response continues a pattern of a lack of communication and transparency as to assets and financials of DAF Holdco under your stewardship. These failures exacerbate the concerns we previously communicated in our letter to [Mr Murphy] in November 2024*" (page 55). The letter concluded by requesting that the Company be wound up and that Mr Murphy and Mr Patrick not dissipate the Company's assets until the Supporting Organisations' concerns had been resolved.

43.4 On 30 January 2025, Mr Murphy sent an email in response to Ms Diaz indicating that he had understood that "*the next steps following the meetings between our respective legal representatives (Douglas Mancino and David Rosenberg) in December last year*

was for us to present directly to the foundations/supporting organisations in order to address some of the concerns in the letter dated 11 November 2024" (pages 51 to 52). Mr Murphy noted that "*it was surprising to receive the 28 January Email which repeats some of the allegations in the 11 November Letter*" and informed Ms Diaz that he and Mr Patrick had not received Ms Diaz's 23 January email as it was sent to an out-of-use email address. The email also included the following paragraphs:

> "*I must, however, record that we have some growing concern around the content and circumstances your email of 23 January 2025, specifically that it might be interpreted as a premise to attempt to inappropriately exercise control over DAF HoldCo and/or its assets. As a reminder, when the participating shares in DAF HoldCo were issued to the supporting organizations, there was no conveyance of voting rights or control, and it has always been well understood that such shares did not convey voting rights or control. In particular, without waiving applicable privileges, we are advised that any attempt to exert control of DAF HoldCo or its assets by James Dondero would be both inappropriate, unlawful and inconsistent with DAF HoldCo's charitable mission. We are deeply concerned that this outreach, which began following Mark's resignation from Skyview in October 2024, may be the supporting organizations acting as proxy for Mr. Dondero. We hope we are wrong, but the supporting organizations have received the same ValueScope quarterly financial reports and charitable distributions over time without change and without issue.*
>
> *…*
>
> *Whilst we are cooperating with the foundations/supporting organizations to provide additional information we have no legal obligation to do so (which is not disputed). In no way should our cooperation be construed as an implicit*

acknowledgment of any duty to continue providing information to you or as a waiver of any DAF HoldCo's rights and remedies." (pages 53 to 54)

43.5 It is not clear to the JOLs how Mr Murphy interpreted the Supporting Organisations' requests in Ms Diaz's email of 23 January 2025 for basic financial information and to not dissipate the Company's assets as "*a premise to attempt to inappropriately exercise control over [the Company] and/or its assets.*"

43.6 On 31 January 2025, Mr Michael Stockham of Holland & Knight, the US attorneys then acting for the Supporting Organisations, sent an email to Mr Murphy that included the following statements:

(a) "*I am appalled by your response. As fiduciaries, you and Mr. Patrick manage $270 million in assets for the benefit of charities that support the most vulnerable in their communities. Whatever your side's obvious antagonism to Mr. Dondero, the fact remains that the underlying assets are ultimately for these charitable missions. And your focus and mission should be not only to ensure the success of the investments, but transparency to the ultimate beneficiaries. The assets are for their benefit, not Mr. Dondero, not Mr. Patrick, and not you.*" [emphasis added] (pages 49 to 51).

I have emphasised the last sentence of this extract as it summarises the JOLs' position on the facts of this case and the JOLs' reason for commencing these proceedings – that is, Mr Patrick and Mr Murphy appear to have treated the Partnership Interest and the underlying assets it represents as their own, and justified it on the basis that those assets do not belong to Mr Dondero, when in fact the assets belong to none of them – they belong to the Company and enure to the ultimate benefit of the Supporting Organisations and their underlying

Charities[17]. As such, the JOLs on behalf of the Company see it as their duty and responsibility to seek to recover the Partnership Interest and preserve as much of the assets it represents as possible.

(b) "*The Supporting Organizations have legitimate concerns. The last information they received from SEI in July of 2024 - before Mr. Patrick shut down that line of communication and information - showed legal expenses had increased to $6 million in the first six months of 2024 compared to $4 million for all of 2022. If annualized, and at that pace, legal expenses appeared to be on path to exceed $12 million for 2024. That's a 300% increase. Director fees skyrocketed from $40 thousand in 2022 to $2.25 million in the first six months of 2024. Again, annualized, these fees are on a path to exceed $5 million in 2024. That is a 12,400% increase.*"

In fact, the JOLs have discovered that the director fees paid to Mr Murphy and Mr Patrick in 2024 were closer to US$11 million. The JOLs believe this level of compensation to be unjustified and approved by Mr Patrick and Mr Murphy in wilful breach of fiduciary duty. I address this issue further at paragraphs 63 to 67 below.

(c) "*The Supporting Organizations have no interest in the animosity or dysfunction between Mr. Patrick and Mr. Dondero. What they do have an interest in, is an active campaign by you and Mr. Patrick to continue to manage the assets in a shroud of mystery, dripping out details and information whenever you deem it appropriate. To do so simply proves our concerns that the governance structure of these entities is broken.*

[17] And Mr Patrick and Mr Murphy's fiduciary duties were to act in the best interests of the Company, which in effect meant the best interests of the Supporting Organisations and the Charities.

Yes, it is true that we have been in discussions for months about transparency, and you provided some information. However, what has been ignored are the repeated requests for a simple set of financials. But how hard is it to create a short PowerPoint on the current state of financial statements, a simple diagram of the alleged new governance structure (who are the advisory board members?), your visions for the funds, and then provide a one-hour briefing to the Supporting Organizations? If you are truly managing the funds to the institutional-investor standards represented in our call, these details should be at your fingertips. Yet somehow this has all devolved into delays and posturing related to the dust up between Messrs. Dondero and Patrick.

That type of myopic thinking is not appropriate in this situation. The Supporting Organizations deserve answers, and the transparency needs to happen sooner rather than later." (pages 50 to 51)

43.7 On 4 February 2025, Mr Murphy sent a short email response to Mr Stockham noting that he and Mr Patrick "*remain open to finding a framework within which we can resolve your clients' concerns.*" (pages 48 to 49). Mr Murphy's email did not address the concerns raised in Mr Stockham's email about the apparent significant increases in expenses and director compensation.

43.8 On 7 February 2025, Mr Stockham sent an email to Mr Murphy that began as follows:

"*I appreciate your email, and your willingness to find a framework to resolve the concerns, but am flummoxed by your, "struggle" to understand our growing frustration.*

I do not believe it should be difficult to comprehend the request for transparency around $270 million dollars you control as a fiduciary for the benefit of charities in Dallas, Kansas City, and Santa Barbara. Indeed, these odd legal and

rhetorical machinations of yours and Mr. Patrick miss the point. These monies are for improving the quality of life of children, building pathways for everyone to have a fair opportunity to succeed, and among other things-creating a lasting impact on young minds by fostering a love for education. They are not meant to pay you and Mr. Patrick millions in director fees. If I'm wrong, please educate me." (page 45)

43.9 In the same email, Mr Stockham explained the video calls that had taken place between representatives of the Supporting Organisations and representatives of the Company (under the control of Mr Patrick and Mr Murphy) on 6 November 2024, 20 November 2024, and 11 December 2024 (page 46). Mr Stockham's account was that: (i) no information was provided to the Supporting Organisations on the underlying assets and financial condition of the Fund at those meetings; and (ii) shortly after the 11 December 2024 video call, the Supporting Organisations received a demand from Mr Patrick and Mr Murphy to withdraw their concerns about the governance of the Company and the Fund, which demand suggested that if the Supporting Organisations wished to receive more information, they needed to execute a non-disclosure agreement with a liquidated damages clause. The JOLs do not presently have a copy of this demand letter to verify the above statements

43.10 On 14 February 2025, Doug Mancino of Seyfarth, sent a letter to Mr Stockham on behalf of the Company (pages 59 to 60). In this letter, Mr Mancino made the following assertions:

(a) *"First, Charitable DAF is not paying Paul or Mark "millions in director fees," as alleged in your January 31st email. The information supplied by SEI is simply incorrect."*

This assertion appears to be false. As explained in paragraphs 63 to 67 below, the Defendants have disclosed that the director fees and expenses paid to Mr Murphy and Mr Patrick (which they themselves approved) exceeded US$11 million for 2024. This is in addition to the US$500,000 paid to Mr Murphy in 2025[18] and the US$3,608,333 paid to Mr Patrick in 2025[19] (of which the JOLs are aware), which amounts were paid notwithstanding the Supporting Organisations had requested in their 11 November 2024 letter that there be no further dissipation of assets until their concerns were resolved.

(b) "*[the Supporting Organisation's] demands for information have only increased, even though, as you yourself acknowledged in one of our early calls, Participating Shareholders of Charitable DAF have no rights to information and what they already get exceeds that to which they are entitled.*" (page 59)

This illustrates that Mr Patrick and Mr Murphy were continuing to rely on their position that the Supporting Organisations had no legal rights to the financial information they were seeking as a basis for refusing to provide any such information to them. The JOLs do not know why Mr Murphy and Mr Patrick took this position.

(c) "*Finally, the controlling role and influence that Mr. Dondero and his agents such as Lucy Bannon appear to be exerting over the Supporting Organizations raise significant private benefit concerns that call into question whether one or more of the Supporting Organizations is at risk of becoming a Restricted Person as that term is defined Article 21 of Charitable DAF's Articles of Association. I know David will be familiar with the seminal Tax Court decision in American Campaign*

[18] See paragraphs 60-62 below

[19] See paragraph 49 of MacInnis 1

Academy v. Commissioner, 92 T.C. 1053 (1989),which involved the denial of section 501(c)(3) exemption because the Internal Revenue Service concluded that the organization was operated for the substantial nonexempt purpose of benefitting private interests. We offer no opinion on that question but raise it as a matter of concern to Charitable DAF." (pages 59 to 60)

Based on the documents and correspondence the JOLs have in their possession, this appears to be the first time the "Restricted Person" reasoning for the DAF Restructuring was raised in correspondence with the Supporting Organisations]. In that regard, I note that by the date of the Seyfarth letter, the first two steps in the DAF Restructuring had already been completed (the LP/LLC Exchange and DFW Share Issuance). It therefore appears to the JOLs that the "Restricted Person" reasoning was introduced at a late stage to support the final step of the DAF Restructuring – the Redemption and extinguishment of the Company's interest in the Fund. The JOLs have now also filed the Bedingfield Affidavit addressing matters of US tax law relevant to this issue, which is addressed at paragraphs 32 to 33 above.

43.11 I also note that at paragraph 60 of Patrick 2, Mr Patrick asserts that: "*Having received no response to Mr Mancino's letter [dated 14 February 2025], Mr Murphy and I concluded that it would be prudent to implement the CDM Restructuring. Accordingly, on 18 December 2024, the Company, CDM and the GP executed a Deed of Assignment and Assumption, the effect of which was to transfer the Company's interest in the DAF to CDM, with the Company obtaining 100% of the membership interest in CDM*". This statement is contradictory and false. It cannot have been the case that the lack of a response from the Supporting Organisations to Mr Mancino's letter of 14 February 2025 led Mr Patrick and Mr Murphy to implement the CDM Restructuring by way of executing the Deed of Assignment and Assumption almost two months earlier

on 18 December 2024. The JOLs believe this to be yet another concerning statement from Mr Patrick indicating that his underlying motivation for the DAF Restructuring was not as he suggests in his evidence.

44 It appears to the JOLs from the above correspondence that, contrary to what is suggested by Mr Murphy at paragraph 23 of Murphy 1, the Supporting Organisations' concerns about Mr Murphy and Mr Patrick's management of the Company and the Fund were conveyed in correspondence *before* Mr Murphy and Mr Patrick's concerns about "*Mr Dondero's overreach*" were conveyed to the Supporting Organisations.

45 Mr Murphy also points to no specific documentary evidence to substantiate his assertion that: "*It was only when it became clear that Mr. Dondero, through the Supporting Organisations, had no intention of engaging with us in good faith that the final stages of the DAF Restructuring were implemented*" (i.e. the suggestion that Mr Murphy and Mr Patrick only undertook those steps in response to an alleged lack of good faith engagement from the Supporting Organisations). At paragraph 94 of the Murphy Liquidation Affidavit, Mr Murphy makes a similar statement in response to the emails from Mr Stockham and Ms Diaz referred to above whereby they sought information about the Company and its assets: "*Given the position of Ms Diaz and Michael Stockham, I formed the view that the Highland Foundations had no genuine interest in seeking to resolve their perceived and unfounded grievances and Mr Patrick and I proceeded to execute the DFW Share Issuance*." The JOLs find that to be an extraordinary admission that Mr Patrick and Mr Murphy made the deliberate decision to dilute the Supporting Organisations' shareholding in the Company by issuing shares to DFW (an entity controlled by Mr Patrick) in circumstances where –

45.1 The Supporting Organisations' grievances as to the apparent increase in expenses and director remuneration were not addressed by Mr Patrick or Mr Murphy in any way;

45.2 The Supporting Organisations' requests for financial information were not responded to or satisfied; and

45.3 The only response from Mr Patrick and Mr Murphy was to seek to point the finger at Mr Dondero's perceived influence as a basis for their own purported concerns about the Supporting Organisations' intentions.

46 In any event, the JOLs believe that Mr Murphy's sworn statements extracted at paragraph 45 above are contradicted by evidence that suggests that Mr Patrick and Mr Murphy were contemplating transferring away the Company's assets and/or the Fund's assets to new entities from as early as 9 November 2023. I refer to the following:

46.1 Paragraphs 76.3 and 76.4 of MacInnis 1 and the Work Plan prepared by Shields for the Company dated 9 November 2023[20].

46.2 On 23 January 2024, Shields sent an email to Walkers, then Cayman Islands attorneys for the Company, which set out some "*Proposed Cayman Restructuring Options*" in response to "*some very minor issues with the transfer of the membership interests and role of managing member of Charitable DAF GP, LLC from (i) James Dondero to Grant Scott and (ii) Grant Scott to Mark Patrick*" (pages 61 to 62). The proposed options included some that would appear to have had the effect of transferring away the Company's and/or the Fund's assets to new entities:

> "*3. HoldCo forms new LP and contributes old LP assets to new LP*
>
> *a. Create new Charitable DAF Fund II, LP*
>
> *b. Create new Charitable DAF GP II, LLC*

[20] At pages 1433 to 1440 of Exhibit MM-1

c. HoldCo contributes old LP to new LP

d. New GP is managing member of new LP

e. Old LP dissolves and distributes all assets to new LP

4. Form new HoldCo and contribute old HoldCo assets to new Holdco

a. Create new Charitable DAF HoldCo II, Ltd. subsidiary of old HoldCo

b. Create new Charitable DAF Fund II, LP subsidiary of new HoldCo

c. Create new Charitable DAF GP II, LLC

d. New GP is managing member of new LP

e. Old HoldCo liquidates and contributes all assets to new HoldCo

f. New HoldCo issues new participation shares to old participation shareholders".

46.3 On 8 March 2024, Shields sent an email to Walkers which set out Mr Patrick and Mr Murphy's objective as: "*…the goal is to reduce or eliminate the possibility of litigation filed from the participation shareholders to Charitable DAF HoldCo, Ltd.* *We understand that participation shareholders do not generally having [sic] voting rights under the articles, but they do have a consent right to actions that would modify the rights of the participation shares. We have discussed a couple solutions on our side, and we would appreciate your team's input and creativity.*" (pages 63 to 64). The proposed "solutions" included the following:

"*Blocker LLCs (with participation shareholder consent)*

- *Form new blocker LLCs between Charitable DAF HoldCo, Ltd. and the participation shareholders…*

Transfer Charitable DAF Fund, LP in some manner (without participation shareholder consent)

- *Charitable DAF HoldCo, Ltd. is a holding company. The assets are generally held at the CLO HoldCo, Ltd. and Liberty CLO HoldCo, Ltd. levels, so a transfer of Charitable DAF Fund, LP to a new holding company (e.g. Charitable DAF HoldCo, Ltd. #2) could provide some protection*." (page 63)

47 It appears to the JOLs that the logical explanation for the short delay between each of the three steps of the DAF Restructuring was due to the time it took for Mr Patrick and Mr Murphy to find advisors who were willing to give opinions that said what they wanted them to say in order to provide a basis to justify each of those steps[21]. This is aptly demonstrated by the email from Mr Patrick to Walkers and Shields dated 17 March 2025, where Mr Patrick laid out his strategy to remove the Supporting Organisations from the structure or otherwise defeat their interest in the Company as follows:

"*We are seeking U.S. tax counsel to send emails to both Paul and I that the non profits are Restricted Persons and/or best interests of the Company to have non dondero holders of the its (sic) interests.*

After that, an alternative approach is to give them what they want - liquidate Holdco Ltd after its only investment is redeemed by the US. LLC pursuant to U.S. counsel advice

[21] See the chronology of relevant events and correspondence with valuation and legal advisors with respect to the stages of the DAF Restructuring set out at paragraphs 37 to 48, 63, 71, 76 to 77 of MacInnis 1

above, that it's in the best interests of the Company to redeem all non-profits affiliated with Dondero.

US LLC has same valuation conducted on its shares as the participation shares. so we would redeem the LLC interest, then distribute the proceeds out of Holdco Ltd., and file articles of Dissolution for Charitable daf Holdco Ltd before a wind up petition is filled. That would put us on the "high ground" to fight (rather the way this is currently heading in a defensive posture). they would have to scrap their wond up petition and fight for reinstatement, gripe about the valuations, and file fiduciary breach actions (all of which they will do anyway under a wind up).

We will stage this in light of the Doug letter, new advice of two separate U.S Tax counsel, and seeing how successful (or not) our outreach to the Texas attorney general office is....

Note : US LLC would make DFW its sole owner." [emphasis added] (page 65)

48 In this respect, as Mr Murphy points out at paragraph 46 of Murphy 1, each of his director services agreements ("**DSAs**") with the Company and subsidiary entities (including the Fund) contained terms purporting to exonerate Mr Murphy of any liability for anything he did in reliance on professional advice unless through actual fraud or wilful default. It is the JOLs' position that Mr Murphy and Mr Patrick's selective instructions and selective reliance on certain advices they obtained on the various steps of the DAF Restructuring (whilst discounting the views of other professional advisors who reached different conclusions, such as PwC[22]) was not in good faith, and their carrying out of those steps was a wilful breach of their fiduciary duties to the Company.

[22] See paragraph 77.4 of MacInnis 1

49 At paragraphs 63 and 67 of Murphy 1, Mr Murphy asserts that the reason the Supporting Organisations started to raise concerns about the governance of the Company in October 2024 was that "*Mr. Patrick and the DAF Fund had formally cut ties with Mr Dondero and Skyview*" and Mr Dondero was therefore allegedly driving the Supporting Organisations' concerns. In this regard, Mr Murphy omits to mention the fact that in or around August 2024, the Supporting Organisations were provided with a financial analysis (prepared by NexPoint Advisors LP) of the Fund's annual expenses which showed or appeared to show increases in expenditure, particularly as follows:

49.1 Directors' fees increased from around US$40,000 in 2022 to almost US$600,000 in 2023 – and increased further to around US$2.25 million in the first half of 2024; and

49.2 Expenses overall for the first half of 2024 were around US$18.3 million – almost the same amount spent over the entire course of 2023 (i.e. US$18.6 million).

50 As regards expenses, I note at paragraphs 51 and 138 of Patrick 2, he contends that of the US$18.3 million for the first half of 2024, this was partially offset by US$6.1 million of income. However, Mr Patrick appears to concede that total expenses were in fact at US$18.3 million (leaving aside any alleged offsetting income).

51 The Supporting Organisations' concerns about the apparent increase in expenses and director compensation, and requests for information about the Fund's assets and management, were subsequently conveyed to Mr Murphy and Mr Patrick in the correspondence listed at paragraph 43 above. As noted above, Mr Murphy does not engage with the substance of the Supporting Organisations' questions and concerns in his affidavit but instead appears to have discounted them entirely because he believed Mr Dondero was driving them (the same view is expressed by Mr Patrick at paragraphs 54-56 of Patrick 2). Even if Mr Murphy was correct in that view, the JOLs do not believe that it provides a justification for ignoring reasonable questions from the Supporting Organisations in response to evidence of significant increases in director

compensation and expenses that they, as the Participating Shareholders, found to be a cause for concern[23].

A3 The Significant Increases in Mr Patrick's and Mr Murphy's Compensation

Mr Patrick's excessive salaries and bonuses

52 The excessive salaries and bonuses that Mr Patrick and Mr Murphy have resolved to pay Mr Patrick for his directorship of the Company are addressed at paragraph 49 of MacInnis 1. As explained in more detail at paragraphs 63 to 69 below, the JOLs understand from the disclosure provided by the Defendants pursuant to the Interim Undertakings that Mr Patrick was paid a total of $13,873,778.03[24], comprising US$10,548,778 in 2024 and US$3,325,000 in the first six months of 2025[25]. The JOLs believe these payments to be grossly excessive and paid in breach of Mr Patrick's fiduciary duties to the Company. The JOLs do not believe there to be any rational justification for the Directors to approve that level of compensation for Mr Patrick, particularly given Mr Patrick is a US tax lawyer and does not appear to have any relevant experience or qualifications to manage a fund with net assets of approximately US$270 million.

53 The JOLs also have grounds to believe that Mr Patrick used a portion of the above funds to acquire certain properties in the United States, over which the Company now asserts a proprietary tracing claim in its Amended Statement of Claim filed on 15 October 2025. In particular, the JOLs' investigations have revealed the following:

53.1 On 4 November 2024, Mr Patrick and his wife, Darees Patrick, purchased a property at 4909 Minor Hill Road, Missouri, United States of America, for consideration of

[23] Which concerns have turned out to be entirely warranted, as further explained at paragraphs 49 to 51 of MacInnis 1 and paragraphs 52-69 below

[24] This figure includes discretionary bonuses paid to Mr Patrick totalling US$5,450,000.

[25] Pages 84 and 95

approximately US$1,664,500 (the "**Missouri Property**"). The purchase was recorded in a Trustee's Deed dated 4 November 2024 between Harold W. Cunningham and Wanda S. Cunningham, in their capacity as trustees of the Harold W. Cunningham and Wanda S. Cunningham Revocable Trust on the one hand, and Mr Patrick and Mrs Patrick on the other (pages 108 to 109).

53.2 On 20 November 2024, Mr Patrick and Mrs Patrick transferred title to the Missouri Property to the DAAM Real Estate Trust, of which Mr Patrick and Mrs Patrick are the trustees. The transfer was recorded in a Warranty Deed dated 20 November 2024 between Mr Patrick and Mrs Patrick in their personal capacities on the one hand, and Mr Patrick and Mrs Patrick in their capacity as trustees of the DAAM Real Estate Trust on the other (pages 110 to 111).

53.3 On 28 January 2025, Mr Patrick made a payment to Wells Fargo Bank, N.A. to fully repay a loan of US$300,000 and discharge a mortgage on Mr and Mrs Patrick's family home at 6716 Glenhurst Drive, Dallas, Texas, United States of America (the "**Texas Property**"). Mr Patrick's repayment of the loan and the discharge of the mortgage in respect of the Texas Property was recorded in a Deed of Release executed by Wells Fargo Bank, N.A. dated 28 January 2025 (pages 112 to 113).

54 Pursuant to the Amended Injunction Summons, the JOLs seek orders restraining Mr Patrick from transferring or dealing with those properties pending trial (see paragraph 148.3 below).

55 Mr Patrick relies solely on the Mercer Report to support the level of compensation he has paid himself from the Fund structure. I have addressed the Mercer Report at paragraph 78 of MacInnis 1. The JOLs do not believe the Mercer Report validates the level of compensation that Mr Patrick has been paid for his (former) directorship of the Company and management of other entities in the Fund structure. Whilst the issues with the Mercer Report and the Directors' reliance on it will be addressed in more detail in the JOLs' legal submissions, I note

that the Mercer Report does not set out or consider Mr Patrick's qualifications, experience or suitability to the role. As far as the JOLs are aware, Mr Patrick does not have any investment management qualifications or experience aside from his experience as the person in control of the Fund. In this regard, I refer to extracts of the transcript of Mr Patrick's testimony in the Highland Chapter 11 proceedings where he admitted he had no prior investment management experience (pages 114 to 118).

56 I also note that the Mercer Report assumes that the Fund is comparable to a "PE firm with AUM of $400m - $1bn". The JOLs do not agree with that assumption based on the financial information that the Defendants have disclosed to the JOLs to date pursuant to the Interim Undertakings. In particular, the JOLs understand that more than half of the c.US$270 million of net assets of the Fund structure are held in cash or cash equivalents. Finally, I note that Mr Reid also appears to disagree with Mercer's assumption where he states at paragraph 25 of Reid 1 that: "*DAF LP's purpose is not to aggregate capital from investors in the expectation that invested capital will be managed in accordance with a well-defined investment strategy or to provide returns to investors based on the success of that strategy. As such, the notion of an investment fund is inapplicable to DAF LP.*" [emphasis added]

57 At paragraph 134 of Patrick 2, he relies on another report prepared by ValueScope dated 20 November 2024 "*which shows the financial performance and returns made by the DAF Structure under my stewardship consistently beat returns made by the S&P 500*". I have read ValueScope's report and do not believe that Mr Patrick's claim is correct. At page five of the report[26], there is a chart purporting to show the Fund's performance by NAV against the S&P 500 as a benchmark for the period 1 March 2021 to 1 June 2024. At the top of the chart, it states that "*DAF has performed **in line** with a benchmark S&P 500 Total Return Index from March 31, 2021 to June 30, 2024. DAF's returns generally exhibit less volatility than the S&P 500 over the period*" [emphasis added]. The chart also shows the cumulative returns of the

[26] Exhibit MEP-2 at page 160

Fund and the S&P 500 index meeting at the same point by 30 June 2024. There are other questions the JOLs have as to the methodology used in the ValueScope Report and the appropriateness of creating indexes comparing the S&P 500 with the Fund, but the chart alone rebuts Mr Patrick's assertion of outperforming the S&P 500 during his tenure as the person in charge of the Fund.

The Murphy DSAs

58 At paragraph 36 of Murphy 1, he explains the terms of his appointment as a director of the Company in April 2021 as follows:

> "*I negotiated the terms of my appointment with HAK (acting for the Company), and was appointed as a director of the Company on 21 April 2021. I did not speak to Mr. Patrick, or otherwise communicate with him, about the role until after my appointment. The agreed terms were set out in a DSA executed between me, the Company, and the eight other entities listed at Schedule 1 (including CDAF GP, CDAF Fund, and CLO) (together, the "Corporate Parties") on 21 April 2021*"

59 The compensation that Mr Murphy was entitled to under the 2021 DSA[27] mirrored that of his predecessor, Mr Scott, namely US$60,000 per year[28]. However, from this point on, when Mr Murphy's compensation was negotiated and agreed directly with his fellow director Mr Patrick[29], his compensation grew by many multiples and he was awarded a large bonus, many payments of which coincided with the timing of certain steps in the DAF Restructuring:

[27] As defined in Murphy 1. All references to "[insert year] DSA" in this affidavit shall have the same meaning as they have in Murphy 1

[28] In the case of the 2021 DSA, the compensation payable to Mr Murphy also included an uplift of US$500 per hour for any additional work carried out thereunder of more than 30 hours in any three-month period.

[29] As is admitted in the final sentence of paragraph 37 of Murphy 1

59.1 The 2021 DSA was further amended by way of an agreement signed by Mr Murphy and by Mr Patrick on behalf of the Companies (as defined therein)[30] dated 6 November 2023 (the 2023 DSA). The 2023 DSA provides that the 2021 DSA is amended such that –

(a) Mr Murphy shall receive an annual fee of US$200,000; and

(b) The services Mr Murphy was to provide the Companies would be expanded to include, amongst other things, acting upon all lawful directions issued by Mr Patrick subject to Mr Murphy discharging his fiduciary duties to the Companies[31].

59.2 A further DSA dated 12 December 2024 signed by Mr Murphy and Mr Patrick on behalf of the Companies (the 2024 DSA) replaced the amended April 2021 DSA. Pursuant to the 2024 DSA, Mr Murphy–

(a) Was to provide services in his capacity as a director of the Companies; and

(b) Was to be paid an annual fee of US$200,000 and a discretionary bonus or bonuses in an amount and time determined by Mr Patrick as the Chief Executive Officer of the Companies[32].

59.3 Four days later on 16 December 2024, a resolution of the board of directors of the Company, being Mr Patrick and Mr Murphy, was passed, which purported to award Mr Murphy a discretionary bonus of US$250,000 payable immediately[33]. The resolution is signed by both Mr Patrick and Mr Murphy.

[30] Meaning the Company and the other subsidiary entities listed in the schedule to the DSA for whom Mr Murphy was to act as a director

[31] Exhibit PM-1, page 54

[32] Exhibit PM-1, pages 126-127

[33] Exhibit PM-1, pages 128-129

59.4 The 2024 DSA was amended by way of an agreement dated 27 March 2025 signed by Mr Murphy and Mr Patrick on behalf of the Murphy Entities (the 2025 DSA). Pursuant to the 2025 DSA, Mr Murphy –

(a) Was to provide services in his capacity as a director of the Murphy Entities, which services were to include assisting "*the joint official liquidators of Charitable DAF including taking any and all steps necessary to defend any allegations against Mark Patrick arising from the management of Charitable DAF's affairs*"; and

(b) Was to be paid an annual fee of US$500,000 to be paid in equal instalments on the last business day of each calendar month[34].

60 The 2025 DSA expressly provides that the Companies "*may pay the Director in advance for any fees or expenses in circumstances where the Companies may have an inability to discharge their financial obligations to the Director, for example, where freezing injunctions or temporary restraining orders may be sought against the Companies*". In apparent reliance on this provision, Mr Murphy was paid the US$500,000 annual fee in a lump sum prior to the Directors resolving to put the Company into voluntary liquidation five days later on 2 April 2025[35].

61 The fact that Mr Murphy was awarded this compensation shortly after completing the DAF Restructuring and putting the Company into liquidation only reinforces the JOLs' concerns that the true purpose of the DAF Restructuring was to allow Mr Patrick and Mr Murphy to have full control of the Fund structure (without the imposition of the Company, Supporting Organisations and supported Charities that were the ultimate beneficial owners of the Fund) and thereby allow Mr Patrick and Mr Murphy to award themselves unjustifiably excessive compensation

[34] Exhibit PM-1, pages 147-148

[35] However, see paragraph 79 below. It is unclear if the correct date of the 2025 DSA is 27 March 2025 or 27 May 2025

without any accountability to the Supporting Organisations. I also note in this regard that the report that the JOLs received from the Company's former joint voluntary liquidators, Mitchell Mansfield and William Clarke of Kroll (the "**JVLs**"), shortly after the JOLs' appointment, indicates that Mr Patrick and Mr Murphy informed the JVLs that their engagement would be "*on the basis of a non-contentious straight forward liquidation of the Company*" (page 120). Further:

61.1 On 25 April 2025, Mr Patrick sent an email to Shields regarding his strategy for the hearing of the Supporting Organisation's application to put the Company into provisional liquidation, where Mr Patrick stated:

> "*Goal : Keep Kroll; help Kroll understand management and directors actions, avoid Judicial liquidation.*" [emphasis added] (page 131)

61.2 Finally, in the extract of the email from Mark Patrick to Shields and Walkers dated 17 March 2025 to which I refer at paragraph 47 above, Mr Patrick laid out his strategy behind putting the Company into liquidation as follows:

> "*so we would redeem the LLC interest, then distribute the proceeds out of Holdco Ltd., and file articles of Dissolution for Charitable daf Holdco Ltd before a wind up petition is filled. That would put us on the "high ground" to fight (rather the way this is currently heading in a defensive posture). [the Supporting Organisations] would have to scrap their wond up petition (sic) and fight for reinstatement, gripe about the valuations, and file fiduciary breach actions (all of which they will do anyway under a wind up).*" [emphasis added] (page 65)

These materials strongly suggest that Mr Patrick and Mr Murphy were seeking to have the Company wound up and dissolved without any proper investigation by the liquidators into the propriety of their conduct in effecting the DAF Restructuring.

62 The JOLs understand that none of the above increases in the fees or remuneration paid to Mr Murphy were disclosed by Mr Murphy or Mr Patrick to the Supporting Organisations or the Charities in advance or at all. The JOLs understand that the same is true with respect to the over US$10.5 million in director fees paid to Mr Patrick in 2024, as set out in part at paragraph 49 of MacInnis 1 and at paragraphs 63 to 67 below.

The US$11.6 million of director fees for 2024

63 As noted above, the JOLs' concerns as to the compensation Mr Patrick and Mr Murphy have been awarding themselves has magnified upon the review of the financial information that has been disclosed by the Defendants pursuant to the Interim Undertakings they gave to the Court[36]. On 12 September 2025, after several emails from Grant Thornton following up for proper disclosure[37], Mr Shawn Raver on behalf of the Defendants provided income statements for 7 of the 22 "CDM Entities" caught by the injunction order[38] (pages 134 to 140). The income statements for Charitable DAF Holdings Corp., Liberty CLO Holdco, Ltd., and CLO HoldCo, each of which are direct or indirect wholly owned subsidiaries of the Fund, showed directors' fees amounting to a total of approximately US$11.6 million for the year 2024 alone (pages 137 to 139):

Company	**2024 Directors' Fees**
Liberty CLO Holdco Ltd.	US$225,000
CLO HoldCo	US$974,666

[36] Pursuant to the Consent Order in these proceedings dated 31 July 2025

[37] I address in a separate section below the Defendants' various breaches of the undertakings to date (many of which are ongoing).

[38] 27 including the additional entities disclosed by the Defendants pursuant to the Interim Undertakings

Charitable DAF Holdings Corp.	US$10,448,643.47
TOTAL	**US$11,648, 309.47**

64 The income statements did not show to which person or persons the directors' fees were paid. In response to a series of follow-on emails from Grant Thornton seeking further clarity, Mr Shawn Raver, the Company's former Chief Operating Officer and the person to whom Mr Patrick and the other Defendants have seemingly delegated their responsibility of providing disclosure to the JOLs pursuant to the Interim Undertakings (as defined below), provided a further breakdown of the US$11.6 million as follows (page 84):

	2024				
	Paul Murphy US$	Mark Patrick US$	Shawn Raver US$	Compensation Study US$	Total US$
Salary	$216,667	$3,464,500	$268,978		
Bonus	$250,000	$2,550,000	$306,250		
LTI payment I		$3,559,278			
LTI payment II		$975,000			
Total Compensation	$466,667	$10,548,778	$575,228	$99,804.75	
				Total Expenses	$11,648,309.47

65 The JOLs have since discovered that the US$10,548,778 paid to Mr Patrick was paid on the Company's behalf by the Company's then indirect subsidiaries over the course of eight months in 2024 as follows[39]:

Date	Paying entity	Payment for	Amount (US)
20-Feb-24	Charitable DAF Holdings Corp.	Salary	$800,000
20-Feb-24	Charitable DAF Holdings Corp.	Salary	$939,500
29-Feb-24	CLO HoldCo, Ltd.	Salary	$25,000

[39] Page 141

29-Feb-24	CLO HoldCo, Ltd.	Salary	$425,000
13-Sep-24	Liberty CLO Holdco, Ltd.	LTI Payment 1	$225,000
13-Sep-24	Charitable DAF Holdings Corp.	Salary	$850,000
13-Sep-24	Charitable DAF Holdings Corp.	Salary	$850,000
13-Sep-24	Charitable DAF Holdings Corp.	LTI Payment 1	$3,334,278
02-Oct-24	Charitable DAF Holdings Corp.	Bonus	$2,125,000
02-Oct-24	Charitable DAF Holdings Corp.	LTI Payment 2	$975,000
TOTAL			**$10,548,778**

66 In relation to the timing of the above payments to Mr Patrick, I note that:

66.1 On 13 September 2024, Mr Patrick and Mr Murphy passed a Company board resolution approving a base salary of Mr Patrick for 2024 of US$850,000 and a LTI payment based on a percentage of annualised net Fund returns, which had yet to be calculated[40]. Despite this, immediately after the board resolution was executed, four payments were made to Mr Patrick comprised of US$1,700,000 for salary and US$3,559,278 in LTI payments. These payments were made on instructions from Mr Murphy to Mr Raver immediately after the 13 September 2024 board resolution was finalised and executed. In this regard, I refer to an email chain between Mr Murphy, Mr Patrick, Mr Raver, Shields and Campbells relating to the draft board resolution wherein Mr Murphy wrote: "*Shawn – can you make sure you're happy with the figures going out to MP re: baseline and LTI and get that wire ready to send today?*", and Mr Raver later in the chain confirmed: "*Paul - I will send the wire once you execute the resolutions.*" (page 160)

66.2 On 1 October 2024, Mr Patrick and Mr Murphy passed a Company board resolution approving an adjustment to Mr Patrick's LTI payment to increase it by US$975,000 and an annual bonus for the year 2023 in the amount of 2.5 times Mr Patrick's annual

[40] See Exhibit MM-1 at pages 695 to 696

salary[41]. These payments were made the next day on 2 October 2024, being the same day that Mr Patrick resigned from Skyview, as explained further at paragraph 75 below.

66.3 On 2 October 2024, after Mr Patrick's compensation had been dealt with and paid, Campbells commenced work on updating Mr Murphy's DSA to "*bolster the protections you have as a director*" – see the email from Campbells to Mr Murphy and Mr Patrick dated 2 October 2024, which attached a mark-up of the 2021 DSA (pages 161 to 176).

67 The balance of the payments made from the three subsidiary entities referenced above were paid to (i) Mr Murphy (US$466,667) and (ii) Mr Raver (US$575,228). Mr Murphy confirms at paragraph 76 of Murphy 1 that the amounts paid to him were paid from CLO HoldCo's operating accounts.

The US$4.49 million of directors' fees for the first half of 2025 identified by the JOLs

68 Pursuant to certain financial information provided by the Defendants pursuant to the Interim Undertakings, the JOLs have identified that for the period January to June 2025, CLO HoldCo and Charitable DAF Holdings Corp. made director and officer compensation payments totalling US$4,490,161.25 to Messrs Patrick, Murphy and Raver (page 177).

69 Of the US$4,490,161.25 in compensation payments, a sum of US$3,325,000 was paid to Mr Patrick, including salary payments of US$425,000 and a discretionary bonus of US$2,900,000.

Mr Murphy's assertion that his increased workload justified his higher salaries and bonus

70 As regards the suggestion in Murphy 1 that the significant increases in his salary and bonuses in 2024 and 2025 were justified because he had to take on more complex work, I note that when Mr Murphy was first appointed as a director of the Company on 21 April 2021, the

[41] See Exhibit MM-1 at pages 697 to 704

services he was to provide to the Company (and other entities included in the schedule 1 to the 2021 DSA, including the Fund) were as follows –

> "*1. Review and approve or disapprove proposals for investments in amounts greater than $1 million supported by an economic analysis by Skyview and an independent appraisal. In the event the Director proposes to disprove an investment, he will give the Companies at least 30 days' notice of his intention to do so and provide detailed written reasons why;*
>
> *2. To declare dividends from time to time subject to be satisfied that the Company declaring the dividend is solvent; and*
>
> *3. Subject to being satisfied that the Company or Companies in question would not breach any applicable law or regulation, act upon the reasonable instructions of Skyview as the Director may be given from time to time.*[42]"

71 The above is consistent with the JOLs' understanding of how the Company and the Fund operated at that time – Skyview conducted investment analyses and made recommendations to the directors, which the directors then approved or rejected on behalf of the relevant entities. As set out in item 3 above, the directors were required to act upon the reasonable instructions of Skyview so long as they were satisfied that they would not be breaching any law or regulation in doing so. It therefore appears to the JOLs that the directors (Mr Murphy and Mr Patrick) had minimal substantive work to do[43]. The only other service Mr Murphy was to provide under the 2021 DSA was to declare dividends to the Company's participating shareholders (i.e. the Supporting Organisations), which is another fact that the JOLs believe undermines the Defendants 'No Economic Interest Justification' for transferring away the Company's sole valuable asset.

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[42] Exhibit PM-1, page 230

[43] Not just in their capacity as directors of the Company, but as directors of all the entities listed in schedule 1 (including the Fund GP)

72 The 2023 DSA provided that, in addition to the services set out in the 2021 DSA, Mr Murphy was to provide the following services:

> "*(i) undertake responsibility for all offshore matters involving the Companies;*
>
> *(ii) involve himself in any onshore issues involving the Companies;*
>
> *(iii) act upon all lawful directions issued by Mark Patrick subject to the Director discharging his fiduciary duties to the Companies including acting with independence of judgement; and*
>
> *(iv) make himself available to the Companies at all times acting with due diligence and expedition*[44]*.*"

73 It is unclear to the JOLs specifically what additional work was to be undertaken pursuant to (i) and (ii) above – i.e. "offshore matters" and "onshore matters" are not defined or particularised. It is also unclear to the JOLs what (iv) means and how it would not already be subsumed into the usual role and responsibilities of a director. It therefore appears that the only new "service" that Mr Murphy was to offer the Company (and subsidiary entities) pursuant to the 2023 DSA was to act upon all lawful directions issued by Mark Patrick. Accordingly, at this stage, Mr Murphy appears to have contractually agreed to act upon the reasonable instructions of Skyview (pursuant to the 2021 DSA) whilst also acting upon the lawful directions of Mark Patrick (pursuant to the 2021 DSA as amended by the 2023 DSA).

74 On 11 October 2024, Stephanie Vitiello, the Chief Compliance Officer at Skyview, issued a report as to concerns about potential insider trading by Mr Patrick (pages 190 to 194). The report noted that on 2 October 2024, before Ms Vitiello could interview Mr Patrick, he resigned as an employee of Skyview and terminated the services agreement between Skyview and the

[44] Exhibit PM-1, page 54

"DAF Entities"[45]. The report ultimately concluded that: "*Patrick materially violated Skyview's compliance policies and procedures. If the Dallas Foundation traded on Patrick's disclosure of MNPI*[46]*, Patrick and the Dallas Foundation would likely have violated insider trading laws and triggered disclosure to the SEC*". Having terminated the Skyview services agreement, Mr Patrick was then in a position of complete control of the Fund (through his directorship of the Company and Fund GP). It was only then, as further explained below, that Mr Murphy began to be awarded excessive salaries and bonuses by Mr Patrick for his directorship roles. This was notwithstanding that the only work Mr Murphy claims to have undertaken in that period, besides giving evidence in unparticularised Guernsey litigation and New York litigation, was carrying out the "DAF Restructuring", which the JOLs allege was a deliberate scheme to deprive the Company of the Partnership Interest at a significant undervalue.

75 It also appears to the JOLs that both Mr Patrick and Mr Murphy were aware that the Skyview report was forthcoming and took action to ensure Mr Patrick's self-awarded LTI payment was paid out before he resigned from Skyview and the report was issued. I refer to an email chain between Mr Murphy, Mr Patrick, Shields and Campbells relating to the 1 October 2024 resolution of the board of the Company to approve Mr Patrick receiving an LTI payment of US$975,000 and an annual discretionary bonus for 2023 at an amount of 2.5 times his base salary[47]. The first email in this chain is an email from Mr Murphy directed at Shields and Campbells asking them to review the draft 1 October 2024 board resolution, where Mr Murphy stated: "*Need this to be executed asap given matters with Skyview tomorrow*."

76 On 12 December 2024, Mr Murphy entered into the 2024 DSA. As with the 2023 DSA, the 2024 DSA was executed by Mr Murphy and Mr Patrick (acting on behalf of the Company and other subsidiary entities party to the DSA). The list of services that Mr Murphy was to provide

[45] As defined therein, and including the Company and the Fund

[46] Material non-public information

[47] Page 198

to the Company and subsidiaries are listed in Schedule 2 to the 2024 DSA. As with the 2021 DSA (as amended), the list of services included "*to declare dividends from time to time subject to be [sic] satisfied that the Company declaring the dividend is solvent*"[48].

77 Schedule 3 to the 2024 DSA set out the fees that Mr Murphy was to be provided for his services, which were US$200,000 per year and "*a discretionary bonus or bonuses in an amount and time determined by the current Chief Executive Officer of the Companies [Mr Patrick] which may also include issuing equitable interests or creating a long-term incentive plan*". Mr Murphy was granted that right to a discretionary bonus by Mr Patrick (acting on behalf of the Company and other subsidiary Fund entities party to the DSA) six days prior to the LP/LLC Exchange effected by Mr Murphy and Mr Patrick, being the transactions pursuant to which the Partnership Interest was transferred from the Company to CDM in exchange for the sole membership of CDM.

78 At paragraph 65 of Murphy 1, he confirms that on 16 December 2024, four days after the 2024 DSA was executed, he and Mr Patrick in their capacity as directors approved a discretionary bonus to be paid to Mr Murphy in the amount of US$250,000, which amount was apparently determined by Mr Patrick in recognition of: "*(i) [Mr Murphy's] performance; (ii) [Mr Murphy's] contribution to the increased independence of the Company; and (iii) [Mr Murphy's] input into responding to the Supporting Organisations' behaviour in November/December 2024*". Based on Murphy 1 and Mr Murphy's other sworn evidence, (i) to (iii) appear to be references to Mr Murphy's role in carrying out the corporate steps to cut the Company and the Supporting Organisations out of the structure on the purported justification that to do so was necessary to distance the Fund from the perceived influence of Mr Dondero and avoid negative US tax consequences. As noted above, this "Dondero Control Justification" and why the JOLs believe it does not stand up to scrutiny have previously been addressed in MacInnis 1 at paragraphs 70 to 76. It is therefore the JOLs' belief that the award of the discretionary bonus to Mr Murphy

[48] Exhibit MP-1, page 126

by Mr Patrick in close proximity to their carrying out the first step in the DAF Restructuring (the LP/LLC Exchange) amounted to Mr Patrick awarding Mr Murphy special compensation for acting in accordance with Mr Patrick's instructions to complete the DAF Restructuring[49]. As such, the JOLs seek to recover this amount (and others) from Mr Murphy in the Amended Statement of Claim.

79 At paragraph 37 and elsewhere in Murphy 1, Mr Murphy refers to the 2025 DSA, which is dated 27 March 2025. However, it appears likely to have been executed on or around 27 May 2025, given it refers to the Company being "*placed into court supervised liquidation in the Grand Court of the Cayman Islands on 6th May 2025*". This is broadly consistent with Mr Murphy's sworn evidence that the "*Company was not party to the 2025 DSA due to the fact that it was in voluntary liquidation*" (which I believe must be an error and is instead meant to refer to court supervised liquidation). I note that the 2025 DSA included the following:

79.1 The services Mr Murphy was to provide to the Companies (as defined) included to "*[a]ssist the joint official liquidators of [the Company] including taking any and all steps necessary to defend any allegations against Mark Patrick arising from the management of [the Company's] affairs.*"

79.2 Mr Murphy was to be paid US$500,000 in fees payable in monthly instalments and backdated to 1 January 2025. This amount was permitted to be paid by the Companies (as defined) "*in advance…in circumstances where the Companies may have an inability to discharge their financial obligations to [Mr Murphy], for example, where freezing injunctions or temporary restraining orders may be sought against the Companies*". At paragraph 72 of Murphy 1, Mr Murphy confirms that he was paid the full US$500,000 in advance by CLO HoldCo sometime on or after 12 May 2025.

[49] Which, as noted above, the JOLs believe to have been a deliberate scheme to misappropriate the Partnership Interest in breach of their fiduciary duties to the Company.

80 The JOLs believe these provisions may indicate that Mr Patrick approved significant compensation to Mr Murphy in circumstances where Mr Murphy had agreed to provide support in addressing any allegations relating to the management of the Company, including the claims now raised by the JOLs in these proceedings. The JOLs also believe that the timing of the US$500,000 payment to Mr Murphy, not long after the completion of the DAF Restructuring[50], suggests the payment was made partly to compensate Mr Murphy for his involvement in effecting each of the steps involved. Finally, the JOLs believe that Mr Patrick and Mr Murphy agreeing a justification for paying the annual fee to Mr Murphy in advance where there was a risk of "*freezing injunctions or temporary restraining orders*" shows that they understood the risk that the DAF Restructuring could be challenged and an injunction sought against the entities involved. Against that backdrop, it is unclear to the JOLs how Mr Patrick and Mr Murphy decided it was in the Companies' (as defined) best interests to pay Mr Murphy the full amount of his US$500,000 annual fees upfront (or at all).

81 Whilst the 2025 DSA required Mr Murphy to "*assist*" the JOLs, I understand that as a former director of the Company, Mr Murphy has an independent duty to cooperate with the JOLs in any event. In that respect, the JOLs consider that Mr Murphy (and Mr Patrick) failed to comply with their obligation to deliver up the Company's books and records. This failure is evidenced by the substantial volume of new documents (at least 500 comprising over 5,000 pages) produced under the US Discovery Order, which ought to have been delivered up by Mr Murphy (and Mr Patrick) following the JOLs' initial request on 6 May 2025. Further, the JOLs have yet to receive a statement of affairs for the Company from either Mr Murphy or Mr Patrick, as required under section 101 of the Companies Act.

82 At paragraph 78 of Murphy 1, he asserts that: "*[t]o the best of my knowledge, [the JOLs] have made no effort at all to investigate the nuances of the industry, my role or the work I have*

[50] Or, if the correct date of the 2025 DSA is in fact 27 March 2025, on the same date as the final step of the DAF Restructuring, being the redemption of the Company's membership in CDM on 27 March 2025

actually performed in my time at the Company." As far as the JOLs are aware, Mr Murphy has no prior experience of managing an investment fund with net assets worth over US$270 million, let alone one which has been created to benefit underlying charities. As noted at paragraph 74 above, it appears that a main (or at least major) component of the work Mr Murphy has undertaken as a director of the Company has been the DAF Restructuring, which is the impugned conduct underpinning the Company's claims in these proceedings. The only other work disclosed in Murphy 1 is: (i) assisting with New York proceedings and giving evidence in Guernsey proceedings (of which minimal detail is given); and (ii) setting up various committees (which I address below).

83 In relation to Mr Murphy's point at paragraph 58 of Murphy 1 that he "*spent significant effort creating more independence in the corporate structure*" by way of "*establishing the conflicts committee and investment committee*":

83.1 It is unclear who sits on the conflicts committee and what, if any, work that committee has performed. The conflicts committee is not referred to or explained in any of Mr Murphy's or Mr Patrick's sworn evidence in these proceedings or the Company's liquidation proceedings.

83.2 It is unclear who sits on the investment committee and when exactly it was formed. It is referred to in Mr Murphy's presentation dated 3 December 2024[51], but there are no board resolutions creating the committee. The Company appears to have adopted investment committee guidelines by resolution dated 3 December 2024[52]. The resolution states that the guidelines were prepared by Mr Michael Llodra, but is silent as to who sits on the committee. No specific evidence has been given by Mr Murphy or Mr Patrick of what work the investment committee has done, if any, since its creation.

[51] Exhibit MEP-2, page 319

[52] See Exhibit MEP-2, at pages 1-9

83.3 Mr Patrick and Mr Murphy are the only appointed members of the compensation committee, having appointed themselves to it by way of a board resolution dated 1 October 2024[53]. The JOLs do not believe that Mr Murphy and Mr Patrick appointing themselves to the compensation committee and having absolute discretion as to what compensation to award each other as directors is consistent with creating "more independence" in the structure. To the contrary, it appears to the JOLs to create an obvious conflict of interest between their fiduciary duties to the Company and their own self-interest in awarding themselves excessive compensation.

84 In any event, the JOLs do not see how the existence of these committees bears in any way on whether Mr Murphy and Mr Patrick's actions in carrying out the DAF Restructuring amounted to a breach of fiduciary duty or not. Mr Murphy and Mr Patrick have not suggested that any of these committees reviewed and approved the DAF Restructuring.

A4 D&O Insurance, Indemnification, and Payment of Legal Fees

85 In Murphy 1, Mr Murphy asserts that it was not possible for him to obtain D&O insurance for his role as director of the Company (or any other entities for whom he was appointed a director under the DSAs). At paragraph 39 of Murphy 1, he refers to a conversation he had with Hunton Andrews Kurth ("**HAK**"), the Company's US lawyers at the time, prior to accepting the appointment as a director:

> "*HAK explained to me that D&O insurance was not available for the role with the Company due to its connections with Mr. Dondero, who (as noted above) is a prolific litigant. This was widely known, and for this reason it was generally impossible to obtain any (or any cost-effective) D&O insurance*"

[53] See Exhibit MM-1 at pages 695-696

86 I note that Mr Murphy makes no attempt to explain in his evidence if he stress-tested what he was told by HAK. I also note that Mr Murphy has not referred to any enquiries he made with D&O insurers or exhibited any contemporaneous correspondence to that effect. It therefore appears to the JOLs that Mr Murphy did not approach any D&O insurance providers prior to accepting the appointment. Mr Patrick does not address the issue of D&O insurance in either Patrick 2 or Patrick 3, and therefore the JOLs have assumed that he also does not have D&O insurance in place for his various directorships in the Fund structure[54]. If Mr Patrick does in fact have D&O insurance, the JOLs would expect him to be calling on that insurance rather than depleting the assets of the Fund and its subsidiaries by relying on the contractual indemnities he refers to at paragraphs 148 to 149 of Patrick 2.

87 Paragraph 39 of Murphy 1 continues with a reference to an opinion from Justice Jernigan in the Highland Chapter 11 proceedings dated 5 March 2023 where the following was stated:

> "*multiple witnesses testified that there was a phenomenon in the insurance industry colloquially referred to as the "Dondero Exclusion"—meaning that cost-effective liability insurance could not be obtained for the officers of Highland because of the company's historical inclination toward litigation*"

88 The above does not appear to the JOLs to have any direct bearing on Mr Murphy's ability or inability to obtain D&O insurance for his directorship of the Company. Mr Murphy was not being employed as an officer of Highland - he was being appointed to the board of the Company, of which Mr Dondero was not a director or officer. In any event, I note that the above opinion post-dates the pre-appointment discussions between Mr Murphy and HAK by two years, so it could not have formed part of Mr Murphy's reasoning for not seeking to obtain D&O insurance at the time of his appointment.

[54] Or at the very least, for his directorship/management of the Third through Sixth Defendants to these proceedings

89 As regards paragraphs 41 to 42 of Murphy 1 and paragraphs 148 to 149 of Patrick 2, which deal with the indemnity and exculpation provisions of the Company's Articles of Association (the "**Articles**") and other contractual indemnities relied upon by Mr Patrick, the scope and application of these provisions will be addressed in legal argument as necessary. A copy of the letters the JOLs received from Mr Patrick directly and Kobre & Kim (on behalf of Mr Murphy) seeking to call on their indemnity under the Articles for their legal costs to defend these proceedings, and the letter from Maples to Kobre & Kim dated 28 October 2025 in response, are exhibited at pages 199 to 205.

90 As regards paragraphs 43 to 46 of Murphy 1, which deal with the indemnity and exculpation provisions of Mr Murphy's DSA's, the scope and application of these provisions will also be addressed in legal argument as necessary. On the JOLs' review of the DSAs, the JOLs believe that they evince a pattern of: (i) Mr Patrick increasingly rewarding Mr Murphy at each juncture of the DAF Restructuring; (ii) Mr Patrick and Mr Murphy agreeing to expand the scope of the indemnities to make express provision for the claims they expected would be made against them for their involvement in the DAF Restructuring; and (iii) Mr Patrick and Mr Murphy creating provisions for a right to indemnification and advancement of legal fees from the Fund and other entities that they anticipated would remain under their control (and whom would still hold assets) following the DAF Restructuring, rather than from the Company, which was left with no material assets and placed into liquidation.

91 In relation to (ii) and (iii), as Mr Murphy points out at paragraph 45 of Murphy 1, the indemnity provisions in the 2025 DSA were expanded such that:

91.1 The indemnity was no longer given by the Company itself (which was by that stage in liquidation), but by all of the "Companies" as defined in 'Schedule 1: Parties' therein[55]; and

91.2 The following language was added expressly providing for advancement of legal fees to defend claims brought by the JOLs against Mr Murphy: "*The Companies shall also advance any documented costs and expenses incurred by the Director in relation to any and all proceedings arising from the liquidation of Charitable DAF including any allegations that the Director has been fraudulent, dishonest, wilfully negligent, wilfully defaulted or mismanaged Charitable DAF's affairs. The Companies agree to provide any necessary information that will allow the Director to assess the assets of the Companies and that the Companies will be jointly and severally liable for any indemnity.*"

92 The JOLs believe the nature of these amendments and their timing demonstrates that Mr Patrick and Mr Murphy were aware that what they had done in carrying out the DAF Restructuring could result in claims being made against them by the liquidators of the Company, which is precisely what has happened. The decision to expand the indemnity such that it was given by all the "Companies" rather than just the Company, appears to the JOLs to have been made by Mr Patrick and Mr Murphy in cognisance of the fact that the Company was left with no material assets following the DAF Restructuring and therefore would unlikely be able to satisfy any indemnity.

93 At paragraph 40 of Murphy 1, he asserts that: "*I would not have accepted any appointment to the board of the Company without the indemnity [in the DSAs and the Articles].*" The JOLs are perturbed that after having:

[55] The 'Companies' as listed at page 146 of PM-1 are: CDMCFAD,LLC, CDH GP, Ltd., Charitable DAF Fund 2, LP, Charitable DAF Fund, LP, CLO HoldCo, LLC, Charitable DAF Fund, L.P. (which appears to be a duplication), Acis CLO Value Fund II Charitable DAF Ltd, CLO HoldoCo, Ltd. and MGM Studios Holdco, Ltd.

93.1 Made no attempt to obtain D&O insurance;

93.2 Caused the Company to agree broad indemnities in his favour that were expressed to apply specifically to "*any and all proceedings arising from the liquidation of Charitable DAF including any allegations that [Mr Murphy] has been fraudulent, dishonest, wilfully negligent, wilfully defaulted or mismanaged Charitable DAF's affairs*"; and

93.3 Carried out a series of transactions that had the effect of depriving the Company of its sole valuable asset and source of income,

Mr Murphy now expects the Company (and/or other entities listed in the DSAs) to honour the indemnity for his legal fees to defend claims made by the JOLs that he has acted in wilful breach of fiduciary duty by approving said transactions. Indeed, from recent disclosure provided by the Defendants pursuant to the Interim Undertakings, it has been revealed that US$250,000 was paid to Kobre & Kim (Mr Murphy's legal counsel) by CLO HoldCo in apparent reliance on the indemnity and advancement provisions of the DSAs[56].

94 The JOLs' position is that if Mr Murphy or Mr Patrick intend to continue to rely on their directors' indemnities to cover their legal fees for defending these proceedings, they should have to (at a minimum):

94.1 Disclose precisely which indemnity they are relying upon;

94.2 Disclose which entity the funds are being paid from and on what basis; and

94.3 Give an undertaking to the Court to repay all of those amounts should it be proven at trial that the indemnities did not apply (e.g. where there is a finding that Mr Murphy and Mr Patrick acted in wilful breach of their fiduciary duties).

[56] Page 206

95 The above requirements are reflected in the Amended Injunction Summons (which I explain further at paragraphs 148 to 150 below).

A5 Interim Undertakings

96 The hearing of the Injunction Application was originally listed for 31 July 2025. However, on the eve of the hearing the parties agreed a consent order providing for the adjournment of the injunction hearing subject to the Defendants giving certain undertakings to the Court pending the determination of the Injunction Application (the "**Interim Undertakings**"). The Interim Undertakings can be found at Schedule A of the consent order in these proceedings dated 31 July 2025 (the "**Consent Order**"). This section is broken down into two parts:

96.1 First, I address the JOLs' position on the inadequacy of the Interim Undertakings to protect the Company's position through to trial and the lack of proper transparency provided by the Defendants pursuant to the Interim Undertakings to date.

96.2 Second, I address some of the factual inaccuracies in Patrick 2 and Murphy 1 with respect to the Interim Undertakings (to the extent not already addressed elsewhere in this affidavit).

Inadequacy of the Interim Undertakings and lack of transparency by the Defendants

Defendants' ability to exploit the 'ordinary course of business' exception

97 Whilst the Interim Undertakings offer some protection, the JOLs' position has always been, and remains, that the Interim Undertakings would not adequately protect the Company's position in these proceedings through to a trial. By way of one example only, the Interim Undertakings include carve-outs for the Defendants and CDM Entities to undertake "ordinary course of business" transactions[57], which the JOLs believe is being exploited. In particular, the

[57] See Schedule A to the Consent Order at paragraph 1(a) and paragraph 2(a)

JOLs are concerned that if such a carve-out remains through to trial, Mr Patrick and Mr Murphy will rely on it to continue to pay themselves excessive salaries and bonuses from one or more of the Defendants or Fund Entities[58]. In their present form, the Interim Undertakings would provide the JOLs with no ability to stop those payments being made.

98 From the disclosure of July 2025 transactions pursuant to the Interim Undertakings (which disclosure was provided over three months after the transactions occurred), it is also apparent that Mr Patrick and Mr Murphy are authorising significant payments by CLO HoldCo to Baker & Partners, DFW's counsel, to pay for DFW's legal fees of these proceedings and the liquidation proceedings (including, presumably, DFW's costs of preparing the Removal Application). In July 2025 alone, CLO HoldCo settled invoices to Baker & Partners on DFW's behalf totalling US$764,880.66, with a further US$254,847.40 paid to Baker & Partners in September 2025[59]. The JOLs assume that the payments are being made under the guise of the "ordinary course of business" exception, despite there being no apparent legal basis for CLO HoldCo to be liable for DFW's legal fees.

99 As part of the negotiations of the "protocol" and later, the Interim Undertakings, the JOLs sought the Defendants' agreement to a scheme whereby all transactions above a certain amount would need to first be approved by the JOLs. The Defendants and CDM Entities refused to agree to any such scheme. However, from the JOLs' experience of the Interim Undertakings in practice since then, the JOLs are of the view that nothing short of strict prohibitions on the Defendants' and Fund Entities' use of assets that the Company asserts a proprietary claim to[60] would suffice.

[58] Defined as "CDM Entities" in the Interim Undertakings but referred to as the "Fund Entities" in the Amended Injunction Summons

[59] Pages 247 and 267

[60] Or assets that are directly referable to the value of said proprietary claim (e.g. assets held by the Fund's subsidiaries, being the Fund Entities).

Inadequacy of disclosure provided pursuant to the Interim Undertakings

100 Prior to the Interim Undertakings being in place, the JOLs did not have transparency into the Company's and the Fund's affairs. Whilst Mr Patrick and Mr Murphy have provided some documents to the JOLs, the JOLs have not been provided with a complete set of the Company's books and records. This has necessitated the JOLs seeking provisional relief in the United States Bankruptcy Court against various of the Company's former service providers (including ValueScope and Carrington Coleman) for disclosure of various books and records belonging to the Company (see paragraph 28 above regarding the US Discovery Order). The JOLs obtained the US Discovery Order on 18 September 2025 and have been receiving and reviewing the disclosure on a rolling basis, with the final tranche of disclosure due from ValueScope on 31 October 2025. Despite the JOLs requesting full provision of the Company's books and records and a statement of affairs from Mr Patrick and Mr Murphy pursuant to section 101 of the Companies Act, these have not been provided. For example, the JOLs are aware that Mr Patrick and Mr Murphy used the Company email addresses set out in footnote 11 above, but to date neither Mr Patrick nor Mr Murphy have provided a full suite of those emails.

101 Now that the Interim Undertakings are in place, the level of transparency into the affairs of the Fund and the CDM Entities provided by the Defendants has only marginally improved. As noted above, the Interim Undertakings provide the JOLs with a retrospective window into transactions below US$50,000 and a right to 7 days' notice of any transactions above US$50,000, but no ability to prevent any inappropriate or suspicious transactions. If this arrangement were to continue through to trial, the JOLs believe it will have the effect of depleting the assets of the Fund structure and undermining the value of the Company's proprietary claim to the Partnership Interest and its traceable proceeds.

102 The JOLs' concerns have been heightened by the Defendants' overly restrictive interpretation of the Interim Undertakings. On 30 September 2025, Maples sent a letter to Campbells

pointing out that the Defendants' and CDM Entities' disclosure of financial records to that point was incomplete and did not satisfy the requirements of the Interim Undertakings[61]. On 7 October 2025, Campbells sent a response to Maples whereby Campbells asserted that the Interim Undertakings only required the Defendants and CDM Entities to provide a consolidated balance sheet at the level of the Fund (rather than individual balance sheets and other financial statements and records for each Defendant and CDM Entity). Campbells' letter reasoned that this was all that was required because a consolidated balance sheet (with no supporting information or records) is allegedly all that was provided to the Supporting Organisations in the past[62]. Campbells also asserted that because the Interim Undertakings refer to "existing and up to date" balance sheets and financial records, the Defendants and CDM Entities were only required to provide any financial statements that already existed and did not need to create any new records (including basic records such as balance sheets and profit and loss statements for each individual entity)[63]. In other words, the Defendants' position appears to be that they were only obliged to provide the JOLs with a simple (and not very informative) consolidated balance sheet for the Fund, and anything beyond that would only be voluntary.

103 Pausing there, the JOLs are surprised by Campbells' suggestion that there are no other "existing" financial records for a fund with net assets of c.US$270 million besides a one-page consolidated balance sheet at the Fund level. In the JOLs' experience of such accounting and record-keeping matters, it would not ordinarily be possible to prepare a consolidated balance sheet for the Fund without the individual balance sheets for each of its subsidiaries. This could only be the case if an exercise was never undertaken to figure out which entities hold which assets – which would itself be quite shocking, and certainly not how the JOLs would expect a c.US$270 million fund to be run responsibly and in circumstances where the Fund is paying significant sums to a purported investment manager (Mr Patrick).

[61] Pages 686 to 688

[62] Pages 689 to 691 and 235

[63] Page 689

104 The Fund's consolidated balance sheet also does not have any line item for accounts payable, and the Fund does not maintain an accounts payable ledger[64]. It is unclear to the JOLs how the Fund accurately reports net assets and monitors the balance of accounts payable despite, for example, the fact that the JOLs are aware that there are 27 different law firms that have been engaged by entities in the Fund structure since the beginning of January 2025.

105 In the JOLs' view, the poor state of the accounting and record-keeping for the Fund structure under Mr Patrick's stewardship also calls into question what work Armanino[65] is being paid for and, more importantly, how Mr Patrick can appropriately discharge his duties without these basic accounting reports. In circumstances where Mr Patrick's salary is allegedly comparable to roles in Publicly Traded REITs, PE firms etc (per the Mercer Report), the lack of proper accounting for the Fund and its many subsidiaries (including a lack of any audited accounts) suggests a concerning disregard for good governance and oversight.

106 Even in a hypothetical scenario in which the Interim Undertakings continued through to trial and offered what the JOLs believe to be a sufficient level of protection (which they do not), the Defendants have breached the Interim Undertakings and remain in breach in a number of material respects. The full suite of correspondence between the JOLs and the Defendants (acting through either Campbells or Mr Shawn Raver, the Company's former Chief Operating Officer) on the disclosure the Defendants have undertaken to the Court to provide is at pages 360 to 385. A detailed chronology of this correspondence explaining the various breaches and/or issues the JOLs have encountered with the Defendants' disclosure to date is at pages 222 to 231. In summary:

106.1 Numerous financial records remain outstanding despite repeated requests from the JOLs, including 69 separate reports across 28 entities. Income statements and

[64] See, for example, the email from Mr Raver to the JOLs dated 12 September 2025, where Mr Raver confirmed that there were no accounts payable on the Fund Entities' consolidated balance sheet as the accounting is conducted on a cash basis. Pages 437

[65] Armanino LLC - an accountancy firm engaged by Mr Patrick to provide financial reporting and fund accounting services.

balance sheets for each Fund Entity have either been delayed or not provided at all. No working papers or supporting documentation have been provided to the JOLs to substantiate the consolidated Fund balance sheet dated 31 July 2025.

106.2 Despite multiple follow-ups from the JOLs, the Defendants have failed to explain why there is an apparent understatement of net assets of US$139,000,000 on CLO Holdco's balance sheet as at 30 June 2025. Separately, the JOLs were required to press for further information to explain discrepancies in information provided by the Defendants and reconstruct the Fund and Fund Entities' financials, including between the individual balance sheets and consolidated balance sheets, which remains unreconciled to the extent of US$259,000.

106.3 Multiple iterations of the Fund structure chart were provided by the Defendants, each correcting prior omissions or errors, causing the JOLs to have a lack of visibility over the full Fund structure until 25 September 2025, the date on which the fifth and final iteration of the structure chat was provided by the Defendants.

106.4 Monthly transaction listings for each Fund Entity have been provided to the JOLs consistently late or with incomplete information. For example, whilst the Interim Undertakings provide that the Defendants and Fund Entities are to provide a monthly transaction report for the previous month of transactions below US$50,000 and seven-days' notice of any transactions above US$50,000, the Defendants and Fund Entities initially only provided what transpired to be an incomplete list of transactions below US$50,000 for the month of July 2025. Months later, on 24 October 2025, after numerous emails from the JOLs to Mr Raver whereby the JOLs were seeking to reconcile the financial information that we had been provided, the Defendants provided a full list of transactions for the month of July 2025. The list included significant payments of US$2,680,000 to various law firms and ValueScope that had not previously been disclosed to the JOLs, including retainers of US$500,000 to

Campbells, US$250,000 to Richards Layton & Finger, and US$90,000 to ValueScope. A spreadsheet showing the payments disclosed in the original July 2025 transaction listing as against the payments disclosed in the updated July 2025 transaction listing is at page 692. It therefore appears to the JOLs that the Defendants were concerned about the prospects of injunctions being ordered against them at the original injunction hearing on 31 July 2025 and took steps to transfer out a significant amount of assets from CLO HoldCo to various law firms and ValueScope before any injunction could be granted. The information confirming this position was not provided to the JOLs for a number of months.

106.5 The Fund seemingly operated without entity-level financial visibility, relying solely on consolidated reporting without supporting working papers, which the JOLs consider a fundamental lack of financial control and poor governance, as explained above. To the extent that working papers and supporting documentation for the balance sheets and income statements that have been provided do in fact exist, the Defendants should have provided those materials to the JOLs pursuant to the Interim Undertakings.

107 Should the above breaches of the Interim Undertakings continue, the JOLs may need to seek more stringent relief against the Defendants, such as the appointment of a receiver over CDM, the Fund GP and/or the Fund. The fact that the JOLs may need to seek the appointment of a receiver was expressly foreshadowed to the Defendants by way of a letter from Maples to each of the Defendants' Attorneys[66] dated 15 July 2025 (pages 693 to 703)[67].

108 For the above reasons, the JOLs reject entirely Mr Patrick's assertion at paragraph 162 of Patrick 2 that the Defendants have provided "*full visibility of the financial position of the DAF structure*".

[66] Campbells, Baker & Partners and Kobre & Kim (the "**Defendants' Attorneys**").

[67] At paragraph 4 therein.

Inaccuracies in Patrick 2 and Murphy 1 regarding the Interim Undertakings

109 At paragraph 81.4, Mr Murphy seems to suggest that there has been a *volte face* by the JOLs on the adequacy of the Interim Undertakings the Defendants have given to the Court pending the determination of the Injunction Summons. That is false. The JOLs' express position has always been that whilst the Interim Undertakings provide some protection, they do not adequately protect the Company's position in these proceedings through to trial, hence why the JOLs seek a broader range of injunctive and disclosure relief in the Amended Injunction Summons. Further, the Interim Undertakings are expressed to apply only until the determination of the Injunction Application (not through to trial) and the Defendants expressly agreed therein that "*the issue of whether they are permitted to use funds that derive directly or indirectly from the limited partner interest in the Fund to pay their legal fees and other service providers will be determined at the [adjourned injunction hearing]*". This was agreed in recognition of the JOLs' belief that restraints on the use of Fund assets to pay the Defendants' legal fees should be ordered in the circumstances of this case. It should therefore have been clear to Mr Murphy that the JOLs would not accept the Interim Undertakings as a protective measure through to trial.

110 At paragraph 147 of Patrick 2, he addresses the JOLs' position on the payment of the Defendants' and Fund Entities legal fees and expenses. Mr Patrick refers to a letter from Campbells to Maples dated 8 September 2025 whereby Campbells communicated that the Defendants "*will not accept any undertakings which unduly restricts their ability to defend [these proceedings]*"[68]. On 15 October 2025, Maples sent a letter to the Defendants' Attorneys in response, which enclosed a draft Amended Injunction Summons and set out the JOLs' position on: (i) the scope of the Company's proprietary claim; and (ii) the payment of the Defendants' and Fund Entities' legal fees (pages 704 to 727). I explain the JOLs' position on the extent to which the Defendants and Fund Entities should be able to pay their legal fees if

[68] Exhibit MEP-2, pages 478-480

injunctions are granted in more detail at paragraphs 148 to 150 below under the heading 'Amended Injunction Summons'.

111 The JOLs also take issue with the assertion made in Campbells' 8 September 2025 letter that: "*the legal costs being incurred [by the Defendants] - which are necessitated by the claims brought by your clients - are reasonable and proportionate having regard to the complexity of the Proceedings and the value of the assets in dispute.*" The total amount of legal fees incurred by the Defendants in relation to the Company's liquidation proceedings and these proceedings that the JOLs have been made aware of is US$4,256,882 being US$512,404 to Campbells[69], US$2,326,465 to Kobre & Kim[70], US$1,289,728 to Baker & Partners[71] and US$128,285 to Baker Hostetler[72]. The JOLs consider this level of legal fees to be wholly disproportionate to the work that has been done, particularly given these proceedings remain in their early stages[73] and there is no apparent need for DFW to be separately represented from Mr Patrick and the other Defendants he controls.

112 At paragraph 142 of Patrick 2, Mr Patrick states that a requirement that the "*Defendants and CDM Entities provide advance notice of all transactions over US$10,000 and await approval from the JOLs before proceeding…[was] already included in the Protocol offered to the JOLs*". That is incorrect – the Defendants and Fund Entities never offered a protocol whereby the JOLs would have the right to approve or reject proposed transactions. Mr Patrick appears to admit this at paragraph 143 of Patrick 2 where he states that he was reluctant to agree to such a requirement.

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[69] These are costs associated with Campbells' invoices relating to the Writ Proceedings pursuant to a proof of debt dated 31 October 2025 that Mark Patrick has lodged with the Company. This excludes fees that accrued in October 2025.

[70] This includes retainer amounts of US$750,000 and excludes fees that accrued in October 2025.

[71] This excludes fees that accrued in August 2025, September 2025 and October 2025.

[72] This is understood to be the legal fees associated with Reid 1.

[73] The "value of the assets in dispute" should not be a relevant consideration to the Defendants' when assessing the reasonableness of the legal fees that they are incurring.

A6 Injunction Application

113 At paragraph 91 of MacInnis 1, I addressed factual matters that the JOLs believe to be relevant to the legal elements for obtaining the injunctions the JOLs seek. Mr Patrick addresses points he believes to be relevant to those elements at paragraphs 152 to 175 of Patrick 2, and paragraph 114 of Patrick 3. I reply to some of those points below insofar as they touch on matters of fact. Where I have not replied to any points it is not because I agree with them – the legal elements for injunctions will be more fulsomely addressed in the Company's skeleton argument and oral submissions.

Serious issue to be tried

114 At paragraph 154 of Patrick 2, Mr Patrick seeks to downplay the fact that the JOLs have obtained sanction of this Honourable Court to commence these proceedings because:

114.1 There was no mention of the "DFW Summons" in the JOLs' evidence for the sanction application; and

114.2 There was very limited reference to the parties' correspondence about the "Protocol".

115 I understand that the DFW Summons is incapable of resolving the issues in dispute amongst all the parties to these proceedings. This was explained to the Defendants' Attorneys in a letter from Maples dated 27 July 2025 (pages 796 to 802). The Defendants' Attorneys have not responded to that explanation and DFW has made no attempt thereafter to list the DFW Summons for hearing. As regards the Protocol correspondence, the inadequacy of the protocols offered by the Defendants prior to the JOLs commencing these proceedings is addressed at length in MacInnis 1 and further at paragraphs 151.1 to 151.2 below.

116 The JOLs do not agree with Mr Patrick's explanation of the scope of the Company's proprietary claim in these proceedings at paragraph 156 of Patrick 2 or paragraph 114(a)(i) of Patrick 3.

The JOLs' position on this issue has been explained to the Defendants in a letter from Maples dated 15 October 2025 (pages 704-708) and will be expanded upon in legal argument. However, even if Mr Patrick were correct that the Company's proprietary claim is limited to the Partnership Interest in the Fund and nothing further, the JOLs believe the proprietary claim would be rendered futile (or at least lower in value) if the Fund and its subsidiaries, under the control of Mr Patrick, are permitted to freely dissipate their assets.

Damages would not be an adequate remedy

117 At paragraph 157 of Patrick 2 and paragraph 114(d)(ii) of Patrick 3, Mr Patrick addresses the potential loss or harm that would be suffered by the Supporting Organisations if injunctions are not granted and contends that any such loss could be adequately compensated in damages. This does not address the issue of what damage would be suffered by the Company, which I understand to be the relevant consideration. This issue will be addressed further in legal argument.

118 The JOLs also believe an award of damages in favour of the Company would not be an adequate remedy if injunctions were not granted and the Company succeeds on is proprietary claim at trial because:

118.1 There is no evidence before the Court to suggest that Mr Patrick, Mr Murphy, CDM or DFW have sufficient assets to satisfy an order requiring them to pay the Company what is likely to be a significant amount of damages.

118.2 Any payment of damages by the Fund, CLO HoldCo and/or the Fund Entities to the Company would be circular and would not provide any actual compensation to the Company. That is, the Company would recover the Partnership Interest and thereby own (directly or indirectly) the Fund, CLO HoldCo and the Fund Entities, such that any payment of damages they make to the Company would be sourced from the Company's own property (whether directly or indirectly held).

Balance of convenience

119 At paragraph 160 of Patrick 2, he asserts that the Fund Entities *"…are actively managed. The injunction sought by the JOLs would seriously and unjustifiably interfere with that management. Any interference with the operation of these businesses has the potential to cause serious and irreparable harm to the CDM Entities*". These appear to the JOLs to be unsubstantiated assertions. From my reading of Patrick 2 and Patrick 3, there is no detail of which Fund Entities are "actively managed", what that means in practice, and specifically how an injunction would interfere with the "businesses" of the Fund Entities.

120 Mr Patrick has produced a further document (the "**Damages Report**") prepared by ValueScope, the same entity that provided a report opining that a fair value for the redemption of the Partnership Interest was c.US$1.6 million (when it had net assets of c.US$270 million), which purports to assess the likely damage that the injunction will cause to the Fund, if granted[74]. The headline point of the Damages Report is that ValueScope opine that the estimated damage resulting from the injunction is the remarkable sum of US$126.7 million. The JOLs do not accept this for a number of reasons.

121 First, no permission has been granted to the Defendants to adduce expert evidence, and the Damages Report was only provided to the JOLs for the first time on 3 November 2025, although it was dated 29 July 2025. This obviously hampers the JOLs' ability to assess the report and respond to it, including by reference to expert evidence of their own. This is especially so in light of the fact that many of the claims made in the report are not supported by documentary evidence that the JOLs can investigate and verify.

122 Second, this document was prepared by ValueScope, the same entity that provided valuations that purported to justify Mr Patrick's decision in effect to sell the Partnership Interest to CDM for what appears to be a substantial undervalue. The JOLs therefore consider that valuations

[74] Pages 728 to 783

provided by ValueScope have already been shown to be unreliable documents that serve Mr Patrick's interests, and we hold justifiable doubts as to ValueScope's independence.

123 Third, the JOLs have been provided with at least some of the instructions given by Mr Patrick to ValueScope:

> "*We think the opposition will simply argue for something below $10mm and make the daf sound likes its just a giant escrow so no concern about damages from an asset freezing injunction.*
>
> *They likely plan to wing it and not have a Report from a third party valuation company to support their minimal request for a seven figure bond.*
>
> *Brandon is working on a narrative that details all the areas that could be damaged from a freezing injunction.*
>
> *Do you think ValueScope could prepare an analysis of a bond or cash deposit reflecting the estimated harm that could befall the daf from a freezing injunction taking into account Brandon's narrative, that we can submit to a court to indicate Dondero needs to deposit within 7 days of the order for the injunction?*" (page 784)

124 From this, it can be seen that ValueScope have been instructed to prepare a valuation analysis based on "*Brandon's narrative*". Whilst it is not entirely clear what this narrative entails, it underlines that the report is based on the version of events that Mr Patrick wanted them to use, rather than ValueScope having undertaken any independent verification of the facts that form part of "*Brandon's narrative".*

125 Fourth, the Damages Report is extremely thin on detail, and appears to adopt valuation mechanisms that suit Mr Patrick's purpose, but with no explanation, let alone justification, of why those mechanisms are appropriate. The Damages Report opines that damage is likely to

be caused by the injunction to [redacted] projects that the Fund is currently undertaking, and I consider each of these projects, and the unsatisfactory nature of ValueScope's analysis, in the paragraphs below.

[redacted]

126 First, the Damages Report considers alleged lost opportunities in respect of land [redacted]. This is said to be vacant land, owned by the Fund, totalling around [redacted] It is proposed that this land would be used for the [redacted], which I understand to be a [redacted]; in short, the proposal appears to be that the Fund's land would be used [redacted] that this use of land would be profitable, and that the injunction would impair the Fund's ability to negotiate with [redacted]

127 The Damages Report says that the value of the [redacted] was US$11.29m as at 21 August 2024. This is on the basis of a report prepared by "[redacted]"[75], but no details are given as to how this figure was reached. Then, with no explanation whatsoever, the Damages Report states that a multiple of 10x should be applied to assess the "improved" value of the [redacted] if the land were to be used for the [redacted], giving a value of US$112.9m, and a profit after cash flow and sale cost expenses of US$95.1m, that the Damages Report says will be lost if the injunction were to be granted. To put it mildly, that appears to be an optimistic estimate, but since no explanation has been provided as to why a 10x multiple has been used, it is impossible for the JOLs to engage in a meaningful assessment. All I can say at this stage is that a 10x multiplier of value seems both unlikely and is a round number that seems to have little close analysis behind it.

[75] [redacted]

128 Similarly, no explanation has been given as to why US$855,200 has been used for the 12-month cash flow figure or why 5% has been allowed for selling costs; there is nothing that explains why these are appropriate and realistic figures.

129 The exhibits to the Damages Report that concern the [redacted] are a series of documents that appear to illustrate that [redacted], but they provide no support, as far as I can see, for the alleged increase in the [redacted] value that will result from [redacted] Rather, they are merely documents that provide a general explanation of the nature of the project.

130 Further, no real explanation is given as to the current likelihood that, but for the injunction, the project will go ahead as planned. If it really were the case that the potential land improvement was 10x the relevant land's value, [redacted].

131 Finally, it is not explained why it is said that the project will not go ahead if the injunction is granted, other than to "*impair the DAF's ability to* [redacted]". Whilst the ValueScope Report opines that the "*DAF will be unable to engage with* [redacted] *to secure the* [redacted] no explanation is given of why this should be the case, and nor does this appear to be a matter that lies within ValueScope's expertise (being a matter of the scope of the injunction, as a matter of law).

[redacted]

132 As far as the JOLs understand it, this property comprises [redacted] land with a present value of US$376,000 as at 26 August 2024 (which is said to be [redacted] valuation, but no concrete evidence is provided), which it is proposed to obtain a [redacted] It is said by ValueScope

that the project can be expected to turn a profit of c.US$5 million, but that the Fund will be "[redacted]

133 However, I would note the following:

133.1 ValueScope have assessed the value of the land [redacted] i.e. they have allowed no discount for the possibility that [redacted] The JOLs do not believe this approach is defensible.

133.2 ValueScope have applied a 5.5% cap rate and assumed selling costs of 5%, with no explanation as to why those rates are appropriate.

133.3 The Damages Report has again worked on the basis that the opportunity allegedly presented by the project will be lost entirely were the injunction to be granted. No explanation is given as to how, exactly, the injunction would prevent the [redacted] or how it is that ValueScope are able to opine on this question.

[redacted]

134 [redacted], I understand, a company [redacted] and is an entity to which the Fund made a number of loans that accrue paid-in-kind (PIK) interest at an annual rate of 13% compounded monthly, with a par value of US$112.6 million at maturity on 31 December 2025, according to the Damages Report.

135 ValueScope estimated that the injunction would cause the Fund a loss of US$25.9 million by comparison with the position it would have been in had it not been for the injunction, on the basis that (p.6) [redacted] Rather, the Damages Report asserts, [redacted]

136 However, ValueScope's analysis is very difficult to follow; in particular, it is hard to understand what negative effect ValueScope think the injunction would have on the Fund's rights as a [redacted]

137 The key point appears to be an assumption on the part of ValueScope that the Fund's options without the injunction are either [redacted] and the Amended Injunction Summons contains a carve-out for the reasonable legal fees that would be incurred in taking this course. I do not see how the injunction would reduce the value of the Fund's investment in [redacted] at all.

138 Further, even leaving that aside, there is no explanation provided by ValueScope for a number of the material assumptions made as part of their calculations:

138.1 ValueScope assumes that, if the Fund [redacted] would recover 95% of par, but with no explanation as to why that is.

138.2 ValueScope assumes that the Fund will make only 70% of par if it cannot exit; this is said to be based on price discovery, but no documents are exhibited to support this figure.

138.3 ValueScope assumes that, if the injunction is granted, [redacted] is only 15%, by comparison with 50% ("*two equally likely*" scenarios) if the injunction is not granted. Again, there is no explanation, let alone justification, as to why the injunction would produce such a different outcome.

[redacted]

139 ValueScope estimate US$700,000 of losses arising in relation to the [redacted] That site is said to have had a value of US$570,000 on 11 October 2024 (again, this is said to be [redacted] valuation, but no concrete evidence is provided). In relation to this, it is said that the injunction would put a halt to talks that the Fund is participating in to lease around [redacted] to a [redacted] However, no explanation is given as to why it is said that the injunction will have this effect, and I do not understand why it would.

140 Further, and like for the other properties, no explanation is given for the cap rate of 7% that ValueScope use, or why it is that 5% is a realistic estimate of selling costs.

Attempts to address the Damages Report in correspondence

141 Despite the obvious deficiencies in the Damages Report, on 12 November 2025, Maples wrote to Campbells (copying Kobre & Kim and Baker & Partners), seeking to learn more about the damage that the injunction is alleged to be likely to cause, and offering to seek to reach agreement on potential carve-outs to the injunction to address the Defendants' concerns in that respect:

> "*On the state of the evidence, including the Damages Report, the JOLs' view is that it is unrealistic to expect the Court to not grant any injunctive relief against your clients or to order fortification of a cross-undertaking in damages in an amount even remotely*

approaching US$126 million. In any event, to reduce the issues in dispute for the hearing, the JOLs believe there is considerable merit in the parties exploring whether agreement can be reached to address your clients' concerns regarding the alleged loss of opportunities set out in the Damages Report.

We previously wrote to your firm on 15 October 2025 seeking your clients' feedback on the proposed carve-outs to the injunctive relief sought by the JOLs and enclosing a draft amended injunction summons. The draft amended injunction summons is yet to be filed. We would therefore encourage your clients to make a proposal to the JOLs as to the protections that could be incorporated into any injunction order to alleviate the risk of alleged losses set out in the Damages Report. In that regard, we note that the JOLs previously offered, in the context of the protocol and the interim undertakings, a scheme whereby the Defendants and Fund Entities could seek the JOLs' approval for any expenditure above a certain threshold, which your clients rejected. Further, the injunction summons dated 15 July 2025 expressly provided for the Defendants and Fund Entities to seek the JOLs' approval to make any potentially profitable investments as follows:

> *"5.2 To the extent that any Defendant, Fund Entity or any of their wholly owned subsidiaries wishes to (i) make any payment or otherwise deal with its assets for the purpose of preserving, improving or maintaining the value of its assets; or (ii) make any new investments, they may make a written request (in the case of a Fund Entity or one of their wholly owned subsidiaries, through the Sixth Defendant) to the Plaintiff to undertake the proposed transaction. Such request must include full supporting information and documentation as well as an explanation of the rationale for the transaction. The Plaintiff shall be required to give its approval or non-approval to the proposed transaction within 7 days of the request being made. Should the Plaintiff not approve the proposed*

transaction, the party making the request shall not consummate the proposed transaction."

An agreed scheme modelled on the above provision would appear to fully address the risk of alleged losses identified in the Damages Report. In the alternative, if the parties cannot reach agreement, the appointment of receivers over the Fund would also fully address that risk. In that case, professional Court-appointed receivers could independently determine whether or not to pursue the investments in question. As we foreshadowed in our letter of 15 July 2025 (at the time of filing the injunction summons), the JOLs reserve the right to amend their application to seek the appointment of receivers over the Fund and/or other Defendants if necessary." (pages 785 to 787)

142 The JOLs are awaiting a response from Campbells to Maples' letter before finalising and filing the Amended Injunction Summons, but we intend to do so in any event prior to the hearing on 15-16 December 2025.

Alleged Prejudice to Mr Murphy and Mr Patrick of an Injunction

143 At paragraph 88 of Murphy 1, he asserts that the Company's liquidation proceedings and the claims made by the Company against him in these proceedings "*affects my ability to accept appointments and casts a shadow over my role as an attorney at Stanbrook Prudhoe*" and that "*there is a significant risk that my ability to earn income from alternative sources is severely diminished until I am vindicated in these proceedings*." However, those statements only refer to the prejudice Mr Murphy alleges he would suffer from the commencement of those proceedings (which I understand is a matter of public record). Mr Murphy has not addressed in Murphy 1 the matter of any alleged prejudice he would suffer by virtue of any injunctions ordered against him in these proceedings as distinct from the alleged prejudice he claims to have suffered from the proceedings generally.

144 In any event, Mr Murphy appears to contradict himself at paragraph 9 of Murphy 1, where he states that: "*I have since been appointed to various boards of directors and continue to be offered roles which are a good fit for my particular background as a litigation lawyer*" (emphasis added). If Mr Murphy is continuing to be offered directorship roles then it casts doubt on the alleged prejudice he claims he has suffered from these proceedings. The JOLs also believe Mr Murphy's statement to be inconsistent with the bare assertion made in the letter from his attorneys, Kobre & Kim, to Maples dated 29 July 2025[76] that "*the imposition of injunctive relief…could lead to a loss of at least US$500,000 in income per annum (in today's value), for the duration of his working life*".

145 Mr Patrick does not appear to contend in his evidence that he personally would suffer any particular prejudice if injunctions were granted against him.

Cross-undertaking in damages

146 At paragraph 168 of Patrick 2, Mr Patrick asserts that because the initial tranche of funding provided to the Company by Crossvine has been exhausted, Mr Patrick has "*concerns…regarding Crossvine's ability willingness and ability to meet the any [sic] cross-undertaking in damages*". The JOLs do not believe that the exhaustion of the initial tranche of funding in any way speaks to Crossvine's ability to meet the cross-undertaking in damages that it has agreed to give (if required by the Court). The funding provided by Crossvine was only ever intended to be an initial tranche. The JOLs are in advanced discussions with several third-party funders, including Crossvine, as to the provision of further funding to cover the Company's legal costs and expenses through to trial.

[76] Exhibit PM-1, page 181

Fortification

147 The matter of fortification will be addressed in legal argument. However, the JOLs do not believe fortification is necessary or appropriate given: (i) the strength of their case against the Defendants; (ii) the fact that the Defendants' actions have caused the Company to have no material assets with which to give a cross-undertaking in its own name; and (iii) the fundamental flaws in the Damages Report, being the sole piece of evidence the Defendants rely upon to assert that CDM and/or the Fund Entities would suffer significant damage from an injunction. To the extent fortification of any cross-undertaking is required by the Court, the JOLs do not believe that it should be anywhere near the US$126 million amount sought by the Defendants.

Amended Injunction Summons

148 On 15 October 2025, Maples sent a letter to the Defendants' Attorneys which enclosed a draft amended version of the Injunction Summons (the "**Amended Injunction Summons**")[77]. The main changes to the original Injunction Summons were as follows:

148.1 Included an exception to the injunction for Mr Patrick and Mr Murphy to pay their reasonable living expenses up to a cap of US$10,000 per month from any compensation they have been paid by any of the corporate Defendants or Fund Entities.

148.2 The Defendants are not permitted to use assets ultimately deriving from the Fund (in respect of which the Company asserts a proprietary claim) to pay their legal fees and expenses, subject to the following exceptions –

[77] Pages 704 to 727

(a) The Fund, CLO HoldCo and any of the Fund Entities are permitted to make payment of their reasonable legal fees and expenses. The rationale for this exception being that those entities could only ever use "Fund assets" to pay for their legal fees given where they sit in the Fund structure.

(b) Mr Patrick and Mr Murphy are permitted to pay their reasonable legal fees and expenses out of assets ultimately deriving from the Fund but only where the payment is being made pursuant to a contractual right of indemnification and advancement from an entity other than the Company, in which case they must comply with the requirements set out at paragraph 94 above.

148.3 Included a specific restraint on Mr Patrick transferring or dealing with the Missouri Property or the Texas Property, on the basis that the Company asserts a proprietary tracing claim in relation to those properties as explained at paragraphs 53 to 54 above.

149 Maples letter of 15 October 2025 sought answers from the Defendants as to the source of the funds being used to pay for their legal fees and whether any Defendants were relying on contractual indemnities to pay their legal fees out of assets ultimately deriving from the Fund or its subsidiaries. The letters in response from Kobre & Kim and Campbells, both dated 27 October 2025, are at pages 788 to 795. Whilst the JOLs had intended to finalise and file the Amended Injunction Summons after receipt of those responses, the JOLs decided to wait to review the Damages Report (once provided) before finalising the Amended Injunction Summons.

150 As noted at paragraph 142 above, the JOLs are awaiting a response from Campbells to Maples' letter dated 12 November 2025 in relation to the Damages Report before finalising and filing the Amended Injunction Summons, but we intend to do so in any event prior to the hearing on 15-16 December 2025.

A7 Other Matters

151 Sections F through J of Patrick 2 do not appear to the JOLs to be directly relevant to the Injunction Application. Accordingly, I do not propose to address those sections in detail, save to clarify the following points:

151.1 Protocol Correspondence: I have addressed the correspondence between the JOLs and the Defendants in relation to their proposed protocols at paragraphs 92 to 93 of MacInnis 1 and do not propose to repeat those points here. However, since MacInnis 1 was filed, there has been some limited further correspondence between the parties which helps to further explain the inadequacies of the protocols proposed by the Defendants. In particular, the letter from Maples to Campbells dated 27 July 2025[78], whereby Maples set out in detail at paragraphs 5 and 6 that none of the versions of the protocol offered by the Defendants included asset preservation undertakings, concluding that:

> "*If your clients genuinely were willing to give asset preservation undertakings previously as you suggest, then it bears explaining why they decided not to give those undertakings when the JOLs first (and second) requested them. Absent a satisfactory explanation, of which there isn't any, the JOLs are firmly of the view that your clients did not engage in the protocol correspondence in good faith.*"

Campbells did not respond to that letter.

151.2 I also note that, whilst the Defendants' protocols offered to provide a listing of all transactions undertaken by the Fund and its subsidiaries dating back to 1 July 2024, those protocols expressly stated that the transactions they would disclose: "*shall not*

[78] Which responded to a letter from Campbells dated 24 July 2025 (both of which are exhibited at pages 796 to 808

include renumeration of employees, officers and directors, agents, advisors and / or service providers of the CDM Entities."[79] I now believe Mr Patrick included this proviso in order to allow him to conceal from the JOLs the excessive salaries and bonuses he had paid himself from Fund Entities in 2024 and continues to pay himself (see paragraphs 63 to 69 above as to the information the JOLs have since obtained about the compensation paid to Mr Patrick).

151.3 HMIT Settlement and related correspondence: The JOLs were not a party to the Highland Bankruptcy proceedings or the HMIT Settlement that is addressed at paragraphs 96 to 107 of Patrick 2 and therefore cannot comment on most of what is said in those paragraphs. However, I understand that Mr Patrick is critical in his affidavit of a letter that the JOLs sent to the litigation trustees of the Highland Bankruptcy in relation to the proposed HMIT Settlement dated 24 June 2025. The basis for the JOLs sending that letter was that the JOLs had limited information about the HMIT Settlement and we believed that we needed to understand the transaction before allowing it to proceed in the discharge of our duties to the Company and the Court (particularly given the quantum of the assets involved). The JOLs therefore do not understand the criticism from Mr Patrick. In the JOLs' view, Mr Patrick and Mr Murphy should have disclosed the HMIT Settlement and provided full information of it to the JOLs prior to it being consummated.

151.4 As regards paragraph 107 of Patrick 2, I reject the contention that the JOLs are not independent and are being influenced by the interests of Mr Dondero. The JOLs' actions in the liquidation and these proceedings are being motivated solely by our duty as Court-appointed officers to recover the assets of the Company that the JOLs believe have been misappropriated by the Defendants acting in concert. The JOLs have had

[79] See, for example, the "Revised Campbells Draft Protocol" referred to in paragraph 93.8 of MacInnis 1, page 1148 of Exhibit MM-1

no communications with Mr Dondero and cannot speak to the decision of Dugaboy to file a motion in the Highland Bankruptcy seeking to stay the HMIT Settlement.

151.5 Texas Proceedings: The Company is not a party to the Texas Proceedings nor the Rule 11 Agreement and so the JOLs are not able to comment on paragraphs 108 to 111 of Patrick 2. I have set out at paragraph 97 of MacInnis 1 the reasons why the JOLs believe that the Rule 11 Restrictions are not sufficient to protect the Company's position in these proceedings. Those beliefs have only been strengthened following the JOLs' discovery of the US$13,873,778 in salaries and fees Mr Patrick has paid himself out of the Fund structure in 2024 and the first half of 2025 alone (see paragraphs 63 to 69 above). The JOLs hold concerns that Mr Patrick will rely on the ordinary course of business exception to the Rule 11 Restrictions (and indeed the Interim Undertakings) to continue to pay himself grossly excessive compensation and thereby deplete the assets of the Fund structure if injunctions are not granted by this Honourable Court.

151.6 As regards the "CC Proposal" referred to at paragraphs 120 to 124 of Patrick 2, the JOLs have no direct knowledge of the CC Proposal and therefore cannot speak to Mr Patrick's assertion that the Supporting Organisations did not engage with that proposal. However, I have now read the CC Proposal exhibited to Patrick 2 and note that it does not address the issue of the excessive compensation that Mr Patrick has been paying himself from the Fund structure and what he proposes to do about it moving forward. If Mr Patrick were truly concerned about the Charities and not his own self-interest, the JOLs would have expected him to confirm in the CC Proposal that he would be willing to: (i) resign as a director of the Fund GP and all of the Fund's subsidiary entities; and (ii) cause CDM to return the Partnership Interest to the Company. The JOLs firmly believe that Mr Patrick is not a fit and proper person to be managing the Fund's assets. The JOLs view the recovery of the Partnership Interest that belongs to the Company as a necessary first step to reclaim control of the Fund structure. Once that is achieved,

the JOLs believe they will then need to assess, in consultation with the Court, a way forward for the Company and the Fund which is aimed at ensuring no further corporate governance issues arise and the Company and the Fund operate smoothly and for the sole benefit of the Supporting Organisations and the supported Charities, as they are meant to. The JOLs expect such measures will likely include removing Mr Patrick and Mr Murphy as directors/managers of all the Fund Entities and appointing new independent management (subject to the approval of this Honourable Court).

151.7 Funding: At paragraphs 112 to 117 of Patrick 2, Mr Patrick takes issue with the funding that the JOLs have obtained for the liquidation and these proceedings to date. In reply to those paragraphs, I wish to note the following points –

(a) It has only been necessary for the JOLs to obtain third party funding because of the actions of Mr Patrick and Mr Murphy in transferring away the Company's sole valuable asset (worth c. US$270 million) for nominal consideration, leaving the Company without material assets to pay for the legal fees of its asset recovery efforts. The JOLs therefore believe any purported concerns or objections that Mr Patrick has to the JOLs' funding arrangements to be purely tactical and consistent with what the JOLs perceive to be Mr Patrick's strategy of seeking to: (i) impede the JOLs' efforts to recover the Company's property; and (ii) avoid a determination of the JOLs' claims against him on the merits for as long as possible.

(b) Mr Patrick asserts that the JOLs are conflicted and/or acting under the influence of Mr Dondero due to the initial tranche of funding being provided by Crossvine Litigation Funding LLC ("**Crossvine**"). The JOLs strongly reject that assertion. The JOLs have obtained sanction of this Honourable Court to enter into the funding agreement with Crossvine and are acting in what we believe to be the Company's best interest in seeking to recover its highly valuable property from

the Defendants. Neither Crossvine nor any parties connected with Crossvine (let alone Mr Dondero) have any control over or influence on the JOLs' investigations and decision-making. In any event, I understand that Mr Patrick's allegations against the JOLs are not a matter for determination on the Injunction Application and I understand those allegations will be considered at the hearing of the Removal Application. In that regard and for completeness, I exhibit at pages 809 to 819 a copy of a letter from Maples to Baker & Partners (DFW's attorneys) dated 5 September 2025, which sets out the JOLs' position on the Removal Application and why it is bound to fail.

(c) As regards paragraph 116 of Patrick 2, the JOLs have no information about the litigation proceedings to which any Fund Entities are party besides: (i) publicly available information; and (ii) the limited information amount of information that the Defendants have disclosed to the JOLs pursuant to the Interim Undertakings, which expressly requires the JOLs not to disclose the information to: "*Mr James Dondero, the Supporting Organisations (being Highland Santa Barbara Foundation, Highland Dallas Foundation, and Highland Kansas City Foundation), or any known affiliates or service providers of these individuals / entities, subject to where the JOLs' are required to disclose any such information in the discharge of their duties to the Court or as otherwise required by law*."

(d) Mr Patrick also raises purported concerns about the funding provided by Crossvine having been exhausted. The JOLs believe these concerns to be misguided. As noted at paragraph 146 above, the JOLs only ever sought an initial tranche of funding from Crossvine – it was never intended by the JOLs that it would cover the full costs of the liquidation and these proceedings. The JOLs are presently in advanced discussions with third party funders to provide

a further tranche of funding that is intended to cover the duration of these proceedings. However, the Company's costs are being exacerbated by the hostile and highly defensive position of the Defendants, who have filed a combined six summonses in the liquidation proceedings and these proceedings already. The JOLs believe this to be part of the Defendants' strategy to stultify the progress of these proceedings and delay a determination of the JOLs' claims on their merits (whilst expending considerable sums on legal fees out of assets ultimately belonging to the Company in the process).

151.8 Alleged inaccuracies in MacInnis 1: At paragraph 118 of Patrick 2, Mr Patrick criticises me for not addressing Mr Dondero's position as President of each of the Supporting Organisations. The issue of what powers the President of the Supporting Organisations can exercise and whether they can circumvent the board of directors is addressed in the Bedingfield Affidavit at paragraph 25. I also note that Mr Patrick concedes that the President has "*all powers that are delegated [to the President] by the Board of Directors*" (emphasis added). Further, as Mr Mancino noted in his memo of advice to Mr Patrick dated 12 September 2013, "*the board of each supporting organization is controlled by the supported organisation...*"[80]. Mr Patrick has provided no evidence to suggest that the majority independent board of directors of each of the Supporting Organisations has delegated any specific powers to Mr Dondero as President. Mr Patrick's assertion that Mr Dondero has single-handedly caused the Supporting Organisations to take certain actions appears to be simply conjecture.

151.9 At paragraph 119 and footnote 23 of Patrick 2, he takes issue with my reference in MacInnis 1 to the Supporting Organisations making grants to their respective Charities from time to time from any dividends received from the Company. I do not believe that my evidence was inaccurate in any material respect – the issue appears to me to be

[80] Exhibit MP-1 at pages 62-66

one of terminology. As Mr Patrick admits, "*the terms of each charitable foundation's annual distributions from the Company [are] provided for in the Legal Relationship Agreement or Operating Agreements they entered into with the Supporting Organizations*". Whereas I referred to "dividends" paid by the Company to the Supporting Organisations, Mr Patrick refers to "distributions". Where I referred to the Supporting Organisations using those funds to make "grants" to their respective Charities, I accept that the proper terminology for these payments under the Legal Relationship Agreement or Operating Agreements are payment of fees to the Charities. Indeed, I believe I described it correctly at paragraph 18.5(b) of MacInnis 1 where I stated that those agreements provide that: "*in consideration for the services provided by the Charity to the Supporting Organisation, the Supporting Organisation shall pay an administrative fee to the Charity (most of which are based on a percentage of the market value of the assets held by the relevant Supporting Organisation)*". The JOLs also find it contradictory for Mr Patrick to assert that the Supporting Organisations and their respective Charities had no economic interest in the Company when at the same time he admits that there were contractual terms governing "*each charitable foundation's annual distributions from the Company*".

151.10 I note that at paragraph 125 of Patrick 2, he asserts that the "CDM Entities" (or "Fund Entities" as they are referred to in the Amended Injunction Summons) are not "mostly passive investment vehicles" because they have a number of actively managed business lines. However, Mr Patrick provides no details of which Fund Entities allegedly operate active business lines beyond the high-level business categories described in paragraph 125(a) to (d). The information that the JOLs have received from the Defendants to date pursuant to the Interim Undertakings has not revealed any new significant investments, trades or asset sales for the period from July 2025 onwards. Of the total of 14 transactions above US$50,000 that the Defendants have provided the JOLs with notice of, 11 relate to payment of legal fees or service providers. Further, the

transaction listings provided to the JOLs for the months of July through September 2025 disclose Fund Entities receiving 32 payments from external parties, 30 of which represent passive income streams such as dividends, interest, rent or settlement distributions (pages 820 to 822).

151.11 At paragraphs 130 to 133, Mr Patrick addresses the Mercer report. I have addressed the Mercer Report at paragraphs 55 to 56 above and it will be addressed further in the JOLs' legal submissions.

151.12 As regards paragraph 137 of Patrick 2, the JOLs do not have sufficient information to take a position on the appropriateness of the compensation paid to the Fund's previous investment managers/advisors in the period 2014 to 2020. However, taking the list of payments exhibited at pages 422 to 423 of Exhibit MEP-2 at face value, I disagree with Mr Patrick's contention that the remuneration he has paid himself from the Fund structure represents only a "fraction" of the amounts paid to the investment managers/advisors associated with Mr Dondero in the period 2014 to 2020. Mr Patrick has been paid compensation of US$13,873,778.03 from the Fund structure in 2024 and the first half of 2025 alone. This represents approximately 209% of the fees Mr Patrick contends were paid to the Fund's previous investment managers/advisors for an equivalent 18-month period (US$30.85 million / 4.666 = US$6.61 million).

151.13 Fund structure chart: At paragraph 13 of Patrick 2, he exhibits a "structure chart of the DAF structure, both before and after the DAF Restructuring". However, the "before" chart he exhibits does not show the DAF structure prior to the DAF Restructuring and is misleading in that it shows CDM as the holder of the Partnership Interest, when in fact CDM was incorporated by Mr Patrick specifically for the purposes of carrying out the DAF Restructuring, one of the steps of which was the transfer of the Partnership Interest from the Company to CDM. The correct structure chart showing the position

prior to any steps had been taken in the DAF Restructuring is at page 823, whereby the Company held the Partnership Interest and CDM was not a part of the structure.

152 The only other part of Murphy 1 that I wish to respond to is paragraph 81, which is misleading in several respects. Without wishing to be exhaustive on matters that do not bear on the merits of the JOLs' case for injunctions against Mr Murphy and the other Defendants, I wish to note the following:

152.1 Contrary to what is suggested at paragraph 81.1 of Murphy 1 (and paragraph 144 of Patrick 2), the JOLs' case for urgency in having the Injunction Summons listed for hearing was conveyed to the Honourable Judge by letter dated 15 July 2025 (pages 824 to 827), and the hearing was listed on that basis.

152.2 Paragraphs 81.2 and 81.3 do not provide an accurate account of Maples' efforts, on instructions from the JOLs, to have the adjourned Injunction Summons listed for hearing[81]. An accurate chronology of Maples' attempts to find mutually available dates for the adjourned hearing of the Injunction Summons across the three firms acting for the Defendants can be provided if it would assist the Court.

B REPLY TO PATRICK 3

153 The JOLs are perturbed that Mr Patrick has decided to incur unnecessary costs to have two different firms (Campbells and Baker & Partners) prepare two affidavits sworn by him that largely make the same points (Patrick 2 and Patrick 3). In this regard, I note that at the hearing of the JOLs' application for sanction to engage legal counsel, the Honourable Justice Asif commented on several occasions that he did not understand why DFW (an entity controlled by Mr Patrick and represented by Baker & Partners) needed to be separately represented from

[81] The adjournment being agreed by the parties on the eve of the original hearing date in conjunction with the Defendants giving asset preservation undertakings to the Court, and recorded in the Consent Order

Mr Patrick and the other Defendants he controls (all of whom are represented by Campbells). The relevant extracts from the transcript are as follows:

> "*JUDGE: …I don't really understand why it's necessary for Mr Patrick to be separately represented, and simply because I gave him permission doesn't mean he has to take it up.*"[82]

> "*JUDGE: Well, My Tyers-Smith, my query is this, if DFW and the management shareholder [Mr Patrick] are aligned, which seems to be they're very highly likely to be, I don't really understand why they need separate representation. And if they're not aligned, that means there must be a conflict between them. And I have a bit of difficulty in understanding how Mr Patrick can remain director of a company where he has a conflict*"[83].

154 This point was also addressed in a letter from Maples to Baker & Partners dated 15 August 2025 (pages 828 to 829): "*In circumstances where: (i) DFW was created and is controlled by Mr Patrick; and (ii) their interests in the defence of the FSD Proceedings are obviously aligned, there is no good reason for DFW to be separately represented to Mr Patrick in the FSD Proceedings (or the Liquidation Proceedings). At the sanction hearing on 24 June 2025, Justice Asif on many occasions emphasised that he considered it was unnecessary for DFW to be separately represented from Mr Patrick. We would encourage you to take up his Lordship's suggestion. Should you not do so, the JOLs reserve their right to make an appropriate application to the Court.*"

155 The JOLs also take issue with the significant amount of legal fees being incurred by DFW to Baker & Partners, which are being paid for by CLO HoldCo, despite there being no apparent reason for DFW to be separately represented from Mr Patrick. Accordingly, the JOLs reserve

[82] Exhibit MEP-2, page 36

[83] Exhibit MEP-2, page 60

the right to object to DFW's leading counsel making any oral submissions at the hearing of the Injunction Application. Campbells has confirmed that Mr Patrick and the other Defendants he controls will already be represented by leading counsel at the hearing, such that it would only serve to chew up the available hearing time and increase costs for DFW to make the same or similar submissions.

156 From my reading of Patrick 3, most of it repeats the points already made in Patrick 2 and Reid 1, which only increases the JOLs' concerns and objections to DFW's unnecessary legal costs that are being paid for out of the Fund structure. The JOLs therefore do not see the need to prepare a fulsome reply to Patrick 3. The JOLs only wish to respond to the following handful of points made therein:

156.1 At paragraph 6 of Patrick 3, Mr Patrick takes issue with the Company's Amended Writ and Statement of Claim filed on 15 October 2025. The Amended Writ is marked amended pursuant to Grand Court Rules ("**GCR**") O.20, r.3(1) and the Amended Statement of Claim is marked amended pursuant to GCR O.20, r.12(1). I understand from Maples that these are typographical errors and should refer to GCR O.20, r.1(1) and GCR O.20, r.3(1) respectively, pursuant to which I understand that the Company does not require leave of the Court or the agreement of the Defendants for the amendments. If required by the Court, the JOLs will seek leave to file a further Amended Writ and Statement of Claim correcting these typographical errors.

156.2 At paragraph 59 of Patrick 3 onwards under the heading 'Inequitable Conduct', Mr Patrick makes various criticisms of the JOLs. Mr Patrick's criticisms of the JOLs have culminated in DFW filing the Removal Application, which is conspicuously only mentioned in passing at paragraph 109 of Patrick 3 and not at all in Patrick 2. The JOLs believe it is telling of the lack of merit in those criticisms that neither Patrick 3 nor Patrick 2 addresses the letter from Maples to Baker & Partners dated 5 September 2025 setting

out the multitude of reasons why the Removal Application is bound to fail, which letter Maples has not received a response to (see paragraph 40.4 above).

156.3 At paragraph 78 of Patrick 3, he insinuates that the JOLs deliberately withheld the identity of a further senior counsel from whom the JOLs have taken advice on the merits of the Company's claims. That is incorrect – the Honourable Justice Asif made sealing orders over various parts of MacInnis 5 filed in the liquidation proceedings, including the identity of the senior counsel in question. The JOLs are therefore bound not to disclose the identity of that person to the Defendants.

156.4 At paragraphs 86 to 87 of Patrick 3, he alleges that Mr Andrew Ayres KC is conflicted from acting for the JOLs in this matter. That allegation has already been addressed and rejected by the JOLs in a letter from Maples to Baker & Partners dated 15 August 2025 (pages 828 to 829). Baker & Partners has not responded to that letter.

156.5 The assertions made by Mr Patrick at paragraphs 110 to 111 are incorrect and misleading. The JOLs' letter to the Court dated 15 July 2025 set out that the JOLs were concerned to get the injunction hearing listed before the long Court summer recess began on 1 August 2025 in circumstances where the Rule 11 Agreement in Texas (which provided only partial protection to the Company in these proceedings) may have been discharged by the end of that recess.

C REPLY TO MANCINO AND REID AFFIDAVITS

157 I understand that the function of affidavits in Cayman Islands court proceedings such as these is to provide evidence, not to make legal or other arguments. I therefore do not seek to respond to the various arguments made in Mancino 1 and Reid 1. This is on the basis that, insofar as necessary and appropriate, these will be dealt with in the JOLs' legal submissions. I also understand that neither Mr Mancino nor Mr Reid have any Cayman Islands law qualifications. However, it appears to the JOLs that in a number of instances, Mr Reid and Mr Mancino have

opined on the fiduciary duties of the Company's directors and whether the steps they took in relation to the DAF Restructuring were compliant with those duties. These matters will also be dealt with in the JOLs' legal submissions.

158 At paragraph 32 above, I extracted what appears to be the key conclusions from the Bedingfield Affidavit, which contradict the evidence of Mr Mancino and Mr Reid. In addition to those points, whilst I am not a US tax lawyer, I note an internal contradiction in Mr Reid's reasoning in that:

158.1 Mr Reid states that "*the key tax benefit enjoyed by the Supporting Organisations is that they are not classified as private foundations.*"[84]

158.2 Mr Reid goes on to reason that "*Mr Dondero's presence on the Board of the Highland Foundations is problematic because he is a Disqualified Person, and his presence on the board jeopardizes their tax status as non-private foundations. If a Disqualified Person exercises substantial influence over a Supporting Organization, whether directly or indirectly, then the Supporting Organization would be subject to the private foundation rules, which involve greater scrutiny and a significant tax burden.*"[85]

158.3 However, in relation to DFW, which is controlled by Mr Patrick and after the DAF Restructuring became the sole member of CDM and thereby the indirect owner of the Fund, Mr Reid confirms that "*DFW is a U.S. private foundation, so it is subject to all U.S. tax laws affecting charitable organizations*".[86]

159 If that is the case, the JOLs struggle to understand how a risk of the Company's Participating Shareholders becoming private foundations justified transferring away the Company's

[84] Reid 1, paragraph 30

[85] Reid 1, paragraph 34

[86] Reid 1, paragraph 82

significant asset to another entity (CDM) whose sole membership interest was owned by a private foundation (DFW), both of whom were controlled by Mr Patrick.

160 Finally, I wish to address briefly the inaccuracies that Mr Reid and Mr Mancino allege were in MacInnis 1:

160.1 At paragraph 63 of Reid 1, Mr Reid misconstrues the following statement I made at paragraph 17 of MacInnis 1: "*[e]ach of the Charities held their interests in the Company indirectly through Highland Kansas Foundation, the Highland Dallas Foundation and the Highland Santa Barbara Foundation respectively (i.e. the Dallas Foundation held their interest through the Participating Shares held by Highland Dallas Foundation etc)*". Mr Reid interpreted that as suggesting that: "*each Supported Organization is the alter ego of its respective Supporting Organization, lacking a separate identity.*" That is not what I was suggesting. The point I was making is that it was ultimately the Charities (Supported Organisations) who stood to benefit in economic terms from the assets of the Company, which economic benefit would arise by way of distributions from the Company to its Participating Shareholders (the Supporting Organisations), which would then in turn be used to pay the fees that the Supported Organisations are contractually entitled to (calculated based on a percentage of the Company's NAV) from the Supporting Organisations.

160.2 At paragraphs 8 to 9 of Mancino 1 and various places in Reid 1, they take issue with my description of the Charities[87] being the "indirect beneficial owners" of the Company. What I meant by that term is explained above. However, I would also observe that this terminology is consistent with the way the Charities are described in the Fund LPA – the "*Indirect Charitable Owners*".

[87] Referred to as "Supported Organizations" in Mancino 1 and Reid 1

160.3 Mr Mancino's and Mr Reid's other comments on MacInnis 1 focus on US law tax issues. Having taken the US tax law advice referred to in MacInnis 1 (privilege over which is not waived) and having reviewed Mancino 1, Reid 1, and the Bedingfield Affidavit, the JOLs' views on the propriety of the DAF Restructuring, including the purported US tax law concerns relied upon by Mr Patrick and Mr Murphy for it, have not changed.

SWORN to at George Town,)
Grand Cayman, Cayman Islands,)
this day of November 2025)
before me)



Margot MacInnis

Notary Public

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: LRA/858403-000002/85175762)

Plaintiff
M MacInnis
Third Affidavit
November 2025
Exhibit MM-3

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 OF 2025 (RPJ)

IN THE MATTER OF THE GRAND COURT ACT

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff

AND

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD.

Defendants

EXHIBIT MM-3

FILED by Maples and Calder (Cayman) LLP, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: LRA/858403-000002/85175762)

This is the Exhibit shown to me and marked "**MM-3**" to the Third Affidavit of **MARGOT MACINNIS**.

Sworn before me this ____ day of November 2025

_____

Notary Public

EXHIBIT 71

Our ref CJM//MCL/858403-000002/86423618
Direct tel +1 345 814 5245 / +1 345 814 5577
Email caroline.moran@maplesandcalder.com / christian.la-rodathomas@maples.com

By Email

Ms Karen Hoskins
Personal Assistant to the Hon. Justice Raj Parker
Financial Services Division
Grand Court
Grand Cayman

3 February 2026

Dear Ms Hoskins

Charitable DAF HoldCo, Ltd (in Official Liquidation) (the "Company") v Mark Eric Patrick & Ors – FSD 201 of 2025 (RPJ)

Draft Judgment

1 We refer to the draft judgment (the "**Draft Judgment**") in relation to the hearing on 15 and 16 December 2025 of the Company's application, by way of Amended Summons dated 4 December 2025 (the "**Amended Summons**"), for an injunction restraining the disposal of and dealing with assets over which the Company asserts a proprietary interest. The Draft Judgment was circulated to the parties on 28 January 2026.

2 This letter addresses the following points: (a) a potential omission from the Draft Judgment; and (b) the timing of the handing down of the final judgment.

Omission from the Draft Judgment

3 The Draft Judgment dismisses the Amended Summons in its entirety. This includes the Company's application, at paragraph 1.1(a) of the Amended Summons, for an order restraining the Defendants from taking steps to dispose of and/or transfer the limited partnership interest (the "**Partnership Interest**") itself that the Company formerly held in Charitable DAF Fund, LP (the "**Fund**") which was previously an asset of the Company and was transferred to the Third Defendant in March 2025. The application for injunctive relief in respect of the Partnership Interest itself is distinct from the injunctive relief sought in respect of the underlying assets of the Fund and/or subsidiaries of the Fund.

4 The Draft Judgment does not, however, appear to address the Company's proprietary interest in the Partnership Interest itself and does not consider whether on the balance of convenience an injunction should be granted in respect of the Partnership Interest. This appears to be an omission from the Draft Judgment. In this regard:

(a) It is not disputed by the Defendants that the Company had a proprietary interest in the Partnership Interest.

(b) The Honourable Judge has determined that there is a serious issue to be tried in respect of the Restructuring which caused the Partnership Interest to be transferred to the Third Defendant.

(c) An injunction over transferring the Partnership Interest itself would plainly not interfere with the underlying business of the Fund. This was the basis on which the Honourable Judge found that the balance of convenience weighed against granting an injunction over the underlying Fund assets.

5 The Company is not attempting to make further submissions in respect of the Amended Summons but respectfully seeks to query whether the Honourable Judge would consider amending the Draft Judgment to determine this issue. As currently drafted, upon delivery of the final judgment, the Company will have no protections in respect of the Partnership Interest, and it is not clear whether this was the intention of the Court.

Timing

6 The Company intends to appeal the final judgment once handed down. The Company will seek to have the appeal listed as soon as practicable. To preserve its position pending the appeal, the Company intends to apply to this Honourable Court for a short interim injunction on the same or similar terms as the interim undertakings set out in the Consent Order dated 31 July 2025 (the "**Interim Undertakings**") to continue until either the determination of (i) the appeal of this Honourable Court's final judgment; or in the alternative (ii) the Company's application to the Cayman Islands Court of Appeal for an interim injunction pending appeal (the "**Interim Application**").

7 To address the risk of further dissipation of assets during the period between the delivery of the final judgment and the determination of the Interim Application, the Company respectfully requests that the Interim Application be listed and determined before or at least simultaneously when the final judgment is delivered. The Company will file the Interim Application promptly once the Honourable Court has had an opportunity to respond to our query above and make any desired consequential amendments to the Draft Judgment. Given the terms of the Interim Undertakings, which have been in place since 31July 2025, we do not consider that the proposed approach would cause any party any undue prejudice.

8 The Company will write to the Defendants to seek their consent to extend the Interim Undertakings pending determination of the appeal. If the Defendants give such consent, the Interim Application may not be necessary.

9 We should be grateful if you would please place this letter before the Honourable Judge at your earliest convenience. Please do not hesitate to contact Caroline Moran or Christian La-Roda Thomas of this firm (details above) if you require any further information.

Yours faithfully

Maples and Calder (Cayman) LLP

Maples and Calder (Cayman) LLP

EXHIBIT 72

Digitally signed by Advance Performance Exponents
Date: 2026-02-10 15:[illegible]
Reason: Apex Certified
Location: Apex

NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 9

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. FSD 201 OF 2025 (RPJ)

IN THE MATTER OF THE GRAND COURT ACT

B E T W E E N:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff/Applicant

- AND -

(1) MARK ERIC PATRICK

(2) PAUL MURPHY

(3) CDMCFAD, LLC

(4) DFW CHARITABLE FOUNDATION

(5) CDH GP, LTD AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER

(6) CLO HOLDCO, LTD

Defendants/Respondents

Before: The Hon. Raj Parker

Heard: 15 and 16 December 2025

Appearances: Andrew Ayres KC with Caroline Moran, Luke Armitage and Alasdair Munro of Maples and Calder (Cayman) LLP on behalf of the Company

Andrew Scott KC with Mark Goodman, Ronan O'Doherty and George Connolly of Campbells LLP on behalf of the 1st, 3rd, 5th and 6th Defendants

David Quest KC with Peter Tyers-Smith and Daniel Mills of Kobre & Kim (Cayman) on behalf of the 2nd Defendant

Jennifer Colegate with Fleur O'Driscoll and Nia Statham of Baker & Partners (Cayman) Limited on behalf of the 4th Defendant

Draft judgment circulated: 28 January 2026

Judgment delivered: 10 February 2026

Proprietary injunction - jurisdiction - s.11 of the Grand Court Act (2015 Revision) - O.29, r.1 and r.2 of the Grand Court Rules - test for grant of injunction - serious issue to be tried - nature of proprietary interest - discretion - cross undertaking in damages - fortification - charitable fund structure - Cayman Islands exempted limited company in structure to make charitable distributions for US tax reasons to US charities - reorganisation by directors of fund structure - transference of limited partnership interest without notification to supporting organisations - claims of improper purpose to gain control - claims of excessive remuneration against directors - alleged transactions at undervalue.

Introduction

1. Charitable DAF HoldCo, Ltd (in Official Liquidation) (the "Company") is a Cayman Islands exempted company. It applies[1] for a proprietary injunction restraining the disposal of and dealing with assets over which the Company asserts a proprietary claim.

2. The application arises from transactions procured by the First and Second Defendants (Mr Mark Patrick and Mr Paul Murphy, collectively "the Directors" and D1 and D2) in alleged breach of fiduciary duties owed to the Company.

3. Four parties addressed the Court over a two-day hearing. Mr Andrew Ayres KC represented the Company, Mr Andrew Scott KC represented D1, D3, D5 and D6 (the “CDM Defendants” or “CDM Entities”), Mr David Quest KC represented D2 (“Mr Murphy”), and Ms Jennifer Colegate represented D4 (“DFW”).

4. All of the Defendants contested the application on various grounds. The affidavits and exhibits submitted on the application are voluminous.[2]

5. In a nutshell the Company’s claim alleges that unlawful steps were taken by the Directors to divest the Company of its sole asset, which is a limited partnership interest (the “Partnership

[1] *By summons dated 15 July 2025 as amended on 4 December 2025.*
[2] *Including: First Affidavit of Margot MacInnis; Third Affidavit of Margot MacInnis; Second Affidavit of Mark Eric Patrick; Third Affidavit of Mark Eric Patrick; First Affidavit of Paul Murphy; First Affidavit of Alexander L. Reid; First Affidavit of Douglas Mancino; First Affidavit of Marvin Bradford Bedingfield.*

Interest") in a Cayman Islands exempted limited partnership, Charitable DAF Fund, LP (the "Fund").

6. The Company alleges that control of the Partnership Interest of the Company was transferred to D3 and/or D4, entities under Mr Patrick's sole control and ownership, for a gross undervalue of c.US$ 1.6 million in March 2025.

7. The Company points to the fact that the Fund's net asset value was estimated at c.US$ 270 million in September 2024.

8. The joint official liquidators ("JOLs")[3], who bring the claim on behalf of the Company, are concerned that the Directors remain in control of the relevant assets and that the Company has been divested of its control of the Fund. They are concerned that value has been lost and will continue to be lost while the Directors enrich themselves by paying themselves what the JOLs say are 'vast and unjustifiable' fees and by the expenditure of large sums under the guise of 'ordinary business expenses'.

Factual Background

The Fund

9. The factual background to the Fund's establishment and the transfer of the Partnership Interest is explained in the First Affidavit of Margot MacInnis sworn 15 July 2025 ("MacInnis 1"). The following is a summary of the relevant structures and transactions which show how this worked.

10. The Fund is a Cayman Islands exempted limited partnership formed to invest and manage assets for the benefit or ultimate benefit of certain registered charitable organisations in the US.

11. The Fund is governed by the Second Amended and Restated Exempted Limited Partnership Agreement dated 11 March 2024 (the "ARLPA").

12. The Fund was formed in 2011 at the instigation of Mr James Dondero, a U.S. resident and the founder of Highland Capital Management, L.P. ("Highland"), to enable certain assets to be donated to those registered charitable organisations.

[3] *Appointed on 6 May 2025.*

13. The Fund's sole asset is or was its single share, comprising 100% of the issued share capital in CLO HoldCo, Ltd (D6).

The Company

14. The Company, until recently the Fund's sole limited partner, and owner of the 99% Partnership Interest, was incorporated in the Cayman Islands on 7 November 2011.

15. The Company's share capital is divided into Participating Shares and Management Shares[4]:

(1) The entirety of the Participating Shares were, from 2011 to 2024, held by four non-profit U.S. companies[5] (the "Original Participating Shareholders") that act as "Supporting Organisations" to US charities (the "Charities").[6] Each is a charitable entity exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code of 1986 (the "IR Code"). Mr Dondero was (and remains) involved at board level with these Supporting Organisations, but according to Ms MacInnis he does not control them. The Defendants say that he does own and in effect controls them.

(2) The Management Shares were initially held by a Mr Grant Scott, but were transferred to Mr Patrick on 25 March 2021, on which date Mr Patrick was also appointed to replace Mr Scott as sole director of the Company.

16. On 22 April 2021, Mr Patrick, as Management Shareholder, appointed Mr Murphy as a director of the Company. Mr Murphy is resident in the Cayman Islands.

17. The Company's Memorandum and Articles of Association[7] provide that Management Shareholders had the right to receive notice of, and to attend, to speak at and to vote at, any general meeting of the Company, but no right to participate in the profits or assets of the Company (Article 11).

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[4] Authorised share capital of US$50,000 divided into 100 Management Shares of US$0.01 par value each and 4,999,900 Participating Shares of US$0.01 par value each.
[5] Highland Dallas Foundation, Inc, Highland Santa Barbara Foundation Inc, Highland Kansas City Foundation Inc (together the "Highland Foundations"), and subsequently Community Foundation of North Texas ("CFNT").
[6] Save that CFNT an underlying charity, has no "Supporting Organisation" and holds its shares in the Company directly.
[7] The memorandum and articles of association dated 27 October 2011; and the amended and restated memoranda and articles of association dated 19 January 2015; 24 January 2024; and 20 February 2025 respectively.

18. The Participating Shareholders have no right to vote at Company meetings, but did have rights in a winding up or repayment of capital and the right to participate in the profits or assets of the Company by way of dividend in accordance with Article 12.

19. The Participating Shareholders therefore have the economic interest in the Company, whereas the Management Shareholders have the control rights.

20. The Company was placed into voluntary liquidation by directors' resolution on 2 April 2025.

The General Partner of the Fund

21. Under the ARLPA, sole control over the management and distribution of the Fund's assets was granted to the Fund's general partner. From its formation until 7 March 2024, the Fund's General Partner was Charitable DAF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands (the "Original GP"). On 25 March 2021, the same date he appointed Mr Patrick sole director of the Company, and transferred his 100 Management Shares to him, Mr Scott also transferred to Mr Patrick the entire issued share capital in the Original GP. On 7 March 2024, the Original GP was replaced by CDH GP, Ltd, a Cayman Islands incorporated company (D5 and the "New GP"), of which Mr Patrick is sole shareholder and director.

Charitable Purpose and Tax Considerations

The Fund's Purpose

22. The purpose of the Fund was to make investments for the ultimate benefit of the Charities which the Supporting Organisations supported.

23. The Charities are the following four U.S. charitable or non-profit organisations:

(1) *The Dallas Foundation*: a charitable entity established in Texas in 1929 which has awarded over US$1 billion in grants and manages over US$500 million in assets.

(2) *Greater Kansas City Community Foundation*: a charitable entity established in Missouri in 1978 which has awarded over US$7 billion in grants and manages over US$6 billion held in charitable funds.

(3) *Santa Barbara Foundation*: a charity established in 1928 which is the largest community foundation on California's Central Coast and manages assets of over US$800 million.

(4) *North Texas Community Foundation*: which manages assets totalling US$513 million and donated US$38.9 million to local non-profits in 2023.

The Tax Structure[8]

24. As a matter of US tax law, in order for the Charities to benefit from distributions from the Fund in a tax efficient manner, it was necessary for them to hold their interests through an offshore 'corporate blocker', i.e. the Company.

25. Section 501(c)(3) of the IR Code provides that charitable organisations which meet certain criteria are exempt from state and federal taxes except to the extent that they receive income classified as unrelated business taxable income ("UBTI").

26. Section 509 of the IR Code defines the term "supporting organisation" as a tax-exempt entity that must be organised and then operate exclusively either (i) for the benefit of, (ii) to perform the functions of, or (iii) to carry out the purposes of, one or more supported organisations (the Charities). The supported organisations must also be s501(c)(3) entities.

27. Both the Charities and the Supporting Organisations apparently meet the criteria of s501(c)(3), and are therefore exempt from US state and federal taxes save to the extent that they receive UBTI.

28. Apparently as a matter of US tax law, some income received directly from the Fund by the Charities would likely be considered UBTI.

29. In order to 'insulate' the Charities from UBTI, instead of holding their interest in the Fund directly, the Supporting Organisations hold their interest through an 'offshore corporate blocker' structure, i.e. the Company.

30. The purpose of inserting the Company into the structure was that any tax that was due from these investments would be paid at the Company level, and the proceeds would then be distributed to the Supporting Organisations and then to the Charities free of any tax liability.

[8] *See affidavit of Marvin Bradford Bedingfield.*

Company Submission on this Structure

31. The Company argues that:

(1) The Supporting Organisations (the four non-profit US companies who were the original Participating Shareholders) and the Charities hold or ultimately hold the real economic interest in the Fund;

(2) They are not merely discretionary beneficiaries whom the Fund may or may not choose to confer a benefit on, but the ultimate owners of the Fund, albeit through the Company as a tax filter, and with the Fund having its own discretion as to how to manage its investments; and

(3) The fact that the GP had a discretion as to whether to make any distribution to any of the Participating Shareholders does not change this analysis.

Relationship between Supporting Organisations and the Charities

32. As to the relationship between the Supporting Organisations and the Charities:

(1) The Supported Organisations (Charities) are said to control the Supporting Organisations (Participating Shareholders) through their majority voting interest and their ability to elect a majority of the directors of the Supporting Organisations (Participating Shareholders);

(2) The Supporting Organisations (Participating Shareholders) support the Supported Organisations (Charities) by way of paying fees (i.e. making grants) to them from time to time from their assets, including any dividends received from the Company;

(3) The Supporting Organisations (Participating Shareholders) have no ability to pay dividends to any private person or make payments to their directors (save reasonable reimbursement for reasonable out-of-pocket expenses) and can only make grants to their relevant Charity in furtherance of their charitable purposes; and

(4) Whilst Mr Dondero sits on the board of the Supporting Organisations (Participating Shareholders), he does not control them, as a supermajority of the votes are always held by the respective Charity.

33. As described above, the structure was set up to make discretionary distributions to qualifying tax exempt organisations under Section 501(c)(3) of the IR Code. US tax rules apparently require donors to cede 'dominion and control' over contributed assets and for donees to be genuinely independent from donor influence.[9]

Mr Patrick's Role

34. Mr Patrick is a US attorney and was employed as tax counsel by Highland from 2008 to 2021, and as tax counsel by Highland Consulting Group, Inc. d/b/a Skyview Group from March 2021 to October 2024. Highland is a group of companies set up by Mr Dondero. Mr Patrick was instrumental in the creation of the Fund in 2011; in particular, he advised on the tax structure of using an offshore 'blocker' company.

35. From March 2021, Mr Patrick was the sole director of the Company, and holder of the 100 Management Shares in it, and the sole director and shareholder in the Fund's general partner (as at March 2021, the Original GP). Mr Patrick occupied a position informally termed "the Control Position", the effect of which was that Mr Patrick was in effective sole control of the limited partner (i.e. the Company), the general partner (the Original GP), and was therefore in effective sole control of the Fund and all its assets, albeit, according to the Company, with no economic, residual, beneficial or winding up interest in either the Company or the Original GP.

Directors' Fees and Expenditure

36. The Company says that the Fund's annual expenses showed increases in expenditure which show:

(1) Directors' fees increased from around US$40,000 in 2022 to almost US$600,000 in 2023 and increased further to around US$2.25 million in the first half of 2024; and

(2) Expenses overall for the first half of 2024 were around US$18.3 million, almost the same amount spent over the entire course of 2023 (i.e. US$18.6 million).

[9] *Patrick 2 section D, Reid 1 and Mancino 1.*

37. As is explained in MacInnis 1,[10] in October 2024, Mr Patrick executed an employment agreement, under which he was entitled to receive a base salary of US$850,000; a long-term incentive plan payment for the period 24 March 2021 to 24 March 2024 in the amount of US$4,759,000; and is eligible for both annual and discretionary bonuses as determined at the sole and absolute discretion of the Directors.

38. The Company points to Mr Grant Scott's salary during his previous tenure which, by contrast, was approximately US$60,000 per annum, and says Mr Patrick's remuneration and benefits are 'grossly excessive'.

The Divestiture of the Company's Limited Partnership Interest in the Fund

Supporting Organisations' Concerns

39. In late October 2024, as a result of concerns arising from the expenditure by the Directors on fees and expenses, the Supporting Organisations asked for financial information from Mr Patrick.

40. On 11 November 2024, Holland and Knight, U.S. attorneys for the Supporting Organisations, sent a letter to Mr Murphy advising that they no longer had confidence in the governance of the Company and/or the Fund and considered that a reorganisation of the governance structures was required to protect the charitable efforts of the Supporting Organisations.

41. On 26 November 2024, Mr Patrick sought advice from Walkers (Cayman) LLP ("Walkers"), then Cayman attorneys to the Company, as to whether the Company could issue further Participating Shares to a new non-profit organisation to dilute the Supporting Organisations and insert a new member able to oppose a potential winding up petition brought by the Supporting Organisations on just and equitable grounds.

42. On 27 November 2024, Walkers responded to the Directors confirming that, if other shareholders were to oppose an equitable winding up, such opposition would be taken into consideration and would likely help any efforts Mr Patrick might make to resist such a winding up.

[10] *At §49.*

The Reorganisation

43. The Company relies on the following steps taken by the Defendants, each without informing the Supporting Organisations or the Charities.

CDM

44. On 18 December 2024, the Directors passed a resolution (the "18 December Resolution"), under which:

> "*In connection with a corporate restructure of the Company's group, the Company proposes to transfer, convey, assign or otherwise contribute to CDMCFAD, LLC, a Delaware limited liability company (the "Transferee"), 100% of the Company's interests in CHARITABLE DAF FUND, LP, an exempted limited partnership established in the Cayman Islands (the "Partnership") in consideration for the contribution by the sole member of the Transferee of 100% of the issued and outstanding limited liability company interests in the Transferee (the "Transfer"*).

45. The 18 December Resolution also provided that (based apparently on US tax advice) the proposed assignment of the Partnership Interest to D3, CDM (the "CDM Assignment"):

> *"… would help insulate the DAF from exposure to [Dondero] and his entities … who may be at risk of causing the [IRS] to revoke the tax-exempt status of one or more of the participating shareholders/supporting organizations, which could imperil the assets of the DAF";* and that
>
> *"The IRS would look favorably upon any and all attempts for DAF to maintain its influence from 'what seems to be persistent attempts by Dondero and the entities controlled by him to use DAF for his private benefit and private inurement'".*

46. This resolution was given effect by way of a Deed of Assignment and Assumption of the same date which was executed by Mr Patrick on behalf of each of: (i) the Company, in his capacity as Director; (ii) CDM, in his capacity as Manager; and (iii) the New GP, in his capacity as Director (a position which the Company says gives rise to an irreconcilable conflict of interest).

47. CDM is a Delaware limited liability company. Its Certificate of Formation, dated 12 December 2024, is signed by Mr Patrick, who is CDM's sole member.

48. Also on 18 December 2024, the Company (as member) and Mr Patrick (as manager) entered into a Delaware law governed Limited Liability Company Agreement in respect of CDM (the "LLC Agreement").

49. The LLC Agreement provides that:

> "*Fair Market Value shall have the meaning set forth in Section 6.9(b).*
>
> *...*
>
> *The initial Manager shall be Mark Patrick.*
>
> *...*
>
> *6.5 No Duties to the Company. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that the Manager shall owe no fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing.*
>
> *...*
>
> *6.9 Valuation of Company Assets.*
>
> *(a) General. The Manager shall make a good faith determination of the value of the Company's assets in connection with any distribution pursuant to Section 8.1(b), as required under Section 4.3(c), upon the dissolution of the Company, and whenever otherwise required by this Agreement or determined by the Manager.*
>
> *(b) Binding Effect. The value of any Company asset or Interest determined pursuant to this Section 6.9 shall be binding upon the Company and the Members and shall establish the "Fair Market Value" of such asset or Interest for all purposes under this Agreement.*
>
> *...*
>
> *7.3 Redemption. The Manager, in its sole discretion, may cause any Member's Interest to be redeemed by the Company for any reason. Any Interest of a Member to be redeemed by the Company shall be redeemed for the Fair Market Value of such Interest, as determined by the Manager in its sole discretion. Such payment to the Member shall either be made in cash or pursuant to a promissory note. Such promissory note shall: (i) provide for interest at the lowest rate necessary to avoid the imputation of additional interest under the Code; and (ii) have a stated principal*

amount of the Fair Market Value of such Member's Interest being redeemed, as determined by the Manager in its sole discretion."

50. The Company says the effect of these changes was that:

(1) CDM was inserted into the corporate structure and as a subsidiary of the Company and would hold the Partnership Interest (previously held by the Company);

(2) The Company would hold the entire membership interest in CDM, with the result that the Company's sole asset, having previously been the Partnership Interest, was exchanged for its membership of CDM (the "Company's CDM Membership"); and

(3) The Company's CDM Membership was inherently fragile as it was held in a company that (by a combination of Delaware law and the LLC Agreement) was owed no fiduciary duties by its manager, Mr Patrick; and subject to redemption at any time of Mr Patrick's choosing, and for any price of Mr Patrick's choosing, subject to the 'good faith' proviso at paragraph 6.9(a) of the LLC Agreement.

New Shares to DFW

51. In February 2025, the Directors again sought advice from Walkers on whether the Company could issue new Participating Shares that would have the effect of diluting the existing Participating Shareholders, *"in light of a possible just and equitable winding up petition"* being filed by one of the Supporting Organisations.

52. On 7 February 2025, the Company's board passed a resolution (the "Share Issuance Resolution") approving a proposed share issue of 318 Participating Shares, of a nominal or par value of US$0.01 each as fully paid up, to D4, DFW. Paragraph 5.2 of the Share Issuance Resolution noted that "*following the Share Issuance, DFW shall own 51.04% of the issued Participating Shares of the Company*."

53. DFW is, according to its Certificate of Incorporation, a Delaware non-profit non-stock corporation. It is organised under the General Corporation Law of the State of Delaware exclusively for charitable purposes, incorporated on 9 December 2024, and was incorporated by Mr Douglas Mancino, then a partner at Seyfarth Shaw, a U.S. law firm apparently engaged by the Fund. The sole member of DFW is Mr Patrick.

54. The Share Issuance Resolution stated that the Directors believed the issuance of shares to DFW was justified as a means of protecting the Company, because:

(1) There was a heightened risk that the IRS could revoke the tax-exempt status of the Participating Shareholders which could imperil the status and assets of the Company;

(2) Increasing the number of Participating Shareholders would mitigate the undue influence and private inurement of Mr Dondero; and

(3) The IRS would look favourably upon attempts by the Fund to maintain its independence from his (i.e. Mr Dondero's) attempts to use the Fund for his private benefit.

55. The Company says the effect of the Share Issuance Resolution was to remove the majority that was held by the Original Participating Shareholders, and to dilute their shareholding into a minority stake. DFW (D4) now holds 51% of the Participating Shares.

The Admission and Redemption

56. On 27 March 2025, the Company entered into a letter agreement with CDM, pursuant to which it was agreed that CDM would redeem the Company's CDM Membership, and CDM would admit DFW to membership of CDM, with DFW obtaining membership in it.

57. On 27 March 2025, Mr Patrick executed:

(1) Admission and Amendment No.1 Agreement between CDM and DFW under which DFW was admitted as a member of CDM, in consideration for a capital contribution of US$1,637,192; and

(2) Admission and Amendment No.2 Agreement under which CDM redeemed (the "Redemption") the Company's CDM Membership for the same sum of US$1,637,192 (the "Redemption Sum").

58. On the same day, Mr Patrick executed a written consent (the "Manager Consent") to the Admission and Redemption, on behalf of CDM, under which the Admission and Redemption was justified by reference to Participating Shareholders allegedly posing a material risk to the Company, due to:

> "*among other things, (i) officers and directors of the Highland Foundations seeking to assert dominion and control over the assets of DAF (through the Current Member), despite no legal ability to do so under the Current Member's organizational documents and despite the potential illegality (as demonstrated by tax counsel to DAF—see Exhibits C and D) of doing so, (ii) the potential loss of the non-profit status of the Highland Foundations due to their actions, among others, described in clause (i), and (iii) the potential loss of the tax-exempt status which the Highland Foundations currently enjoy and which is central to the mission of DAF, as a result of the factors including those described in clauses (i) and (ii).*"

59. The Company says that the substantive financial effect of the Redemption, under which DFW paid the Redemption Sum to CDM, and the Company's CDM Membership was redeemed for the Redemption Sum, was that the Company's CDM Membership was purchased by or otherwise transferred to DFW for the Redemption Sum.

Effect of the Reorganisation

60. The Company says that the result of these transactions, all done 'in secret', is that:

(1) The Company realised its interest in the Fund, which it says had a Net Asset Value ("NAV") of c.US$269.1m, for only US$1.6m;

(2) The Company made a distribution to Participating Shareholders (c.US$1.6m);

(3) The Supporting Organisations and the Charities were divested of their indirect interest in the Fund, and the assets underlying the Fund; and

(4) The Original Participating Shareholders were diluted from 100% of the economic interests in the Company to less than 50%.

The Issue of Control

61. The Company argues that:

(1) the Company, in its role as tax blocker and which formerly held a very valuable interest in the Fund, no longer has that interest or anything like proper value in exchange for it;

(2) the Charities have been completely disconnected from the Fund and structure which was set up to produce capital and income for their activities; and

(3) Mr Patrick remains in control of the Fund and its assets but in a way and pursuant to a structure which has no supervision by the Charities or the Supporting Organisations, and nor do they have any economic interest in it.[11]

62. The Defendants in answer broadly say that:

(1) It is because of Mr Dondero's historic intermeddling and wrongdoing that the Control Person for the DAF structure, D1 (Mr Patrick), acted to reorganise the DAF structure to protect it from Mr Dondero's predations and the risks these posed to its assets and charitable mission, in the sole service of which the Company existed;

(2) Mr Patrick took this protective restructuring action together with the other director of the Company, D2 (Mr Murphy), in good faith, believing it to be in the best interest of the Company, and acting with the benefit of legal and tax advice from an array of respected advisors in this jurisdiction and in the US;[12] and

(3) CDM redeemed the Company's membership interest for fair market value, and the Company paid dividends with the proceeds to its Participating Shareholders.

63. Mr Patrick and Mr Murphy vehemently deny, for the reasons set out in detail in their affidavit evidence, that the restructuring was done in breach of their fiduciary duties to the Company or that they are in any other way in breach as alleged by the Company.

64. Mr Ayres KC for the Company described the reason given for the restructuring as a bogus reason. It has never been properly explained how the assets of the Fund might be imperilled by Mr Dondero.

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[11] The claims are pleaded in the Statement of Claim dated 15 July 2025 and amended on 15 October 2025.
[12] Including Walkers (Cayman) LLP ("Walkers"), Maples & Calder (Cayman) LLP ("Maples") and Campbells LLP in the Cayman Islands, Shields Legal Group, Carrington Coleman & Sloman & Blumenthal, L.L.P, Dorsey & Whitney and others in the US, and Tony Beswetherick KC in the UK.

The Interim Undertakings and Disclosure

65. The JOLs originally requested urgent injunctive relief last year and the application was listed for 31 July 2025, the last day of term. In the event there was a compromise, the hearing was adjourned and a series of undertakings (the "Interim Undertakings") were given by the Defendants pending the determination of this application.

66. In outline, the effect of the Interim Undertakings was as follows:

(1) Pending the determination of this application, the Defendants and the CDM Entities undertook not to deal with or dispose of any assets of the CDM Entities other than in the ordinary course of business;

(2) The Defendants undertook not to dispose of or diminish the value of their, or any, interest in the Fund other than in the ordinary course of business;

(3) The Defendants and the CDM Entities were not prohibited from making payments to any attorney, lawyer, third party consultant, accountant, or external professional services advisor which is required, either in the ordinary course of business, or in respect of their reasonable legal fees and expenses in connection with these proceedings or the official liquidation of Charitable DAF HoldCo, Ltd (in Official Liquidation) FSD 116 of 2025 (JAJ) (the "Liquidation Proceedings"), or the related Chapter 15 recognition application commenced by the JOLs; and

(4) The Defendants were to provide a retrospective notification of transactions below US$50,000, and agreed to give 7 days' notice of any transactions above US$50,000.

The JOLs' Continuing Concerns about the Interim Undertakings

67. The JOLs say that the Interim Undertakings, although not adequate for the long-term because there is no ability to prevent any inappropriate or suspicious transactions, were agreed out of a desire for a pragmatic compromise to adjourn a hearing on the last day of the summer term.

68. They say that the Interim Undertakings were expressed to apply only until the determination of the present application (as opposed to through to trial), and the Defendants expressly agreed as part of the Interim Undertakings that the issue of whether they are permitted to use funds that

derive directly or indirectly from the Partnership Interest to pay their legal fees and other service providers will be determined as part of this application.

69. The JOLs are also concerned that the 'ordinary course of business' exception to the prohibition contained in the Interim Undertakings is susceptible to exploitation by Mr Patrick and Mr Murphy because they are likely to say that their 'exorbitant' fees are paid in the ordinary course of business, and are also concerned that the legal fees that have been incurred by the Defendants so far are excessive.[13]

JOLs' Legal Fees - Funding Agreement

70. In July 2025, the JOLs filed an *ex parte* sanction application in the Liquidation Proceedings seeking approval to enter a funding agreement (the "Funding Agreement") with an entity named Crossvine Litigation Funding LLC ("Crossvine"), a special purpose vehicle whose managers are Mr Scott Ellington and Mr Michael McDonald. Mr Ellington is apparently a longtime business associate of Mr Dondero.

71. On 5 September 2025, the JOLs notified DFW (D4) (but apparently none of the other Defendants) that they had exhausted the litigation funding provided by Crossvine.

72. Crossvine is apparently:

> "*incorporated for the purpose of ultimately Mr Dondero … funding the liquidation of the Company and the JOLs pursuing the Proposed Proceedings"*[14]

73. As to the arrangements with Crossvine, the CDM Defendants maintain that through the Company, the JOLs are asserting proprietary claims over assets of the CDM Entities that include causes of action and litigation receivables which would inure to the benefit of the liquidation estate, and those causes of action and litigation receivables are, in many cases, directly adverse to the interests of Messrs Dondero and Ellington.

74. The CDM Defendants believe this constitutes an unacceptable conflict of interest, as does the profit Mr Dondero stands to make on any sums advanced under the Funding Agreement.

Disclosure

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[13] *Amounting to, as far as the JOLs are aware, at least US$4,256,882 (MacInnis 3, §111).*
[14] *MacInnis 6, §11.*

75. The JOLs also complain that the disclosure provided by the Defendants under the Interim Undertakings has been deficient. The disclosure deficiencies are described in the detailed chronology referred to at §106 of MacInnis 3. It is not necessary to set them out. They are denied by the Defendants.

76. The JOLs are of the view that no exercise has been undertaken to determine where the assets of the Fund and each of its subsidiaries are held, which raises a wider question about how Mr Patrick has performed his duties to manage the Fund, receiving large fees for doing so, without proper information concerning the Fund's assets. This again is denied by the Defendants, particularly the CDM Defendants.

77. The JOLs say Mr Patrick's attempt to justify his approach at Patrick 2 §151, is cursory and unconvincing.[15]

78. The JOLs argue that the objection is not that consolidated balance sheets were provided, but that there was a failure to provide more detailed, entity-by-entity disclosure that would provide the JOLs with proper visibility into the Fund's asset position.

79. The CDM Defendants respond that the DAF structure historically produced consolidated balance sheets and accompanying quarterly valuation materials. That was always what was provided to the Supporting Organisations and was given to the JOLs immediately following entry into the Interim Undertakings on 31 July 2025.[16]

The Relevant Law

Proprietary Injunction

80. It is important to emphasise that this is an application for a proprietary injunction. It is not an application for *Mareva* style relief which would require a risk of dissipation and which would normally include an ordinary course of business exception. A proprietary injunction would not usually provide such an exception.

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[15] "...as the DAF Structure prepares consolidated financial materials in the ordinary course, I believe that these allegations are incorrect".

[16] They add that once the JOLs requested entity specific financials (which go beyond the existing consolidated records), the CDM Defendants engaged an external accounting firm, Armanino LLC, to prepare entity-level financial information at year-end 31 December 2024, and subsequently as at 30 June 2025.

Jurisdiction

81. The Court's power to grant such relief arises under s.11 of the Grand Court Act (2015 Revision) in conjunction with O.29, r.1 and r.2 of the Grand Court Rules (2023 Revision) ("GCR").

"Section 11.

(1) The Court shall be a superior court of record and, in addition to any jurisdiction heretofore exercised by the Court or conferred by this or any other law for the time being in force in the Islands, shall possess and exercise, subject to this and any other law, the like jurisdiction within the Islands which is vested in or capable of being exercised in England by-

(a) Her Majesty's High Court of Justice; and
(b) the Divisional Courts of that Court, as constituted by the Senior Courts Act, 1981, and any Act of the Parliament of the United Kingdom amending or replacing that Act.

Application for injunction (O.29, r.1)

1. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons."

82. A key feature of the jurisdiction is that a proprietary injunction is only available where the plaintiff can maintain a *prima facie* proprietary claim to the assets which are the subject of the injunction.

§28-199 of Grant and Mumford on Civil Fraud (1st ed) ("Civil Fraud") states:

"Accordingly, where a claimant asserts a claim in specie to relevant property that claimant can apply to the court for an interim injunction aimed at preserving in the hands of the defendant that property on the basis that at trial the claimant will seek a

remedy which involves the return of that property to the claimant. The term "proprietary injunction" is used to describe the type of injunction issued by the court in response to such a claim."

Test

83. In deciding whether to grant a proprietary injunction, the Court applies the principles of *American Cyanamid v Ethicon Ltd [1975] AC 396.*[17]

84. In applying those principles, the applicant must establish three general matters:

(1) There is a serious issue to be tried on the merits;

(2) The balance of convenience is in favour of the grant of an injunction; and

(3) It is just and convenient to grant the injunction.

85. This Court, in *In Frabran Holdings Limited and Ors. -v- Daventree Trustees Limited and Ors,*[18] ("*Daventree Trustees*") confirmed the application of the *American Cyanamid* principles to proprietary injunctions, and stated at §154:

"In applications for proprietary injunctions, the matter is one for the discretion of the court. On ordinary principles, a plaintiff beneficiary would have to show:

a) a prima facie case the property is his,

b) a serious issue to be tried that the trust property is in danger pending the hearing of his claim,

c) that damages would not be an adequate remedy,

d) that the balance of convenience favours the grant of an injunction,

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[17] *Polly Peck International plc v Nadir [1992] 4 All ER 769 at 784G-H.; In Ascentra Holdings Inc (in OL) v Yoshida [2024 (1) CILR 409] at §96 (Parker J).*
[18] *Parker J (Unreported, 17 January 2024).*

e) and that it is just and convenient to order an injunction."[19]

86. In a recent case Ramsay-Hale CJ helpfully set out the scope of the Court's power to order proprietary injunctions[20] at §29:

> *"The scope of the Court's power to make property preservation orders pursuant to GCR O.29, r.2(1) is usefully summarized in the White Book:*
>
> *i. the source of the Court's power is the inherent jurisdiction of the Court to secure by orders the just and proper trial of the issues: see White Book note 29/8A/2;*
>
> *ii. the Court may only make an order in relation to property "which is the subject-matter of the cause or matter or as to which any question may arise therein." The property must be bona fide the subject-matter of the action: see note 29/8A/7;*
>
> *iii. the order may be granted even where the party against whom it is sought has a proprietary interest in it. An order should not be refused merely because the defendant claims that he has a discretionary power to determine whether or not the property should be preserved and how it should be preserved, when one of the issues in the case is whether or not the power is untrammelled by a duty to the plaintiff to preserve the property: Johnson v Tobacco Leaf Marketing Board [1967] VR 427."*

Serious Issue to be Tried

87. The Company must show a serious issue to be tried that it has a specific proprietary interest in the asset under consideration i.e. the Partnership Interest. The test is whether the claim has a real (as opposed to a fanciful) prospect of success which would withstand a reverse summary judgment application.

88. As the Court said in *Ascentra*:[21]

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[19] *See also Smellie CJ in Classroom Investments Inc v China Hospitals Inc [2015] (1) CILR 451 at §§50-57.*
[20] *Lakeshore Biopharma Co Ltd [2025] CIGC (FSD) 24 ("Lakeshore") Ramsay-Hale CJ.*
[21] *Ascentra Holdings, Inc (in official liquidation) v Yoshida [2024 (1) CILR 409] Parker J.*

"*97. The company must show a serious issue to be tried, i.e., that there is a "real, as opposed to a fanciful, prospect of success on the claim." This is lower than the "good arguable case" threshold that applies in freezing injunction cases. A serious issue to be tried has to be shown on the evidence, not by mere assertion or allegation.*

98. Further, it follows from the nature of a proprietary injunction that the serious issue to be tried should be in respect of facts which, if proven, would afford the claimant a proprietary remedy."

Balance of Convenience

89. If a properly arguable claim to a proprietary interest is established, it may well be the case that damages will not be an adequate remedy if the property is dealt with pending trial, and so the balance of convenience will generally be in favour of the applicant.[22]

90. As Flaux J said in *Madoff Securities v Raven [2011] EHWC 3102 (Comm)* at §140, once a sufficiently arguable proprietary case has been established, arguments by respondents that '"*it would be frightfully inconvenient to tell you what I've done with your money or to be prevented from continuing to use it" when, on this hypothesis [the respondent] should not have had the money in the first place, do not cut much ice".*

91. Whilst the Court will not enquire too closely into the merits at this stage, where the scales are evenly balanced in relation to the balance of convenience, the Court can take into account the relative strengths of the parties' cases.[23]

92. As to the exercise of discretion, the court said in *Ascentra* at §124:

> *"The question in relation to this issue is which course is likely to involve the least risk of injustice or irremediable prejudice to one party or the other. The analysis will include the prejudice to the company if no injunction is granted, or to the defendants if it is, the likelihood of such prejudice actually occurring, the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking, the likelihood of either party being able to satisfy such an award, and the likelihood that the injunction will turn out to have been wrongly granted or withheld."*

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[22] *Grant and Mumford (eds), Civil Fraud: Law, Practice, & Procedure ("Civil Fraud") at 28-206.*
[23] *Polly Peck International plc v Nadir [1992] 4 All ER 769 at 784G–784H.*

93. For the Court to exercise its discretion in all the circumstances of the case, the effect of the injunction must be examined to ensure that it is in the interests of justice overall and does not work unfairly, oppressively or is granted without good cause. The court must assess whether granting or refusing to grant an injunction is more likely to produce a just result.

94. As Lord Hoffmann said as to the purpose and effect of interim injunctions:

> *"It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result…that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction..."*[24]

Just and Convenient

95. Generally speaking where the Court finds that the balance of convenience favours the grant of the injunction, it would be unlikely that the Court found that it was not just and convenient to grant the injunction.[25]

Use of Funds for Ordinary Course Business Purposes

96. In *Polly Peck International plc v Nadir,* Scott LJ commented that a proprietary injunction "*would not be subject to provisos enabling the use of the money for normal business purposes, or for the payment of legal fees, or the like*".[26]

97. The rationale for this is that the applicant has established that the particular asset in question arguably belongs to him and so the question is whether the respondent should be permitted to use assets which may turn out to be the applicant's for any of those purposes.

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[24] *National Commercial Bank of Jamaica v Olint Corp Ltd [2009] UKPC 16, at §16.*
[25] *Ascentra ibid, §150.*
[26] *Page 784.*

98. Therefore, in the case of a proprietary injunction, if ordered, whilst there is no presumption in favour of the exceptions for such payments being included in a proprietary order, the defendants may show (and the burden is on them) that it is nonetheless appropriate for any expenditure from the injuncted assets to be permitted.[27]

99. This issue was further examined in *Marino v FM Capital Partners [2016] EWCA Civ 1301* per Sales LJ at §23:

> "*Lewison J (as he then was) in Independent Trustee Services Ltd v GP Noble Trustees Ltd [2009] EWHC 161 (Ch) helpfully summarised the proper approach at para. [6] by setting out the four questions which should be addressed: (1) does the claimant have an arguable proprietary claim to the funds in issue? (2) if yes, does the defendant have arguable grounds for denying that claim? (3) if yes, has the defendant demonstrated that without the release of the funds in issue he cannot effectively defend the proceedings (or, it may be added, meet his legitimate living expenses)? (4) if yes, where does the balance of justice lie as between, on the one hand, permitting the defendant to expend funds which might belong to the claimant and, on the other hand, refusing to allow the defendant to expend funds which might belong to it?"*

Legal Expenses

100. Similarly, if there is an argument that provision for legal expenses is to be carved out from the injunction, the defendants will need to satisfy the court that they have no other source of funding available apart from the disputed funds, and that the balance of prejudice comes down in their favour.[28]

101. Further, Miles J in *AB v CD [2023] EWHC 2419 (Ch)* at §43 noted that the balancing exercise must be carried out in relation to "*all relevant circumstances",* and that *'[t]he court will "act cautiously so as to ensure that the funds are not wasted", which may be achieved by "limiting the amount …even if that may cause a defendant to reassess how to pursue her case or to consider alternative funding models*"'.

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[27] *Civil Fraud ibid at 32-059 to 32-060.*
[28] *Ascentra ibid, §151.*

Ancillary Disclosure

102. Ancillary to freezing and proprietary jurisdiction, it is well established that the Court has jurisdiction to require respondents to provide disclosure.

103. In the context of proprietary injunctions, it is legitimate for such disclosure orders to be aimed at establishing the whereabouts of missing funds, as opposed to merely policing the terms of the order.

104. As the editors of Civil Fraud point out at 29-028 to 29-029:

> "*The court's approach is epitomised in the famous dictum of Templeman LJ in Mediterranea Raffineria Siciliana Petroli SpA v Mabanaft GmbH:*
>
> > *"A court of equity has never hesitated to use the strongest powers to protect and preserve a trust fund in interlocutory proceedings on the basis that, if the trust fund disappears by the time the action comes to trial, equity will have been invoked in vain."*
>
> *The disclosure typically ordered in such a case is categorically different to a normal asset disclosure order. What the court is here doing is requiring the respondent to identify the current location and status of assets, or their proceeds, to which the claimant lays claim, even if they are no longer in the possession of the respondent and regardless of whether the respondent himself claims ownership of the assets…*"

Cross-Undertakings and Fortification

105. The court will normally require a cross undertaking in damages as the price for interfering with the defendant's freedom before they have been found liable for anything and to indemnify the defendants for any damage found wrongfully to have been caused to them by the injunction, if they ultimately prevailed at trial.[29]

[29] *Kelly v Fujigmo Limited [2012] (2) CILR 222 Smellie CJ at §13; JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA 139 at §68.*

106. This would be the usual order to achieve justice at the trial.[30] There are rare exceptions where the court has waived or limited the size of the cross undertaking required, but there would have to be a good reason not to make the usual order, for example where the applicant's inability to provide the undertaking has been caused by the wrongful conduct of the defendants or where there is no practical possibility of damage being suffered. The mere fact that the claim is being brought by liquidators of an insolvent company does not lead to the conclusion that a cross undertaking should be capped.[31]

Fortification

107. Assuming that the defendants can show:

(1) on a good arguable case basis, that the injunction will cause them loss; and

(2) that the party offering the cross undertaking will not be good for the money absent fortification,[32]

the approach is for the Court to make an intelligent estimate of the likely amount of any loss which might be suffered by the applicant for fortification by reason of making the interim order, and assess whether the making of the interim order is or was a cause without which the relevant loss would not be or would not have been suffered.[33]

D1, D3, D5 and D6 (CDM Defendants) Arguments in Outline

108. The following represents a summary of the points Mr Andrew Scott KC made on behalf of the CDM Defendants:

(1) Mr Patrick and Mr Murphy vehemently deny that there has been any breach of their fiduciary duties to the Company for the reasons set out in their affidavit evidence;

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[30] Hoffmann-La Roche & Co. A.G. v Trade & Indus. [1975] AC 295 at §361 (Lord Diplock), cited by the Cayman Islands Court of Appeal in Ennismore Fund Management Ltd v Fenris Consulting Limited [2020] (2) CILR 147 at §37.
[31] Re IAHP Group Holdings Limited; Bucknall v Rizvi [2025] EWHC 2069 (Ch) per Mellor J at §87.
[32] Omni Bridgeway (Fund 5) Cayman Invt Limited v Bugsby Property LLC & Anor [2024] Costs LR 405 per Jacobs J at §9.
[33] Daventree Trustees at §162.

(2) The proprietary injunction sought, in respect of the limited partnership interest (the Partnership Interest) held by CDM is too wide and would restrain dealings with partnership assets of the Fund to which the Company has no pleaded proprietary claim;

(3) There is no legal basis for such a claim under the Exempted Limited Partnership Act (as amended) ("ELP Act") or the ARLPA;[34]

(4) The relevant assets are held by the general partner on statutory trust for the partnership and not by or for any limited partner;

(5) Even if there were a proprietary interest in the limited partnership, it is of no economic value to the Company, being a right to be considered by the general partner for discretionary charitable distributions for the benefit of qualifying Indirect Charitable Owners, and so any loss would fall on those owners, not the Company, and being financial in nature it could be adequately compensated in damages;

(6) The effect of the relief sought would be to 'lock down' the Fund and the CDM Entities and place their operations under the control of the JOLs, which is not justified. It would restrain the CDM Defendants from conducting their lawful business operations in the ordinary course, impairing their ability to make distributions to charitable causes;

(7) The Company's only rights as the former limited partner of the Fund were to be considered for discretionary distributions at the sole discretion of the general partner[35], and there is no justification for the JOLs taking such control;

(8) The Company's purpose and role within the DAF structure was to facilitate charitable distributions to qualifying non-profit organisations. It did not exist to operate or transact business as a commercial entity or to benefit its Participating Shareholders;[36]

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[34] The limited partnership interest is a bundle of contractual and /or statutory rights not a proprietary interest in the Fund's assets.

[35] See Article 4.2 of the ARLPA. The ARLPA also confirms that: (i) the General Partner has full, exclusive and complete discretion to manage the DAF's affairs and assets (Article 1.6(a)); (ii) Limited Partners do not participate in management and have no power to bind the DAF (Article 1.6(b)); (iii) distributions are at the General Partner's discretion (Article 4.2(a)); and (iv) partners renounce any right to partition partnership property (Article 6.14).

[36] See Asif J's comments at the June 2024 sanction hearing in the Liquidation Proceedings: "this structure is unlike the majority of funds in that there is no right to receive dividends. So it's purely discretionary, it's almost like a discretionary trust" and "could, for example, be set up as a foundation company."

(9) The JOLs are being funded by Mr Dondero (who allegedly has a history of dishonesty and vexatious litigation) through a funding vehicle, Crossvine, established for his benefit, which has opaque financial standing;

(10) The reason Mr Patrick acted in late 2024 and 2025 to restructure was to protect the Fund from Mr Dondero's predations and the risks[37] that these posed to its assets and charitable mission;

(11) Both Mr Patrick and Mr Murphy carried out the restructuring in good faith believing it to be in the best interests of the Company having taken legal and tax advice from respected advisers in this jurisdiction and in the US;[38]

(12) When Mr Patrick and Mr Murphy caused the Company to assign the Partnership Interest as part of the DAF restructuring, they did so in good faith, in the best interests of the Company, and for valuable consideration in the form of the Company's CDM Membership. They likewise acted when the Company's CDM Membership was redeemed. The Company was paid US$1,637,192 upon redemption, a fair market valuation supported at the time by two independent valuation exercises (by ValueScope and FTI) and subsequently confirmed by a third independent firm, Weaver & Tidwell LLP ("Weaver").[39] Having received the fair market value of its CDM membership interest, the Company immediately distributed those proceeds to the Original Participating Shareholders;

(13) Having carried out the restructuring, there is no realistic risk that CDM will dispose of or diminish the value of the Partnership Interest now that it has been put beyond Mr Dondero's reach;

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[37] An illustration of that exposure is, according to the CDM Defendants, the litigation that UBS pursued in the US Courts against Mr Dondero and entities with which he was affiliated or controlled (the "UBS Litigation"). On 8 February 2023, UBS filed a Special Turnover Petition whereby, apparently, it sought to challenge as fraudulent certain transactions by which attempts were made to put assets beyond UBS's reach and to affix liability to the entities involved on the basis that they were the "alter egos" of Mr Dondero. One such transaction involved D6 ("CLO HoldCo"), one of the holding companies within the DAF Structure, which was joined as a defendant to the petition. UBS alleged that "CLO HoldCo is a wholly owned subsidiary of [the DAF] which Dondero indirectly controls and has funded from personal assets, his family trusts, and HCM". Mr Patrick and Mr Murphy were able to settle UBS's claims and secure broad releases for the benefit of CLO HoldCo and other CDM Entities. The CDM Defendants say that UBS were willing to settle and provide releases as they were satisfied that CLO HoldCo and the CDM Entities were no longer aligned with Mr Dondero.

[38] The decision-making is recorded in the Company board resolutions dated 18 December 2024,7 February 2025 and 2 April 2025.

[39] See Patrick 2 at §81.

(14) The relief sought would risk causing irremediable harm to the Fund, the CDM Entities, and their ongoing businesses, impairing the charitable mission they support by US$126.7 million[40]. The JOLs are unwilling or unable to offer a properly fortified cross undertaking in damages in respect of this risk and so the balance of convenience weighs decisively against granting the injunctive relief;

(15) The imposition of an injunction stands to benefit Mr Dondero, and Mr Ellington personally. For example, it would prevent the CDM Entities from pursuing valuable litigation claims which are adverse to their interests (claims which, taking the JOLs' pleaded case at its height, would otherwise inure to the benefit of the liquidation estate); and

(16) There is no basis for a proprietary injunction against Mr Patrick in respect of his properly incurred, approved and documented salary and bonus payments or the two pieces of US real estate referred to in the pleaded case, as he was paid by other entities within the structure, not the Company, and it has no pleaded proprietary claim to those assets or any *prima facie* case that they belong to it.[41]

Constructive Trust

109. The CDM Defendants also argue that there is also no arguable proprietary case available to the JOLs that:

(1) CDM holds its limited partnership interest in the Fund on constructive trust for the Company; or

(2) DFW holds the Participating Shares issued to it on constructive trust for the Company; or

(3) DFW holds its membership interest in CDM on constructive trust for the Company.

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[40] As set out in the Damages Report from ValueScope.
[41] Mr Patrick is a US citizen who lawfully purchased these assets with remuneration received from his employment by US entities.

No Assets at Risk

110. The CDM Defendants argue that even if any of the proprietary claims were sustainable, they would not support the extraordinary relief sought, where the JOLs have had the benefit of the Interim Undertakings, which have 'held the ring' in a manner that is just and convenient and which has allowed the Fund and the CDM Entities to further their charitable mission in the ordinary course of their business.

111. The CDM Defendants say that the criticisms the JOLs advance[42] are not a fair reflection of how they have worked in practice and that there has been no exploitation of the ordinary course of business exception as alleged. The CDM Defendants also say the JOLs have had ample opportunity to police and if required prevent suspicious transactions of which there have been none.

Remuneration

112. They strongly refute the criticisms regarding the alleged excessive remuneration received by Mr Patrick and Mr Murphy[43] and rely, in respect of Mr Patrick's remuneration, on the compensation benchmarking work done by Mercer, a global consulting firm, and by the remuneration/compensation committee.

113. They also rely on the fact that the JOLs have not filed expert evidence which challenges Mercer's recommendations. They point out that the comparisons the JOLs make with Mr Grant Scott's historical remuneration are inappropriate for a number of reasons, not least that Mr Scott's role was fundamentally different in scope, complexity and exposure to Mr Patrick's. They say that Mr Scott only passively managed the structure, outsourcing management of the assets and investment decisions to entities owned or controlled by Mr Dondero, who then charged significant investment management and advisory fees.[44]

Modified Undertakings

114. The CDM Defendants refer to the modified set of undertakings that they offered on 24 November 2025, to last until the determination of the trial, subject to the provision of appropriate fortification of the cross undertaking, which the JOLs refused.

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[42] *See MacInnis 3.*
[43] *See in detail Patrick 2 and Murphy 1.*
[44] *Estimated at approximately US$30 million between 2014 and 2020, Patrick 2 at §137.*

115. As to the modified undertakings offered, Mr Ayres KC explained the objection taken by the JOLs, in particular to the suggestions which now said that the CDM Entities would only be obliged to give 7 days' notice of transactions above US$100,000 (as opposed to US$50,000) and that no disclosure was required of payments made by the CDM Entities to Mr Patrick and Mr Murphy above US$50,000 where the payments were contractual salary or bonus entitlements accrued in the ordinary course.

116. Mr Andrew Scott KC argued that if the Court were minded to grant some form of injunctive relief, it should be the minimum necessary to maintain the *status quo* pending trial and any order should be modelled on these undertakings.

117. He argued that the JOLs' criticisms regarding the Interim Undertakings' apparent 'inadequacies' and lack of protection are overblown. He submitted that the JOLs have not shown any irreparable harm to the Company or that there is any real risk that the assets would be adversely dealt with.

Texas Proceedings

118. Reference was made to Texas proceedings which it is necessary to briefly describe.

119. The Highland Foundations applied in July 2025 to obtain a Temporary Restraining Order that would have 'locked down' the DAF structure.

120. In the Texas Petition, the Highland Foundations sought (among other things) the imposition of a constructive trust over all assets, interests, and property of, and immediate injunctive relief to freeze all assets held in, the Fund. The Highland Foundations alleged that Mr Patrick owed them fiduciary duties which were breached in the restructuring that he organised.

121. The CDM Defendants point out that the Judge in the Texas proceedings observed to the Highland Foundations at the hearing that:

> "*I'm struggling to find evidence in the record that there is an immediate threat of irreparable harm. It appears that the $270 million is gone. Your concern is you don't want to confirm it away. But I'm not seeing anything in the record to indicate to me that there is an immediate threat of that".*

122. The matter was settled (by the Rule 11 Agreement) upon the CDM Entities giving undertakings on 11 July 2025.

123. Mr Scott KC invited the Court to endorse the Texas court's recognition that there was no risk of irremediable harm. Particularly in the light of the Rule 11 Agreement in Texas where undertakings were given not to make payments other than in the ordinary course of business, for investments and monies to be kept in the entities which they currently resided in, and for there to be no further change in the corporate structure. Subject to that the Fund and its assets could be operated in the ordinary course.

124. Mr Ayres KC pointed out that these proceedings did not concern the Company, the relief sought was not refused and the agreement made was outside the JOLs' control.

125. Mr Scott KC urged the Court to have regard to the effect of an injunction which would:

(1) cause serious and irreversible prejudice to the CDM Defendants by restraining them from conducting their lawful business operations and impairing their ability to make distributions to charitable causes; and

(2) benefit Mr Dondero and Mr Ellington personally. It would, he said, prevent the CDM Entities from pursuing valuable litigation claims which were adverse to their personal interests which would be otherwise for the benefit of the liquidation estate, and it would also benefit them personally as they would gain from any uplift of sums advanced under the funding agreement.

Legal Fees

126. The CDM Defendants argue that the JOLs' criticism of the amount of legal fees expended was misplaced because such fees were caused by the JOLs' litigation tactics in the U.S. and Cayman, for example their conduct of the sanction application in June 2025 which resulted in indemnity costs of *circa* US$1m being awarded against them in favour of DFW and Mr Patrick.

D2 Submissions in Outline

127. Mr David Quest KC's submissions included the following points on behalf of Mr Murphy:

(1) There is no adequately pleaded case or serious issue to be tried on the evidence that the payment of remuneration to Mr Murphy amounted to a breach of fiduciary duty;

(2) There is no tracing claim that money paid to him by way of remuneration would justify a proprietary, as opposed to a personal, claim against him;

(3) If there were any such case, the proper plaintiff would be the corporate entity that made the payment and the Company did not make any payment. The Company does not have and never has had its own source of liquidity given its purpose as a blocker for UBTI;[45]

(4) The Company has no proprietary claim to the assets of the Fund and less so to the assets held by subsidiaries of the Fund because its limited partnership interest only gave it an entitlement to be considered for discretionary charitable distributions, not for its own account but for the account of the appropriately qualified charities;

(5) The Terms of the ARLPA[46] made clear that the Company had no entitlement to remain an object of the charitable purposes of the Fund and, unlike a shareholder, never had any right to exercise managerial control over the Fund assets;

(6) Pursuant to section 16(1) of the ELP Act, the general partner of the Fund held its sole asset (the shares in CLO HoldCo) on trust for the Fund in accordance with the ARLPA;[47]

(7) Damages would be an adequate remedy if liability were established at trial and so the balance of convenience is against any proprietary injunctive relief;

(8) If an injunction were granted against Mr Murphy, the assets in question would have a maximum value of US$900,000[48] which is insignificant compared to the value of the overall claim (c.US$270m); and

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[45] *Patrick 1, §30-31.*
[46] *LPA 2011 cl.4.3 and LPA 2024 cl.16.*
[47] *Section 16: "(1) Any rights or property of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner and if more than one then by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement".*
[48] *Although he has been spending money on outgoings: Murphy 1, §§84-87.*

(9) An injunction would be highly invasive and prejudicial to Mr Murphy as it would freeze most of his liquid assets and the bank accounts into which his salary and bonus were paid.

DFW (being the majority Participating Shareholder of the Company) (D4) Submissions in Outline

128. The only liquid assets which DFW holds are the discretionary distributions it receives through its limited partnership membership in CDM (the "CDM Interest"). It also has 51% of the Participating Shares of DFW in the Company.

129. Ms Jennifer Colegate's submissions included the following points:

(1) The property in the hands of DFW was not property which could be followed or traced from the Company to DFW, and as such cannot be the subject of a constructive trust;

(2) There is no basis for restitution as between DFW and the Company in respect of the CDM Interest because the interest conferred on DFW has not been done so at the expense of the Company - it was redeemed for value;

(3) Damages would be an adequate remedy if the redemption was found at trial to be for insufficient consideration;

(4) There is no serious issue to be tried as to the Company having a proprietary interest under Cayman law in the CDM Interest and it is not pleaded how agreements governed by the laws of Delaware would support the imposition of a proprietary injunction;

(5) The Company does not and cannot as a matter of law hold title to its own shares and cannot assert a constructive trust over shares it has issued;

(6) There is no risk of DFW disposing of any assets and DFW has no intention to do so;

(7) An injunction would prevent DFW from making charitable distributions to charities in accordance with the Fund's charitable purposes; and

(8) DFW should be allowed to defray necessary legal costs from funds available to it via CDM.

Decision

Is there a serious issue to be tried that the Company has a proprietary interest in the asset(s) over which an injunction is sought to be imposed?

130. The Court has carefully considered whether the Company, as a limited partner in the Fund, has a proprietary interest as a limited partner which would entitle it to be protected by way of the injunction sought and/or an indirect beneficial interest in the underlying assets of the Fund.

131. The Court answers both of these questions in the negative.

132. Taking a step back, wide interim proprietary injunctive relief with similarly broad orders for asset disclosure are sought by the Company which would require (among other things) each Defendant to:

> *"preserve and… not in any way dispose of, deal with, encumber, transfer or diminish the value of… any interest… in Charitable DAF Fund, LP… the Fund Entities… and/or any assets of the Fund",*

with no exceptions for ordinary course dealings.

133. The Court accepts the Defendants' submissions that it would restrain dealings with partnership assets of the Fund to which the Company has no pleaded proprietary claim which may be because, under Cayman law, the assets are held by the general partner on statutory trust for the partnership and not by or for any limited partner.

134. An Exempted Limited Partnership ("ELP") under Cayman law is different from an ordinary partnership and a registered company. It has no legal personality.

135. The property and rights of an ELP are held on trust by the general partner as an asset of the partnership in accordance with the terms of the partnership agreement.[49]

136. The limited partners do not own those assets, whether legally or beneficially. They instead have contractual rights under the ARLPA and statutory rights under the ELP Act. Those rights do not in the Court's view found a seriously arguable proprietary claim to partnership assets.

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[49] *Section 16(1) of the ELP Act.*

137. Notwithstanding this, a limited partner may be said to have a 'proprietary interest' in the partnership assets,[50] a concept which Mr Ayres KC relied upon.

138. However, in the same way beneficiaries under a discretionary trust may have a 'proprietary interest' in the trust assets and their interests are to be considered.

139. The limited partnership interest in this case is not a proprietary interest in the assets themselves but the right to be considered for potential distributions[51] which the Company then passes on to the Charities.

140. The Court is not satisfied in this case that there is a real prospect of showing that the Company has a legitimate proprietary claim to legal or beneficial ownership of the assets it seeks to injunct.

141. The Court has examined the particular features of the legal structure of the ELP and the terms of the relevant partnership agreement to ascertain the extent and nature of any proprietary claim and entitlement of the limited partner.[52]

142. The recitals to the ARLPA provide that the purpose of the Fund was to:

> "*make certain investments directly or indirectly on behalf of certain entities exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code … for the economic benefit of* ***the Limited Partner and its Indirect Charitable Owners****…".* (emphasis added)

143. Clause 1.3 of the ARLPA provides that:

> "*… the Partnership may make investments in other types of securities, investment vehicles and instruments* ***in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners****".* (emphasis added)

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[50] Aquapoint LP (in Official Liquidation) v Fan [2025] UKPC 56 per Lord Richards at §48: this view was expressed in the context of a winding up petition appeal, not a proprietary injunction case.
[51] Y v R [2018] 1 CILR 1 Mangatal J at §59 and §§66-68 and JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev (CA) [2016] 1 WLR 160.
[52] The legal interest of the limited partner is expressed in the partnership agreement to be an ownership interest equal to each limited partner's opening capital account: clause 4.1 of the ARLPA.

144. "*Indirect Charitable Owners"* is defined in clause 1.12 of the ARLPA as:

> "***the indirect equity owners of the Limited Partners**, which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code."* (emphasis added)

145. Clause 4.2(a) of the ARLPA provides that:

> "*Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash **and the needs of the Indirect Charitable Owners of the Limited Partner** for funds to cover their administrative and operating expenses*…". (emphasis added)

146. The particular position and purpose of the Company in the structure gives it no proprietary claim to the assets of the Fund or the assets held by the subsidiaries of the Fund.

147. The Company's limited partnership interest only gave it an entitlement to be considered for discretionary distributions, not for its own account, but for the account of the appropriately qualified charities.

148. It is true that the Original Participating Shareholders had the right to be considered for a dividend from the Company (Article 12), but the purpose of the Fund was to make charitable distributions to the relevant Charities through the Company which was given no ownership rights and, in the Court's view, was not entitled to be an object of the charitable purposes of the Fund.

149. Mr Ayres KC submitted that clause 4.2 of the ARLPA is expressed in mandatory terms with regard to distributions, but reading the clause as a whole, together with the ARLPA, it is clear that discretion was left to the general partner after first taking into consideration available cash and the needs of the Indirect Charitable Owners.

150. It also appears from Mr Patrick's evidence[53] that the distributions which the Company made to each of the Supporting Organisations were not linked to the number of Participating Shares

[53] *Patrick 2, §§66-67.*

held by each organisation, but on a predetermined formula primarily linked to the Company's NAV. This is set out by Mr Patrick in an excel spreadsheet.

151. The Participating Shareholders did not receive a *pro rata* distribution or dividend from the Company and instead their annual distribution was dependent on the contractual terms which governed the relationship between each of these Supporting Organisations and their underlying Charities which are, as an average, set out in Mr Patrick's evidence:

> "§68 *These distributions were, on average, c.US$160,000 per annum for Highland Kansas City, c.US$280,000 per annum for Highland Dallas, and c.US$60,000 per annum for Highland Santa Barbara. In addition, CFNT was paid $100,000 per year annually in the fourth quarter of each year."*

152. This is further support for the Court's view, on a proper analysis, that the Company has no legal or beneficial claim to own assets of the Fund or the CDM Entities.

153. This also accords with the Mission Statement adopted by the Company and its objects.

154. The Mission Statement, adopted by the Company by way of written resolution of the Directors on 3 December 2024, stated:

> *'1. ADOPTION OF COMPANY MISSION STATEMENT.*
> *1.1 NOTED THAT:*
> *(a) The Company wishes to adopt a mission statement to clearly outline the purpose and objectives of the Company.*
>
> *(b) Based on the Company's operating history (which includes significant donations to various charities) and the reason for establishing the Company, the Company wishes to adopt the following mission statement:*
>
> *"Charitable DAF makes investments in order to support community-focused non-profit foundations with a demonstrated focus of giving funds to worthy causes and making a difference." ("Mission Statement")'*

155. The Court finds that this accords with the purpose of the Fund structure, which is to support the Fund's charitable mission, and that the assets are assets of the Fund which are held by the general partner on statutory trust in accordance with the ELP Act and the ARLPA.

156. Moreover, by clause 4.3 of the ARLPA, the general partner can terminate the limited partner's interest in its sole discretion and apparently at will. The limited partner has no entrenched rights.

157. Clause 4.3 of the ARLPA provides that:

> "*The General Partner may require the withdrawal of all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.*"

158. The following clauses also make clear that the Company is to be considered for distributions at the general partner's sole discretion, not for its own account, but for the benefit of the Supporting Organisations insofar as they qualified as Indirect Charitable Owners.

159. As the Court has found, that is not a proprietary right to the Fund's assets, but is a limited right consistent with the role of the Company to act as a tax blocker and conduit for charitable distributions.

160. Clause 1.6 (GP powers) of the ARLPA provides that:

> *(a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs* ***and fulfill the purposes of the Partnership****;*[54] *provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner. (emphasis added)*

[54] *i.e. principally to benefit the Indirect Charitable Owners.*

(b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement."

161. In addition, in keeping with the limited rights afforded, Clause 6.14 of the ARLPA provides that all Partners:

> "*renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek to bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held*".

Koza[55]*, Gill and Kaur, and Bourlakova*

162. Mr Ayres KC sought to rely on the English Court of Appeal's decision in *Koza* and the subsequent decisions which considered *Koza* to persuade the Court that a proprietary claim was justified in this case. The Court has carefully considered these decisions and the helpful submissions of both Mr Ayres KC and Mr Scott KC.

163. The Court has concluded that there is good reason not to follow each of these decisions in the way that Mr Ayres KC suggested the Court should. To explain why the court has decided not to follow them in the way Mr Ayres KC suggested, it is necessary to give short explanations and analysis.

164. The *Koza* case was principally concerned with the *Mareva* jurisdiction (freezing orders) of the English court, not the proprietary injunction jurisdiction.

165. One of the issues considered by the Court of Appeal was whether the court had jurisdiction to make the injunction regardless of whether there had been a breach of an undertaking given to

[55] *[2020] EWCA Civ 1018.*

the court. The Court of Appeal decided that there was such jurisdiction and Lord Justice Popplewell gave the leading judgment:

> *"67 Although at first sight it might seem surprising that the jurisdiction to make ancillary orders to enforce or render effective undertakings can be invoked when it is not, and never will be, definitively established that the threatened conduct is a breach of the undertaking, and there is no decided case revealed by counsel's researches in which it has been exercised in such circumstances, it seems to me that it is consistent with established principle and practice that such jurisdiction exists and can be exercised in such circumstances.*
>
> *68 The starting point is that where the court has by injunction restrained conduct in general terms, the ancillary jurisdiction permits the grant of a further injunction to restrain something specific which is within the scope of the general restraint.* ***This is a common feature of freezing orders****."*(emphasis added)

166. Popplewell LJ made the distinction between the freezing order jurisdiction and a proprietary claim to assets which he described as founding a principled basis for preserving those assets pending trial:[56]

> *"82 I would also accept the existence of this alternative jurisdictional basis for the injunction granted by the judge. Where there is a dispute over control of a company the court may make interim orders,* ***including freezing orders, whose purpose is to preserve the value of the company in favour of a party who has a legitimate interest in preserving its value.*** *(emphasis added)*
>
> *83 Section 37(1) of the Senior Courts Act 1981 is in very wide terms. ... Where a claimant has a proprietary claim to assets, there is obviously a principled basis for preserving those assets pending trial, and a proprietary freezing order is commonly granted in such circumstances.* ***In the present case Koza Altin has no proprietary claim as such to the assets in question: the funding will be from assets owned by its subsidiary, Koza Ltd. However, a parent company does have an interest in the use by its subsidiary of the latter's assets because such use affects the value of its shareholding in the subsidiary, and such***

[56] *§§82-83.*

> ***interest is proprietary in nature because the shareholding is a species of property.*** *It is, therefore, in accordance with principle that the court's wide jurisdiction under section 37 should be exercisable to protect such a proprietary interest in appropriate circumstances.* ***Koza Altin's proprietary interest in preserving the value of Koza Ltd's assets, and the consequent value of its own shareholding, is a legitimate interest which is capable of justifying protection by the grant of a freezing order****. It is a separate question whether the circumstances justify the grant of such an injunction in any particular case; but the existence of a power to grant it is consistent with principle."* (emphasis added)

167. As to the freezing order jurisdiction, the court needed to determine whether there was a real risk that the alleged expenditure at issue in breach of undertaking would be an unjustified dissipation of assets otherwise than in the ordinary and proper course of Koza Ltd's business.

168. In the Court's view, the *Koza* decision does not assist Mr Ayres KC in relation to the jurisdiction to grant the proprietary injunction in this case, where the facts are very different.

Gill and Kaur[57]

169. In this case the respondents to the injunctions did not appear and were unrepresented. Bryan J had heard no opposition to the injunctions and said, purporting to apply *Koza,* at § 40:

> "*In order to obtain a proprietary injunction, it is not necessary for the applicant to have a direct proprietary claim to the assets themselves."*

170. The Court finds this to be unpersuasive authority in the circumstances in which the Judge made that comment, against the jurisprudence to the contrary which requires a proprietary claim to the assets themselves.

[57] *[2025] EWHC 156 (Comm).*

Bourlakova[58]

171. This, unlike *Koza* and *Gill and Kaur, was* a proprietary injunction case where the claimant sought injunctions to restrain dealings with the company's assets pending trial. The claimants claimed to be shareholders of the relevant companies.

172. However, the judge in that case, Smith J, was not being asked to order an injunction which would prevent the companies from continuing in the ordinary course of their business. That is unusual for a proprietary injunction case, which unlike the freezing order jurisdiction, does not require a real risk of dissipation of assets and would normally not allow an ordinary course of business exception because the assets themselves are claimed to be owned by the applicant.

173. Smith J took *Koza* to establish that a proprietary injunction could be made to restrain the company from dealing with assets without the need for any proprietary claim and without the need to show any risk of unjustified dissipation.[59]

174. With respect to the Judge, this Court does not accept that the analysis he makes of Popplewell LJ's judgment in *Koza* is correct.

175. Popplewell LJ found on the particular facts of that case that the parent had an interest in the use by its subsidiary of the subsidiary's assets, even though it did not have a proprietary claim to those assets, because he found that such use affected the value of its shareholding in the subsidiary, and such an interest is proprietary in nature because the shareholding was a species of property.

176. Popplewell LJ, however, was dealing with a freezing order which could still be made provided its requirements were met in relation to a real risk of dissipation.

177. In any event, *Bourlakova* can also be distinguished on the facts.

178. An ordinary course exception is applied for in this case which concerns a limited partner interest in a Fund, not a shareholder's interest in a Company.

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[58] *[2025] EWHC 1792 (Ch).*
[59] *§§140-144.*

Lakeshore[60]

179. Even if it could be said that the rights of the Company in this case, as a limited partner in the Fund, are somehow analogous to a shareholder's rights in the above three cases (which the Court doubts), the Court could not grant a proprietary injunction if there is no *prima facie* ownership interest in the relevant assets sought to be injuncted.

180. This issue was considered by the Chief Justice in *Lakeshore.* In that case a displaced shareholder sought a proprietary injunction against a company in respect of the company's assets. This was refused on the basis that there was no good claim to beneficial ownership of those assets and the shareholder rights asserted in that case did not found a basis for proprietary injunctive relief.

181. The Court held that a proprietary claim is one where the claimant asserts a legal or beneficial interest in an asset and that the asset must be specific and ascertained, citing Gee Commercial Injunctions (7th Ed.) at 2-026.[61]

182. The Court noted that a company's shareholders have no proprietary interest in its assets.

183. This Court accepts the reasoning in that case and applies it to this application.

Valuation Issues

184. The Court has also reviewed the detailed advice of Mr Beswetherick KC who advised the Company that the Company's objects, revised in line with the Mission Statement, could not realistically be challenged by the Participating Shareholders.[62]

185. The Court has concluded that the Fund structure in this case gave the Company and its Participating Shareholders no rights of legal or beneficial ownership or indeed control with regard to the Fund and its assets.

186. There is evidence that other charitable entities were unwilling to accept 'a gift of Participating Shares' on this basis:

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[60] *[2025] CIGC (FSD) 24.*
[61] *§61 and see §§62-69.*
[62] *See §§56-60.*

> *"[t]hese charities carried out extensive due diligence on the Participating Shares and ultimately rejected the gift. These charities determined that the shares did not confer sufficient economic rights to qualify as a gift because they provided only discretionary dividends, carried no liquidation rights, and were susceptible to being diluted at any point".*[63]

187. As borne out by the valuations conducted in this case, this outcome was of more limited economic value to the Company as a limited partner in the Fund than an asset valuation of the Fund's assets.

188. Having considered the Company's arguments and evidence, the Court takes the view that there is no good reason to impugn ValueScope's assessments of the CDM Interest,[64] or to second guess the FTI report[65] (which considered appropriate discounts in relation to the Participating Shares), and/or the Weaver fairness opinion.

189. The Court is unpersuaded on this application that the transactions undertaken were at an undervalue. The JOLs have adduced no valuation evidence.

What Rights did the Company have as a Limited Partner in the Fund?

190. The Court accepts Mr Scott KC's submissions that the Company's rights as a limited partner in this structure were not typical of those in a commercial Cayman investment fund. The Fund was not an investment vehicle for limited partners on commercial terms as is usually the case.[66]

191. Unlike a limited partnership agreement used for commercial investment purposes, the ARLPA did not have the usual provisions relating to, for example: the limited partners' capital commitments; investment objectives; carried interest and distributions; and investment periods. The Fund did not solicit capital from investors. There are no subscription agreements through which interests are taken up as the Supporting Organisations did not make any capital commitments. The Fund was not able to make capital calls against the Supporting Organisations or against the Company.[67]

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[63] *Patrick Liquidation 1 at §96.*
[64] *7 January and 26 March 2025.*
[65] *27 March 2025.*
[66] *Patrick 1, §§89-99.*
[67] *Patrick 2, §63(d).*

192. Rather, the ARLPA reflects the charitable purpose of the Fund which was to benefit a defined class of qualifying beneficiaries, namely the Indirect Charitable Owners.[68]

193. As stated above, the Court agrees with the Defendants' submissions that the Company only had the right to be considered for discretionary distributions by the general partner at the partnership level and by the Directors at the Company level (by way of dividend).[69]

194. As a matter of US tax law, in order for the Charities to benefit from distributions from the Fund in a tax efficient manner, it was necessary for them to hold their interests through an offshore 'corporate blocker', i.e. the Company. The Company was constituted in a form to facilitate the surrender of ownership and control.

195. It did not hold any assets or cash reserves.[70]

196. It is clear having reviewed the Memorandum and Articles of the Company that the Participating Shareholders (who paid no money for their shares) had no control or ownership rights in the Fund's assets.

197. The Court accepts Mr Scott KC's submission that any economic rights that the Company may have had[71] were satisfied when the Company was voluntarily wound up after the restructuring had taken place.

The Company's Pleaded Proprietary Claims against CDM and DFW

198. The claims are in respect of:

(1) the limited partnership interest held by CDM;

(2) the participating shares held by DFW; and

(3) the membership interest in CDM also held by DFW.

199. They are all pleaded to arise from the restructuring on the basis of a constructive trust.

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[68] *Murphy 1, §28.*
[69] *That is the basis on which ValueScope, FTI and Weaver produced the US$1.6 million valuation.*
[70] *Patrick 1, §31.*
[71] *Under Article 12 "The participating shares shall confer upon the shareholders rights in a winding up of repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles."*

200. The Court, consistent with its findings in relation to the proprietary injunction analysis, finds that those claims raise no serious issue to be tried. The Court finds that there is no seriously arguable case that the Participating Shares held by DFW and the CDM Interest also held by DFW were assets owned legally or beneficially by the Company. No constructive trust arises absent a proprietary interest.[72]

201. The Court is also unpersuaded that there is a real risk that those assets will be diminished or otherwise unlawfully dealt with (see below).

The Injunction against Mr Patrick

The Corporate Entity which made the Remuneration Payments

202. The Court has reviewed the relevant evidence and the pleadings. The Court takes the provisional view that the sums paid to Mr Patrick as remuneration for his work did not come from Company funds or assets.

203. Whilst there are Company board resolutions in respect of the payments, other companies in the structure actually paid Mr Patrick on behalf of the Company.[73] This may give rise to a proprietary tracing claim by the Company, but there is no seriously arguable case that the payments represent assets which belong to the Company.

Excessive Remuneration

204. The Company says in contrast to Mr Scott, who was paid US$60,000 per annum, Mr Patrick awarded himself sums comprising a base salary of US$850,000, a bonus of 2.5 times that base salary, and a long-term incentive ("LTI") payment of US$975,000. For the period March 2021 to March 2024, Mr Patrick was entitled to an aggregate LTI payment of US$4,759,000.

205. From disclosure provided pursuant to the Interim Undertakings, the JOLs say that Mr Patrick received, by way of director's fees, a total of US$10,548,778 in 2024 and US$3,325,000 in the first six months of 2025.[74]

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[72] *Foskett v McKeown [2001] 1 AC 102.*
[73] *They seem to have been paid by Liberty CLO HoldCo, Ltd, CLO HoldCo Ltd, and Charitable DAF Holdings Corp.*
[74] *MacInnis 3, §52.*

206. Having reviewed the affidavit evidence on this question including the detailed report dated 26 August 2024 from Mercer, the Court finds that there is no serious issue to be tried that this remuneration was excessive and in breach of his duty to the Company.

207. If there were any such irregularity in Mr Patrick's remuneration, the Articles contain an indemnity for officers for conduct short of bad faith.

208. The remuneration levels were the subject of professional advice. Mercer undertook benchmarking and market research which considered the complexity of Mr Patrick's role and the value of the Fund's assets and holdings.

209. The JOLs and the Company have not provided any expert evidence to gainsay Mercer's view.

210. In addition, the remuneration was structured in accordance with legal advice including the establishment of a remuneration committee.

211. Mr Patrick's second affidavit and Mr Murphy's first affidavit set out in some detail the demands of the role of being a Director, their own expertise, and the level of risk involved, particularly in relation to the extensive litigation involving the Fund. Apparently, Mr Murphy was unable to obtain directors and officers insurance given the history of claims made by Mr Dondero.

212. It may be said that as a matter of common sense the Court should objectively assess whether the amounts paid were excessive.

213. Even if there was a seriously arguable case that these amounts were excessive from that point of view and Mr Patrick acted in breach of duty (in bad faith) in relation to his remuneration, the Court finds that this is not a proprietary claim of the Company and is a claim for which damages would be an adequate remedy.

214. The court finds that there is no serious issue to be tried that a proprietary claim lies against the Texas and Missouri properties such that would justify a proprietary injunction restraining the disposition of these properties. The Court accepts Mr Scott KC's submission that there is no pleaded proprietary claim to these specific properties and there is no *prima facie* case that the Company owns those properties or that they are the traceable proceeds of anything belonging to it.

215. There is insufficient evidence that the alleged excess remuneration was used to purchase these properties.

The Injunction against Mr Murphy

216. Mr Ayres KC made clear that as Mr Murphy still plays a role in the Fund and the Company, the JOLs apply to injunct him in respect of all the Fund entities.

217. However, it is undisputed, on the evidence before the court, that Mr Murphy does not hold any interest in the Fund or in its limited or general partner and has no shareholding or any other interest in any of the companies connected with the Fund.

218. The Company's proprietary claim concerns only money that was paid to him as remuneration under his director's service agreements.

219. The Court takes the view that the damages and compensation claimed based on his participation in the restructuring are not proprietary claims in nature.

220. Having reviewed Mr Murphy's affidavit evidence,[75] the levels of remuneration he received (which is not contradicted) do not seem to the Court to be excessive in the circumstances. They are within the margin of appreciation in respect of commercial decisions such as risk and reward relating to remuneration.

221. In 2024, Mr Murphy was paid a total of US$466,667[76] including a bonus of US$250,000 in recognition of his:

> "*contribution to the increased independence of the Company"* and *"input in responding to the Supporting Organisations' behaviour in November/December*".

222. The Company says that this appears to be a reward for Mr Murphy's actions in supporting the restructuring and therefore the Company claims to recover this sum.

223. Mr Murphy was also paid US$500,000[77] in fees payable in monthly instalments and backdated to 1 January 2025, to be paid in advance:

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[75] *Murphy 1, §§48-78.*
[76] *MacInnis 3, §§64-66, §74.*
[77] *On or after 12 May 2025: Murphy 1, §72.*

> "*in circumstances where the Companies may have an inability to discharge their financial obligations to [Mr Murphy], for example, where freezing injunctions or temporary restraining orders may be sought against the Companies*".

224. The Court accepts that the comparison made by the Company with the salary paid to Mr Grant Scott is not apposite given the complex and contentious issues that Mr Murphy had to deal with and the professional services he provided.

225. Moreover Mr Patrick, and not Mr Murphy, replaced Mr Scott. Mr Scott had been the sole Management Shareholder of the Company. Mr Murphy's role was newly created.

226. A second director was appointed because entities in the Fund had become involved in US Chapter 11 proceedings (including proceedings for contempt of court) and proceedings brought by UBS in respect of a judgment exceeding US$1 billion. It was considered that there was an urgent need to appoint a robust independent director with litigation experience.[78]

227. Mr Grant Scott was a close personal friend of Mr Dondero, and was:

> "*a patent lawyer with no experience in finance or running charitable organisations, who was Mr. Dondero's long-time friend, college housemate and best man at his wedding".*[79]

228. Mr Dondero's deposition evidence in the Highland Capital Chapter 11 bankruptcy proceedings (in Texas) given on 1 June 2021 shows that Mr Scott was not fulfilling a serious role and reveals the difficulties in identifying anyone prepared to take on his position without sufficient protections.

229. Mr Quest KC emphasised that Mr Murphy is a professional independent director with (by 2021) 17 years of relevant legal, financial services, and asset-management experience.

230. The Court is not persuaded that the payment of his remuneration gave rise to an actionable breach of fiduciary duty.

231. Moreover, there is no pleaded case of fraud or wilful default against him or any deliberate decision by him to act in breach of his fiduciary duty. There is also no evidence that would

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[78] *Murphy 1, §35.6.*
[79] *As noted by Judge Jernigan in the US civil contempt proceedings.*

support an allegation of fraud or wilful default against Mr Murphy, or which would support any allegation of relevant actual knowledge.

232. The Court does not however agree with Mr Quest KC that there is no evidence to support the suggestion that Mr Murphy was paid in return for his agreement to the course of action that Mr Patrick took in relation to the restructuring.[80] The timing of the payment of US$250,000 and the reason given for it, raise a plausible inference.

233. However, the Court is of the view that in the light of the *'Directors liability and indemnity'* provisions of his service agreement,[81] there is no serious issue to be tried.

234. The Court accepts Mr Ayres KC's point that he does not need in his pleading to anticipate defences which may or may not be run. However, the evidence does not show a serious issue to be tried against the liability and indemnity protection.

235. In addition, the Company did not pay Mr Murphy. The Court is not persuaded that the Company owned the funds that were paid to Mr Murphy or that it had a proprietary interest in the remuneration paid by CLO HoldCo (D6) to Mr Murphy. The Company as a limited partner had no control over CLO HoldCo (D6).

236. The balance of convenience is firmly against granting a proprietary injunction against Mr Murphy. The injunction sought against him is not against any identifiable fund over which any proprietary claim by the Company could be made. Even if there were such an identifiable fund, if the injunction were to be granted, it would give Mr Murphy a difficult task to comply with.

237. The remuneration was paid into Mr Murphy's bank accounts. If an order was made against him, he would be left having to work out which monies he still had (and from a proportion of his remuneration said to be excessive over 4 ½ years) or which may be received from any assets of the Fund, at the risk of committal for breach. No tracing claim is pleaded. This ambiguity would be a reason as a matter of discretion to refuse to make the injunction against him.[82]

238. The Court accepts Mr Quest KC's cogent submissions that it is hard to see any benefit to the Company and the JOLs in the injunction application against Mr Murphy not to diminish assets, and there is real potential oppression to Mr Murphy in seeking to comply with the injunction sought.

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[80] *Company written argument, §128.*
[81] *See clause 6 of the April 2021 Directors Services Agreement.*
[82] *Vestey Foods UK Ltd v Cox [2018] EWHC 3466 (Ch).*

The Balance of Convenience Generally

Assets in Danger

239. Had the Court been persuaded that there was a serious issue to be tried in relation to the proprietary interest of the Company and there was a legitimate juridical basis to grant a proprietary injunction, it would not have granted the injunction against any of the Defendants because it is not persuaded that there is a real risk that the assets are in danger.

240. There is no good reason to believe that the relevant assets will be adversely dealt with given the evidence that the Court has considered on this application, and following the undertakings in July 2025 and suggested in November 2025, as well as the Texas Rule 11 Agreement.

241. Having considered the affidavit evidence and submissions made, the Court is unpersuaded that the ordinary course of business exception poses any real risk to the Fund or to the Company.

242. The Court has concluded that the course which is likely to involve the least risk of injustice is not to grant the injunction.

Lock Down and Transference of Control to JOLs

243. The balance of convenience would also come down firmly in favour of the Defendants because the effect of the relief if granted would be to lock down the charitable activities of the Fund and place it under the control of the JOLs, which the Court regards as unjustified at this interlocutory stage.

244. The Court is not persuaded that the carve outs for specific projects proposed by the JOLs remedy the issue.

245. There is on the other hand no real risk of irremediable prejudice to the Company and the JOLs if the injunction is refused.

Serious Issue to be Tried on the Restructuring

246. The question whether the allegations made against the Directors are true or not will be properly investigated at trial. The principal allegation is a serious one, namely that they have stripped

the Company of its only asset so as to seize control and enrich themselves without the scrutiny of the Supporting Organisations.

247. They each vehemently deny these allegations and give reasons for the reorganisation which will need to be investigated at trial. There is a mass of contemporaneous documentary material to consider including legal and professional advice provided at the time. The Defendants say that it is inherently improbable that all of these advisers were wrong and that the restructuring was invalid or illegal and that the Directors knew this to be the case at the time.

248. No doubt the allegations the Defendants make that the Highland Foundations, which Mr Dondero controlled as Participating Shareholders, were used as vehicles to exert influence over the assets and operations of the Fund, inconsistently with its purpose and exposing it and its assets to litigation in which he was personally involved, will also be examined in detail at trial.[83]

249. All of the evidence will be properly tested at trial against the contemporaneous material so that a conclusion may be drawn as to whether the Directors took the decisions they did because they believed them to be in the best interests of the Company, as they say, or whether they are in breach of fiduciary duty as the JOLs and the Company say.

250. It is clear that Mr Dondero and his affiliates have a long history of contention with Mr Patrick and the Fund. The Court also notes that the Defendants say that Mr Dondero is the primary stakeholder in the liquidation, is funding it, and has a considerable personal stake in the claims being advanced by the Company, as well as the standing to benefit from any recoveries made pursuant to the funding agreement with Crossvine.

251. The Court has carefully considered the actions taken by the Directors, the advice sought and given, and the justifications put forward for the actions that were undertaken. The time when these actions were undertaken coincides with when the Supporting Organisations (Participating Shareholders) were getting increasingly concerned about the conduct of the Directors.

252. The Court has also taken into account the Company's point that these complex transactions were undertaken in secret without notifying the Original Participating Shareholders (Supporting Organisations) and in effect presented them with a *fait accompli*.

[83] *Patrick 1 Liquidation, §§101-164 and Patrick 2, §§26-43*

253. The Court has been persuaded that the Company and JOLs have a case which the Directors need to answer in relation to the divestiture of the Company's limited partner interest in the Fund which does withstand a reverse summary judgment application.

254. Weighing all of these points at this stage with a necessarily incomplete picture, the Court is persuaded that there is a serious issue to be tried as to whether the Directors acted in breach of duty in undertaking the restructuring.

255. The Court expresses no view as to whether that case is likely to succeed or not at this stage, merely that it has cleared the relatively low bar of having a real, as opposed to a fanciful, prospect of success at trial.

256. That finding does not change the analysis or outcome on this application and in particular does not affect the Court's view on the balance of convenience and the exercise of its discretion generally.

257. The Company's interest at stake is not proprietary, is of no economic value to the Company which has not already been reimbursed, and was a right to be considered by the general partner for discretionary charitable distributions for the Indirect Charitable Owners. Any loss would be felt by those owners and could be compensated by an award of damages which could be met from the Fund's assets.

Cross Undertaking

258. There is a further important reason why the Court, even had it been persuaded that there was a juridical basis to grant a proprietary injunction, would not have done so.

259. Given the wide nature of the injunction applied for and the significant costs which the Defendants would need to spend to comply with it, the absence of a secure cross undertaking is a good reason to not grant the injunction.

260. The default position is that an applicant for an interim injunction is required to give a cross undertaking in damages. This is not a case where it would be right to waive the cross undertaking required.

261. The Court has concluded that if the injunction were granted, significant loss would be likely to be caused to the Fund and its charitable recipients. There might also be business related and reputational impacts on individuals, including most obviously the Directors, which may be hard to quantify.

Fortification

262. The Court has also concluded in its discretion that this is a proper case for fortification. The JOLs themselves are not offering a cross undertaking and yet ask for wide ranging relief and further disclosure orders.

263. The Court is not persuaded that Crossvine, which is put forward to provide a cross undertaking, would be good to make up the likely loss sustained if it was to be found that the injunction had been wrongly granted.

264. The Defendants say Crossvine is controlled by Messrs Dondero and Ellington, both of whom are involved in the UBS Litigation in the US where it is alleged that Mr Dondero has an outstanding judgment against him of more than US$1.2 billion.

265. There is scant material on this application as to the nature, extent and location of Crossvine's assets. Apparently, the original funding Crossvine agreed has been exhausted.

266. The Defendants point out that an indemnity costs order[84] that was made against the Company as part of a June sanction application in the Liquidation Proceedings has not been complied with.

267. The Defendants have a good arguable case that there is a real risk that Crossvine, on the present evidence available, will not be good for the money.

268. Mr Ayres KC argued that the evidence from ValueScope suggesting potential damage to the Fund of c.US$127m if the injunction is granted is flawed because they had been involved in justifying the redemption of the Company's interest in CDM and so were not able to provide objective and independent evidence to the Court by way of the Damages Report. The Court does not agree.

[84] *Said to be circa US$1 million.*

269. An intelligent estimate of the loss is, in the Court's view, in the region of the ValueScope Damages Report. There is a real need for fortification in this case and none is offered. That in itself is a powerful factor against the granting of the proprietary injunction sought on the balance of convenience.

Conclusion

270. For these reasons, the Court refuses to make an order in the terms of the amended injunction summons filed on 4 December 2025.



THE HON. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT

EXHIBIT 73

EXECUTION VERSION

SETTLEMENT AGREEMENT & GENERAL RELEASE

THIS SETTLEMENT AGREEMENT & GENERAL RELEASE (this "**Agreement**") is entered into as of May 19, 2025 (the "**Agreement Date**"), by and among Highland Capital Management, L.P., a Delaware limited partnership ("**Highland**"), the Highland Claimant Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "**Claimant Trust**"), the Highland Litigation Sub-Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "**Litigation Sub-Trust**"), and the Highland Indemnity Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "**Indemnity Trust**", and together with Highland, the Claimant Trust and the Litigation Sub-Trust, the "**Highland Entities**"), on the one hand, and Hunter Mountain Investment Trust, a Delaware statutory trust ("**HMIT**"), Beacon Mountain LLC, a Delaware limited liability company ("**Beacon Mountain**"), Rand Advisors, LLC, a Delaware limited liability company ("**Rand Advisors**"), Rand PE Fund I, LP, a Delaware series limited partnership ("**Rand PE Fund**"), Rand PE Fund Management, LLC, a Delaware limited liability company ("**Rand GP**"), Atlas IDF, LP, a Delaware limited partnership ("**Atlas IDF**"), Atlas IDF GP, LLC, a Delaware limited liability company ("**Atlas GP**" and together with HMIT, Beacon Mountain, Rand Advisors, Rand PE Fund, Rand GP and Atlas IDF, the "**HMIT Entities**"), on the other hand. The Highland Entities and the HMIT Entities are collectively referred to as the "**Parties**," and each individually, as a "**Party**".

DEFINITIONS

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Claimant Trust Agreement or the Plan, as applicable (in each case, as hereinafter defined). For purposes of this Agreement, the following capitalized terms have the following meanings:

"**9019 Motion**" means the motion seeking entry of the Bankruptcy Court Order pursuant to Bankruptcy Rule 9019 and in accordance with Section 18.

"**Action**" means any action, claim, demand, arbitration, hearing, charge, complaint, investigation, examination, indictment, litigation, suit or other civil, criminal, administrative or investigative proceedings, including any petition under Rule 202 of the Texas Rules of Civil Procedure.

"**Affiliate**" means a Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"**Amended Complaint**" means the *Amended Complaint and Objection to Claims*, filed as docket number 158 in *Kirschner v. Dondero*, Adv. Pro. No. 21-03076-sgj (Bankr. N.D. Tex. May 19, 2022).

"**Bankruptcy Case**" means *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex.) and its related proceedings.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended).

"**Bankruptcy Court**" means the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.

"**Bankruptcy Court Approval Date**" means the date on which the Bankruptcy Court Order is issued.

"**Bankruptcy Court Order**" means an order of the Bankruptcy Court approving the allowance of the HMIT's Class 10 Interest as provided in this Agreement pursuant to the 9019 Motion.

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure.

"**Business Day**" means any day other than (i) a Saturday or a Sunday, (ii) a day on which the Federal Reserve Bank of New York or the New York Stock Exchange is closed, or (iii) a day on which banks in the States of Texas are required, or authorized by law, to close.

"**Claimant Trust Agreement**" means that certain Claimant Trust Agreement of the Claimant Trust (as may have been or may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), effective as of August 11, 2021, by and among Highland, as settlor, James P. Seery, Jr., a Claimant Trustee, and Wilmington Trust, National Association, a national banking association, as Delaware trustee.

"**Claims**" means any claims, debts, liabilities, demands, obligations, breaches of contract, breaches of duty or any relationship, misfeasance, malfeasance, promises, acts, omissions, agreements, liens, losses, costs and expenses (including attorney's fees and related costs), damages, injuries, suits, Actions, and causes of action of whatever kind or nature, whenever and however, arising, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise.

"**Class 10**" means the class of Claims or Equity Interests described in Article II. Section H.10. of the Plan.

"**Class 11**" means the class of Claims or Equity Interests described in Article II. Section H.11. of the Plan.

"**Committee**" means the official committee of unsecured creditors appointed in the Bankruptcy Case.

"**Confirmation Order**" means that certain *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943], as conformed in accordance with the Fifth Circuit's rulings.

"**Dugaboy Note**" means that certain Promissory Note dated May 31, 2017, in the original face amount of $24,268,621.69, from The Dugaboy Investment Trust, as Maker, and Highland Capital Management, L.P. and The Get Good Non-Exempt Trust, collectively as Payee.

"**Final Court Approval Date**" means the date on which the Bankruptcy Court Order becomes a Final Order.

"**Final Order**" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Highland Entities, as applicable, or, in the event that an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or certiorari, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

"**Gatekeeper**" means the gatekeeping provision contained in Article IX. F of the Plan as of August 11, 2021.

"**Governmental Authority**" means any federal, provincial, state, local or foreign government or political subdivision thereof, court of competent jurisdiction, administrative agency, judicial or arbitral body, or commission or other governmental or regulatory authority or instrumentality.

"**Highland Released Parties**" means collectively (i) the Highland Entities, (ii) any Affiliate of any Highland Entity and any Person directly or indirectly majority-owned by any Highland Entity or any of their respective Affiliates, (iii) any Person directly or indirectly managed by any Highland Entity or any of their respective Affiliates, whether by contract or otherwise (the entities described in clauses (i)-(iii), collectively, the "**Highland Parties**"), (iv) each of the Highland Parties' current and former trustees and administrators (including the trustees of any of the Claimant Trust, the Litigation Sub-Trust, or the Indemnity Trust), officers, executives, agents, directors, advisors, advisory representatives, consultants, administrators, managers, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns, (v) the current and former members of the Oversight Board of the Claimant Trust in any capacity (including Richard Katz) and their Affiliates, (vi) Farallon Capital Management, LLC, Stonehill Capital Management, LLC, Muck Holdings LLC, and Jessup Holdings LLC, in each case, in any capacity, (vii) the Independent Board and its members John Dubel, James P. Seery, Jr., and Russell Nelms, (viii) James P. Seery, Jr., individually and in all capacities for any Highland Released Party, including as Chief Executive Officer of Highland Capital Management, L.P., Claimant Trustee of the Claimant

Trust, and the Indemnity Trust Administrator of the Indemnity Trust, (ix) Marc S. Kirschner, individually and as Trustee of the Litigation Sub-Trust, (x) the Committee and each of its members, (xi) the professionals (and their respective firms) (a) retained by Highland or the Committee during the Bankruptcy Case or which provided services to Highland or the Committee during the Bankruptcy Case or (b) retained by any Highland Released Party on or after August 11, 2021, (xii) any Person indemnified by any Highland Party (the Persons described in clauses (i)-(xii), collectively, the "**Highland Covered Parties**"), and (xii) each Highland Covered Party's current and former officers, executives, agents, attorneys (and their respective firms), directors, advisors, consultants, administrators, managers, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns, if not otherwise included in the defined term "Highland Covered Parties;" provided, however, and for the avoidance of doubt, and without in any way limiting the scope of the foregoing, "Highland Covered Parties" shall include Highland CLO Funding, Ltd., Highland HCF Advisor, Ltd., Highland Multi Strategy Credit Fund, L.P., Highland Multi Strategy Credit Fund GP, L.P., Highland Multi Strategy Credit GP, LLC, Highland Multi Strategy Credit Fund, Ltd., Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., Highland Select Equity Fund, L.P., Highland Restoration Capital Partners Master, L.P., Highland Restoration Capital Partners GP, LLC, Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Offshore Director, LLC, Acis CLO Management, LLC, Neutra, Ltd., Pollack, Ltd., Acis CLO Management Holdings, L.P., Acis CLO Management Intermediate Holdings I, LLC, Acis CLO Management Intermediate Holdings II, LLC, Acis CLO Assets Holdings Limited, CHG Houston Holdings, LLC, Penant Management, L.P., Penant Management GP, LLC, Gunwale, LLC, HE Capital, LLC, Gleneagles CLO, Ltd., Aberdeen Loan Funding, Ltd. Highland Argentina Regional Opportunity Fund GP, LLC, Highland Argentina Regional Opportunity Fund, L.P., Highland Argentina Regional Opportunity Fund, Ltd., Highland Argentina Regional Opportunity Master Fund, L.P., Highland Latin America Consulting, Ltd., Highland Capital Management Korea Limited, Highland Capital Management Latin America, L.P., Highland Latin America GP, Ltd., Highland Latin America LP, Ltd., Highland Offshore Partners, L.P. (Diversified), Brentwood CLO, Ltd., Eastland CLO, Ltd., Bristol Bay Funding Ltd., Jasper CLO Ltd., Highland Legacy Limited, Grayson CLO, Ltd., Greenbriar CLO, Ltd., Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Liberty CLO, Ltd., Valhalla CLO, Ltd., Stratford CLO Ltd., Southfork CLO, Ltd., Pam Capital Funding, L.P., Stonebridge-Highland Healthcare Private Equity Fund, Pamco Cayman Ltd., Red River CLO, Ltd., Rockwall CDO II Ltd., Rockwall CDO, Ltd., Westchester CLO, Ltd. Longhorn Credit Funding, LLC, PensionDanmark Pensionsforsikringsaktieselskab, Highland Dynamic Income Master Fund L.P., Highland Dynamic Income Fund GP, LLC, Highland Dynamic Income Fund, L.P., Highland Dynamic Income Fund, Ltd., Highland JHT Holdings, LLC, Highland Prometheus Master Fund, L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland Sunbridge GP, LLC, Trussway Holdings, LLC, Trussway Industries, LLC, TW Company, Inc., T-Way Investments, LLC, SSP Holdings, LLC, Highland Flexible Income UCITS Fund, and Acis CLO 2017-7, Ltd. *Notwithstanding the forgoing or anything herein to the contrary*, none of "Highland Released Parties", "Highland Parties", nor "Highland Covered Parties" shall include James Dondero, Scott Ellington, Isaac Leventon, or any Person directly or indirectly owned as of the date hereof (in whole or in part) by, and/or Affiliated as of the date hereof with, or claiming

through, under or on behalf of, any of Mr. Dondero, Mr. Ellington, or Mr. Leventon in any manner and none of such Persons are released from any Claim by any Person in connection with this Agreement.

"**HMIT Class 10 Interest**" means the unvested, contingent Class 10 interest in the Claimant Trust (a) to be allowed on account of HMIT's pre-petition equity interest in Highland, and (b) subject to the terms and conditions, as applicable, of the Plan, the Plan Documents, the Claimant Trust Agreement, and in accordance with this Agreement, and applicable law.

"**HMIT Note**" means that certain Secured Promissory Note dated December 21, 2015, in the original face amount of $63,000,000 from HMIT, as maker, and Highland, as payee.

"**HMIT Note Claims**" means any Claim related to, in connection with or arising out of the HMIT Note.

"**HMIT Released Parties**" means collectively (i) the HMIT Entities, (ii) any Affiliate of any HMIT Entity and any Person directly or indirectly majority owned by any HMIT Entity or any of their respective Affiliates, (iii) any Person directly or indirectly managed by any HMIT Entity or any of their respective Affiliates, whether by contract or otherwise (the entities described in clauses (i) – (iii), collectively, the "**HMIT Parties**"), (iv) each of the HMIT Parties' current and former trustees, administrators, officer, executives, agents, directors, advisors, consultants, manager, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns (v) the professionals (and their respective firms (a) retained by any HMIT Party during the Bankruptcy Case or which provided services to any HMIT Party during the Bankruptcy Case or (b) retained by any HMIT Released Party on or after August 11, 2021, (vi) any Person indemnified by any HMIT Party (the Persons described in clauses (i) – (vi), collectively, the "**HMIT Covered Parties**"), and (vii) each HMIT Covered Party's current and former officers, executives, agents, directors, advisors, consultants, administrators, managers, members, partners (including limited and general partners), employees, beneficiaries, shareholders, other equityholders, participants, direct and indirect subsidiaries and parents, Affiliates, successors, designees, and assigns, if not otherwise included in the defined term "HMIT Covered Parties." *Notwithstanding the forgoing*, none of "HMIT Released Parties", "HMIT Parties", nor "HMIT Covered Parties" shall include James Dondero, Scott Ellington, Isaac Leventon, or any Person directly or indirectly owned as of the date hereof (in whole or in part) by, and/or Affiliated as of the date hereof with, or claiming through, under or on behalf of, any of Mr. Dondero, Mr. Ellington, or Mr. Leventon in any manner, and none of such Persons are released from any Claims by any Person in connection with this Agreement.

"**Indemnity Trust Administrator**" has the meaning given to it in the Indemnity Trust Agreement.

"**Indemnity Trust Agreement**" means that certain *Second Amended and Restated Indemnity Trust Agreement of the Indemnity Trust* (as may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), effective as of [April 28], 2025, by and among the Claimant Trust, as grantor, James P. Seery, Jr., as indemnity

trust administrator, and Wilmington Trust, National Association, a national banking association, as indemnity trustee and Delaware trustee.

"**Indemnity Trust Assets**" has the meaning set forth in the Indemnity Trust Agreement, but excluding Highland, the Claimant Trust, and their respective assets.

"**Independent Board**" means the independent board appointed by the Bankruptcy Court on January 9, 2020, pursuant to that certain *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339].

"**Kirschner Claims**" means all Claims and causes of action that were asserted or could have been asserted by the Litigation Trustee of the Litigation Sub-Trust, in the Amended Complaint.

"**Liability**" means any liability, debt, obligation, loss, damage, claim, cost or expense (including costs of investigation and defense and attorney's fees, costs and expenses), in each case, whether direct or indirect, whether accrued or contingent, whether or not involving a third-party claim, and including incidental and consequential damages and diminution of value.

"**Litigation Protections**" means, individually and collectively, the rights, duties, and obligations set forth in Sections 1 – 2 and Sections 9 - 16.

"**Litigation Sub-Trust**" means the Highland Litigation Sub-Trust, a Delaware statutory trust governed by the Delaware Statutory Trust Act.

"**Litigation Sub-Trust Agreement**" means that certain Litigation Sub-Trust Agreement of the Litigation Sub-Trust (as may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), effective as of August 16, 2021, by and among James P. Seery, Jr., as Claimant Trustee of the Claimant Trust, Wilmington Trust, National Association, a national banking association, as Delaware Trustee, and the Litigation Trustee.

"**Litigation Trustee**" means Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust.

"**LPA**" means that certain *Sixth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.* (as may be amended, supplemented or otherwise modified in accordance with the terms thereof from time to time), dated as of October 4, 2021.

"**Operating Expenses**" means, except for the expenses of the Indemnity Trust (including any payments to Trust Indemnified Parties or Indemnified Parties (in each case, as defined, and pursuant to the terms and conditions set forth, in the Indemnity Trust Agreement)), the expenses of operating and administering the Highland Entities, including legal expenses, employee compensation, Claimant Trustee/CEO and other trust and trustee related compensation, incentive compensation, and customary general and administrative expenses.

"**Original Plan**" means that certain *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* attached as Exhibit A to the *Order (A) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as modified) and (B) Granting Related Relief*, filed at Docket No. 1943 on the Bankruptcy Court's docket.

"**Oversight Board**" means the oversight board of the Highland Claimant Trust.

"**Pending Litigation**" means (i) *Hunter Mountain Investment Trust v. Highland Cap. Mgmt., L.P.*, Case No. 3:23-cv-02071-E (N.D. Tex.), on remand to the Bankruptcy Court (including *Hunter Mountain Investment Trust's Emergency Motion for Leave to File Adversary Proceeding* filed at Bankruptcy Court Docket No. 3699 and all proceedings, decisions, and orders relating there); (ii) *Dugaboy Investment Trust v. Highland Cap. Mgmt, L.P.*, 3:24-cv-01531-X (N.D. Tex.) (only as to HMIT), and (iii) *Hunter Mountain Investment Trust v. Highland Cap. Mgmt., L.P.*, Case No. 3:24-cv-01786-L (N.D. Tex.).

"**Permitted Investments**" has the meaning set forth in the Indemnity Trust Agreement.

"**Person**" means any natural person, partnership, limited liability partnership, corporation, limited liability company, association, joint stock company, trust, estate, joint venture, unincorporated organization or Governmental Authority.

"**Plan**" means that certain *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* as conformed in accordance with the Fifth Circuit's rulings.

"**Plan Documents**" has the meaning given to it in the Plan.

"**Plan Protections**" means, collectively, the provisions of the Plan contained in Article IX thereof.

"**Pro Rata**" means the proportion that (a) the allowed amount of a particular Claim or Equity Interest in Class 10 bears to (b) the aggregate allowed amount of all Claims or Equity Interests in Class 10.

"**Threats**" means any written threats of legal action, legal demands, filed complaints, petitions for pre-suit discovery, suits, litigations, arbitrations, actual or threated restraining orders or injunctions made in writing, or similar written actions of any kind, or sworn statements evidencing the same, in any forum against any Trust Indemnified Parties or Indemnified Party (both as defined in the Indemnity Trust Agreement), excluding any such action that would otherwise be a Threat except that any applicable statute of limitations that could be applicable to such action has expired.

"Threats Notice" means the written notice of any Threats received by the Indemnity Trust with respect to any Trust Indemnified Parties or Indemnified Party (both as defined in the Indemnity Trust Agreement), that is hereby required to be provided by the Indemnity Trust to the HMIT Entities, within five (5) Business Days after receipt of such Threat.

RECITALS

WHEREAS, as of the Petition Date, HMIT held Class B and Class C Limited Partnerships Interests in Highland;

WHEREAS, on December 21, 2015, HMIT entered into the HMIT Note with Highland, which had a total outstanding principal balance of Fifty-Seven Million Six Hundred Ninety Thousand Six Hundred Forty and 95/100 Dollars ($57,690,640.95) as of the Petition Date (the "**HMIT Note Balance**");

WHEREAS, HMIT's Class B and Class C Limited Partnership Interests in Highland were extinguished on August 11, 2021, in accordance with the Plan;

WHEREAS, pursuant to the LPA, HMIT's capital account balance at Highland on account of its Class B and Class C Limited Partnership Interests on the Petition Date was Three Hundred Ninety-Four Million Six Hundred Thirty Thousand Eight Hundred Seventy-One and 53/100 Dollars ($394,630,871.53) (the "**HMIT Capital Account Balance**");

WHEREAS, some or all of the HMIT Entities have asserted certain Claims against certain Highland Entities and certain other Highland Covered Parties, including those asserted in the Pending Litigation;

WHEREAS, certain distributions to be made to the holders of allowed Class 10 Claims or Equity Interests pursuant to the terms and subject to the conditions set forth herein are premised on the consent of certain Highland Covered Parties in their capacity as Holders of Class 9 Interests, and such Persons are only willing to provide such consent in exchange for the releases as set forth in this Agreement;

WHEREAS, some or all of the Highland Entities have asserted certain Claims against certain HMIT Entities, including the HMIT Note Claims;

WHEREAS, the Parties wish to terminate, extinguish, and release any and all rights, duties, obligations and Claims that (a) any of the Highland Released Parties owed or have, or may have owed or have, to or with respect to any of the HMIT Released Parties, and (b) any of the HMIT Released Parties owed or have, or may have owed or have, to or with respect to any of the Highland Released Parties, as provided in this Agreement (collectively, the "**Rights and Obligations**");

WHEREAS, the Parties agree that the Litigation Protections are intended to enact a permanent cessation of all litigation concerning or related to the Highland Released Parties through and including the Agreement Date; and

WHEREAS, the Parties, individually and collectively, wish to (a) resolve all disputes between and/or among any of the Highland Entities and their respective indemnitees, on the one hand, and any of the HMIT Entities, on the other hand, including those asserted or attempted to be asserted in the Pending Litigation, (b) fix and allow HMIT's Class 10 Interest at the amount and on the terms provided herein; and (c) terminate, extinguish, and release all Rights and Obligations on the terms provided herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Stay and Dismissal of Pending Litigation With Prejudice.

(a) Within five (5) Business Days after the Agreement Date, the HMIT Entities shall take all steps necessary (at their own cost) to stay the Pending Litigation.

(b) Within five (5) Business Days after the Bankruptcy Court Approval Date, the HMIT Entities shall take all steps necessary (at their own cost) to dismiss the Pending Litigation with prejudice.

2. Maintenance of Stay and Dismissal of Certain Defendants from the Amended Complaint.

(a) The Litigation Trustee shall continue to maintain the stay of Adv. Proc. No. 21-03076-sgj and all related proceedings arising therefrom through the Bankruptcy Court Approval Date. Within five (5) Business Days after the Bankruptcy Court Approval Date, the Litigation Sub-Trust shall take all steps necessary (at its own cost) to dismiss, with prejudice, HMIT and Rand PE from Counts I, II, III, and XXIV of the Amended Complaint.

3. Cash Payment to HMIT. Within five (5) Business Days following the Bankruptcy Court Approval Date, Highland shall pay HMIT a one-time, lump sum of Five Hundred Thousand Dollars (US$500,000.00) (the "**Payment**") by wire transfer:

Hunter Mountain Investment Trust
C/o CLO Holdco, LLC
Hancock Whitney
Account # - 071173413
Routing # - 113000968
(469) 604-0955

4. HMIT Class 10 Interest.

(a) Subject to entry of the Bankruptcy Court Order, and the terms of this Agreement, the HMIT Class 10 Interest shall be deemed allowed in the amount of Three Hundred Thirty-Six Million Nine Hundred Forty Thousand Two Hundred Thirty and 58/100 Dollars (US$336,940,230.58), which amount represents the HMIT Capital Account Balance, less the HMIT Note Balance.

(b) Notwithstanding anything to the contrary in the Plan or the Claimant Trust Agreement, as an integral part of this Agreement to consent to the allowance of the HMIT Class 10 Interest and the other considerations in this Agreement, HMIT shall not be deemed, and no holder of the HMIT Class 10 Interest shall be, a Claimant Trust Beneficiary or a "Beneficiary" under the Claimant Trust Agreement, and the Highland Released Parties, individually and collectively, shall owe no duty to any HMIT Releasor (whether contractual, fiduciary, equitable,

statutory or otherwise), including with respect to the HMIT Class 10 Interest, in each case, except as expressly set forth in this Agreement. Furthermore, without limiting the foregoing and for the avoidance of doubt, the contractual right of the holder of the HMIT Class 10 Interest to receive or recover any payments or Indemnity Trust Assets from the Indemnity Trust as set forth in this Agreement or the Indemnity Trust Agreement does not make any HMIT Releasor or any other Person a beneficiary of the Indemnity Trust or under the Indemnity Trust Agreement.

(c) Notwithstanding anything to the contrary in the Plan, the Claimant Trust Agreement or the Indemnity Trust Agreement, in no event shall HMIT sell, transfer, assign, pledge, hypothecate, participate or otherwise dispose of or encumber the HMIT Class 10 Interest or any rights (including any right to payment) with respect thereto (collectively, a "**Class 10 Assignment**"), and any attempted Class 10 Assignment shall be null and void.

(d) For the avoidance of doubt, the HMIT Class 10 Interest is and shall remain senior to the not yet allowed, unvested contingent Class 11 Claims of Equity Interests as provided for in the Plan, the Plan Documents, and the Claimant Trust Agreement.

5. Initial Interim Distributions on the Allowed Class 10 Interests.

(a) Within five (5) Business Days after the Bankruptcy Court Approval Date, the Indemnity Trust shall distribute (the date on which such distribution is made, the "**Initial Interim Distribution Date**") Pro Rata to the Holders of allowed Class 10 Claims or Equity Interests cash in the aggregate amount of Ten Million Dollars (US$10,000,000.00) (the "**Initial Interim Cash Distribution Amount**"), by means of wire transfer with the Pro Rata portion in respect of the HMIT Class 10 Interest sent to the wire instructions contained in Section 3 ("**Wire Transfer**").

(b) Within five (5) Business Days after the Bankruptcy Court Approval Date (the "**Note Assignment Date**"), the Highland Entities shall cause the portion of the Dugaboy Note held by the Highland Entities to be distributed to HMIT in-kind and take all actions necessary for HMIT to become the holder of such portion of the Dugaboy Note, and shall in addition pay to HMIT cash in the aggregate amount of all principal and interest payments actually received on the Dugaboy Note by the Highland Entities, including the Indemnity Trust, from the Agreement Date to the Note Assignment Date. Prior to the Bankruptcy Court Approval Date, HMIT will engage an independent valuation service provider to value the Dugaboy Note for purposes of determining the magnitude of reduction to the outstanding allowed Class 10 Interests on account of such in-kind distribution, which shall not be less than Fifty percent (50%) of the current balance owed under the Dugaboy Note. The HMIT Entities acknowledge and agree that none of the Highland Entities are representing or warranting that the Dugaboy Note can be sold, or the price, if any, that could be received for the Dugaboy Note and further acknowledge and agree that any such purchase price may be de minimis.

6. Subsequent Distribution(s) on the Allowed Class 10 Interests.

(a) On December 1, 2027, the Indemnity Trust shall distribute (such distribution, collectively, the "**First Subsequent Distribution**", and the date on which such Subsequent Distribution is made, the "**First Subsequent Distribution Date**") Pro Rata to the

Holders of allowed Class 10 Claims or Equity Interests: cash in the aggregate amount of Six Million Five Hundred Thousand Dollars (US$6,500,000.00), by Wire Transfer.

(b) On December 1, 2028, the Indemnity Trust shall distribute (such distribution, collectively, the "**Second Subsequent Distribution**", and the date on which such Subsequent Distribution is made, the "**Second Subsequent Distribution Date**") Pro Rata to the Holders of allowed Class 10 Claims or Equity Interests cash in the aggregate amount of Six Million Five Hundred Thousand Dollars (US$6,500,000.00) by Wire Transfer.

(c) Notwithstanding anything herein to the contrary, the obligations of the Indemnity Trust to make the First Subsequent Distribution or Second Subsequent Distribution is subject in all respects to (i) there being no Threats and (ii) a determination in accordance with Article VIII, Section 8.1(c) of the Indemnity Trust Agreement that the Indemnity Trust Assets comprising such distributions are not reasonably necessary to satisfy current or potential Indemnification Obligations (as defined in the Indemnity Trust Agreement) to all persons who are or might become Beneficiaries (as defined in the Indemnity Trust Agreement).

7. Final Distribution on the Allowed Class 10 Interests.

(a) On the later of the Final Court Approval Date and April 1, 2029, the Indemnity Trust will distribute all excess remaining Indemnity Trust Assets in accordance with Article VIII of the Indemnity Trust Agreement; provided, however, that the obligation of the Indemnity Trust to make any such distributions and/or dissolve and wind up the affairs of the Indemnity Trust is subject in all respects to (i) there being no Threats and (ii) a determination in accordance with Article VIII of the Indemnity Trust Agreement that (1) a Final Order(s) (as defined in the Indemnity Trust Agreement) has been entered resolving all litigation, claims or proceedings in any forum of any kind which could give rise to Indemnity Obligations (as defined in the Indemnity Trust Agreement) and payment in full of all such Indemnity Obligations and (2) all applicable statutes of limitations and any applicable tolling of such statutes of limitation have expired.

(b) The Indemnity Trust agrees to not use Indemnity Trust Assets to fund Operating Expenses.

(c) Following the Bankruptcy Court Approval Date, at the request of Mark Patrick, solely in his capacity, and to the extent he remains, as administrator of HMIT, but not more often than quarterly, Highland and the Indemnity Trust Administrator agree to review (i) the status of their respective assets, (ii) the balance of cash held, (iii) the status of any claims made for indemnification and any resolutions thereof, (iv) the status of any litigation, and (v) forecasted operating expenses with Mr. Patrick, and will each work in good faith to reduce operating expenses where reasonably practicable; provided, however, that all such reporting shall be subject to Mr. Patrick's agreement to maintain confidentiality with respect to any non-public information.

8. Transfer Kirschner Claims; Dismissal of HMIT Note Claims.

(a) Within five (5) Business Days after the Bankruptcy Court Approval Date, but after the dismissal provided for in Section 2, the Litigation Sub-Trust shall execute a short-

form assignment in in favor of the HMIT Entities transferring all of the Litigation Sub-Trust's right, title, and interest in and to the Kirschner Claims (the "**Kirschner Transfer**"). Such assignment shall be in a form mutually acceptable to the Parties and its substance shall be consistent with the terms, conditions and limitations set forth in this Agreement, including Section 8(b) below. Each HMIT Entity acknowledges and agrees that none of the Highland Entities will have any duty or obligation to assist the HMIT Entities in any way with respect to the Kirschner Claims, including the prosecution thereof, except as provided in this Agreement, including the terms of Section 8(c) below.

(b) THE HMIT ENTITIES SPECIFICALLY ACKNOWLEDGE AND AGREE THAT THE LITIGATION SUB-TRUST IS TRANSFERRING THE KIRSCHNER CLAIMS ON AN "AS IS AND WITH ALL FAULTS" BASIS AND THAT THE HMIT ENTITIES ARE NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE HIGHLAND ENTITIES OR THEIR REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE KIRSCHNER CLAIMS AND AMENDED COMPLAINT, INCLUDING WITH RESPECT TO THE ENFORCEABILITY, TRANSFERABILITY, VIABILITY, STRENGTH, OR VALUE OF ANY OF THE KIRSCHNER CLAIMS OR THE AMENDED COMPLAINT. The HMIT Entities hereby specifically acknowledge that they have carefully reviewed this Section and have had the opportunity to discuss its import with legal counsel and that the provisions of this Section are a material part of this Agreement. Thus, if for any reason HMIT is precluded from or is otherwise unable to prosecute all or any of the Kirschner Claims, (i) the HMIT Releasors shall have no recourse against any Highland Released Parties whatsoever and shall not be entitled to compensation of any kind, it being agreed that the HMIT Entities are otherwise receiving adequate consideration for the duties and obligations they are undertaking pursuant to this Agreement and (ii) there will be no effect whatsoever on the validity and enforceability of this Agreement or any of the other transactions contemplated hereby.

(c) As promptly as reasonably practicable following the Bankruptcy Court Approval Date, the Highland Entities shall provide to the HMIT Entities electronic copies of written discovery requests and responses thereto, and documents produced in discovery in respect of the Kirschner Claims and the Amended Complaint. The Highland Entities will not provide any other documents regarding the Kirschner Claims including any attorney-client communications and any documents subject to the attorney work-product doctrine or similar privileges or immunities concerning the Kirschner Claims (collectively, the "**Kirschner Privileges**"), it being understood and agreed that the Highland Entities are retaining, and not transferring or waiving, the Kirschner Privileges.

(d) Each Party acknowledges and agrees that if (i) the Kirschner Transfer is found or deemed to be impermissible or invalid, for any reason, or (ii) any HMIT Entity materially breaches this Agreement, the Kirschner Claims and Amended Complaint will revert to, and remain an asset of, the Litigation Sub-Trust.

9. General Release By The HMIT Entities. On the Bankruptcy Court Approval Date, and to the maximum extent permitted by law, each of the HMIT Entities, on behalf of itself and each of its respective Affiliates (including Affiliated and/or managed funds, accounts and other investment vehicles) and its and their respective current and former advisors, consultants,

administrators, trustees, directors, officers, managers, executives, members, partners (including limited and general partners), employees, beneficiaries, direct and indirect shareholders and other equity holders, agents, participants, direct and indirect subsidiaries and parents, successors, predecessors, designees, and assigns (whether by operation of law or otherwise) and all Persons claiming through, under or on their behalf (collectively with the HMIT Entities, the "**HMIT Releasors**") hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, discharges, remises, and exonerates each Highland Released Party from, and waives and relinquishes, any and all Claims, which the HMIT Releasors, or any Person claiming through, under, or on behalf of any of the HMIT Releasors, ever had, now has, or hereafter can, shall, or may have against any of the Highland Released Parties by reason of, arising from, relating to, or in connection with, any fact, matter, or transaction that occurred prior to the Agreement Date, including any fact, matter, transaction, or occurrence asserted by any HMIT Entity in the Pending Litigation or in connection with, relating to, or with respect to the Bankruptcy Case, the management or operation of any of the Highland Released Parties, or the Highland Released Parties' property and including any defense, affirmative defenses, and right to setoff arising out of, or otherwise related to, any of the foregoing (collectively, the "**HMIT Entity Released Claims**").

10. General Release By The Highland Entities. On the Bankruptcy Court Approval Date, and to the maximum extent permitted by law, each of the Highland Entities, on behalf of itself and each of its respective Affiliates (including Affiliated and/or managed funds, accounts and other investment vehicles) and its or their respective current and former advisors, consultants, administrators, trustees, directors, officers, managers, executives, members, partners (including limited and general partners), employees, beneficiaries, direct and indirect shareholders and other equity holders, agents, participants, direct and indirect subsidiaries and parents, successors, predecessors, designees, and assigns (whether by operation of law or otherwise) and all Persons claiming through, under or on their behalf (collectively with the Highland Entities, the "**Highland Releasors**") hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, discharges, remises, and exonerates each HMIT Released Party from, and waives and relinquishes, any and all Claims which the Highland Releasors, or any Person claiming through, under, or on behalf of any of the Highland Releasors, ever had, now has, or hereafter can, shall, or may have against any of the HMIT Released Parties by reason of, arising from, relating to, or in connection with, any fact, matter, or transaction that occurred prior to the Bankruptcy Court Approval Date, including any fact, matter, transaction, or occurrence in connection with, relating to, or with respect to the Bankruptcy Case, the management or operation of any of the HMIT Released Parties, or the HMIT Released Parties' property and including any defense, affirmative defenses, and right to setoff arising out of, or otherwise related to, any of the foregoing (collectively, the "**Highland Released Claims**").

11. Further Provisions Concerning The General Releases.

(a) **FOR THE AVOIDANCE OF DOUBT, THE FOREGOING RELEASES ARE INTENDED TO BE GENERAL AND INCLUDE A RELEASE OF ALL RELEASED CLAIMS, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, ARISING OR EXISTING FROM THE BEGINNING OF TIME THROUGH AND INCLUDING THE AGREEMENT DATE.**

(b) To the maximum extent permitted by law, each of the HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, waives the benefit of any statute or other principle of law or equity that limits the applicability of a release with respect to Claims that the releasing party does not know or suspect to exist in his, her or its favor at the time of executing the release.

(c) Without limiting the scope of the foregoing waiver, in connection with the foregoing release, each of the HMIT Entities and the Highland Entities, on its own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, waives the benefits of Section 1542 of the California Civil Code (to the extent, if any, that Section 1542 might apply to the foregoing release), which provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Each of the HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, hereby agrees that the provisions of Section 1542 of the Civil Code of the State of California and all similar federal or state law, rights, rules or legal principles, legal or equitable, in each case solely to the extent such provisions apply, **ARE HEREBY KNOWINGLY AND VOLUNTARILY WAIVED AND RELINQUISHED BY EACH OF THE HMIT ENTITIES AND THE HIGHLAND ENTITIES, ON THEIR OWN BEHALF AND ON BEHALF OF THE OTHER HMIT RELEASORS AND HIGHLAND RELEASORS, RESPECTIVELY,** in each and every capacity, to the full extent that such rights and benefits pertaining to the matters released herein may be waived, and each of the HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, hereby agrees and acknowledges that this waiver and relinquishment is an essential term of this Agreement, without which the consideration provided would not have been given.

In connection with such waiver and relinquishment, each of the HMIT Entities and Highland Entities acknowledges that it is aware that it may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believes to be true, with respect to the matters released herein. Nevertheless, it is the intent of each of the HMIT Entities and the Highland Entities, on its own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, in executing this Agreement fully, finally, and forever to settle and release all such matters, and all Claims related thereto, which exist, may exist or might have existed (whether or not previously or currently asserted in any action) which are the subject to the releases granted above.

(d) As an integral component of this Agreement, and notwithstanding the Parties' intent set forth in the preamble hereto and the general nature of the releases in Sections 9 and 10, should:

(i) any HMIT Releasor contend or assert that any Claim of any kind whatsoever held by any HMIT Releasor against any Highland Released Party survives this Agreement and is in any way related to or arising from or in connection with any HMIT Entity Released Claim (such claim or cause of action, a "**HMIT Alleged Claim**"), such HMIT Releasor will be deemed to have irrevocably, fully, and finally assigned such HMIT Alleged Claim to the Highland Entities and the Highland Entities will be deemed to have forever, finally, full, unconditionally, and irrevocably, and completely released such HMIT Alleged Claim.

(ii) any Highland Releasor contend or assert that any Claim of any kind whatsoever held by any Highland Releasor against any HMIT Released Party survives this Agreement and is in any way related to or arising from or in connection with any Highland Entity Released Claim (such claim or cause of action, a "**Highland Alleged Claim**"), such Highland Releasor will be deemed to have irrevocably, fully, and finally assigned such Highland Alleged Claim to the HMIT Entities and the HMIT Entities will be deemed to have forever, finally, full, unconditionally, and irrevocably, and completely released such Highland Alleged Claim.

12. Covenant Not To Sue; Limitation on Standing. Upon the Agreement Date:

(a) Each of the HMIT Releasors covenants and agrees that it will not institute or prosecute any Action, in law, in equity or otherwise, against any of the Highland Released Parties, to recover, enforce, investigate, or collect any HMIT Entity Released Claim and will not (i) induce, encourage or direct any other Person to do so or (ii) act in concert with or assist (financially or otherwise) any other Person in doing so.

(b) Each of the Highland Releasors covenants and agrees that it will not institute or prosecute any Action, in law, in equity or otherwise, against any of the HMIT Released Parties, to recover, enforce, investigate, or collect any Highland Entity Released Claim and will not (i) induce, encourage or direct any other Person to do so or (ii) act in concert with or assist (financially or otherwise) any other Person in doing so.

(c) For the avoidance of doubt, this Agreement shall not operate to give any HMIT Entity standing for any purpose in connection with the Bankruptcy Case (or in connection with any appeal arising from any order entered by the Bankruptcy Court), except for the limited purpose of seeking Court approval of this Agreement (including with respect to any appeal concerning any order entered granting or denying such approval), and except for the limited purpose of enforcing this Agreement, no HMIT Entity shall commence any Action in connection with the HMIT Class 10 Interest.

13. Representations and Warranties.

(a) Each of the HMIT Entities hereby represents and warrants that every HMIT Entity Released Claim has not heretofore been assigned or encumbered and is not the subject of a transfer (as such term is defined in 11 U.S.C. § 101(54)), by any HMIT Releasor.

(b) The HMIT Entities, on their own behalf and on behalf of the other HMIT Releasors, acknowledge and agree that each Plan Provision is lawful, effective, and binding on the HMIT Releasors. The HMIT Entities further agree, on their own behalf and on behalf of the

other HMIT Releasors, that the HMIT Releasors will never, in any way, challenge or seek to modify, nullify, vacate, or revoke, or induce, encourage or direct any other Person to do so or act in concert with or assist (financially or otherwise) any other Person in doing so the Confirmation Order, the Plan, the Plan Protections, or any Plan Document, including the Claimant Trust Agreement, the LPA, the Indemnity Trust Agreement or the Litigation Sub-Trust Agreement, in the Bankruptcy Court, in any other state or federal court, in any other forum or tribunal, or otherwise, including administrative or regulatory tribunals and foreign courts.

(c) Each of the Highland Entities hereby represents and warrants that every Highland Entity Released Claim has not heretofore been assigned or encumbered and is not the subject of a transfer (as such term is defined in 11 U.S.C. § 101(54)), by any Highland Releasor.

(d) Each Party severally represents and warrants as to itself only that: (i) it has taken all necessary action to authorize and approve the execution, delivery and performance of this Agreement; (ii) such Party has full power and authority to execute and deliver this Agreement; and (iii) this Agreement constitutes a valid, legal and binding obligation of such Party, and is enforceable subject to its terms. Each individual signatory hereto individually warrants and represents to all Parties hereto that such individual has full power and authority to act on behalf of and bind the Party for which he or she has executed this Agreement; provided, however that no signatory shall otherwise provide any warranty or representation or otherwise be a party to this Agreement on an individual basis.

14. No Continuing Rights, Duties or Obligations. Except for the rights, duties, and obligations expressly set forth in this Agreement, all Rights and Obligations that existed or may have existed shall be deemed terminated, extinguished, and released upon the Agreement Date. For the avoidance of doubt, from and after the Agreement Date, (a) the Highland Released Parties, individually and collectively, shall owe no duty, past or present, including with respect to the Kirchner Claims, to the HMIT Released Parties, individually and collectively, whether contractual, fiduciary, equitable, statutory or otherwise, except as arising out of this Agreement, and (b) the HMIT Released Parties, individually and collectively, shall owe no duty to the Highland Released Parties, individually and collectively, whether contractual, fiduciary, equitable, statutory or otherwise, except as arising out of this Agreement.

15. Gatekeeper Standard.

(a) The HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, acknowledge and agree that, notwithstanding the United States Court of Appeals for the Fifth Circuit's decision in *Highland Capital Management Fund Advisors, L.P. v. Highland Capital Management, L.P.*, No. 23-10^{53}4 (5th Cir. Mar. 18, 2025), the "Gatekeeper" provisions contained in Highland's Original Plan is forever binding on each of the HMIT Entities and any Persons claiming through, under or on behalf of any of them, and for a claim or cause of action to be "colorable" for purposes of the Gatekeeper, it must be found by final order of the Bankruptcy Court (the "**Gatekeeper Court**"), which order shall be subject to appeal to a court of competent jurisdiction, to have satisfied the "Gatekeeper Colorability Test" as such term is defined in *In re Highland Capital Management, L.P.*, 2023 Bankr. LEXIS 2104 at *124-36 (Bankr. N.D. Tex. Aug. 24, 2023).

(b) The HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, acknowledge and agree that compliance with the Gatekeeper requires (i) a motion seeking leave to sue an Exculpated Party (as that term is defined in Highland's original Plan) and a finding that the litigant's claims and causes of action are "colorable" attaching a complaint setting forth the basis for such claims or causes of action and (ii), in the Gatekeeper Court's sole discretion, an evidentiary hearing (during which the Gatekeeper Court may, among other things, hear testimony and assess the credibility of any witness(es)) to determine whether a proposed claim or cause of action is "colorable."

(c) The HMIT Entities and the Highland Entities, on their own behalf and on behalf of the other HMIT Releasors and Highland Releasors, respectively, further acknowledge and agree that the moving party under the Gatekeeper has the burden of satisfying the "Gatekeeper Colorability Test," and that the dismissal of the Pending Litigation shall have res judicata effect.

16. Indemnification.

(a) Without in any manner limiting the available remedies for any breach of this Agreement, the HMIT Entities, severally but not jointly, agree to indemnify, defend, and hold the Highland Released Parties harmless from and against any and all Liability, that may arise or result from or on account of, or that are otherwise related or attributable to (x) any breach of this Agreement or of any representation or warranty contained in the Agreement, including the representations and warranties of any HMIT Entity set forth in Section 13 or (y) any Actions brought or prosecuted by or on behalf of, any HMIT Releasor or that are induced, encouraged, assisted or directed by any HMIT Releasor or brought or prosecuted in concert with any HMIT Releasor against any Highland Released Party with respect to or related to any HMIT Entity Released Claims. Without limiting the scope of the foregoing in any manner, any HMIT Entity that breaches Section 12 shall be liable to the Highland Released Party against whom the applicable Action has been brought or prosecuted in violation of Section 12 for the reasonable attorneys' fees and costs incurred by such Highland Released Party in defending against or otherwise responding to such Action. Each HMIT Entity acknowledges and agrees that the HMIT Entities are and shall be severally but not jointly liable for any Liability arising from or out of any breach of this Agreement or of any representation or warranty set forth in this Agreement.

(b) Without in any manner limiting the available remedies for any breach of this Agreement, the Highland Entities, severally but not jointly, agree to indemnify, defend, and hold the HMIT Released Parties harmless from and against any and all Liability, that may arise or result from or on account of, or that are otherwise related or attributable to (x) any breach of this Agreement or of any representation or warranty contained in the Agreement, including the representations and warranties of any Highland Entity set forth in Section 13 or (y) any suits, proceedings, or other actions brought or prosecuted by or on behalf of, any Highland Releasor or that are induced, encouraged, assisted or directed by any Highland Releasor or brought or prosecuted in concert with any Highland Releasor against any HMIT Released Party with respect to or related to any Highland Entity Released Claims. Without in any manner limiting the scope of the foregoing, any Highland Entity that breaches Section 12 shall be liable to the HMIT

Released Party against whom the applicable Action has been brought or prosecuted in violation of Section 12 for the reasonable attorneys' fees and costs incurred by such HMIT Released Party in defending against or otherwise responding to such Action. Each Highland Entity acknowledges and agrees that the Highland Entities are and shall be severally but not jointly liable for any Liability arising from or out of any breach of this Agreement or of any representation or warranty set forth in this Agreement.

17. Execution. This Agreement may be executed by the exchange of signatures by facsimile or by PDF attachment to an email transmittal and in counterparts, and if so executed, shall be fully executed when a counterpart has been executed and delivered by all Parties hereto through counsel. All counterparts taken together shall constitute one and the same agreement and shall be fully enforceable as such.

18. Bankruptcy Court Order. The allowance of the allowed HMIT Class 10 Interest pursuant to Section 4 is subject to the entry of the Bankruptcy Court Order. To that end, the Highland Entities shall file the 9019 Motion no later than five (5) Business Days after the Agreement Date. Each Party shall, and shall cause each of their respective Affiliates to, undertake any and all actions in compliance with applicable law to obtain the Bankruptcy Court Order as promptly as practicable, and without limiting the foregoing, if an Action is threatened or instituted by any Person opposing the 9019 Motion or otherwise challenging the validity or legality, or seeking to restrain the consummation, of the transactions contemplated by this Agreement or the Bankruptcy Court Order, each Party shall, and shall cause its respective Affiliates to, use their commercially reasonable best efforts to avoid, resist, resolve or, if necessary, and defend to effectuate this Agreement and consummate the transactions hereby. If the 9019 Motion is not approved by entry of the Bankruptcy Court Order or if the Bankruptcy Court Approval is precluded from becoming a Final Order, (a) there will be no effect on, adjustment to, or impairment of, in any way, the validity and enforceability of the remainder of this Agreement, and the other transactions contemplated hereby, all of which shall remain in full force and effect and (b) each Party shall, and shall cause its respective Affiliates to, use their best efforts to seek the allowance of the HMIT Class 10 Interest in a substantially similar amount and on substantially similar terms as set forth in Section 4 to the fullest extent possible so as to give effect to the original intent of the Parties as closely as possible.

19. Fees and Expenses. Whether or not the transactions contemplated hereby are consummated or the Bankruptcy Court Order is obtained, and except as otherwise expressly provided in this Agreement, each Party will bear its respective fees, costs and expenses (including legal, accounting and other professional fees) incurred in connection with the preparation, negotiation, execution and performance of this Agreement or the transactions contemplated hereby, including with respect to each Party's respective obligations pursuant to Section 18. Notwithstanding the foregoing, if any Party hereto, any Highland Released Party, or any HMIT Released Party brings an Action to enforce or interpret the terms and provisions of this Agreement, the prevailing Person in that Action shall be entitled to have and recover from the non-prevailing Person all such fees, costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing Person may suffer or incur in the pursuit or defense of such action or proceeding.

20. Entire Agreement; No Other Representations. **THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND NO RIGHTS ARE CREATED IN FAVOR OF ANY PERSON OTHER THAN AS SPECIFIED OR EXPRESSLY SET FORTH IN THIS AGREEMENT. THERE ARE NO REPRESENTATIONS, CONDITIONS, WARRANTIES, STATEMENTS, OR UNDERSTANDINGS (COLLECTIVELY, "REPRESENTATIONS"), EITHER ORAL OR WRITTEN, BETWEEN THE PARTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT THEY HAVE NOT BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY ANY REPRESENTATIONS NOT SET FORTH IN THIS AGREEMENT; AND THE PARTIES EXPRESSLY AGREE THAT THEY HAVE NOT RELIED ON ANY REPRESENTATIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT THEY ARE ENTERING INTO THIS AGREEMENT RELYING SOLELY ON THEIR OWN JUDGMENT AND NOT ON ANY REPRESENTATIONS BY ANY PARTY, EXCEPT FOR THOSE REPRESENTATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PARTIES AGREE THAT REPRESENTATIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT SHALL NOT BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT, AND NEITHER THE HMIT RELEASED PARTIES NOR THE HIGHLAND RELEASED PARTIES SHALL HAVE ANY LIABILITY FOR ANY CONSEQUENCES ARISING AS A RESULT OF ANY REPRESENTATIONS NOT SET FORTH IN THIS AGREEMENT**.

21. Agreement and Release Knowing and Voluntary. The Parties acknowledge that they have considered this Agreement with their respective attorneys and have carefully read this Agreement, that it has been fully explained by their attorneys, and that they have had a reasonable opportunity to consider this Agreement. The Parties further represent that they know and fully understand the contents of this Agreement, that they intend to be legally bound by this Agreement and the releases and covenants contained herein, and that they are signing this Agreement, including the release provisions herein, voluntarily and of their own free will and without coercion, and with the benefit of advice of counsel.

22. Cooperation. The Parties agree to perform any services or actions reasonably necessary to carry out the terms and conditions of this Agreement or the transactions contemplated hereby, including the execution and delivery of reasonable additional documents, instruments, conveyances and/or assurances, in good faith, and to reasonably communicate and cooperate with one another in this regard. For the avoidance of doubt, nothing in this Section shall obligate the Highland Entities to assist the HMIT Entities in any way with respect to the Kirschner Claims, including the prosecution thereof.

23. Governing Law. This Agreement shall be construed pursuant to and governed by the laws of the State of Delaware (substantive and procedural) without reference to principles of conflicts of law that would result in the application of any other State's laws.

24. Jurisdiction/Venue. The Parties hereby irrevocably submit to the jurisdiction and venue of the Bankruptcy Court with respect to any Action arising out of or related to this Agreement or the subject matter hereof; if (and only if) the Bankruptcy Court lacks personal or

subject matter jurisdiction to adjudicate an Action arising out of or related to this Agreement or the subject matter hereof, then the Parties irrevocably submit to the jurisdiction and venue of the United States District Court for the Northern District of Texas.

25. No Admissions. All Parties acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed Claims and that this Agreement shall not constitute the admission of any fact or liability by any of them regarding any Claim, including the Claims released hereunder, and neither the terms hereof, nor the fact of this Agreement itself, shall be evidence of any kind in any Action, other than an Action to enforce the terms of the Agreement or any instrument executed in connection herewith or any claim for damages or other relief for breach of any representation or warranty contained herein or in any instrument executed in connection herewith.

26. Other Provisions.

(a) No representation, inducement, agreement, promise or understandings altering, modifying, amending, taking from or adding to, the terms and conditions hereof shall have any force or effect unless the same is in writing and validly executed by each of the Parties hereto.

(b) The waiver by any Party of any breach of, or default under, any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or default; provided, however, that for any such waiver to be enforceable, it shall be in writing and executed by the non-breaching Party.

(c) The headings contained in this Agreement are for convenience only and shall in no way restrict or otherwise affect the construction of the provisions hereof.

(d) The Parties shall each execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

27. Notices. All notices required or permitted to be provided hereunder shall be afforded to the respective parties to and through their counsel, and shall be transmitted simultaneously by electronic mail (with PDF attachments, as necessary) and by telefax, addressed as follows:

To the Highland Entities:

PACHULSKI STANG ZIEHL AND JONES LLP
Jeffrey N. Pomerantz
John A. Morris
10100 Santa Monica Boulevard
Los Angeles, California 90067-4003
310.277.6910
jpomerantz@pszjlaw.com
jmorris@pszjlaw.com

To the HMIT Entities:

KELLY HART PITRE
Louis M. Phillips
Amelia Hurt
301 Main Street, Suite 1600
225.381.9643
Louis.Phillips@Kellyhart.com
Amelia.Hurt@Kellyhart.com

28. Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity and enforceability of any other provision of this Agreement.

29. Interpretive Provisions. Unless the express context otherwise requires: (a) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (b) words defined in the singular shall have a comparable meaning when used in the plural, and vice versa; (c) the words "Dollars" and "$" mean U.S. dollars; (d) references herein to a specific Section, Subsection, Recital, Schedule or Exhibit shall refer, respectively, to Sections, Subsections, Recitals, Schedules or Exhibits of this Agreement; (e) wherever the word "include," "includes" or "including" is used in this Agreement, it shall be deemed to be followed by the words ",without limitation,"; (f) references herein to any gender shall include each other gender; (g) references herein to any Person shall include such Person's heirs, executors, personal representatives, administrators, successors and assigns; provided, however, that nothing contained in this clause (g) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement; (h) with respect to the determination of any period of time, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; (i) the word "or" shall be disjunctive but not exclusive; (j) the headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the Parties; and (k) if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

HUNTER MOUNTAIN INVESTMENT TRUST

By /s/ Mark Patrick
Name: Mark Patrick
Title: Administrator
Date: May 19, 2025

BEACON MOUNTAIN LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

RAND ADVISORS, LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

RAND PE FUND I, LP
By: Rand PE Fund Management, LLC, its General Partner

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

RAND PE FUND MANAGEMENT, LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

ATLAS IDF, LP
By: Atlas IDF GP, LLC, its General Partner

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

ATLAS IDF GP, LLC

By /s/ Mark Patrick
Name: Mark Patrick
Title: President
Date: May 19, 2025

HIGHLAND CAPITAL MANAGEMENT, L.P.

By /s/ James P. Seery, Jr.
Name: James. P. Seery, Jr.
Title: Chief Executive Officer
Date: May 19, 2025

HIGHLAND CLAIMANT TRUST

By /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Title: Claimant Trustee
Date: May 19, 2025

HIGHLAND LITIGATION SUB-TRUST

By /s/ Marc S. Kirschner
Name: Marc S. Kirschner
Title: Litigation Trustee
Date: May 19, 2025

HIGHLAND INDEMNITY TRUST

By /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Title: Indemnity Trust Administrator
Date: May 19, 2025

EXHIBIT 74

Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
Alexandra Ohlinger
Texas State Bar No. 24091423
aohlinger@cwl.law
CRAWFORD, WISHNEW & LANG PLLC
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Counsel for The Dugaboy Investment Trust

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

In re:	§	**Chapter 11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj**
	§	
Reorganized Debtor.	§	
	§	

NOTICE OF APPEAL OF ORDER PURSUANT TO BANKRUPTCY RULE 9019 AND 11 U.S.C. § 363 APPROVING SETTLEMENT BETWEEN THE HIGHLAND ENTITIES AND THE HMIT ENTITIES AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

Part 1: Identify the appellant(s)

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

The Dugaboy Investment Trust

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

For appeals in an adversary proceeding:
□ Plaintiff
□ Defendant
□ Other (describe)

For appeals in a bankruptcy case and not in an adversary proceeding:
□ Debtor
X Creditor
□ Trustee
□ Other (describe)

1934054250714000000000002

Part 2: Identify the subject of this appeal

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

ORDER PURSUANT TO BANKRUPTCY RULE 9019 AND 11 U.S.C. § 363 APPROVING SETTLEMENT BETWEEN THE HIGHLAND ENTITIES AND THE HMIT ENTITIES AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

A true and correct copy of the Order is attached hereto as Exhibit A.

2. State the date on which the judgment, order, or decree was entered: signed June 30, 2025 [Dkt. No. 4297]

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

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

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

Attorneys:

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

And

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

2. *Party/Appellee:* Highland Claimant Trust

Attorneys:

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

And

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

3. *Party/Appellee:* The Highland Litigation Sub-Trust

Attorneys:

QUINN EMANUEL URQUHART & SULLIVAN LLP
Deborah J. Newman (admitted pro hac vice)
Robert S. Loigman (admitted pro hac vice)
51 Madison Avenue, 22nd Floor New York, NY 10010
T: (212) 849-7000

And

SIDLEY AUSTIN LLP
Paige Holden Montgomery
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
T: (214) 981-3300

4. Party/Appellee: Hunter Mountain Investment Trust

KELLY HART PITRE
Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
T: (225) 381-9643
F: (225) 336-9763
Email: louis.phillips@kellyhart.com

Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
T: (504) 522-1812
F: (504) 522-1813
Email: amelia.hurt@kellyhart.com

Dated: July 14, 2025,

Respectfully submitted,

CRAWFORD, WISHNEW & LANG PLLC

By: */s/ Michael J. Lang*
Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
Alexandra Ohlinger
Texas State Bar No. 24091423
aohlinger@cwl.law
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Counsel for Dugaboy Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 14, 2025, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Michael J. Lang
Michael J. Lang

EXHIBIT A

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed June 30, 2025

United States Bankruptcy Judge

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

ORDER PURSUANT TO BANKRUPTCY RULE 9019 AND 11 U.S.C. § 363 APPROVING SETTLEMENT BETWEEN THE HIGHLAND ENTITIES AND THE HMIT ENTITIES AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

This matter having come before the Court on the *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4216] (the "Motion")[2] filed by Highland Capital Management, L.P., the reorganized debtor (the "Debtor" or "Highland") in the above-captioned chapter 11 case (the "Bankruptcy Case"), the Highland Claimant Trust (the "Claimant

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 8357. The headquarters and service address for the Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion or the Settlement Agreement, as applicable.

Trust"), and the Highland Litigation Sub-Trust (the "Litigation Sub-Trust," and together with Highland and the Claimant Trust, the "Movants"); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 as well as the retention of jurisdiction provisions of the Plan; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered (a) the Motion, (b) *Patrick Daugherty's Objection to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4229] (the "Daugherty Objection") filed by Patrick Daugherty, (c) the *Preliminary Objection of the Dugaboy Investment Trust to the Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities* [Docket No. 4230] (the "Dugaboy Objection," and together with the Daugherty Objection, the "Objections"), filed by The Dugaboy Investment Trust, (d) the *Objection of the Dallas Foundation and Crown Global Life Insurance Ltd. to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4231] (the "Charitable Foundation Objection"), filed by The Dallas Foundation (the "Dallas Foundation") (on behalf of Empower Dallas Foundation ("EDF") and The Okada Family Foundation ("Okada Family"), and Crown Global Life Insurance, Ltd., not individually, but solely in respect of Segregated Accounts 30218 and 30219 ("Crown"), (e) the evidence admitted into the record during the hearing on the Motion on June 25, 2025 (the "Hearing") in support of, and in opposition to, the Motion, including the Court's assessment of the witnesses' credibility, and (f) all arguments heard at the Hearing in connection therewith; and the Court having found that the legal and factual bases set forth in the Motion establish sufficient

cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor,

THE COURT HEREBY FINDS THAT:

1. The Court's findings of fact and conclusions of law set forth on the record at the conclusion of the Hearing are incorporated by reference except as supplemented in this Order, and as may be further supplemented by the Court.

2. Entry into the Settlement Agreement is an appropriate exercise of the Movants' business judgment.

3. The Settlement Agreement is fair, reasonable, and in the best interests of each of the Highland Entities and their creditors and constituents.

4. The Settlement Agreement was negotiated and entered into by the Highland Entities and the HMIT Entities without collusion or fraud, in good faith, and was the product of arm's- length negotiations.

5. The HMIT Entities are not "insiders" or "affiliates" of Highland as those terms are defined in Bankruptcy Code sections 101(31) and 101(2).

6. The HMIT Entities entered into the Settlement Agreement, are acquiring the Transferred Claims and Dugaboy Note in good faith, and have proceeded with all aspects of the Settlement Agreement in good faith, and have received fair value in consideration of their entry into the Settlement Agreement.

7. The Transferred Claims and Dugaboy Note are property of the estate, and the Highland Entities' sale of those assets free and clear of all liens and encumbrances but otherwise subject to the Settlement Agreement is a proper exercise of their business judgment.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

8. The Motion is **GRANTED**.

9. As stated on the record during the Hearing, The Charitable Foundation Objection is withdrawn with prejudice.

10. All other Objections to the Motion are overruled.

11. The Settlement Agreement attached as **Exhibit 1** to the Demo Declaration is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code.

12. HMIT's Class 10 Interest is Allowed in the amount of $336,940,230.58.

13. The HMIT Entities, as good faith purchasers of Estate assets in the Settlement, are entitled to the protections contained in section 363(m) of the Bankruptcy Code.

14. The Highland Entities and their agents are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement without further notice or further Court approval.

15. Notwithstanding anything in the Settlement Agreement to the contrary, none of the Dallas Foundation, EDF, Okada Family, or Crown (collectively, the "Foundation Parties") are or will be included in the definitions of "HMIT Releasors" or "Highland Releasors." For the avoidance of doubt, however, any attempt by the Foundation Parties to assert a Claim against a HMIT Released Party by, through, or under, including derivatively, a Highland Entity, or against a Highland Released Party by, through, or under, including derivatively, a HMIT Entity is barred by this Order and the Settlement Agreement.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER

EXHIBIT 75

Exhibit No.	Document
Dugaboy Memo of Law in Support of Motion to Vacate – Exhibits – Dkt No. 4513	
1	Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith, No. 19-34054-sgj11, Dkt. 4297 (Bankr. N.D. Tex. **June 30, 2025**) ("Rule 9019 Settlement Order") (pdf pages 70-74)
2	Transcript of Status and Scheduling Conference Hearing Held **December 6, 2019** at 23:2–15, Dkt. 207 (pdf pages 75-102)
3	Objection of The Dallas Foundation and Crown Global Life Insurance, Ltd. to the Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith, Dkt 4231("Charities' Obj.") (dated **June 9, 2025**) (pdf pages 103-111)
4	DAF's original organizational chart ("DAF Org Chart") (undated) (pdf pages 112-113)
5	Rand Advisors, LLC Form ADV Part 2A (**March 17, 2025**) (pdf pages 114-144)
6	*Kirschner v. Dondero*, Adv. Proc. No. 21-03076-sgj (Bankr. N.D. Tex.), Dkt. 158 - Complaint (page 10 only) (dated **May 19, 2022**) (pdf pages 145-148)
7	Notice of Occurrence of Effective Date of Confirmed Plan of Reorganization, Dkt. 2700 (dated **August 11, 2021**) (pdf pages 149-153)
8	*Kirschner v. Dondero*, Adv. Proc. No. 21-03076-sgj (Bankr. N.D. Tex.), Dkt. 1 (dated **May 19, 2022**) (pdf pages 154-300)
9	Order Pursuant to Plan "**Gatekeeper Provision**" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding, Dkt. 3904 (certain pages only) (dated **August 25, 2024**) (pdf pages 301-326)
10	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding ("Motion for Leave"), Dkt. 3699 (dated **March 28, 2024**) (pdf pages 327-364)
11	Order, *Hunter Mountain Inv. Trust v. Highland Cap. Mgmt., L.P.*, No. 3:23-cv-02071-E (N.D. Tex. **Mar. 21, 2025**), Dkt. 44 (pdf pages 365-370)
12	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust, *The Dugaboy Investment Trust v. Highland Cap. Mgmt., L.P.*, No. 23-03038-sgj (Bankr. N.D. Tex. **May 10, 2023**), Dkt. 1 ("Valuation Litigation") [DUGABOY MISTAKENLY ATTACHED THE WRONG COMPLAINT—THE COMPLAINT ATTACHED IS KIRSCHNER V. DONDERO, OKADA, ET AL., DATED OCTOBER 15, 2021] (pdf pages 371-505)]

Exhibit No.	Document
13	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets, Adv., Dkt. 27, No. 23-03038 (dated **May 24, 2024**) (pdf pages 506-542)
14	Notice of Appeal, *The Dugaboy Inv. Trust v. Highland Cap. Mgmt., L.P.*, No. 3:24-cv-01531-X (N.D. Tex. **Aug. 29, 2025**), Dkt. 32 (pdf pages 543-548) [DUGABOY MISTAKENLY ATTACHED A DUPLICATE OF EXHIBIT 15 RATHER THAN THE NOTICE OF APPEAL]
15	*The Dugaboy Inv. Trust v. Highland Cap. Mgmt., L.P.*, No. 25-10999 (5th Cir. **October 1, 2025**), Dkt. 32 [USCA letter to Dugaboy's counsel] (pdf pages 549-554)
16	Motion for Leave to File a Delaware Complaint ("Delaware Motion for Leave"), Dkt. 4000 (dated **January 1, 2024**) (pdf pages 555-593)
17	Highland's Motion to Stay Contested Matter or for Alternative Relief, Dkt. 4013 (dated **January 14, 2024**) (pdf pages 594-602)
18	Order Extending Stay of Contested Matter, Dkt. 4104 (dated **July 8, 2024**) (pdf pages 603-607) [DUGABOY MISTAKENLY ATTACHED THE NOTICE OF APPEAL, NOT THE ORDER]
19	Organizational chart reflecting the DAF Restructuring (undated but filed on **July 21, 2025**) (pdf pages 608-609)
20	Email from Shawn Raver to Chris Rice (dated Feb. 20, 2025) (pdf pages 610-613)
21	Email from Chris Rice to Skyview Group (dated Mar. 12, 2025) (pdf pages 614-615)
22	Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith ("9019 Motion"), Dkt. 4216 (dated **May 19, 2025**) (pdf pages 616-630)
23	Transcript of Hearing dated **June 25, 2025** ("9019 Hr'g Tr.") (certain pages only) (pdf pages 631-637)
24	Settlement Agreement & General Release, Dkt. 4217-1 (certain pages only) (dated **May 19, 2025**) (pdf pages 638-647)
25	Preliminary Objection of The Dugaboy Investment Trust to the Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities, Dkt. 4230 (dated **June 9, 2025**) (pdf pages 648-656)

Exhibit No.	Document
26	Notice of Hearing Held June 25, 2025 [**June 25, 2025**], Dkt. 4295 (pdf pages 657-658)
27	Stipulation Withdrawing Objection of the Dallas Foundation and Crown Global Life Insurance, Ltd. to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith, Dkt. 4291 (**June 27, 2025**) [DUGABOY MISTAKENLY ATTACHED THE JUNE 24, 2025 BINDING TERM SHEET BETWEEN HMIT AND THE DALLAS FOUNDATION RATHER THAN THE STIPULATION] (dated June 24, 2025) ("Withdrawal Stip.") (pdf pages 659-665)
28	Letter from Ken Paxton re: Request for a Stay; Dkt. 4308 (dated **July 9, 2025**) (pdf pages 666-668)
29	Notice of Appeal, Dkt. 4311; Ex. 30, The Dugaboy Investment Trust's Motion to Stay 9019 Order, Dkt. 4326 ("Dugaboy Motion to Stay") (**July 14, 2025**)
30	The Dugaboy Investment Trust's Motion to Stay 9019 Order, Dkt. 4326 (dated **July 17, 2025**) (pdf pages 679-775)
31	Memorandum Order and Opinion Regarding Stay Requests, Dkt. 4333 ("Stay Order") (dated **July 21, 2025**) (pdf pages 776-781)
32	Order 05-26-90042 (**December 29, 2025**) (pdf pages 782-789)
33	Order 05-26-90044 (**December 29, 2025**) (pdf pages 790-795)
34	Order 05-26-90045 (**December 29, 2025**) (pdf pages 796-801)
35	Stacey G. Jernigan, *Hedging Death*, White Bird Publications (**March 22, 2022**) (excerpt) (pdf pages 802-837)
36	Memorandum of Law in Support of Highland Capital Management Fund Advisors, L.P.'s Motion to Recuse at 16–17, *Highland Cap. Mgmt. L.P. v. Kirschner*, Adv. Proc. No. 21-03076, Dkt. 310 (Bankr. N.D. Tex. **Feb. 27, 2023**) ("Motion to Recuse") (excerpt) (pdf pages 838-842)
37	Movant's Supplemental Memorandum of Law in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455, No. 19-34054, Dkt. 3673 (Bankr. N.D. Tex. **Mar. 3, 2023**) (pdf pages 843-849) (excerpt)
38	Memorandum Opinion and Order Denying "Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455," No. 19-34054, Dkt. 3676 at 32–36 (Bankr. N.D. Tex. **Mar. 6, 2023**) (pdf pages 850-886)

Exhibit No.	Document
39	Order re: Writ of Mandamus at 3, No. 3:23-cv-00726-S, Dkt. 25 (N.D. Tex. **Mar. 8, 2024**) (pdf pages 887-893)
40	Original organizational chart for Hunter Mountain ("Hunter Mountain Org Chart") (pdf pages 894-914)
41	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief, Dkt. 1943 ("Confirmation Order") (dated **February 22, 2021**) (pdf pages 915-946)
42	Notice of Appeal [ORDER EXTENDING STAY OF CONTESTED MATTER [DOCKET NO. 4000]], Dkt. 4111 (dated **July 8, 2024**) (pdf pages 947-951)
43	Voluntary Petition, Dkt. 3 (dated **October 16, 2019**) (pdf pages 952-968)
44	Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, Dkt. 281 (dated **December 27, 2019**) (pdf pages 969-987)
45	Motion to Compel Compliance with Bankruptcy Rule 2015.3, Dkt. 2256 (dated **April 29, 2021**) (pdf pages 988-997)
46	Order Denying Motion to Compel Compliance with Bankruptcy Rule 2015.3, Dkt. 2812 (dated **September 6, 2021**) (pdf pages 998-1000)
47	Deferred Variable Annuity Policy No. 30218 dated as of **December 10, 2015**, issued to Empower Dallas as Policyholder and Beneficiary (pdf pages 1001-1049)
48	Rand Fund 2024 Audit (dated **June 26, 2025**) (pdf pages 1050-1068)
49	Transcript of Deposition of Mark Patrick (**June 23, 2025**) (pdf pages 1069-1081)
50	Amended and Restated Limited Partnership Agreement of Atlas Fund as of **November 30, 2015** at § 3.01 (pdf pages 1082-1116)
51	Stacey G. Jernigan, *He Watches All My Paths*, SJ Novels (self-published) (**January 16, 2019**) (excerpt) (pdf pages 1117-1135)
52	Petition for Rehearing in the Supreme Court (dated **February 26, 2026**) (pdf pages 1136-1185)

Exhibit No.	Document
53	Stacey G. Jernigan, *Hedging Death*, White Bird Publications (**Mar. 22, 2022**) (full text) (pdf page 1186)
54	Stacey G. Jernigan, *He Watches All My Paths*, SJ Novels (self-published) (**Jan. 16, 2019**) (full text) (pdf page 1187)
	pdf pages 1188 – 1195 are slip sheets only for Ex A - H
Dkt 4521 – Dugaboy's Supplemental Exhibits	
A	First Affidavit of Mark Eric Patrick Cayman proceedings (Marked Ex 47) (dated **June 4, 2025**) (pdf pages 1-9)
B	Writ of Summons Cayman proceedings (dated July 15, 2025) (pdf pages 10 -93) [a copy was attached as Exhibit A to Dugaboy's Motion for a Stay filed July 17, 2025; see Ex. 30 above)]
C	"Exhibit 125" Deposition Transcript of Torrey Littleton, (dated **June 22, 2025**) (pdf pages 94-194)
D	Chapter 15 Petition for Recognition of a Foreign Proceeding for Charitable DAF Holdco, Ltd. (dated **July 21, 2025**) (pdf pages 195– 198)
E	Winding Up Petition for Charitable DAF Holdco, Ltd. (dated **April 23, 2025**) (pdf pages 199-211)
F	"Exhibit 124" – Deposition Transcript of Julie Diaz (dated **June 22, 2025**) (pdf pages 212-314)
G (Part 1)	Declaration of Margo Macinnis in Support of Chapter 15 Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code (dated **July 21, 2025**) (pdf pages 1-46)
G – Exhibits Part 1	"Exhibit 1" Supervision Order Cayman Island proceedings (dated May 6, 2025) (pdf pages 47-50) "Exhibit 2" Margot MacInnis, Partner, Practice Leader – Cayman Islands Curriculum Vitae (pdf pages 51-52) "Exhibit 3" Certificate of Incorporation Charitable DAF HoldCo, Ltd (dated October 2011) (pdf pages 53-56) "Exhibit 4" Charitable DAF Holdco, Ltd Memorandum and Articles of Association (dated October 27, 2011) (pdf pages 57-124)

Exhibit No.	Document
	"Exhibit 5" Charitable DAF Holdco, Ltd Amended and Restated Memorandum and Articles of Association (dated February 20, 2025) (pdf pages 125-162) "Exhibit 6" Register of Members of Charitable DAF HoldCo, Ltd. (printed April 25, 2025) (pdf pages 163-167) "Exhibit 7" Charitable DAF Holdco, Ltd Written Resolutions of the Sole Director of the Company (dated March 25, 2021) (pdf pages 168-170) "Exhibit 8" Charitable DAF Holdco, Ltd. Share Transfer Form (dated March 24, 2021) (pdf pages 171-172) "Exhibit 9" Written Resolutions of the Sole Director of Each Company (dated April 22, 2021) (pdf pages 173-176) "Exhibit 10" Charitable DAF Holdco, Ltd., Director Details Mark Patrick, Paul Murphy (no date) (pdf pages 177-178) "Exhibit 11" Internal Revenue Service letter to Highland Dallas Foundation Inc. (dated January 19, 2013) (pdf pages 179-181) "Exhibit 12" Charitable DAF Holdco, Ltd Written Resolutions of the Sole Director of the Company (dated November 30, 2011) (pdf pages 182-183) "Exhibit 13" Share Transfer Form Charitable DAF Holdco, Ltd. (dated November 30, 2011) (pdf pages 184-185) "Exhibit 14" Internal Revenue Service letter to Highland Kansas City Foundation Inc. (dated March 21, 2013) (pdf pages 186-188) "Exhibit 15" Share Transfer Form Charitable DAF Holdco, Ltd (dated November 30, 2011) (pdf pages 189-190) "Exhibit 16" Internal Revenue Service letter to Highland Santa Barbara Foundation Inc. (dated February 12, 2013) (pdf pages 191-194) "Exhibit 17" Share Transfer Form Charitable DAF Holdco, Ltd (dated November 30, 2011) (pdf pages 195-196) "Exhibit 18" Internal Revenue Service letter to Community Foundation of Metropolitan Tarrant Count Inc. (dated May 19, 1994) Internal Revenue Service letter to Community Foundation of North Texas (dated March 2, 2006) (pdf pages 197-199)

Exhibit No.	Document
	"Exhibit 19" Charitable DAF Holdco, Ltd Written Resolutions of the Sole Director of the Company (dated August 12, 2015) (pdf pages 200-203) "Exhibit 20" Letter from DFW Foundation to Charitable DAF Holdco, Ltd (dated February 7, 2025) (pdf pages 204-205) "Exhibit 21" Charitable DAF Holdco, Ltd Written Resolutions of the Board of Directors of the Company (dated February 7, 2025) (pdf pages 206-231) "Exhibit 22" Register of Directors for Charitable DAF Holdco, Ltd. (dated December 18, 2023) (pdf pages 232-233) "Exhibit 23" The Dallas Foundation Supporting Organization Operating Agreement (dated November 30, 2011) (pdf pages 234-242) "Exhibit 24" Highland Kansas City Foundation Agreement and Acknowledgment of Legal Relationship (dated November 30, 2011) (pdf pages 243-246) "Exhibit 25" Santa Barbara Foundation Supporting Organization Operating Agreement (dated November 30, 2011) (pdf pages 247-254) "Exhibit 26" Highland Dallas Foundation Certificate of Incorporation (dated November 22, 2011) (pdf pages 255-258) "Exhibit 27" Highland Kansas City Foundation, Inc. Certificate of Incorporation (dated November 23, 2011) (pdf pages 259-262) "Exhibit 28" Highland Santa Barbara Foundation, Inc., Certificate of Incorporation (dated November 22, 2011) (pdf pages 263-266) "Exhibit 29" Bylaws of Highland Dallas Foundation Inc. (undated) (pdf pages 267-282) "Exhibit 30" Highland Kansas City Foundation, Inc., Unanimous Written Consent of Directors in Lieu of Organizational Meeting and Bylaws (dated November 30, 2011) (pdf pages 283-302) "Exhibit 31" Bylaws of Highland Santa Barbara Foundation, Inc., (undated) (pdf pages 303-318) "Exhibit 32" Organizational Chart Titled "Before" (Undated) (pdf pages 319-320) "Exhibit 33" Organizational Chart Current-DAF Holdco (Undated) (pdf pages 321-322)

Exhibit No.	Document
	"Exhibit 34" Certificate of Registration of Exempted limited partnership Charitable DAF Fund, LP (dated October 28, 2011) (pdf pages 323-324) "Exhibit 35" Amended and Restated Exempted Limited Partnership Agreement of Charitable DAF Fund, LP (dated November 7, 2011) (pdf pages 325-346)
G	"Exhibit 36" Second Amended and Restated Exempted Limited Partnership Agreement of Charitable DAF Fund, LP (dated March 11, 2024) (pdf pages 1-20) "Exhibit 37" Written Consent of the Managing Member of Charitable DAF GP, LLC (dated March 7, 2024) (pdf pages 21-24) "Exhibit 38" Statement of Terms of Section 10 of the Exempted LP Act (As Amended) (dated March 7, 2024) (pdf pages 25-26) "Exhibit 39" Register of Members for CDH GP, LTD (dated February 27, 2024) (pdf pages 27-31) "Exhibit 40" Register of Member for CLO Holdco, Ltd. (date of incorporation December 13, 2010) (pdf pages 32-35) "Exhibit 41" Grand Cayman Search Report for CLO HoldCo, Ltd. (dated December 13, 2010) (pdf pages 36-37) "Exhibit 42" The Companies Law (as Amended) Company Limited by Shares Memorandum and Articles of Association of CLO Holdco, Ltd.(dated December 13, 2010) (pdf pages 38-96) "Exhibit 43" Certificate of Incorporation of CLO Holdco, Ltd. (dated January 24, 2024) (pdf pages 97-98) "Exhibit 44" Unanimous Written Resolutions of all of the Directors of the Company for Charitable DAF Holdco, Ltd. (dated December 18, 2024) (pdf pages 99-106) "Exhibit 45" Deed of Assignment and Assumption between CDH GP, Ltd and Charitable DAF Holdco, Ltd and CDMCFAD, LLC (December 18, 2024) (pdf pages 107-113) "Exhibit 46" Charitable DAF Holdco, Ltd. Written Resolutions (dated April 2, 2025) (pdf pages 114-117) "Exhibit 47" CDMCFAD, LLC Delaware formation documents (December 12, 2024) (pdf pages 118-120)

Exhibit No.	Document
	"Exhibit 48" LLC Agreement of CDMCFAD, LLC (dated December 18, 2024) (pdf pages 121-149) "Exhibit 49" DFW Charitable Foundation Delaware formation documents (December 9, 2024) (pdf pages 150-154) "Exhibit 50" Charitable DAF Holdco, Ltd Valuation Analysis of Certain Participation Shares (dated March 25, 2025) (pdf pages 155-230) "Exhibit 51" Charitable DAF Holdco, Ltd. Valuation Analysis of 100 Participation Shares (dated September 30, 2024) (pdf pages 231-286) "Exhibit 52" Letter Agreement re; Assignment of Undertakings (dated March 27, 2025) (pdf pages 287-292) "Exhibit 53" Admission and Amendment No. 1 Agreement (March 27, 2025) (pdf pages 293-297) "Exhibit 54" Redemption and Amendment No. 2 Agreement (March 27, 2025) (pdf pages 298-302) "Exhibit 55" Written Consent of the Manager of CDMCFAD, LLC (March 27, 2025) (pdf pages 303-306) "Exhibit 56" Total Annual Expenses (undated) (pdf pages 307-308) "Exhibit 57" Charitable DAF Holdco, Ltd. Written Resolutions of the Directors of the Company (September 13, 2024) (pdf pages 309-311) "Exhibit 58" Charitable DAF Holdco, Ltd. Written Resolutions of the Directors of the Company (dated October 1, 2024) (pdf pages 312-320) "Exhibit 59" Writ of Summons (dated July 15, 2025) (pdf pages 321-404) "Exhibit 60" Letter from Highland Dallas Foundation, Highland Kansas City Foundation, Highland Santa Barbara Foundation to Paul Murphy, Director of Charitable DAF Holdings Corp. (dated November 11, 2024) (pdf pages 405-407) "Exhibit 61" Email from Paul Murphy to Brandon R. Schaller, et al. (dated November 26, 2024) (pdf pages 408-414) "Exhibit 62" Email from Barnaby Gowrie to Mark Patrick and Paul Murphy (dated November 27, 2024) (pdf pages 414-420) "Exhibit 63" Participating Shareholder Rights Charitable DAF Holdco Ltd.

Exhibit No.	Document
	(undated) (pdf pages 421-441) "Exhibit 64" Email from Michael Stockham to Paul Murphy (dated February 7, 2025) (pdf pages 442-456) "Exhibit 65" Charitable DAF Holdco, Ltd. Written Resolutions (dated April 2, 2025) (pdf pages 457-459) "Exhibit 66" Letter from Charitable DAF Holdco's Cayman counsel to Johnstone Law (dated April 25, 2025) (pdf pages 460-462) "Exhibit 67" Petition for Court Supervision of a Voluntary Liquidation (May 2, 2025) (pdf pages 463-473) "Exhibit 68" Notice of Appointment of Official Liquidators (May 7, 2025) (pdf pages 474-475) "Exhibit 69" Publication Notice of Notice of First Meeting of Contributories (June 2, 2025) (pdf pages 476-477) "Exhibit 70" Letter from Douglas Mancino to Michael Stockham (dated February 14, 2025) (pdf pages 478-480) "Exhibit 71" Letter from Michael Stockham to Douglas Mancino (dated February 27, 2025) (pdf pages 481-482) "Exhibit 72" Letter from Douglas Mancino to TEGE Referrals Group, Internal Revenue Service (dated March 20, 2025) (pdf pages 483-501) "Exhibit 73" Charitable DAF Holdco Written Resolutions (dated April 2, 2025) (pdf pages 502-504) "Exhibit 74" Charitable DAF Holdco Written Resolutions (dated April 2, 2025) (pdf pages 505-50) "Exhibit 75" Email from David Rosenber to Douglas Mancino (dated March 18, 2025) (pdf pages 507-508) "Exhibit 76" Email from David Rosenber to Douglas Mancino (dated April 3, 2025) (pdf pages 509-511) "Exhibit 77" The H M Le Petitio (April 23, 2025) (pdf pages 512-524) "Exhibit 78" Cayman Islands Companies Act (January 28, 2025) (pdf pages 525-

Exhibit No.	Document
	576) "Exhibit 79" Cayman Islands Companies Winding Up Rules) (January 12, 2023) (pdf pages 577-584) "Exhibit 80" Charitable DAF holdco Ltd, Written Resolutions of the Joint Official Liquidators of the Company (July 1, 2025) (pdf pages 585-586) "Exhibit 81" Letter from M Goodman to Johnstone Law (dated May 30, 2025) with several attachments (pdf pages 587-649) "Exhibit 82" Summons in Cayman proceedings (July 15, 2025) (pdf pages 650-666) "Exhibit 83" one page transcript excerpt from Patrick deposition transcript (undated) (pdf pages 667-668) "Exhibit 84" Register of Members for Charitable DAF Fund, LP (dated October 28, 2011) (pdf pages 669-670) "Exhibit 85" Plaintiffs Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Request for Appointment of Receiver (July 1, 2025) (pdf pages 671-708) "Exhibit 86" Presentation: Paul Murphy Independent Director Charitable DAF Holdco Ltd. (dated December 4, 2024) (pdf pages 709-718) "Exhibit 87" Email from David Corkern to Brandon R. Schaller (dated December 18, 2024) (pdf pages 719-721) "Exhibit 88" Temporary Restraining Order and Order Setting Hearing for Temporary Injunction (undated) (pdf pages 722-726) "Exhibit 89" Letter from Joesph M. Cox to Brian Shaw (dated July 11, 2025) (pdf pages 727-730) "Exhibit 90" Defendants' Motion to Dismiss and Please to the Jurisdiction (July 14, 2025) (pdf pages 731-777) "Exhibit 91" Memorandum from Haynes and Boone, Kenneth Bezozo to Mark Patrick (dated July 9, 2021) (pdf pages 778-783) "Exhibit 92" Executive Employment Agreement (dated March 24, 2021) (pdf pages 784-802)

Exhibit No.	Document
	"Exhibit 93" Valuation Analysis of 100% Membership Interest in CDMCFAD, LLC (dated March 25, 2025) (pdf pages 803-877) "Exhibit 94" CDH GP, Ltd Certificate of Incorporation (February 27, 2024) (pdf pages 878-881)

Exhibit No.	Document
H	Plaintiffs' Original Petition, Application for Temporary Restraining Order and Temporary Injunction, and Emergency Request for Appointment of Receiver (July 1, 2025) (pdf pages 1-38) Exhibit 1-A DFW Charitable Foundation Formation Documents (dated December 9, /2024) (pdf pages 41-43) Exhibit 1-B CDMCFAD, LLC Formation Documents (dated December 12, 2024) (pdf pages 44) Exhibit 1-C CDH GP, Ltd. Formation Documents (dated February 10, 2025) (pdf pages 45-46) Exhibit 2-A Nov. 7, 2011, Amended and Restated Exempted Limited Partnership Agreement (November 7, 2011) (pdf pages 47-67) Exhibit 2-B Amended and Restated Memorandum and Articles of Association (dated Jan. 19, 2025) (pdf pages 68-97) Exhibit 3 Sykes Affidavit Exhibit GS-I (April 27, 2025) (pdf pages 98-162) Exhibit 4-A No Confidence Letter (dated Nov. 11, 2024) (pdf pages 163-164) Exhibit 4-B Emails Julie Diaz, Mark Partick, Paul Murphy, and Michael Stockham (dated Jan. 23-Feb. 7, 2025) (pdf pages 165-178) Exhibit 4-C Letters and Emails between David Rosenberg, Paul Murphy, Michael Stockham, and Douglas Mancino (dated Feb 14-April 3, 2025) (pdf pages 179-183) Exhibit 5 Hearing Transcript (Patrick Testimony) (dated June 25, 2025) (pdf pages 184-210) Exhibit 6 Dondero Declaration (dated July 1, 2025) (pdf pages 211-222) Exhibit 7 Diaz Declaration (dated July 1, 2025) (pdf pages 223-244) Exhibit 8 Supervision Order (dated May 6, 2025) (pdf pages 245-248)
Exhibits Filed Under Seal	
I	Third Affidavit of Margo Macinnis filed in the Cayman Proceedings

Exhibit No.	Document
J	Exhibit MM-3 to Third Affidavit of Margo Macinnis filed in the Cayman Proceedings

EXHIBIT 76

February 6, 2025

Via Certified Mail Return Receipt Requested:
Dolomiti, LLC
300 Crescent Ct, Ste 700
Dallas, TX 75201

RE: Notice of your Withdrawal from Rand PE Fund I, L.P.

To Whom It May Concern:

This letter serves as your notice that pursuant to Section 7.02(e) of the *Amended and Restated Limited Partnership Agreement of Rand PE Fund I, L.P.* dated November 30, 2015 ("**LPA**")[1] that you are required to withdraw the full value of your Capital Account ($0) on or before the fifth day after the date first set forth above. Attached as Exhibit A is the value of your Capital Account as of December 31, 2024, which reflects a negative number. 100% of your Capital Account is being redeemed. This determination has been made at the sole discretion of the General Partner, as provided by Section 7.02(i) of the LPA. Note also that, pursuant to Section 7.02(h) of the LPA, the General Partner is exercising its sole discretion to waive the minimum amounts and notice periods for your withdrawal.

Pursuant to Section 7.02(j) of the LPA, the withdrawal of the full value of your Capital Account excludes any remaining investments held in a Side Pocket Account. You are deemed to have withdrawn from the Partnership and this letter serves as your notice that you are no longer entitled to exercise voting rights afforded to Limited Partners under the LPA.

[*the remainder of this page is intentionally left blank*]

[1] Capitalized terms not otherwise defined in this letter shall have the meaning ascribed to them in the LPA.

Executed as of the date first written above.

RAND PE FUND I, L.P., a Delaware "series" limited partnership



Rand PE Fund I, L.P.
By: Rand PE Fund Management, LLC, its general partner
By: Mark Patrick, its authorized representative

Exhibit A

Statement of Activity as of December 31, 2024

[See attached].

Dolomiti, LLC

Statement of Activity

December 31, 2024

(unaudited)

Dolomiti, LLC
300 Crescent Court, Suite 700
Dallas, TX 75201

Activity Description:	Quarter-To-Date 10/01/2024 - 12/31/2024	Year-To-Date 01/01/2023 - 12/31/2024
Beginning Balance	$ (288)	$ 593
Capital Changes:		
Capital Contributions	$ -	$ -
Capital Distributions	-	-
Net Change in Capital	$ -	$ -
Return on Investments:		
Net investment income/(loss)	$ (293)	$ (1,174)
Management fees	-	-
Total Return on Investments:	$ (293)	$ (1,174)
Ending Balance	**$ (581)**	**$ (581)**
Gross Return	**-101.61%**	**-198.08%**
Net Return	**-101.61%**	**-198.13%**

Note: *Net Return figures are calculated inclusive of the management fees and other expenses for the respective period, and are determined using a time-weighted rate of return methodology in which monthly rates of return are geometrically linked.*

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Past performance does not guarantee future results. *Performance during time period shown is limited and does not reflect the performance in different economic and market cycles. There can be no assurance that similar performance will be experienced.*

February 6, 2025

Via Certified Mail Return Receipt Requested:
Hakusan, LLC
2101 Cedar Springs Rd., Suite 1250
Dallas, TX 75201

RE: Notice of your Withdrawal from Rand PE Fund I, L.P.

To Whom It May Concern:

This letter serves as your notice that pursuant to Section 7.02(e) of the *Amended and Restated Limited Partnership Agreement of Rand PE Fund I, L.P.* dated November 30, 2015 ("**LPA**")[1] that you are required to withdraw the full value of your Capital Account ($0) on or before the fifth day after the date first set forth above. Attached as Exhibit A is the value of your Capital Account as of December 31, 2024, which reflects a negative number. 100% of your Capital Account is being redeemed. This determination has been made at the sole discretion of the General Partner, as provided by Section 7.02(i) of the LPA. Note also that, pursuant to Section 7.02(h) of the LPA, the General Partner is exercising its sole discretion to waive the minimum amounts and notice periods for your withdrawal.

Pursuant to Section 7.02(j) of the LPA, the withdrawal of the full value of your Capital Account excludes any remaining investments held in a Side Pocket Account. You are deemed to have withdrawn from the Partnership and this letter serves as your notice that you are no longer entitled to exercise voting rights afforded to Limited Partners under the LPA.

[*the remainder of this page is intentionally left blank*]

[1] Capitalized terms not otherwise defined in this letter shall have the meaning ascribed to them in the LPA.

Executed as of the date first written above.

RAND PE FUND I, L.P., a Delaware "series" limited partnership



Rand PE Fund I, L.P.
By: Rand PE Fund Management, LLC, its general partner
By: Mark Patrick, its authorized representative

Exhibit A

Statement of Activity as of December 31, 2024

[See attached].

Hakusan, LLC

Statement of Activity

December 31, 2024

(unaudited)

Hakusan, LLC
300 Crescent Court, Suite 700
Dallas, TX 75201

Activity Description:	Quarter-To-Date 10/01/2024 - 12/31/2024	Year-To-Date 01/01/2023 - 12/31/2024
Beginning Balance	$ (96)	$ 198
Capital Changes:		
Capital Contributions	$ -	$ -
Capital Distributions	-	-
Net Change in Capital	$ -	$ -
Return on Investments:		
Net investment income/(loss)	$ (98)	$ (394)
Management fees	-	
Total Return on Investments:	$ (98)	$ (394)
Ending Balance	**$ (194)**	**$ (194)**
Gross Return	**-101.95%**	**-199.60%**
Net Return	**-101.95%**	**-199.48%**

Note: *Net Return figures are calculated inclusive of the management fees and other expenses for the respective period, and are determined using a time-weighted rate of return methodology in which monthly rates of return are geometrically linked.*

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Past performance does not guarantee future results. *Performance during time period shown is limited and does not reflect the performance in different economic and market cycles. There can be no assurance that similar performance will be experienced.*

EXHIBIT 77

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

In re:
HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor, Chapter 11
No. 19-34054-sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff/Counter-Defendant,

V. Adv. Proc. No. 25-03055-bwo

PATRICK HAGAMAN DAUGHERTY,

Defendant/Counter-Plaintiff.

REMOTE DEPOSITION OF JAMES DONDERO

Friday, May 8, 2026

Reported by:

LISA M. MURACO, RPR, CCR-NJ

JOB NO. 53803

Friday, May 8, 2026

11:30 a.m.

REMOTE Deposition of JAMES DONDERO, held VIA ZOOM, before LISA M. MURACO, a Registered Professional Reporter, CCR-NJ, a Notary Public of the State of New York, New Jersey, Florida, Massachusetts.

A P P E A R A N C E S:

PACHULSKI STANG ZIEHL & JONES
On behalf of Highland Capital Management,
and the Highland Claimant Trust
1700 Broadway, 36th Floor
New York, New York 10019
BY: JOHN MORRIS, ESQ.
JEFF POMERANTZ, ESQ.
ANDREA BATES, Legal Assistant

WILLKIE FARR GALLAGHER
Attorneys for Highland
1875 K Street, N.W.
Washington, DC 20006
BY: JOSH LEVY, ESQ.
MARK STANCIL, ESQ.

A P P E A R A N C E S:

KELLY HART
Attorneys for HMIT
400 Poydras Street
Suite 1812
New Orleans, LA 70130
BY: AMELIA HURT, ESQ.

MORGAN LEWIS,
Attorneys for the Witness
1111 Pennsylvania Avenue, NW
Washington, DC 20004
BY: MICHAEL EDNEY, ESQ.

A P P E A R A N C E S:

ALSO PRESENT:

Jordan Kitrick, Everest Tech

Time Cournoyer, General Counsel Highland Capital

John Sheahan, US Trustee's Office

Danielle Pham, US Trustee's Office

Lisa Lambert, US Trustee's Office

Liz Young, US Trustee's Office

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

- oOo -

J A M E S D O N D E R O, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. MORRIS:

Q. Good morning, Mr. Dondero.

A. Good morning.

Q. Can you hear me okay?

A. Yes.

Q. Okay.

I'll try to be efficient today. We've done this so many times. So I'm going to skip the ground rules unless there's something of particular concern for you.

Is that okay?

A. That's fine.

Q. Are you ready to proceed?

A. Yes.

Q. The Dugaboy Boy Investment Trust is your family trust, correct?

A. Yes.

Q. And we're going to refer to that entity today as Dugaboy, okay?

A. Yes.

Q. You established Dugaboy; is that correct?
A. Yes.
Q. How did you choose the name?
A. It's the name of an animal in Africa.
Q. Okay.
When did you establish Dugaboy?
A. I don't remember. It's been around for a while, though.
Q. You're the sole beneficiary of Dugaboy during your lifetime, correct?
A. Yes.
Q. And you understand that Dugaboy is controlled by a trustee, correct?
A. I -- it has a trustee. I don't know the exact rights and responsibilities.
Q. Who is the trustee?
A. My sister.
Q. Does anybody have any rights -- withdrawn.
Does anybody -- withdrawn.
To the best of your knowledge, does anybody have the right to make decisions on behalf of Dugaboy other than your sister in her

capacity as the trustee?

A. There are no other parties I'm aware of.

Q. So is it fair to say that, to the best of your knowledge, Nancy is the only person authorized to make decisions on behalf of Dugaboy?

A. Yes.

Q. And when did -- withdrawn.

When did Nancy become Dugaboy's trustee?

A. I don't recall. Several years ago.

Q. Is it fair to say she's been the trustee since at least before the Highland bankruptcy was commenced in the fall of 2019?

A. I don't remember.

Q. Do you know how she became Dugaboy's trustee?

A. I don't remember.

Q. Did you appoint Nancy as the trustee of Dugaboy?

A. I -- I believe so. I don't remember, though.

Q. Do you know if you have the ability to remove Nancy as Dugaboy's trustee?

A. I don't know.
Q. Do you have any knowledge as to how Nancy might be removed as Dugaboy's trustee?
A. I don't know.
Q. Okay.
It fair to say that as the trustee, Nancy solely controls Dugaboy?
A. I don't know.
Q. Is there anybody else who you have reason to believe might control Dugaboy other than Nancy?
A. I struggle with the word control. I don't know specs that are within her discretion, or if there's asset managements or other agreements. Like, I don't know.
Q. Do you know if anybody has asset management agreements with Dugaboy?
A. I don't know.
Q. Does any entity owned or control by you have any agreement of any kind with Dugaboy?
A. Don't know.
Q. Do you have any role in the management of Dugaboy's assets?
MR. EDNEY: I'm going to object to

the form of the question.

A. I believe there's a large chunk of NexBank stock in Dugaboy. I'm the chairman of NexBank.

Q. Do you know if Nancy receives any advice on how to invest Dugaboy's assets?

A. I don't know.

Q. Have you ever provided any advice to Nancy as to how to manage Dugaboy's assets?

MR. EDNEY: I'm going to object to the form of the question.

A. I don't recall.

Q. You have no memory of ever providing any advice to Nancy as to how Dugaboy should manage its assets; is that right?

A. I can't remember any specifics as I sit here today.

Q. How about generally? Do you ever remember, in general, providing any advice to Nancy as to how Dugaboy should manage its assets?

A. Not as I sit here today.

Q. Do you recall if anybody while you were affiliated with Highland provided any advice to Nancy as to how Dugaboy should manage

its assets?

MR. EDNEY: I'm going to object to the form of the question.

A. I don't recall.

Q. You have no memory of anybody at Highland ever providing any advice to Nancy as to how Dugaboy should manage its assets.

Is that your testimony?

MR. EDNEY: I'm going to object to the form of question.

A. I don't recall.

Q. How about NexPoint? Do you know if anybody at NexPoint has ever provided any advice to Nancy as to how Dugaboy should manage its assets?

MR. EDNEY: I'm going to object to the form of the question.

A. I don't recall.

Q. So as you sit here today, you can't think of any time that anybody employed by NexPoint provided advice to Nancy as to how to manage Dugaboy's assets.

Do I have that right?

MR. EDNEY: I object to the form of the question.

A. I don't recall.

Q. How about Skyview? Are you familiar with an entity called Skyview?

A. Yes.

Q. Do you have an understanding as to the business of Skyview?

A. Yes.

Q. What's your understanding of Skyview's business?

A. They provide HR, legal, and accounting services to several -- several of the entities that we manage money for, or several -- various different entities that we have that require those services.

Q. Do you know if Skyview has ever provided any services to Dugaboy?

A. I -- I don't know. I don't know. Logically, they would, but I don't have a specific awareness.

Q. So you have no personal knowledge of anybody at Skyview ever performing any services for the benefit of Dugaboy?

Do I have that right?

MR. EDNEY: I'm going to object to the form of that question.

A. Oh, I have awareness. But like I said, it would be logical that they provided some accounting or HR or tax services for Dugaboy.

Q. Are you aware of Nancy delegating any authority to act on Dugaboy's behalf to anybody in the world at any time?

MR. EDNEY: I'm going to object to the form of that question.

A. Not that I recall.

Q. Has Nancy ever delegated any authority to you to act on Dugaboy's behalf?

MR. EDNEY: I'm going to object to the form of the question.

A. I don't know.

Q. Okay.

So as you sit here today, you have no memory of Nancy ever delegating any authority to you to act on Dugaboy's behalf?

Do I have that right?

A. I don't know.

Q. Okay.

Do you have any recollection of Nancy ever delegating you to act as Dugaboy's agent for any purpose?

MR. EDNEY: Object to the form of the question.

A. I don't know.

Q. So you have no personal knowledge of Nancy ever appointing you as an agent for Dugaboy?

Is that fair?

A. I don't have specific awareness.

Q. Okay.

A. I don't know. Yeah, and I don't know what happened or how the different roles in how -- who -- yeah, how responsibilities are shifted, or who they're directly part of.

Q. Can you identify anybody who provides professional services for the benefit of Dugaboy today?

MR. EDNEY: Object to the form of the question.

A. I don't know. I didn't -- I wasn't prepared for this as a relevant topic.

Q. You needed to prepare yourself in order to learn who provides professional services to Dugaboy.

Do I have that right?

MR. EDNEY: I'm going to object to

the form of the question.

A. I'm not involved in the details, typically.

Q. Okay.

Can you identify any law firm that represents Dugaboy.

A. I believe Stinson represents Dugaboy quite a bit.

Q. Can you name any other law firm that, as you sit here right now, you believe represents Dugaboy for any purpose.

MR. EDNEY: Object to the form of the question.

A. I don't want to -- I don't want -- I'm not a hundred percent certain. I don't want to speculate.

Q. Okay.

I don't want you to speculate either.

But do you have any -- do you have any basis to identify -- other than -- withdrawn. Sorry.

Other than speculation, do you have any basis to identify any other law firm that provides legal services to Dugaboy today?

A. I don't want to speculate.
Q. Okay.
How about accounting? Do you know who provides accounting services to Dugaboy?
MR. EDNEY: I'm going to object to the form of the question.
A. I -- I do not have specific knowledge.
Q. How about asset management advice? Do you have any knowledge as to who provides asset management advice to Dugaboy, if anybody?
MR. EDNEY: Object to the form of the question.
A. I do not.
Q. Does Nancy -- is it your understanding that as the trustee of Dugaboy, Nancy has the power and authority to choose an investment advisor?
MR. EDNEY: I'm going to object to the form of the question.
A. I don't know.
Q. Do you have any understanding as to whether a trustee -- withdrawn.
Have you ever given Nancy any advice on who to use as an asset manager?

A. Not that I recall.
Q. Do you know where Dugaboy's assets are held today? What institution?
MR. EDNEY: Object to the form of the question.
A. I believe different asset -- multiple institutions. Some are held at Raymond James. I know Raymond James holds some.
Q. Can you identify any other institution that you believe holds Dugaboy assets.
A. Not that I recall.
Q. If Nancy decided, is it your understanding that she would have the power and authority to move assets from Raymond James to a different financial institution?
MR. EDNEY: Object to the form of the question.
A. I don't know.
Q. Do you know if you have any rights under the Dugaboy partnership -- Dugaboy trust agreement?
A. I don't know.
Q. Do you have any reason to believe

that Nancy needs to obtain your consent to take any act in her capacity as the trustee of the Dugaboy investment trust?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Do you have any knowledge as to what assets Dugaboy is invested in today?

MR. EDNEY: Objection to the form of the question.

A. It owns some stocks. It owns a large chunk of NexBank. And I believe some assorted real estate investments.

Q. Do you know how Dugaboy came to own a large chunk of NexBank stock?

MR. EDNEY: Objection to the form of the question.

A. As an investor over the years to NexBank.

Q. NexBank advised Nancy to purchase a chunk of its stock.

Is that your understanding?

MR. EDNEY: Objection to the form of the question. Misstates testimony.

A. Yeah, no, that's not true.

Q. I apologize, Mr. Dondero. I may have misunderstood.

I'm trying to figure out if you have any knowledge as to how Dugaboy came to own a large chunk of NexBank stock, the entity in which you are affiliated?

MR. EDNEY: That's not a question, Mr. Morris. Please state one.

BY MR. MORRIS:

Q. Do you know how Nancy came to invest on Dugaboy's behalf a large -- in a large chunk of NexBank stock?

MR. EDNEY: Objection to the form of the question.

A. Dugaboy was an early, if not an original investor, and the interest grew enormously over time.

Q. And you advised her to do that; isn't that right?

MR. EDNEY: Objection to the form of the question.

BY MR. MORRIS:

Q. Withdrawn.

You advised her to invest in NexBank, correct?

MR. EDNEY: Objection to the form of the question.

A. I don't have a recollection of that.

Q. Does Nancy have any investment experience, to the best of your knowledge?

MR. EDNEY: Objection to the form of the question.

A. Yes, she has some.

Q. What's the asset base? Do you know the current value of the Dugaboy asset base today?

MR. EDNEY: Objection to the form of the question.

A. No.

Q. Do you know if it's more than $100 million?

A. Yes.

Q. Is it more than $200 million?

MR. EDNEY: Objection to the form of the question.

A. I believe so.

Q. Do you believe it's more than -- that the assets that Dugaboy has are worth more than $300 million?

MR. EDNEY: Objection to the form of

the question.

A. The NexBank stock is worth quite a bit, and that's the primary asset in there. Oh, yes, I believe it's worth more than 300 million.

Q. Is it worth more than 500 million?

MR. EDNEY: Objection to the form of the question.

A. I don't want to speculate beyond 300 million.

Q. That's fair.

Does Dugaboy have any employees?

A. No.

Q. Does Dugaboy have any officers or directors?

MR. EDNEY: Objection to the form of the question.

A. No, not that I'm aware of.

Q. Does Dugaboy have any relationship with any person or entity on a contract basis?

MR. EDNEY: Objection to the form of the question.

A. I would believe so.

Q. Can you identify any.

MR. EDNEY: Objection to the form of

the question.
A. No.
Q. Do you have any reason to believe that Dugaboy ever had an interest in Hunter Mountain Investment Trust?
MR. EDNEY: Objection form of the question.
A. I don't know.
Q. As you sit here today, you have no reason to believe that Dugaboy ever had an interest in the Hunter Mountain Investment Trust?
Is that fair?
MR. EDNEY: Objection to the form of the question.
A. I don't know.
Q. Do you have any reason to believe that Nancy needs to obtain your consent to take any action in your capacity as Dugaboy's trustee?
MR. EDNEY: Objection to the form of the question.
A. I don't know.
Q. Do you have any reason to believe that Nancy needs to obtain anyone's consent to

take any action in her capacity as Dugaboy's trustee?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Do you control Dugaboy in any way?

A. (Inaudible.)

Q. I'm sorry. Your voice faded, at least in my side.

A. I said I don't know.

Q. Thank you very much.

Are you authorized to make any decisions on Dugaboy's behalf?

MR. EDNEY: Objection to the form of the question.

BY MR. MORRIS:

Q. Withdrawn.

Do you know if you're authorized to make any decision on Dugaboy's behalf?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Have you ever made any decision on Dugaboy's behalf?

MR. EDNEY: Objection to the form of

the question.

A. It's a very static portfolio. I can't remember the last time anything has moved in and out of it. I don't know.

Q. Well, Dugaboy does more than invest; isn't that right?

A. I don't know.

Q. Dugaboy is a litigant, isn't it?

A. Yes.

Q. Dugaboy has litigated against Highland for a long time, right?

A. I guess.

Q. And who makes decisions on Dugaboy's behalf with respect to litigation, to the extent that you know?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Have you ever made any decisions on of Dugaboy's behalf with respect to any aspect of litigation brought against Highland?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. You don't know, as you sit here

right now, whether you have ever made a decision on Dugaboy's behalf with respect to any litigation brought against Highland?

Do I have that right?

MR. EDNEY: Objection to the form of the question.

A. I struggle with the word decision. I don't know where my authority begins and ends. I didn't prepare on that, Dugaboy documents.

And I don't know where the decisionmaking process begins and ends with myself, the trustee, the lawyers, the in-house lawyers, et cetera. I don't know.

Q. Well, does anybody seek Dugaboy's consent before filing papers on Dugaboy's behalf?

MR. EDNEY: Objection of the form of the question.

A. I don't know.

Q. You think -- do you have any reason to believe that Stinson files papers on Dugaboy's behalf without obtaining its client's consent?

MR. EDNEY: Objection to the form of

the question.

A. I assume everybody is operating properly and compliantly. I don't know, and I don't want to speculate otherwise.

Q. To the best of your knowledge, who is authorized to give instruction on Dugaboy's behalf with respect to litigation filings?

A. I don't know.

Q. Have you ever authorized a lawyer at any time to file papers on Dugaboy's behalf?

MR. EDNEY: Objection to the form of the question.

A. I don't recall.

Q. Are you aware of Nancy ever authorizing a law firm to file papers on Dugaboy's behalf against Highland?

MR. EDNEY: Objection to this form of the question.

A. I don't know.

Can we take a break.

Q. No.

Can we just -- I want to finish this line of questioning.

A. Finish it.

Q. I will do the best that I can.

Are you authorized to act on Dugaboy's behalf with respect to this litigation?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Did Nancy designate you to act on Dugaboy's behalf with respect to any aspect concerning the settlement between the HMIT entities and the Highland entities?

MR. EDNEY: Objection to form.

A. I don't know. Not that I'm aware of.

Q. Did you ever discuss -- withdrawn.

Are you aware that Dugaboy made a motion to vacate the order that was entered last June by the bankruptcy court approving the settlement between the HMIT entities and the Highland entities?

A. Generally. I don't know if that's what it's called. But generally, yes.

Q. What's your understanding of the nature of the motion that Dugaboy filed?

A. It was to unwind the 9019 settlement.

Q. And do you know who authorized the filing of the motion to undo the 9019 settlement on Dugaboy's behalf?

MR. EDNEY: Objection to the form of the question.

A. I do not.

Q. Did you authorize any lawyer to file the motion to undo the 9019 order on Dugaboy's behalf?

A. I don't know. I'm willing to be educated. But I don't know.

Q. I'm -- I can't educate you. These are facts in your head.

MR. MORRIS: Why don't we take that break now, sir. It's 9:03, or I guess 11:03 where you are. Let's come back by 9:15 or 11:15.

And, please, consistent with rules, no discussions with counsel about the substance of the deposition.

(Recess is taken.)

BY MR. MORRIS:

Q. I apologize. Just a couple more questions on that topic, Mr. Dondero.

Do you know if Nancy designated you

to testify today as Dugaboy's agent?

A. The whole process is and proper procedures to have me be agent on this litigation have been done properly based on everybody's role in the Dugaboy trust.

Q. Okay.

I had asked you earlier if you had ever been designated as Dugaboy's agent for any purpose and you said you weren't aware of that.

Are you changing your testimony now after the break?

A. Yes.

Q. And did you speak with your lawyer on this topic during the break?

A. Yes.

Q. And after speaking with your lawyer, you're changing your testimony?

Do I have that right?

A. I -- correct.

Q. Why don't you tell me what the correct testimony is now that you've spoken with your lawyer.

A. That is the correct testimony. I wasn't -- we have many, many different entities, many, many different trustees, many,

many different roles of independents and agents. And I'm well aware of the Dugaboy litigation.

But I wasn't aware particularly what process or protocol had been done behind the scenes to be -- for me to be the agent or representative of Dugaboy in this litigation.

But I was assured that everything that needed to be properly done was done.

Q. So you just learned that during the break?

Do I have that right?

A. Yes.

Q. Okay.

And before the break, you were unaware that you had been designated as the agent by Dugaboy for today's deposition?

Do I have that right?

A. I -- the questions you're asking me were regarding process and who approved and who whatever. I wasn't aware of the process and that between internal counsel, external counsel, trustee role, Dugaboy documents, that I was properly made the agent.

And it all has been done. I was

assured it's all been done properly, and I am the agent.

Q. And who gave you the assurance that it was done properly?

A. Counsel.

Q. Is that Mr. Edney?

A. Yes.

Q. Did he describe for you what the process was?

A. No.

Q. Did you ask him what's the process?

A. No.

Q. Did you -- did you ask -- you don't care? Is that fair?

You don't care what the process was.

Your lawyer told you on the break that you were the agent and the process was fine and you're good with that.

Is that fair?

A. Yeah, the process is different. It's largely administrative each time. It's different on every structure.

Q. Do you know if there's any written document that reflects the designation of you as Dugaboy for this purpose?

A. I do not.
Q. Do you know if you've been designated by Dugaboy as Dugaboy's agent for any other litigation that concerns Highland?
A. I don't know.
Q. Should we take another break so you can ask Mr. Edney?
A. If it's relevant, sure.
Q. I'm just asking you the question.
So you have no knowledge, as you sit here right now, of ever having been designated as Dugaboy's agent for any litigation purpose relating to Highland?
Is that fair?
A. I'm saying we do things properly and compliantly. But it's subject to numerous documentations and hurdles. And it's -- I imagine it's different in every case.
Q. I appreciate that it may be different in every case.
And I'm not asking about process here.
I'm just asking if you know whether you've ever been designated by Dugaboy to act as its agent in connection with any litigation

pertaining to Highland other than this deposition?

MR. EDNEY: Objection to the form of the question.

A. I don't know. I don't know, as I sit here.

Q. One moment.

Did -- withdrawn.

I think you said earlier that you're aware that Dugaboy has made a motion to set aside the 9019 settlement; is that right?

A. Yes.

Q. Did you ever read Dugaboy's motion?

A. I don't -- yes, yes. But I haven't reread it recently.

Q. Did you review the motion before it was filed?

A. Yes.

Q. Did you approve the motion before it was filed?

A. Yes.

Q. And did you offer comments to the motion before it was filed?

A. I don't remember, specifically.

Q. Did Isaac Leventon play in role in

preparing the motion?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Did anybody from Skyview play any role in connection with preparation of the motion?

A. I don't know.

Q. Did you ever discuss the motion with Nancy?

A. Not specifically.

Q. Did you discuss the motion with Nancy, generally?

A. Yeah, I believe I did, generally. Yes.

Q. What did you discuss with her?

A. Just that Mark Patrick was continuing to be a person off the reservation.

Q. Anything else?

A. That's all I remember.

Q. What did she say, if anything?

A. She had known Mark for a long time. She was disappointed. Disappointed that he was continuing to behave as he was.

Q. Anything else?

A. That's it.
Q. Did you share any documents with Nancy concerning Dugaboy's motion?
A. I did not.
Q. Let's go back to the 9019 motion from last June.
Do you remember that Highland filed a motion for Court approval of the proposed settlement agreement between the HMIT entities and the Highland entities?
A. Yes.
Q. And do you recall that Dugaboy filed an objection to that motion?
A. Yes.
Q. Did you ever discuss that objection with Nancy?
A. Not specifically.
Q. Do you recall any conversation that you ever had with Nancy concerning Dugaboy's objection to Highland's 9019 motion?
MR. EDNEY: Objection to the form of the question.
A. I'll just repeat my general comments.
Q. There's been a big proceeding --

withdrawn.

There's been a proceeding in the Cayman Islands involving the supporting organization.

You're aware of that, right?

A. Yes.

Q. And you submitted a declaration in connection with that proceeding, correct?

A. Yes.

Q. Did you ever discuss the Cayman proceedings with Nancy?

MR. EDNEY: Objection to the form of the question.

A. I mean, just generally. When the Caymans put their piece together, I said it was damming and reflected premeditation on Mark's part.

Q. Anything else?

A. I don't believe anything more specific than that.

Q. Did you give her -- did you ever e-mail or send to her any documents that were filed in the Cayman Island relating to the matters that the supporting organizations were prosecuting?

MR. EDNEY: Objection to the form of the question.

A. I don't believe so.

Q. Do you know if anybody ever provided Nancy any documents that were filed in the Cayman Islands?

MR. EDNEY: Objection to the form of the question.

And I'm going to instruct my client not to answer to the extent any information he has is from communications with counsel.

You can go ahead and answer the question, if you know otherwise.

A. I'm not aware of her being in the workflow or the document flow at all.

Q. And let's go back to the 9019.

Are you aware of her being in the workflow or document flow in connection with that matter?

MR. EDNEY: I'm going to object to the form of the question and issue the same instruction.

And you can go ahead and answer, if you have knowledge outside of communication with counsel.

A. I am not aware.

Q. Are you aware that the supporting organizations filed an action in Texas in July -- on July 1, 2025, against Mark Patrick and others?

A. Yes.

Q. And you submitted a declaration in connection with that, right?

A. Yes.

Q. Did you ever discuss -- can I refer to that proceeding as the Texas -- the Texas proceeding?

A. Yes.

Q. Did you ever have any discussion with Nancy at any time about the Texas proceeding?

A. No, not that I remember at all.

Q. So then is it fair to say, to the best of your recollection, you never provided Nancy with any information concerning the Texas proceeding?

MR. EDNEY: Object to the form of the question and issue the same instruction.

You can answer to the extent it

doesn't involve communications with counsel.

A. Yeah, I did not.

Q. Are you aware that Dugaboy contends that the 9019 motion should be set aside based on newly discovered evidence?

A. Yes.

Q. Can you identify the newly discovered evidence for me.

MR. EDNEY: Object to the form of the question.

BY MR. MORRIS:

Q. All right.

Let me ask a new question.

Mr. Dondero, are you aware of any evidence that you learned after July 28, 2025, that pertains to Mark Patrick and allegations of wrongdoing?

MR. EDNEY: I'll object to the form of question.

A. Yes, I believe there were numerous things laid out in the Cayman litigation that we were unaware of.

Q. Okay.

Can you identify any fact that you

were unaware of that was laid out in the Cayman litigation.

A. Sure. The value scope appraisal of the assets, the mechanisms by which Mark Patrick defrauded all the charities and moved things around and issued more shares to himself.

And also there was reference to him rushing the process and keeping it secret from the charities, based on a confidential informant.

Q. Anything else?

MR. EDNEY: Object to the form of the question.

A. No. Those are the things off the top of my head at the moment.

Q. Okay.

Did you share any of those things at any time with Nancy?

MR. EDNEY: I'm going to object to the form of the question and issue the same instruction about not providing information when counsel was present.

But if you have any other information, please go ahead and answer the

question.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. Let me ask this question.

Were you ever party to a conversation with Nancy where a lawyer was present concerning Dugaboy's motion to vacate the 9019 proceeding?

A. No.

Q. Okay.

So now, let's go back to the question.

Did you ever discuss with Nancy any of the new information that you just identified?

A. No.

Q. So to the best of your knowledge, as you sit here today, Dugaboy is unaware of any of the newly discovered evidence that you just described, fair?

MR. EDNEY: Objection to the form of the question. Misstates testimony.

BY MR. MORRIS:

Q. You can answer.

A. I think all I'm saying is Nancy is

not aware of the details.

Q. Okay.

In fact, she's not aware of any of the newly discovered evidence that you just described for me, to the best of your knowledge, correct?

MR. EDNEY: Objection to the form of the question.

A. To the best of my knowledge.

Q. Thank you very much.

A. There was one more thing from the Caymans that was highlighted and egregious. It was regarding the expense earned. The -- I believe it was 28 or 29 lawyers at law firms that had become 30 law firms, and then the tens of millions of compensation to Mark Patrick.

Q. Okay.

So you -- you're telling me that you learned after July 28th about compensation issues?

A. Yes, yes. Sort of in that -- yes. In that period after mid July, whenever the Cayman complaint was made public.

Q. Okay.

Mr. Dondero, the Cayman complaint

you're referring to, is that the writ and summons that the joint official liquidators filed in the Cayman Islands on or about July 15, 2025?

A. Yes.

Q. And it's that document that you're saying contains the information that you learned about Mark Patrick's compensation?

Do I have that right?

MR. EDNEY: Objection to the form of the question.

A. Yeah, I believe that's the extent, or I believe that's when we learned most of it. I think we learned more recently. But that was the -- that was the first knowledge of the excessiveness.

Q. What was the July 15th joint official liquidator writ; is that right?

A. Yes, that's the document we're talking about.

Q. Okay.

And how about the hiring of the law firms?

I think you said there were 28 or 30 law firms.

Did I hear that correctly?

A. Yes.

Q. When did you first learn that he had hired 28 or 30 law firms?

MR. EDNEY: Objection to the form of the question.

A. In that Cayman writ was when we found out about 28. I think he added two or three more since then. Maybe a couple more criminal attorneys.

Q. So the compensation information and the law firms came from the writ.

Do I have that right?

MR. EDNEY: Objection to the form of the question.

A. Yes.

Q. You mentioned value scope.

Did I hear that correctly?

A. Yes.

Q. You were aware before there was a Highland 9019 motion that Mark Patrick had sold Hunter Mountain for about a million dollars; isn't that right?

MR. EDNEY: Objection to the form of the question.

A. Yes, I believe so.
Q. Okay.
So does the value scope appraisal relate to that sale, to the sale of Hunter Mountain?
MR. EDNEY: Objection to the form of the question.
A. The value scope appraisal, I believe, pertained to the 135 million in cash and 135 million of other assets that were on the balance sheets of the charities.
Q. And do you know when that appraisal was issued?
A. I -- again, we found out about it, that that was the justification for his testimony of the charities have nothing. They'll get nothing.
And his basis for removing all of their assets was that value scope appraisal or contrivance. Whatever you want to call it.
Q. Was the value scope appraisal an appraisal of Hunter Mountain?
A. I don't believe so.
Q. Do you know what the value scope appraised?

A. I don't know when their appraisal was done, if it would have included Hunter Mountain on the balance sheet at the time.

I don't know when the value scope appraisal was done, if it was done before or after the transfer. I don't know if it included it or not.

Q. Do you recall when you first learned about the value scope appraisal?

A. The value scope appraisal was something we found out about in the Cayman writ.

Q. Okay.

So -- so to the best of your knowledge, the value scope appraisal is addressed within the July 15, 2025, writ that the JOLs filed in the Cayman Islands; is that right?

MR. EDNEY: Objection to the form of the question.

A. I'm sorry. Can you repeat the question, just to...

Q. Sure.

The value -- to the best of your memory, the value scope -- withdrawn.

To the best of your recollection, you learned about the value scope appraisal because it was discussed in the July 15, 2025, writ that the JOLs filed in the Cayman Islands; is that correct?

MR. EDNEY: Objection to the form of the question.

A. My recollection is we knew he had contrived the million and a half as the kiss-off money for the charity, so to speak. But we didn't know the basis for it.

And I think that basis for it being a value scope appraisal or a contrivance or whatever was made known to us in the writ.

Q. Okay.

How did you learn of the writ?

A. We learned of it right around when it was filed. I'm not sure we even got a copy of it until a few days afterwards.

Q. Would it refresh your recollection to -- to tell you that the writ was filed in the Cayman Islands on July 15th, and Dugaboy attached it to its motion for a stay of the 9019 order two days later on July 17th?

A. Okay.

Q. So I'm asking you if you recall how you first -- withdrawn.

Did you ever see a copy of the writ?

A. Yes.

Q. Did you see a copy of the writ before Dugaboy filed its motion for a stay on July 17th?

MR. EDNEY: Objection to the form of the question.

A. Yes.

Q. How did you obtain a copy of the writ?

A. As soon as we got it and as soon as someone read it, it was -- you know, it was -- it was immediately -- it was considered unbelievable and sensational. And it was immediately brought to me.

Q. Okay.

You're aware that the supporting organizations sit on the liquidation committee of the DAF HoldCo entity in the Cayman Islands, right?

A. Yes.

Q. And you are a principal officer of the Highland Dallas Foundation, the Highland

Kansas City Foundation, and the Highland Santa Barbara Foundation, correct?

MR. EDNEY: Objection to the form of the question.

A. I'm one of the board members of those entities, yes.

Q. And you're also designated as the principal officer, correct?

MR. EDNEY: Objection to the form of the question.

A. I don't know that.

Q. Okay.

MR. MORRIS: Can I please ask that the court reporter put up Tab 2. Which we'll mark as Exhibit 1.

(Dondero Exhibit 1, Form 990, marked for identification.)

MR. MORRIS: And if we could scroll down just a little bit.

BY MR. MORRIS:

Q. So this is Exhibit 1, Mr. Dondero.

MR. MORRIS: And if you could stop right there.

BY MR. MORRIS:

Q. Do you know what a Form 990 is?

A. No.
Q. Do you see this document that is called a return of organization exempt from income tax?
A. Yes.
Q. Have you ever signed such a form?
A. I don't know.
Q. If I told you that we obtained this document from the IR -- from publicly available information, would that surprise you?
A. No.
Q. Do you see that this Form 990 was filed by the Highland Dallas Foundation Inc.?
A. Does it matter that I can't see it or...
MR. EDNEY: No, no, if you need to...
BY MR. MORRIS:
Q. In box C.
A. Okay.
MR. EDNEY: Can you see it from there or do you need to get up?
THE WITNESS: I'm going to get closer to the screen.
(Document review.)

A. Highland Dallas Foundation Inc.

Q. That's an entity that you formed, correct?

A. That was an entity that was formed as part of the DAF structure.

MR. EDNEY: Jim, why don't you come back to your seat.

MR. MORRIS: Mike, can we get a laptop in front of him.

MR. EDNEY: Yeah. Yes, sir.

BY MR. MORRIS:

Q. Mr. Dondero, can you see in box F that you are named as the principal officer of the Highland Dallas Foundation?

A. Yes, I saw that when I was up there.

Q. Okay.

And your address and the Highland Dallas Foundation address is the same, correct?

MR. EDNEY: Jim, I can read it.

It says 2101 Cedar Springs, Suite 1200, Dallas, Texas 75201.

A. That's not our address here, though, right.

That's at the Dallas foundation, I assume?

Q. Mr. Dondero, can you put yourself in a position where you can be seen on the screen and see the exhibits as we're putting them up.

A. They're getting a laptop as we speak.

Q. Are you aware that you are the -- you were designated on Form 990 as the principal officer of the Highland Dallas Foundation?

A. I -- I was not.

Q. So as you sit here right now, you're learning for the first time that you've been designated by the Highland Dallas Foundation as its principal officer?

A. I knew I was on the board. I did not know I was a principal officer.

Q. Did you know you signed tax returns on that entity's behalf?

A. I did not, specifically. I signed -- I signed a couple thousand tax returns every year.

MR. MORRIS: Can we scroll down to the next Form 990.

Keep going. Keep going.

Stop right there.

BY MR. MORRIS:

Q. You're also the president; is that right.

Do you see that, sir?

A. Yes, I see that.

Q. Were you aware until this moment that you're the president of the Highland Dallas Foundation?

A. I was not.

Q. You're not aware of that?

A. I was not.

Q. Okay.

(Document review.)

MR. MORRIS: Let's keep scrolling.

Keep going.

Okay. Stop right there.

BY MR. MORRIS:

Q. Do you see the page we're on now is the first page of the 2004 Form 990 for the Highland Kansas City Foundation?

THE WITNESS: Thank you, sir. I've got a laptop now.

MR. MORRIS: Excellent.

MR. EDNEY: You can't manipulate it. They have to move it.

THE WITNESS: Oh, okay.

MR. EDNEY: So just read what they show you.

BY MR. MORRIS:

Q. Do you have the first page of the 2024 Form 990 in front of you?

A. I do. It looks similar to the other one.

Q. Okay.

And do you understand today that you were designated as the principal officer of the Highland Kansas City Foundation?

A. Yes.

Q. Did you know that before today?

A. I did not.

MR. MORRIS: Can we scroll down, please.

BY MR. MORRIS:

Q. Do you have any reason to believe that you're not the principal officer of both the Highland Dallas Foundation and the Highland Kansas City Foundation?

MR. EDNEY: Objection to the form of the question.

A. I do not, no.

MR. MORRIS: Stop right there, please.

BY MR. MORRIS:

Q. Do you see that you are designated as both the president and the director of the Highland Kansas City Foundation?

A. Yes.

Q. Are you learning that for the first time today?

A. Yes.

Q. Okay.

MR. MORRIS: Let's keep scrolling down until we get to the last of the 990s.

(Document review.)

BY MR. MORRIS:

Q. Great.

Do you see this is the Form 2024 Form 990 for the Highland Santa Barbara Foundation?

A. Yes.

Q. And do you see that you're designated as the principal officer for that entity?

A. Yes.

Q. Are you learning that for the first

time today?

A. Yes.

Q. Okay.

And let's go down and just confirm that he's also the president of this entity.

Right there.

Do you see you've been designated as both the director and the president of the Highland Santa Barbara Foundation?

A. Yes.

Q. Are you learning that for the first time today?

A. Yes.

MR. MORRIS: You can take that down.

BY MR. MORRIS:

Q. So -- so these three entities, the Highland Dallas Foundation, the Highland Santa Barbara Foundation, and the Highland Kansas City Foundation, I'm going to refer to those collectively as the supporting organizations.

Is that is that okay?

A. Yes.

Q. You're aware that the supporting organizations were members of the liquidation committee of the entity that's in liquidation

in the Cayman Islands, correct?

A. Yes.

Q. Do you know when they were appointed?

A. By the Court or...

Q. When they were appointed to the liquidation committee?

A. I think by the Court sometime in April or May.

Q. Okay.

So members of the supporting organization -- who from the supporting organization represented those entities on the liquidation committee, if you know?

A. I believe they are represented by Maples.

Q. Okay.

So Maples is the law firm.

And who -- who from each of the Highland Dallas, Kansas City, and Santa Barbara, like what are the people that sat on the committee to represent those supporting organizations?

MR. EDNEY: Objection to the form of the question.

A. I don't know if the president of each organization or their CFO was sitting on it.

They were represented by counsel at Holland & Knight that did most of the interaction with the Maples law firm and the advisory firm.

Q. And in your capacity as the principal officer, director, and president of each of the supporting organizations, did you receive reports from time to time as to the liquidation's doings?

MR. EDNEY: Objection to the form.

A. No, zero, for a few reasons.

Q. Do you know if the liquidation committee had an opportunity to review the writ before it was filed?

MR. EDNEY: Objection to form.

A. I do not know.

Q. Do you know if the liquidation committee authorized the joint official liquidators to file the writ?

MR. EDNEY: Objection to form.

A. I know they authorized them to put the entity in liquidation and move as quickly

as possible. I don't know what specific authority they gave.

Q. Were you informed prior to July 15th that the JOLs were preparing a writ?

A. No, it was a surprised -- surprise to all of us.

Q. Okay.

So you learned that it's filed on the 15th and your testimony is that within 48 hours, Dugaboy prepared and filed a motion to stay the implementation of the 9019 order, correct?

MR. EDNEY: Objection to form.

A. There was urgency around the criminal activity, correct. Yes.

Q. Okay.

MR. MORRIS: I move to strike the reference to criminal activity. I didn't ask about that.

BY MR. MORRIS:

Q. I'm just asking about your knowledge, sir.

To the best of your knowledge, Dugaboy obtained a copy of the order that was -- withdrawn.

To the best of your knowledge, Dugaboy obtained a copy of the JOLs' writ that was filed in the Cayman Islands on July 15th and attached it to its motion for stay of the 9019 order two days later; is that right?

MR. EDNEY: Objection to form.

A. We handled it with proper urgency. If those are the exact dates, I'm not disagreeing.

Q. Did you have any discussion with Nancy about whether to file a motion for a stay?

A. No.

Q. Do you know who authorized the filing of the motion for a stay on Dugaboy's behalf?

A. You mean, which law firm or which...

Q. No.

Who -- who gave instructions on Dugaboy's behalf to file the motion for a stay?

A. If I was -- it's probably my signature, if I was operating as an agent on it from the beginning, I guess.

Q. And that's just a guess; isn't that right?

A. No, that's probably correct.

Q. So you were acting as -- I'm going to ask you again. This is about the fourth time I'm asking you the question.

Tell me every single time you know of that you were designated as Dugaboy's agent to prosecute litigation with respect to Highland.

MR. EDNEY: Objection to the form of the question.

A. I believe that's largely been my role. And it was handled properly, process-wise, between internal counsel, external counsel, Nancy in her role as trustee, and mine as beneficiary until my death of the trust.

Q. Who told you you were Dugaboy's agent for purposes of filing the motion for a stay?

MR. EDNEY: Objection to the form of the question.

A. Who told me? It seems like I've been in that role for quite a while.

Q. Who put you in that role?

A. The proper process between Nancy, as

an uninvolved trustee, and me, as the benefactor and grantor and beneficiary of the trust, and whatever other process or protocols needed to be followed.

Q. Can you describe for me the process or protocols that were followed.

A. No. It would've all been proper legal work.

Q. Can you describe for me the proper legal work.

A. No.

Q. Can you tell me when you were appointed Dugaboy's agent for these purposes.

A. It appears that I have been that for quite some time.

Q. What makes you think -- what makes that apparent?

MR. EDNEY: Objection to the form of the question.

A. It's not apparent. My sister is not involved in the details. There's various internal and external counsel involved.

But it sounds like, to the extent that anybody speaks for the trusts, it's me, as agent.

Q. When you say she's not involved in the details, did she have any involvement whatsoever, to the best of your knowledge, with respect to the preparation and filing of the motion to vacate the 9019 order?

MR. EDNEY: Objection to the form of the question.

A. She had no involvement or awareness that I'm aware of.

Q. Okay.

So you acted on Dugaboy's behalf.

Do I have that right?

A. Yes.

Q. And you didn't seek her consent, correct?

MR. EDNEY: Objection to the form of the question.

A. If it was necessary, I'm sure it was properly done by our extensive legal and compliance team.

Q. Okay. I move to strike.

I'm asking you for your memory, sir.

MR. EDNEY: I object to the motion to strike.

A. That is my -- that is my memory.

Q. Do you have a specific recollection --

A. No.

(Multiple speakers.)

Q. -- again -- let me finish the question. I appreciate that.

Do you have a specific recollection of your seeking Nancy's consent before authorizing the filing of the motion to vacate?

MR. EDNEY: Objection to the form of the question. Asked and answered.

A. No.

Q. Do you have any recollection of seeking or obtaining Nancy's consent before filing the objection to the 9019 motion last June?

MR. EDNEY: Objection to the form of the question.

A. My recollection -- my understanding is the agency, so to speak, or my agency was in place properly, as administered by the law firms and compliance.

Q. What law firms administered the agency agreement that you're referring to?

MR. EDNEY: Objection to the form of

the question.

A. I don't -- I don't know. I don't know if it was a formal agreement or an internal agreement. I don't know.

Q. Can you describe anything about the agreement.

A. No.

Q. Can you describe the subject matter of the agreement.

A. Not beyond power for legal agency.

Q. What's the power for legal agency?

A. Act on behalf of Dugaboy in -- properly in legal matters.

Q. You said a couple of times that it was properly done.

What's your basis for telling me that it was properly done?

A. We run a highly compliant organization. We have lots of people in compliance. We have a lots of internal lawyers and external lawyers. They handle this stuff in due course, and they handle it well.

Q. Can you identify the people who were involved in the process of granting you agency from Dugaboy with respect to these litigation

matters.

A. No.

MR. MORRIS: Can we mark as Exhibit 2, Tab 13.

(Dondero Exhibit 2, Objection to the 9019 Motion, marked for identification.)

MR. MORRIS: And while we're putting that up, I'm going to put up now, Mr. Dondero, Dugaboy's objection to the 9019 motion. Okay.

BY MR. MORRIS:

Q. We can scroll through as much of this document as you want. I'm not going to ask you any particular questions.

Let me just start with the first one, which is: Do you recall that Dugaboy filed an objection to the 9019 motion?

A. Yes.

Q. Do you know who -- who authorized Hunton Andrews Kurth to file this document on Dugaboy's behalf?

A. Probably me.

Q. Did you review it before it was filed?

A. Yes.

Q. Did you discuss it with Nancy before it was filed?

A. I do not believe so.

Q. Did you seek Nancy's consent or approval before authorizing the filing of this document?

MR. EDNEY: Objection to the form of the question.

A. Not that I recall. But I don't know in the background if it was done as part of the process. But I don't have knowledge of that either.

Q. Okay.

So is it fair to say that, to the best of your knowledge, Nancy's consent or approval was not sought or obtained before this document was filed?

MR. EDNEY: Objection to the form of the question.

A. I'm saying I don't know.

Q. Yeah, that's all.

So you lack knowledge, correct?

A. I lack knowledge.

I mean, we can scroll to the end. It could be signed by me. It could be signed

by her. I don't know. But it'll be -- it will have been done in a compliant way.

Q. Yeah.

It's just signed by a lawyer.

A. Okay.

Q. Do you see that?

A. Yes.

Q. Were you familiar with this objection before it was filed?

A. Yes.

Q. Do you understand that Dugaboy did not object to the 9019 settlement on the grounds that Mark Patrick lacked authority to enter into the agreement on behalf of the HMIT entities?

MR. EDNEY: Objection to the form of the question.

And I would instruct you not to answer with respect to any information you learned from counsel with respect to this particular matter.

If you have other knowledge, you can go ahead and answer the question.

A. Yeah, I don't know.

Q. You don't recall that Dugaboy did

not object to the 9019 settlement on the grounds that Mark Patrick lacked authority to enter into the agreement on behalf of the HMIT entities?

MR. EDNEY: Objection. Asked and answered.

A. I don't know.

Q. Well, as the person who was acting as the agent for Dugaboy, did you give any instruction as to -- as to whether or not Mark Patrick's authority should be addressed in the objection?

MR. EDNEY: I'm going to object to that question and instruct him not to answer, as it calls for attorney-client privileged communication.

MR. MORRIS: Fine.

BY MR. MORRIS:

Q. Mr. Dondero, you said you reviewed this document before you authorized it to be filed, correct?

A. Yes.

Q. And before authorizing to be filed, did you believe that it stated all of the bases for objecting to the 9019 motion that Dugaboy

wanted to assert?

MR. EDNEY: Objection to the form of the question.

A. Yeah, I don't know.

Q. You wouldn't have authorized this to be filed if you thought it was missing important objections, would you?

MR. EDNEY: Objection to the form of the question.

BY MR. MORRIS:

Q. You can answer.

A. I rely on counsel regarding tactics and items that highlight and items they wait to highlight.

Q. Great.

So in reliance on counsel, and based on your knowledge and experience, you believed at the time you authorized this to be filed, that it contained all of the objections that Dugaboy wanted to assert, correct?

MR. EDNEY: I'm going to object that question and instruct my client not to answer because it calls for attorney-client privileged communication.

MR. MORRIS: It doesn't.

I'm asking him for his --

(Multiple speakers.)

MR. EDNEY: I'm sorry you feel that way.

My instruction not to answer stands.

MR. MORRIS: All right. I'm going to try again.

BY MR. MORRIS:

Q. Mr. Dondero, when this was filed, you believe that it included all of the objections that Dugaboy should be asserting to the 9019 motion, correct?

MR. EDNEY: I'm going to object to the form of the question.

MR. MORRIS: You can answer that one.

A. I don't know. And I don't want to make a legal conclusion.

Q. So as the agent for Dugaboy, is it possible that you authorized the filing of an objection that didn't include material objections that you now believe should have been asserted?

MR. EDNEY: I'm objecting to the form of that question.

A. Sure.
Q. Yes? The answer to that is yes?
A. It's possible.
Q. All right.
You're aware that the Dallas Foundation and an entity called Crown Global Life Insurance Company jointly filed an objection to the proposed settlement between the Highland and the HMIT entities, correct?
A. Yes.
Q. And we're going to refer to Crown Global Life Insurance Limited as Crown Global, okay?
A. Yes.
Q. And we'll refer to the joint objection that was filed by the Dallas Foundation and Crown Global as the Dallas Foundation objection, okay?
A. Yes.
Q. What is the Dallas Foundation, if you know?
A. That's the primary charity, the umbrella charity above Highland Dallas.
Q. Do you play any role with respect to the Dallas Foundation?

A. Not that I'm aware of.
Q. Are you aware that the Dallas Foundation objection was filed on behalf of entities called Empower Dallas Foundation and the Okada Family Foundation?
A. Yes.
Q. Do you know what Empower Dallas Foundation is?
A. I believe it's a subsidiary charity of which I was the donor.
And the other one that you mentioned, Mark Okada's, was a subsidiary charity for assets he was -- charitable assets he was the donor of.
Q. Okay.
Do you know when they were formed?
A. I do not.
MR. MORRIS: Let's put up Tab 1. We'll call it Exhibit 3.
(Dondero Exhibit 3, Organizational Chart, marked for identification.)
MR. MORRIS: Which is an organizational chart.
BY MR. MORRIS:
Q. Can you see that, sir?

A. Yes.
Q. Have you seen this before?
A. If I have, not in a long time.
Q. Okay.
Take as much time as you want to review it.
But my first question is whether this organizational chart reflects your understanding of the organization of the entities depicted therein for the period of time August 2022 through February 12, 2025?
(Document review.)
A. Okay. I see it.
What's the question?
Q. The question is whether you have any -- any knowledge that any aspect of this organizational chart is inaccurate for the period of time reflected in the upper left-hand corner?
MR. EDNEY: Objection to the form of the question.
A. I do not have specific knowledge either way.
Q. On the bottom, you see Hunter Mountain Investment Trust.

Do you see that?

A. Yes.

Q. Okay.

I'm going to refer to that as HMIT.

Is that okay?

A. Sure.

Q. You're aware that on Highland's petition date in October 2019, HMIT owned 99.5 percent of the limited partnership interest in Highland Capital Management LP, right?

A. Yes.

Q. We'll refer to Highland Capital Management LP as Highland, okay?

A. Yes.

Q. And on -- on the petition date, other entities, including Dugaboy, collectively owned the other one-half of one percent of the limited partnership interest of Highland, correct?

A. Yes.

Q. And those entities were subordinated to HMIT under the limited partnership agreement, correct?

MR. EDNEY: Objection to the form of

the question.

A. What was that last -- subordinate?

Q. Yeah.

There were different classes of partnership interests under the -- under the then-effective limited partnership agreement of Highland, right?

MR. EDNEY: I object to the form of the question.

A. I don't know what you're asking. I'm sorry.

Q. Do you recall that under the limited partnership agreement, there were -- there were different classes of limited partnership interests?

A. Different classes, meaning what? Different entities or...

Q. Okay.

Do you remember that there was a class A, a class B, and a class C?

A. No.

Q. Do you remember that HMIT held the class B and class C limited partnership interest, and the other one-half of one percent held the class A limited partnership interest?

A. Okay. No, I don't remember that.
Q. Okay.
But you do know that Mark Patrick was the control person of HMIT during the period of time depicted in the upper left-hand corner.
Is that fair?
MR. EDNEY: Objection to the form of the question.
A. I don't want to comment generally on his authority. Because there are things that void his authority, too.
Q. Did any of those things occur before -- well, has anybody ever voided his authority?
MR. EDNEY: Objection to the form of the question.
A. I think his authority automatically voids.
Q. So is it your testimony that you do not believe Mark Patrick controls Hunter Mountain today?
A. Correct.
Q. When did he lose the authority to manage Hunter Mountain?
A. I think it was automatic, when he

went from being a normal trustee type administrator for the best interest of the charities, when he shifted to self-interest and contrived transactions, embezzlement, everything else, which I think rolls all the way back to '23 or '24.

I think he automatically lost authority then.

Q. Who acts on behalf of Hunter Mountain today, to the best of your knowledge?

MR. EDNEY: Objection to the form of the question.

A. It's not him. It should be -- it should be the underlying charities.

Q. Okay.

I'm not asking who it should be, sir. I'm asking you a very simple question.

To the best of your knowledge, can you identify the person that acts on behalf of HMIT today?

MR. EDNEY: Objection to the form of the question.

A. I believe he's commandeered it, and he's inappropriately tried to commandeer it.

But I believe he was automatically

eliminated from that role.

Q. Okay.

Please listen carefully to my question.

Can you identify the person who controls Hunter Mountain today.

MR. EDNEY: Objection to the form of the question. Asked and answered.

A. I have asked and answered it.

Q. Sir, has anybody ever asked a Court to remove Mark Patrick as the control person of Hunter Mountain Investment Trust?

MR. EDNEY: Objection to the form of question.

A. I understand the documentation would be automatic. Not necessarily requiring that.

If it needs to be ratified, I don't know what the process is for that.

Q. Okay.

I'm going to move to strike.

And I'm going to ask you to listen carefully to my question.

MR. EDNEY: I'm going to object to your motion strike.

MR. MORRIS: Great.

BY MR. MORRIS:

Q. Do you know if anybody has ever asked a Court to remove Mark Patrick as the duly authorized representative of HMIT?

MR. EDNEY: Objection.

A. Not as I sit here today.

Q. Do you know why nobody has ever sought to remove Mark Patrick as the authorized representative of HMIT?

MR. EDNEY: Objection to the form of the question.

A. I believe legal tactics have been to have him removed overall from the entire entity. So I don't -- I believe I'm going to rely on counsel. But I believe the tactics were to have him out entirely, of which I don't want to be a part of that.

Q. In what proceeding has somebody sought to have Mr. Patrick removed entirely?

A. Cayman and Dallas business court. Various regulatory bodies.

Q. What regulatory bodies are you referring to?

A. Texas AG. Missouri AG.

Q. Anything else?

A. No.

Can we break for lunch or...

MR. MORRIS: Sure.

How long would you like, sir?

MR. EDNEY: Well, what works for you? Can we do 45 minutes?

MR. MORRIS: I would prefer less. I would prefer a half an hour. We started late at your request.

(Recess is taken.)

BY MR. MORRIS:

Q. Mr. Dondero, are you ready to proceed?

A. Yes.

Q. Did you have any substantive conversations with your lawyer during the break about this deposition?

A. No.

Q. Earlier I had asked you about evidence that you learned after the hearing on the 9019 settlement.

Do you remember that?

A. Yes.

Q. And you described for me information concerning compensation.

Do you remember that?

A. Yes.

Q. And you told me that you learned that information in the joint official liquidator's writ, correct?

A. Yes.

Q. And the same is true with respect to Mr. Patrick's retention of 25 to 30 law firms.

You learned that in the writ, correct?

A. Yes.

Q. And the same is true with respect to value scope.

You learned in the writ, correct?

A. Yeah. We got a taste for all of it in the writ, yes.

Q. Okay.

I just want to cover the two other items that I think you mentioned, one of which was rushing the process, keeping it secret.

Is that an accurate statement of information that you learned after the June hearing?

A. Yes.

Q. And what --

(Multiple speakers.)

A. After the July -- after the July release of the writ.

Q. Okay.

What do you mean by rushing the process, keeping it secret?

A. There was an e-mail between Mark and one of his attorneys talking about a mole that they had on the other side, indicating that the charities were moving towards liquidation in Cayman and he needed to move fast.

Q. And do you know who the mole was?

A. We have suspicions, but we're working on it.

Q. Who is the suspicion?

MR. EDNEY: I'm going to object to the form of the question.

A. Yeah, I don't want to -- I don't want to accuse or defame anybody until we know for sure.

Q. Okay.

But you learned of this e-mail with the reference to the mole and the concept of rushing the process and keeping it secret in connection with the writ?

MR. EDNEY: Objection to the form of the question.

A. Yes. In general, yes.

Q. And have you been investigating the mole since the writ was filed last July 15, 2025?

MR. EDNEY: Objection to the form of the question.

A. Investigating, compiling evidence in all aspects of the allegations for the last six, seven months, yes.

Q. And then I think the other thing you mentioned was -- and these are just my notes, so I may not have gotten this accurately.

But my notes say: Mechanism: Issued more shares to himself.

Do you know what I'm referring to there?

MR. EDNEY: Objection to the form of the question.

I don't think it's fair to ask Mr. Dondero to interpret your notes.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q. But you can answer, sir.

A. I -- I believe we had some indications that -- that charities have been wiped out for the million six.

We didn't know where that valuation came from. And we didn't know that, as part and parcel of fleecing them out of their assets, he also, in the entities that they had interest in, he issued and diluted their shares enormously on new shares or his own charity or DFW or himself or whatever.

But the mechanisms by which he defrauded the charities weren't known or -- weren't known and the details weren't known until the writ came out.

Q. So that also you learned about with respect to the writ.

Is that fair?

A. Yes.

Q. Okay.

Is there anything that we've missed in terms of information that you learned after the hearing?

MR. EDNEY: Objection to the form of the question.

MR. MORRIS: You can answer.

MR. EDNEY: And I'm going to instruct him not to answer to the extent it calls for any communications with counsel.

MR. MORRIS: Fantastic.

BY MR. MORRIS:

Q. Let me ask the question again, because I definitely want to respect the privilege.

Are you aware of any facts that you learned after the hearing on the 9019 motion that you haven't shared with me already?

MR. EDNEY: Object to the form of the question.

I'm going to instruct the client not to reveal any communications with counsel in his answer.

If he has a nonprivileged source for the information, he may share it.

A. I think how best to be responsive here.

The writ represented allegations. We ran with them as quickly as possible, I believe. As you noted a couple of days later.

But the evidence and the support in the specific e-mails and, you know, the org

charts showing the wiping out of assets and the charities, and so that stuff didn't come in for months later. And then it -- well, it all came in through counsel.

But anyway. All right. That's all I have to say on that.

Q. Was it all -- do you know if it was all put before the Court in the Cayman Islands?

A. I -- it -- I think they had an extensive compilation period that -- well, you know, extended through the writ and thereafter. You know, they were aware of the hearings in Jernigan's court and they asked for more time and Jernigan denied it.

So I don't know if that accelerated their timeframe in terms of trying to get something out.

And I don't know how complete their product was and how much of it came later.

Q. Okay.

So I want to ask very specific questions.

You mentioned org charts.

Can you identify any org charts that you obtained after the June hearing.

MR. EDNEY: Object to the form of the question.

A. Not -- not specifically.

Q. Can you identify any specific evidence that you haven't described for me that -- that you learned of after the June hearing on the 9019 hearing.

MR. EDNEY: Object to the form of the question.

A. I mean, I run a big business. I'm not involved in the details. But I know lots of stuff was compiled from things that came out of the Cayman. And not just in July and August, but even recently.

You know, so I -- but I don't have direct awareness or I don't have the flow charts that show how the assets or monies disappeared or whatever.

Q. Let me try and ask this question.

Other than what you have identified so far, you're not able to identify any specific evidence that you learned after the hearing on the 9019 motion.

Is that fair?

MR. EDNEY: Object to the form of

the question.

A. Yeah, well, what I'm saying is the allegations that were in the writ were not even -- were not known -- barely suspected in the June hearing. And then the evidence supporting the writ trickled in and came in later.

Q. Great.

What evidence supporting the writ trickled in later?

A. The details, the e-mails, the creating org charts from the entities. All that stuff came in later.

Q. What --

(Multiple speakers.)

A. The writ was -- the writ was allegations. And they were allegations that were suspected but unknown in June.

Q. Okay.

But -- but what evidence supporting the writ trickled in later?

You mentioned e-mails.

Do you know what e-mails you're referring to?

I'm trying to -- I want to see the evidence.

We're here the last business day before the trial. I want to try to understand what evidence you're referring to.

So let me ask the question again.

What e-mails supported the writ that -- can you -- withdrawn. I'm sorry.

Can you identify any e-mails that support the writ that came in after the writ was filed.

MR. EDNEY: Object to the speech and question.

A. I'm going to have to defer to counsel and our pleadings. I assume relevant evidence is presented or will be presented. But I'm -- I'm not the keeper or presenter of the evidence.

Q. Okay.

So you can't describe the evidence.

Is that fair?

MR. EDNEY: Object to the form of the question.

A. I believe I've described it already.

Q. Okay.

But you can't describe it any further than you have.

Is that fair?

A. Correct.

Q. Thank you.

Do you know if the evidence that trickled in after the writ was filed was presented to the Court in the Cayman Islands?

MR. EDNEY: Object to the form of question.

A. I don't know.

Q. Did you take any steps to make sure that the evidence that trickled in after the writ was filed was presented to the Cayman Court?

MR. EDNEY: Object to the form of the question.

A. No. That would not have been my role. The -- the joint liquidators were representing the charities. They had counsel. DFW had objected to my participation.

So I was recused. So I did not oversee, you know, minutiae or evidence or even aware of it.

Q. Do you believe Maples competently represented the joint official liquidators?

MR. EDNEY: Object to the form of

question.

A. As far as -- as far as I know. I think there's been fits and starts. But I think they're on a good path now.

Q. Do you have any reason to believe, as you sit here today, that Maples failed to represent all the evidence that supported the writ to the Cayman Court?

MR. EDNEY: Objection to the form of the question.

A. Yeah, I -- I -- when I say there were fits and starts, I think there was one hearing that they lost but then got overturned. And when they lost it, they didn't believe that it was an evidentiary hearing, so they didn't provide as much evidence. But they did on the second hearing and won.

But again, this is all -- I get all of it secondhand. None of it concurrent or realtime. And, you know, none of it directly.

Q. As you sit here today, the entity that's the subject of the proceedings in the Cayman Islands is Charitable DAF HoldCo Limited, correct?

A. I have to lean on my lawyers for

that one.

Q. You don't know what entity is the subject of the Cayman proceedings?

A. I believe there's a complex holding company structure and there's a half a dozen entities. And I'm not familiar with the names of which ones are actual defendants.

Q. The evidence that you just described as being newly discovered, is that, in your mind, also evidence of fraudulent conduct by Mr. Patrick?

A. Yes. And it's a continuation of a scheme, I believe, too.

Q. Okay.

Other than the evidence that you've described for me, did you learn of any additional evidence of the -- of fraud committed by Mr. Patrick after -- withdrawn.

I'm sorry. That was bad.

Other than the information that you've shared with me as having been newly discovered, did you learn of any new facts supporting allegations of fraud against Mr. Patrick after the June 9019 hearing?

MR. EDNEY: I'm going to object to

the form of that question.

I'm going to instruct the witness not to answer to the extent he has knowledge drawn from communications with his counsel that is privileged.

If he has some other source of that information, he may share it with you.

Go ahead, Jim.

MR. MORRIS: I'm really just asking for facts, Mike. I'm not sure why the objections are necessary. I'm asking only for facts. I'm not asking for anything about communications.

And just because he learns a fact from somebody, it's still a fact.

MR. EDNEY: I mean, listen --

MR. MORRIS: I'll reserve because I don't think that's proper. But...

MR. EDNEY: John, I just want to put you at ease about the nature of my objection.

I mean, Dugaboy has counsel that's investigating this stuff, and, you know, they are reporting to Mr. Dondero in a privileged setting regarding that.

You know, I don't want him revealing the conversations he's had with counsel about it. Yes, he's had access to some documents that aren't privileged. And, you know, I think he's doing his best to recall what is coming from them.

But frankly, those documents and/or time and speak for themselves.

MR. MORRIS: Okay. Mike, I really do appreciate that. And I just want to have clarity on the record, because we're going to have an evidentiary hearing on Monday.

We're going to ask the Court to consider evidence of fraud or newly discovered evidence that wasn't available at a certain point in time.

And I think you're telling me right now that there is some of that evidence but you're not going to share it with me because it's subject to the attorney-client privilege; is that right?

MR. EDNEY: No. I think what I'm telling you is that, you know, he is perfectly fine talking to you about his

recollection of reading public documents.

But if you want to find out what evidence that we think is newly discovered, when it came in, and obviously the evidence has a provenance to it that will be documented, you need to look at the pleadings of Dugaboy, right.

I'm not going to let you get behind the -- the work of counsel in investigating this matter.

Look, it would be a different question, sir, if -- if, you know, this was about what Mr. Dondero did, right.

But this hearing coming up is about what others did. And to some extent, what you're getting in our pleadings and what you've got in our papers is what you're seeing in the depositions, is what counsel has done to uncover it.

So it is a tricky privilege situation. I think he's doing the best he can. But as a steward of the privilege, I also need to protect it. So...

MR. MORRIS: And that's fair.

MR. EDNEY: I don't think we're

laying a trap for you. I guarantee you that the -- you know, we're going to be very transparent about the evidences that has come out of the Cayman process, and, you know, when it has come out of it and what the source of it is. You know, whether be it the McGinnis affidavits over time, or the allegations in the writ down in the Cayman Islands.

So I just want to be transparent with you about our thinking on that.

It's -- yeah, this is an odd deposition insofar as you're -- you're questioning of derivative knowledge of events that are really happening elsewhere.

MR. MORRIS: All right. I appreciate that, Mike. And I'm going to tell you, I don't think you're being transparent at all. I think you're hiding the ball.

I'm sitting here one business day before the hearing, and I do not know, as I sit here today, what newly discovered evidence you all are relying on.

MR. EDNEY: You'll get our reply

brief in a few hours.

MR. MORRIS: I understand. I understand.

I want it to be really clear that you're going to wait until the day before the hearing in your reply brief to describe for the first time what the newly discovered evidence is. And --

(Multiple speakers.)

MR. EDNEY: I mean, I don't agree with you --

MR. MORRIS: I'm glad that we have that on the record. I'm glad --

MR. EDNEY: I don't agree with you that's a standard, and I do think the schedule is a little screwed up. And I brought that to the attention of the Court and you pounded the table and proposed my modifications to the schedule.

So we're in -- you guys want to move this on a railroad, right, you know, we have to deal with the timing performances of the debtor.

MR. MORRIS: Enough, Mike. Enough. Enough. It ain't the schedule.

Let's move on. Okay.

You take that position.

BY MR. MORRIS:

Q. So earlier, Mr. Dondero, you referred to regulatory agencies that are looking into Mr. Patrick's conduct.

Is that fair?

A. Yes.

Q. And you mentioned the Missouri attorney general.

Did I hear that correctly?

A. Yes.

Q. How do you know that the Missouri attorney general is looking into any allegations concerning Mark Patrick?

A. I believe through counsel.

Q. And what did counsel tell you?

MR. EDNEY: Objection. I'm going to instruct my client not to answer.

BY MR. MORRIS:

Q. What is the Missouri attorney general investigating?

A. All the issues we've discussed.

Q. Do you know, did somebody acting on behalf of the supporting organizations file a

complaint with the Missouri Attorney General's Office?

MR. EDNEY: Objection. Lack of foundation.

A. I don't know specifics, but I believe there's been outreach.

Q. And who made the outreach, to the best of your knowledge?

A. I don't know, specifically.

Q. Sir, you told me that you believe there's been outreach.

What is your basis for telling me that you believe there's been outreach?

A. Conversations with attorneys.

Q. Do you know who made the outreach, sir?

A. No.

Q. Is it your understanding that investigations by attorneys general are generally private?

MR. EDNEY: Objection to the form of the question.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. Did Johnny Sutton contact the

attorney's general office in Missouri?

MR. EDNEY: Objection to the form of the question.

A. Not that I'm aware of.

Q. Have you ever spoken to Johnny Sutton?

A. Yes.

Q. Johnny Sutton, he used to -- he's in Missouri, right?

A. No, I believe he's in Austin, Texas.

Q. But he was in Missouri, right?

He's affiliated with Mr. Ashcroft, right?

A. I think Johnny Sutton's name and Ashcroft's name are both on the door. But I'm not aware of Johnny's connection to Missouri.

Q. Can you tell me anything about the Missouri attorney general's investigation of Mark Patrick.

A. No. I mean, I do believe some of it is confidential. I think they'll express to professionals whether or not they have a strong interest in their pursuing it.

But you're right, in general, it's confidential and they don't keep you apprised

of all of the sausage meat.

Q. When did the investigation begin, to the best of your knowledge?

A. I don't know.

Q. Has -- have the supporting organizations provided information to the attorney general?

MR. EDNEY: Objection to the form of question.

A. Again, well, it's just from conversation with lawyers, but I believe they had been queried, and I think they've been responsive directly through their counsel.

Q. Okay.

So it's your understanding that the supporting organizations, through their counsel, have provided information to the Missouri attorney general.

Do I have that right?

A. I believe both attorney generals.

Q. Okay.

And is the Texas attorney general, like the Missouri attorney general in that you understand that there's been some, quote, reach out?

A. Yes.
Q. Okay.
When did that reach out happen?
A. I think it's been ongoing. I think early -- early after Mark Patrick's departure.
Q. So your understanding is that the Texas attorney general has been investigating these matters since 2023 or 2024?
A. 2025.
Q. Early 2025, correct?
A. Yes. Not '23 or '24.
Q. Okay.
You said after he left, so I was just using that date.
And who reached out to the Texas attorney general with respect to Mr. Patrick?
A. I think it's been various counsel. Various counsel at various times.
Q. Just name the counsel.
THE WITNESS: Is that proper, sir?
MR. EDNEY: Good question.
Let's see if Mr. Morris can lay a foundation that's not privileged.
MR. MORRIS: I've already laid a foundation. And I can't imagine that it's

privileged.

If you want to instruct him not to answer, you go ahead. But it's a really simple question.

BY MR. MORRIS:

Q. What law firms contacted the Texas attorney general with respect to Mark Patrick?

MR. EDNEY: If you know whether a law firm has contacted the Texas attorney general, you should answer the question, Jim.

A. Hance Scarborough.

Q. What's the name?

A. Hance Scarborough.

Q. And who do they represent?

A. I believe they represented either -- yeah, me, as grantor. I think myself, as grantor, actually.

THE COURT REPORTER: Can you repeat that firm name.

THE WITNESS: Hance Scarborough.

BY MR. MORRIS:

Q. And that firm represented you in your individual capacity when they contacted the Texas attorney general regarding

Mark Patrick; is that right?

A. Yes, they're one of the firms.

Q. Thank you very much, sir.

Can you name any other firms, as you sit here right now.

A. On behalf of the charity, I know Holland & Knight has been in.

Q. Okay.

So --

(Multiple speakers.)

A. Significant numerous contact with them.

Q. So Holland & Knight on behalf of the supporting organizations or the Dallas foundation or both?

A. All three.

Q. All three supporting organizations?

A. Correct.

Q. So let me ask a clean question.

You know that Holland & Knight, on behalf of the supporting organizations, has been in communication with the Texas attorney general regarding Mark Patrick; is that right?

A. Yes.

Q. And it's your understanding that

Holland & Knight initiated those discussions, fair?

MR. EDNEY: Objection. Lack of foundation.

A. I don't know. I don't know how it started.

Q. But you do know that the Hance Scarborough firm, acting on your behalf, initiated their discussions with the attorney general, correct?

MR. EDNEY: Objection. Lack of foundation.

A. Yes. Early on, at our behest.

Q. And you've done that several times in the Highland bankruptcy case, right?

You have filed complaints or initiated communications with government regulatory agencies, right?

A. Yeah, at different times, when we thought there was criminal activity.

Q. Right.

And remember, you had Dugaboy contact the Texas Securities Exchange Commission regarding matters that were the subject of the so-called insider trading case.

Do you remember that?

MR. EDNEY: Objection to your question.

A. They were bona fide insider trades with train tickets and nonpublic information and things that were bona fide criminal activity.

Q. That's what you say.

But you know that the Texas -- the Texas Securities Commission closed their investigation and took no action; isn't that right?

A. I believe that's correct.

Q. Okay.

So you have your view and the Texas Securities Commission has its view.

Is that fair?

A. Okay.

Q. Yup.

And you also initiated the contact with the Texas attorney general that -- that prompted the filing of the letter last July, correct?

MR. EDNEY: Objection to the form of the question.

A. I don't know if those two are connected. But we -- we did reach out to the Texas attorney general in early '25.

Q. And other than filing that letter, the Texas attorney general has taken no action against Mark Patrick.

Is that fair?

MR. EDNEY: Objection to the form of the question.

A. Well, the investigation is private. It's ongoing, as far as we know. But that letter asks for more time. And I believe it was ignored by the Court.

Q. And other than that letter, the Texas attorney general has never made an appearance in the Highland bankruptcy case, correct?

MR. EDNEY: Objection to the form of the question.

A. As far as I know.

Q. Do you recall some of the attorneys that represented your interest earlier included Davor Rukavina and Douglas Draper and Amy Ruhland?

A. Yes.

Q. And do you recall that the three of them sent multiple letters to the U.S. Trustee's Office in Washington, D.C., concerning the Highland bankruptcy case?

A. Yes.

Q. And none of those letters ever caused any action to be taken against Highland; is that right?

MR. EDNEY: Objection to the form of the question.

A. Not yet. Well, not that I'm aware of. Not yet.

Q. And they were filed years ago, right?

They were filed in 2021 and 2022, right?

MR. EDNEY: All right, Mr. Morris.

So listen, you guys have filed all these motions to limit discovery to things that are relevant.

And we have a hearing coming up in just a few hours on --

MR. MORRIS: Stop --

MR. EDNEY: -- (inaudible) -- with Hunter Mountain. So --

(Multiple speakers.)

MR. MORRIS: I didn't file anything.

MR. EDNEY: I mean, I am getting towards end of my latitude about collateral matters.

MR. MORRIS: All right. Great.

MR. EDNEY: If you have a question or two left, great. But you're getting very close to me, you know, redirecting this towards something that might actually be relevant to Monday.

And if you want to take that up with the Court, I think he'll have very low patience for it.

MR. MORRIS: Mike, stop talking.

MR. EDNEY: So wrap it up.

MR. MORRIS: Stop talking. Okay.

MR. EDNEY: No, I'm going to make a record.

MR. MORRIS: This is improper.

MR. EDNEY: You're going to listen to me make a record.

MR. MORRIS: This is improper. Okay.

I didn't file any motion to limit

anything. Okay.

BY MR. MORRIS:

Q. Mr. Dondero, this is your MO, isn't it?

You like to file complaints with regulatory agencies and then point to them as evidence that there's investigations and wrongdoing being investigated; isn't that right?

MR. EDNEY: Objection to the form of the question.

BY MR. MORRIS:

Q. This is what you do all the time, isn't it?

MR. EDNEY: Objection to the form of the question.

A. No.

Q. Did somebody acting at your direction contact the U.S. Trustee's Office with respect to this matter?

A. I hope so.

Q. I'm not asking you what you hope.

I'm asking if you know.

A. I hope so. I don't know, specifically.

Q. Who's Mr. Tarasov (phonetic)?
A. He's an attorney.
Q. Has he filed an appearance in this case?
A. I don't know.
Q. Does he represent Dugaboy?
A. Not that I'm aware of.
Q. Do you know who he represents?
A. I do not.
Q. Do you know why he contacted the U.S. Trustee's Office?
A. Maybe there were six U.S. trustee letters that need to be addressed. I don't know.
Q. Do you know who authorized him to contact the U.S. Trustee's Office?
A. Nope.
Q. How about Mr. Sutton? Do you know who he represents?
A. Sutton, I believe, represents Dugaboy.
Q. Really?
A. Or if not Dugaboy, then he represents me, I guess. But one or the other.
Q. So you don't know who he represents;

is that right?

A. I -- I thought it was Dugaboy. But if it's not Dugaboy, then it's me, personally.

Q. Is he going to be at the trial on Monday?

A. I don't know.

Q. All right.

MR. MORRIS: Can we go back to Exhibit 3, please.

BY MR. MORRIS:

Q. All right.

Mr. Patrick became the control person of HMIT in August 2022, correct?

A. I don't know.

Q. He replaced Mr. Honis, right?

A. Yes, he replaced Mr. Honis.

Q. Mr. Honis had been the control person of the HMIT entities prior to Mr. Patrick, correct?

A. Yes.

Q. Who is Mr. Honis?

A. Longtime friend of mine. Board member in our retail mutual funds. Independent board member on our independent retail mutual funds.

Q. Do you know the circumstances by which Mr. Honis gave control of the HMIT entities to Mr. Patrick?

A. I don't know. I don't know specific details.

Q. Did Mr. Honis want to step down as the control person of the HMIT entities?

A. Yeah, I think he was tired of being deposed by you guys, you know.

Q. Okay.

You don't dispute that Mr. Patrick replaced Mr. Honis as HMIT's control person in August 2022, do you?

MR. EDNEY: Objection to the form of the question.

A. I don't know that they -- I would have to rely on counsel for the accuracy of this chart.

Q. I can take the chart down.

Do you need to check with counsel in order to be able to tell me that you're aware that Mr. Patrick replaced Mr. Honis as the control person of the HMIT entities?

A. No, I know he replaced him. I would have to check with counsel if you want me to

verify August 22, five years ago.

Q. Okay.

I didn't mean to do that. So let me ask it again.

Are you aware -- you don't dispute that Mr. Patrick replaced Mr. Honis as the control person of the HMIT entities, correct?

A. Correct.

Q. And Mr. Patrick has served as the control person of the HMIT entities on a continuous basis since replacing Mr. Honis.

Is that fair?

A. That's not consistent with my testimony earlier.

Q. Oh, that's because you think what, as a matter of -- withdrawn.

Can you tell me when Mr. -- withdrawn.

Is it your position that Mr. Patrick is not the control person of the HMIT entities today?

A. Correct.

Q. Do you know when he ceased to be the control person of the HMIT entities?

A. When he failed to act properly and

for the benefit of -- in a normal trustee role, as soon as he -- the litany of things we've alleged in terms of embezzlement, self-dealing, and whatever, a lot of that stuff started in '23 and '24. And I think as soon as the bad acts began he, was automatically removed.

Q. And who removed him?

A. I didn't take a person. It was just automatic.

Q. Pursuant to what?

A. The document.

Q. And did anybody ever replace him?

A. He wouldn't really step aside, provide books and records, or...

Q. I asked a simple question.

Did anybody replace him?

A. I think, again, because it's automatic, I think it would be once he was automatically out, whoever else was in the chain of ownership. Whether it was Crown or Dallas Foundation or whatever. So I think at that point in time, it automatically moved to somebody else.

Q. So going back to June 2025, you authorized the filing of an objection to the

9019 motion on behalf of Dugaboy, correct?

A. Yes.

Q. And none of what you just testified to is in Dugaboy's objection; is that right?

MR. EDNEY: Objection to the form of the question.

A. I'm not aware of when we were aware. I'm not aware that it's -- the automatic is affected by that or not. I don't want to make legal conclusions or comments.

Q. Well, you just said that he automatically lost his position as the control person in 2023 or 2024, when he stopped acting in the interest of the charities.

Do I have that right?

A. That's how I read the paragraph.

Q. Okay.

So why didn't you, on behalf of Dugaboy, put that in Dugaboy's objection to the 9019 settlement?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. The Dallas Foundation objected to the settlement on the grounds that Mr. Patrick

wasn't authorized to act on behalf of the HMIT entities because of his conduct.

Are you aware of that?

A. Yes.

Q. One moment.

And after -- withdrawn.

After the Dallas Foundation filed its objection to the 9019 settlement on the grounds that Mark Patrick engaged in wrongful conduct, they took discovery.

Do you recall that?

A. Not specifically, but yes.

Q. And Dugaboy took discovery as well, right?

A. Yes.

Q. And you were the one who was acting on Dugaboy's behalf, right?

A. Yes.

Q. And you're familiar with the discovery process, aren't you?

A. Yes.

Q. And you understand that the Dallas Foundation and Dugaboy had the right to seek documents from Highland and from the HMIT entities, correct?

A. I believe many requests were made and none were provided.

Q. Are you aware that Dugaboy served document requests on Highland?

A. I'm aware that the charities made numerous, numerous requests for books and records from Mark Patrick. Never received them.

And Mark was, in his deposition, evasive and non-- nonresponsive for most of it.

Q. Okay.

I want to distinguish any request that was made for information outside of the 9019 contested matter from information that was sought and received in the context and within the 9019 contested matter process.

Do you understand that?

A. Yes.

Q. Okay.

And do you understand that Dugaboy served document requests on Highland in the 9019 process?

A. I assume so.

Q. And are you aware that Highland produced over 4,000 pages of documents in

response to Dugaboy's request?

A. I'm not aware of specifics, but...

Q. As you sit here today, can you identify -- withdrawn.

As you sit here today, can you identify anything that Dugaboy requested that Highland failed to produce.

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Okay.

You cannot identify anything, as you sit here today, that Highland failed to produce in response to Dugaboy's discovery request.

Is that fair?

MR. EDNEY: Same objection.

A. I don't know. And I wouldn't be the person to answer that.

Q. Do you have any reason to believe that Highland failed to comply with any discovery request made by the Dallas Foundation or Dugaboy?

MR. EDNEY: Same objection.

A. I don't know. And I wouldn't be in a position to know.

Q. Okay.

Do you know if Dugaboy served any discovery request on the HMIT entities?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. So as you sit here today, you have no reason to believe that Dugaboy sought documents from the HMIT entities, right?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Do you have any reason to believe that the HMIT entities ever failed to provide any documents in response to any request that was made by Dugaboy in connection with the 9019 proceeding?

MR. EDNEY: Objection to the form of the question.

A. I don't know. And I wouldn't be in a position to know.

Q. Okay.

Do you know if the Dallas Foundation served document requests on the HMIT entities?

A. I don't know.

Q. Do you have any reason to believe that the Dallas Foundation ever contended that the HMIT entities failed to comply with any discovery requests that they made?

MR. EDNEY: We lost you there.

Mr. Morris, you cut out in the middle of your last question. Sorry.

MR. MORRIS: Can you hear me now?

MR. EDNEY: Yup, you're back. You froze for ten seconds.

BY MR. MORRIS:

Q. Mr. Dondero, do you have any reason to believe, as you sit here today, that the HMIT entities failed to fully respond to all discovery requests that were made by the Dallas Foundation?

MR. EDNEY: Objection to the form of the question.

A. I don't know. And I wouldn't be in a position to know.

Q. Okay.

I don't know whether you would or you wouldn't be in a position.

But you would agree that, as you sit here today, you have no reason to believe that

HMIT failed to comply with any discovery request made by either Dugaboy or the Dallas Foundation, correct?

MR. EDNEY: Objection to the form of the question. Asked and answered.

A. I have no relevant awareness, knowledge, or ability to comment.

Q. Okay.

Are you aware of any motion to compel -- withdrawn.

Do you know what a motion to compel discovery is, right?

A. Yes.

Q. Okay.

Do you know if Dugaboy ever filed a motion to compel discovery against Highland in connection with the 9019 proceeding?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Do you know if Dugaboy ever filed a motion to compel discovery against the HMIT entities in connection with the 9019 proceeding?

A. I don't know.

Q. Do you know if the Dallas Foundation ever filed a motion to compel discovery against Highland in connection with the 9019 proceeding?

MR. EDNEY: Same objection.

A. I don't know.

Q. Do you know if the Dallas Foundation ever filed a motion to compel discovery against the HMIT entities in connection with the 9019 hearing?

A. (Inaudible.)

THE COURT REPORTER: Can you repeat your answer.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q. To the best of your knowledge, neither Dugaboy nor the Dallas Foundation ever contended before the hearing on the 9019 motion that Highland had failed to comply with any discovery, correct?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. To the best of your knowledge, neither Dugaboy nor the Dallas Foundation ever

contended before the 9019 hearing that the HMIT entities failed to comply with their discovery obligations, correct?

A. I don't know.

MR. EDNEY: Objection to the form of the question.

BY MR. MORRIS:

Q. I'm sorry. What was the answer?

A. I don't know.

Q. Okay.

Are you aware of any limitations that were placed on the scope of discovery that the Dallas Foundation and that Dugaboy could have sought in connection with the 9019 motion?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Are you aware that a half a dozen people were deposed in connection with the 9019 motion?

MR. EDNEY: Objection to the form of the question.

A. I was not aware.

Q. Are you aware that the Dallas Foundation and Dugaboy deposed Mark Patrick and

Shawn Raver in connection with the 9019 hearing?

MR. EDNEY: Objection to the form of the question.

A. Yes.

Q. Okay.

Do you know whether Dugaboy or the Dallas Foundation ever contended before the June 25th hearing on the 9019 motion that Mr. Patrick failed to adequately respond to questions posed to him during the deposition?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Do you know whether Dugaboy or the Dallas Foundation ever made a motion to compel Mr. Patrick to answer questions that were perceived to be answered evasively in the deposition?

A. I don't know.

Q. As you sit here today, can you identify any fact that you believe was responsive to any question posed to Mr. Patrick during his deposition that he failed to disclose?

MR. EDNEY: I object to the form of the question.

A. I did not prepare -- review Mark Patrick's deposition. I do not know. I don't have specific awareness.

Q. As you sit here today, can you identify any answer that Mr. Patrick gave during his deposition on the 9019 motion that Dugaboy contends was inaccurate or misleading?

MR. EDNEY: I object to the form of the question.

A. I do not know.

Q. To the best of your knowledge, neither Dugaboy nor the Dallas Foundation ever contended before the 9019 hearing that Shawn Raver failed to adequately respond to questions posed to him during his deposition, correct?

MR. EDNEY: Objection to form.

A. I don't know.

Q. As you sit here today, can you identify any fact that you believe was responsive to a question posed to Mr. Raver, that he failed to disclose?

MR. EDNEY: Objection to form.

A. I don't know.
Q. As you sit here today, can you identify any answer that Mr. Raver provided during his deposition on the 9019 hearing that Dugaboy contends today was inaccurate or misleading?
A. I do not know.
Q. Do you know that the Dallas Foundation and Dugaboy also deposed James Siri (phonetic) and David Claus (phonetic)?
A. I was not aware.
Q. Okay.
Then I'll leave that alone.
You're aware that I took the depositions of Ms. Diaz and Mr. Littleton in connection with the Dallas Foundation objections, correct?
A. Yes.
Q. Are you familiar with their testimony?
A. I never saw the deposition.
Q. Are you aware that they testified that Mr. Patrick did not need to obtain the Dallas Foundation's consent to enter into the HMIT settlement on behalf of the HMIT entities?

MR. EDNEY: Objection to the form of the question.

A. I'm not aware of her testimony.

Q. Is it your position that Mr. Patrick needed the Dallas Foundation's consent before entering into the HMIT settlement?

MR. EDNEY: Objection to the form of the question.

A. State of disarray. I don't believe he had any authority by the time he got to June of '25.

Q. Okay.

But Dugaboy didn't make that objection to the Court; is that right?

MR. EDNEY: Objection to the form of the question.

A. Not that I'm aware of or aware that it was necessarily to do that.

Q. Okay.

Before Mr. Patrick automatically ceased to be the control person of the HMIT entities, it your understanding that he did have the authority to enter into settlement agreements without needing to obtain anybody else's consent?

MR. EDNEY: Objection to the form of the question.

A. No, I'm not -- no.

Q. Whose consent did he need?

A. It depends on what period of time. You go back to -- you go back to early '25, when all the underlying charities have said we've lost confidence with you, we believe you've embezzled money, we believe you're not working the best interest, we want our stuff distributed in kind, you can make the argument he lost all authority at that point.

You can make the argument -- yeah. But I'm just -- I'm not going to admit that he had any legitimate authority by the time June rolled around.

Q. Great.

So I'm trying to -- my question was intended to address that point.

You're not able to tell me with specificity the date on which Mr. Patrick lost authority to act on behalf of the HMIT entities; is that right?

MR. EDNEY: Objection to the form of the question.

A. I said it earlier. And, you know, we still have to peel back the onion on when the bad acts, the self-interest, the embezzlement, embezzlement in the form of compensation, when did all that stuff begin?

When did the bad acts begin that triggered the automatic?

But it was quite while ago.

Q. Well, the first act that's in your sworn declaration is June 2023, when he asked for $10,000 charitable contribution to be made to a charity that him and his wife and his daughter controlled.

Do you remember that?

MR. EDNEY: Objection to the form of the question. Lack of foundation.

A. I barely remember the incident you're describing. But he didn't asked. He had just taken it. That was --

(Multiple speakers.)

Q. Do you remember --

A. It was -- (inaudible.)

Q. Do you remember any so-called bad act that happened before that?

A. Like I said, we're still peeling

back the onion.

Q. I appreciate that.

Given all of the peeling that you've done, are you aware of any bad act that occurred before June of 2023?

A. I don't know. But it's definitely began around there. I don't know if it began earlier than that. But it definitely around then, for sure.

Q. Great.

So in December 2022, would Mark Patrick have had the authority to enter into the HMIT settlement with the Highland entities?

A. I don't know.

Q. You don't have a view one way or the other.

Is that fair?

A. We don't have enough detail and evidence. Eventually a receiver gets placed in, and eventually everything gets discovered. And we'll know then.

Q. Sir, I'll try it this way.

Would John Honis have had the authority to enter into the HMIT settlement

agreement with the Highland entities?

MR. EDNEY: I'm objecting to the form of the question.

A. Generally, I believe so.

Q. Okay.

So it's your understanding that under the terms of Hunter Mountain Investment Trust agreement, that the administrator or control person has the authority to settle matters on behalf of the trust without obtaining any anybody's consent.

Is that fair?

A. I think there's a duty of care. Fiduciary responsibility of the owners are, you know.

Q. Who owns -- I'm sorry. Go ahead.

A. Within that context.

Q. You're aware that after I took the depositions of Ms. Diaz and Mr. Littleton, the Dallas Foundation withdrew their objection to the HMIT settlement with prejudice; isn't that correct?

MR. EDNEY: Objection to the form of the question.

A. Are you talking about the Sunday

afternoon badgering that you noticed the day before? Is that the depo you're talking about?

Q. Sir, can you answer my question.

A. I'm trying to understand which depo you're talking about.

Q. You're aware that I took the depositions of Ms. Diaz and Mr. Littleton, correct?

A. Which one? Or what day was it?

Q. I only took their deposition once, sir.

A. What day was it?

Q. I have no idea.

What difference does it make?

A. Just trying to get a sense for it in my mind.

Q. You're aware that after those depositions, the Dallas Foundation withdrew its objection to the 9019 settlement with prejudice, correct?

MR. EDNEY: Objection to the form of the question.

A. I wasn't aware that it was with prejudice, but yes.

Q. As you sit here today, you do not

understand that the Dallas Foundation withdrew their foundation with prejudice?

MR. EDNEY: Lack of foundation. Objection to the form of the question.

A. I knew they'd withdrawn it. I didn't know it was with prejudice.

Q. Okay.

And the Dallas Foundation's objection was based on allegations that Mark Patrick lacked authority to enter into the HMIT settlement agreement on behalf of the HMIT entities because he engaged in wrongful conduct; isn't that right?

MR. EDNEY: Objection to the form of the question.

A. Can you repeat it again, please.

Q. The basis for the Dallas Foundation's objection to the 9019 settlement was that Mark Patrick had engaged in wrongful conduct such that he could not act on the HMIT entities' behalf; isn't that right?

A. Generally. I'd rather have a document to look at to answer that question, specifically.

Q. Well, you're aware that the Dallas

Foundation filed their objection, correct?

A. Yes.

Q. And the Dallas Foundation had the opportunity to take discovery, correct?

A. Yes.

Q. And the Dallas Foundation took discovery, correct?

A. Yes.

Q. And the Dallas Foundation withdrew its objection with prejudice, correct?

MR. EDNEY: Objection to the form of the question.

MR. MORRIS: I apologize.

BY MR. MORRIS:

Q. And you're aware that the Dallas Foundation withdrew its objection, correct?

A. Yes.

Q. I do listen.

Are you aware that in addition to withdrawing its objection, the Dallas Foundation, Crown Global, Empower Dallas, and the Okada Family Foundation also entered into a binding term sheet with the HMIT entities?

MR. EDNEY: Objection to the form of the question.

A. No, I was not aware of that.

Q. Is that news to you today that the Dallas Foundation, Crown Global, Empower Dallas, and the Okada Family Foundation entered into a binding term sheet with the HMIT entities in connection with the withdrawal of its objection to the 9019 motion?

MR. EDNEY: Objection to the form of the question. Asked and answered.

A. I never saw the paperwork. I wasn't aware that it was a term sheet.

I know that Mark Patrick tried to orchestrate a settlement that also released the estate of bad actors in the estate. But I'm not aware of the term sheet or the mechanism for the seller.

Q. Are you aware that when -- when -- withdrawn.

Are you aware that following the Dallas Foundation's withdrawal of its objection, Mark Patrick retained the control position of the HMIT entities from the perspective of the Dallas Foundation?

MR. EDNEY: Objection to the form of the question.

A. I don't remember the specifics.

Q. Do you know that the Mark Patrick signed an agreement on behalf of the HMIT entities with the Dallas Foundation, Crown Global, Empower Dallas, and the Okada Family Foundation that left him in place as the control person of the HMIT entities?

MR. EDNEY: Objection to the form of the question.

A. I -- I don't know the specifics. I know -- I know he -- he gave releases, got releases, got no consideration. Yeah. But I don't know the specifics of the paperwork.

Q. Okay.

It's on the docket.

A. Okay.

MR. EDNEY: Good point.

THE WITNESS: Can we take a break again, please.

MR. MORRIS: Sure.

How long would you like, sir?

THE WITNESS: 15 minutes.

MR. MORRIS: We're running kind of late. And I know we started late. I'm concerned about the court reporter.

It's not that I mean to press you, but I think she expected the day to end earlier than it's going to be.

So let's come back at --

THE WITNESS: 2:30.

MR. MORRIS: Mr. Dondero, you'll be responsible for this.

Take as long as you want.

MR. EDNEY: We'll see you at the bottom of the hour, Mr. Morris. Thank you.

(Recess is taken.)

BY MR. MORRIS:

Q. In its current motion, Dugaboy contends that the settlement agreement that was approved last June should be set aside because Dugaboy has newly discovered evidence and uncovered evidence of fraud, correct?

A. I believe that's what the pleadings say.

Q. Okay.

Did you personally convey any of that newly discovered evidence or fraud to the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation?

A. I did not.

Q. Why not?

A. I wasn't person of knowledge or direct knowledge. And all the people you mentioned were getting it directly from the liquidators -- (inaudible) -- anyway.

Q. The liquidators of what?

A. The liquidators or Stockton from Holland & Knight. All the people you mentioned were getting direct channels from them.

Q. Great.

So it's your understanding that the Dallas Foundation, Crown Global, Empower Dallas, and the Okada Family Foundation has all of the newly discovered evidence and all of the new evidence of fraud, and they got it through other channels.

Do I have that right?

MR. EDNEY: Objection to the form of the question.

A. I'm just saying I may keep them apprised. I believe to the extent that they needed to or wanted to be appraised, they had their other channels of information.

Q. Do you have reason to believe that the liquidators and Holland & Knight gave those

entities the newly discovered information and the new information about fraud?

Yes or no, do you have a reason to believe that?

MR. EDNEY: Objection to the form of the question.

A. I believe the liquidators have had numerous regular conversations with Holland & Knight and David Stockton, sometimes individually and sometimes with the charities on the phone. But I believe that's correct.

Q. The information in the writ, you thought was really powerful, right?

A. The allegations. Correct.

Q. And did you feel any responsibility at all to make sure that the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation was aware of that information?

MR. EDNEY: Objection to the form of the question.

A. I don't know why we keep going in circles on this.

I was recused from direct information. They had much more direct

information from the liquidators. Whatever we got it in mid July, I believe they either got it before or contemporaneously.

So there was no reason for me to have to send it to them on the -- the 15th. If that's what you're asking.

Q. Yes.

And how about any of the e-mails or organizational charts that you mentioned earlier that trickled in after the writ was filed?

Do you know whether that information was provided to the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation?

A. I believe, in general, we were the last to get information. I believe, as liquidators uncovered information, they made it known to the charities, and then we would find out about it later.

Q. Do you know if Holland & Knight represents the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation?

A. I know they represent Dallas Foundation, Kansas City, Santa Barbara. I do

not know if they represent Okada or Empower.

Q. Okay.

And when I talk about the Dallas Foundation, I'm not talking about Highland Dallas Foundation.

I'm talking about the Dallas Foundation entity that filed the objection to the 9019.

Those are two different entities, right?

A. Yes.

Q. Okay.

So it's your understanding that Holland & Knight represents the supporting organizations.

Is that fair?

A. Yes.

Q. So the supporting organizations would've gotten all of this information from either the joint official liquidators or from Holland & Knight.

Is that your understanding?

A. Yes.

Q. Do you have any -- do you know if anybody provided this newly discovered evidence

and this evidence of fraud to the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation?

MR. EDNEY: Objection to the form of the question.

BY MR. MORRIS:

Q. You may answer.

A. John, I feel like I've answered this like five times.

But you want me to answer it again?

Q. Yeah.

Maybe I missed it, sir. I really do apologize. You know, I don't like repeat myself. But I don't think I asked the question.

But go ahead.

A. Okay. The July 15th payment writ was allegations. All the evidence came in subsequently over time. The direct channels of communication, because I was recused, was between the charities and supporting orgs and the liquidators.

We have Stockton in the middle and Maples in the middle, with the Grant Thornton woman also involved.

I've said that four times.

And the information has come in over the last six, seven, eight months. The evidence and the details supporting the excessive compensation, supporting the -- the e-mails supporting trying to camouflage and make sure that, you know, no one would ever find out about the machinations and the restructurings.

All of that stuff has come in over the last six, seven months. That's why we're here with the Rule 60 now instead of whatever, August of last year.

Q. Well, the joint official liquidators must have had some information because they made the allegations.

They didn't just make them up; is that right?

A. That's right. And they had quotes from e-mails. They had snippets from e-mails. Details permeating their thing.

But they didn't have the actual e-mails in their writ. They didn't have the actual evidence. That all came later.

Q. All right.

I think the problem that I was having, Mr. Dondero, is that my understanding is that JOLs have the supporting organizations under liquidation committee.

And I think you've agreed with that; is that right?

A. Yes.

Q. But do the JOLs have any relationship with the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation?

A. I think that's who they view their claim as.

Q. Okay. I didn't understand that.

A. Okay.

Q. In addition to the Highland Dallas Foundation, the Highland Kansas City Foundation, and the Highland Santa Barbara Foundation, your understanding is that the JOLs also believe their clients include the Dallas Foundation, Crown Global, Empower Dallas, and the Okada Family Foundation.

Do I have it right?

MR. EDNEY: Objection to the form of the question.

A. No, the three underlying supporting works.

(Multiple speakers.)

Q. Exactly --

A. Not Empower.

Q. Right.

A. Not the Okada Family Foundation.

Q. Okay.

So now, we agree that the JOLs are only connected to the supporting organizations, right?

MR. EDNEY: Objection to the form of the question. Misstates testimony.

BY MR. MORRIS:

Q. You can answer, sir.

Let me ask a different question.

Let's put the supporting organizations to the side because they're getting information from Holland & Knight and the JOLs.

Do you know whether anybody gave the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation the information that was in the writ and that trickled in after the writ was filed?

A. Not that I'm aware of.
Q. Did you give them that information?
A. No -- maybe this is why I keep struggling.
Where would I be getting it from?
Q. You had the information.
You represented -- Dugaboy filed on July 17th a motion for a stay and attached the writ, correct?
A. Yeah. We had the writ. But we didn't have -- we didn't have the underlying evidence in the writ.
Q. Did you give -- did you give the writ to the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation?
MR. EDNEY: Objection to the form of the question.
A. No, they all got it, as far as we knew, directly from the Caymans.
Q. Okay.
So you believe that they got the writ directly from the Caymans.
Is that your understanding?
A. Yes.
Q. Okay.

Do you also believe that those four entities as opposed to the supporting organizations also obtained the evidence that you referred to, the details that you referred to, that support the allegations in the writ?

Do they have that, too?

MR. EDNEY: Objection to the form of the question.

A. Yes, that is my belief, that they have been in the workstream and they get it, put it together, compile it, get versions of it long before we see it.

Q. Okay.

And what is your basis for believing that the Dallas Foundation, Crown Global, Empower Dallas, and the Okada Family Foundation have the same information that you have, they just got it earlier?

MR. EDNEY: Objection to the form of the question.

A. They're not subject to recusal the way we are. And they're not subject to some of the privy and publication issues as being somebody directly involved in the Cayman, as I understood it.

Their access is better and different than ours was.

Q. Okay.

Neither the Dallas Foundation nor Crown Global nor Empower Dallas nor the Okada Family Foundation has joined Dugaboy's motion to set aside the order approving the HMIT settlement; is that right?

A. I don't know.

Q. Do you have any reason to believe that any of those entities have joined Dugaboy's motion to set aside the 9019 settlement?

A. I don't know. I don't believe so, but I don't know.

Q. Do you control Empower Dallas?

A. No.

Q. Who controls Empower Dallas?

A. It's a three-person board. I don't have -- for tax purposes, it's a board. It's not -- it's not controlled. The president title is not a functioning executive --

Q. Okay.

A. -- power, as I understand it.

Q. Have -- have -- Ms. Diaz is at both

the Dallas Foundation and the Highland Dallas Foundation, correct?

A. Yes.

Q. Did you ever tell Ms. Diaz, Ms. Diaz, we've got newly discovered information, we've got more evidence of fraud, you should join Dugaboy's motion to set aside the 9019 settlement?

Did you ever discuss it with her?

MR. EDNEY: Objection to the form of the question.

A. She had -- again, she gets information before we do. She's -- you know, she's in the charity business. She's not in the justice business.

Q. Is that what she told you?

A. No. I didn't talk to her about it.

Q. Did you ever recommend to the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation that they join in Dugaboy's motion?

MR. EDNEY: Objection to the form of the question.

A. I did not.

THE COURT REPORTER: I'm sorry. I

didn't get his answer.

Q. He said, I did not.

So you didn't feel any responsibility to try to solicit the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation to join Dugaboy in it motion to set aside the settlement, correct?

MR. EDNEY: Objection to form.

A. I did not.

Q. Okay.

And to the best of your knowledge, neither the Dallas foundation nor Crown Global nor Empower Dallas nor the Okada Family Foundation has sought to rescind the binding term sheet that was signed last June on the ground of fraud or newly discovered evidence, correct?

MR. EDNEY: Objection to the form of the question.

A. I don't know.

Q. Did you ever recommend to the Dallas Foundation, Crown Global, Empower Dallas, or the Okada Family Foundation that they try to get out from the agreement that they entered into with the HMIT entities as part of the

withdrawal of their objection to the HMIT settlement?

MR. EDNEY: Objection to form.

A. I did not.

MR. MORRIS: Can we go back to Exhibit 3, please.

BY MR. MORRIS:

Q. Can you see that, Mr. Dondero?

A. Yup.

Q. To the best of your knowledge, Dugaboy has never had an interest of any kind in any of the entities that are in the red boxes; is that correct?

MR. EDNEY: Objection to form.

(Document review.)

A. As I sit here today, I don't think so, but I would need to defer to counsel.

Q. Okay.

Until early 2025, is it your understanding that Crown Global was the sole limited partner of Atlas IDF LP?

MR. EDNEY: Objection to form.

A. Yeah, I don't know.

Q. Did you -- did you have an understanding that Atlas IDF LP held the

ownership interest as reflected on this document in the entities below it?

MR. EDNEY: Objection to form.

A. Yeah, I don't know.

Q. Are you aware that Atlas IDF LP only owned 99 percent of the limited partnership interest in Rand PE Fund I LP?

MR. EDNEY: Objection to form.

A. I can read the chart.

I don't have awareness, though.

Q. All right.

I'm going to refer to Rand PE Fund I LP as Rand.

Is that okay?

A. Sure.

Q. Are you aware that the remaining one percent of Rand was held by two entities, one called Dolomiti LLC and one called Hakusan LLC?

MR. EDNEY: Objection to form.

A. This is not ringing a bell.

Q. Do you know if Dugaboy ever held an interest in an entity called Dolomiti LLC?

A. Not that I recall at this point.

Q. On February 6, 2025, Mr. Patrick,

acting as the control person of Rand, redeemed the limited partnership interest held by Dolomiti LLC and Hakusan; isn't that right?

MR. EDNEY: Objection to form.

A. I do not have awareness of that.

MR. MORRIS: Can we mark as Exhibit 4 the document that's Tab 14.

(Dondero Exhibit 4, Letter, marked for identification.)

BY MR. MORRIS:

Q. 300 Crescent Court, Suite 700, that's NexPoint's address, rights?

A. Yes.

Q. Have you ever heard of Dolomiti LLC?

A. Not before today.

Q. Why don't you take a moment and review this document.

Its -- its entirety is on the screen right now. It's just those two paragraphs.

(Document review.)

A. Okay. I've read it.

Q. Okay.

You see the document was sent by certified mail, return receipt requested, right?

A. Yes.
Q. Okay.
Do you have any reason to believe that Dolomiti didn't receive this letter in February 2025?
MR. EDNEY: Objection to form.
A. I have every reason to believe Mark Patrick didn't have authority to do it.
Q. Okay.
Do you know whether anybody acting on behalf of Dolomiti ever told him that?
MR. EDNEY: Objection to form.
A. I do not have awareness.
Q. Do you understand that pursuant to this document, Rand redeemed Dolomiti's less than one percent interest in that entity?
A. That appears to be what it says.
Q. And does it also appear to say that on the same date, in the same letter, Dolomiti was also informed that it was no longer entitled to exercise voting rights afforded to limited partners of Rand under the LPA?
A. That's what it says.
Q. Are you aware of anybody objecting on behalf of Dolomiti's behalf as to the

actions being taken by Rand as set forth in this letter?

MR. EDNEY: Object to form.

A. I do not have awareness.

Q. Okay.

You understand, though, that following -- let's just go to the next page.

Do you see Mr. Patrick's signature there on behalf of Rand?

A. Yes.

Q. Okay.

Let's go to the next page. I'm sorry. Keep going. Keep going.

Stop there.

2101 Cedar Springs Road.

Is that an address where Mr. Okada maintains an office?

A. I don't know.

Q. Do you know if Hakusan is an entity that was directly or indirectly owned by Mr. Okada?

A. I do not.

Q. Is it fair to say you have no knowledge that Hakusan ever objected to the actions being taken by Rand as set forth in

this letter?

A. I do not know.

Q. Is it your understanding, based on your experience, that following the redemption of the Dolomiti and Hakusan limited partnership interest, that Atlas would've become the 100 percent owner of the limited partnership of Rand?

MR. EDNEY: Objection to form.

A. I don't know.

Q. Okay.

MR. MORRIS: All right. Let's go back to Exhibit 3, please.

BY MR. MORRIS:

Q. Before we look at this document again, do you have any reason to believe that Rand did not give proper notice to Dolomiti and Hakusan in February 2025 that its interests were being redeemed in Rand, and that it would no longer have any voting rights?

MR. EDNEY: Objection to form.

A. I think we covered this. But Mark Patrick as signatory, we do not believe had authority.

Q. Okay.

Did anybody tell Mark Patrick that?

MR. EDNEY: Objection to form.

MR. MORRIS: Withdrawn.

Fair enough.

BY MR. MORRIS:

Q. Did anybody ever tell Mark Patrick that he didn't have the authority to act on behalf of Rand to redeem the limited partnership interest held by Dolomiti and Hakusan?

MR. EDNEY: Objection to form.

A. Not that I'm aware of. And not that I'm aware was necessary.

Q. Okay.

So looking back on the chart that's on the board. We've got Crown Global Life Insurance Limited, the Bermuda entity on the left, right?

Is it your understanding that Crown Global ever had any right to control any of the HMIT entities?

MR. EDNEY: Objection to form.

A. I don't want to speculate on a legal conclusion, when Mark Patrick drops out of authority, where authority falls back to.

Q. Isn't the point of creating this structure to separate the economic beneficiaries from the controlling parties?

MR. EDNEY: Objection to form.

A. I would not say that.

Q. No, you think that economic beneficiaries are permitted to control the -- the same entity and still maintain their -- their tax status?

MR. EDNEY: Objection to form.

A. I would not say that either.

Q. Okay.

Can you tell me, based on your understanding, the circumstances under which an economic beneficiary of a -- of an organization can also control it -- withdrawn.

Your declaration sets out the distinction between economic beneficiaries and controlling entities, correct?

A. I don't know.

MR. EDNEY: Objection to form.

BY MR. MORRIS:

Q. Do you know the difference between the participation shares and the management shares?

MR. EDNEY: Objection to form.

A. They're different in every transaction. In every structure.

Q. Okay.

For this structure, do you know there's a distinction between management shares and participation shares?

MR. EDNEY: Objection to form. Lack of foundation.

A. I would have to be refreshed.

Q. Okay.

We'll do that on Monday.

When John Honis controlled the boxes in red, did he share that control with any person, to the best of your knowledge?

MR. EDNEY: Objection to form.

A. I don't know the Crown Global or the Charitable DAF influence on -- or rights on the red boxes when John Honis was administering the red boxes.

Q. Okay.

So the answer is you don't know?

A. Yes.

Q. Okay.

You're aware that Mark Patrick told

Crown Global in February of 2025 that he was going to liquidate Atlas, correct?

MR. EDNEY: Objection to form.

A. I do not have awareness of that.

MR. MORRIS: Okay. Can we put up Tab 4. And let's call it Exhibit 5.

(Dondero Exhibit 5, Affidavit, marked for identification.)

MR. MORRIS: And if we can go to paragraph 41.

BY MR. MORRIS:

Q. Do you recall signing an affidavit in support of the supporting organizations' winding up petition that was filed in the Cayman Islands?

MR. EDNEY: Mr. Morris, can I ask before you start asking questions about this document, that you show him what it is. I think --

MR. MORRIS: Sure.

MR. EDNEY: -- we blew fast the first page awfully fast.

MR. MORRIS: Can we go back up to the top, please.

MR. EDNEY: Maybe not that page.

There we go.

BY MR. MORRIS:

Q. All right.

Do you see that this is your affidavit?

A. Sure.

Q. Do you see in the upper right-hand corner, in the European style, it says it was filed on April 16, 2025?

A. Yup. Yes.

Q. This is -- this is before there ever is a 9019 settlement motion, right?

A. Yes.

Q. And the reason that you signed this affidavit is because you wanted the supporting organizations' winding up petition to be granted, right?

A. Yes.

Q. Okay.

Who drafted this?

A. I don't know. It would have been some combination of in-house counsel and outside counsel.

Q. In-house counsel where? At Skyview?

A. I don't know.

Q. In-house counsel at NexPoint?
A. I don't know.
Q. So when you use the phrase in-house counsel, who are you referring to?
A. Soughter (phonetic) handles most of this kind of stuff. But I don't know for sure if it was him.
Q. Did you review this document before you signed it?
A. Yes.
Q. Did you think that it was accurate at the time?
A. Yes.
Q. Okay.
Let's go to paragraph 41, please.
Okay. The first sentence begins (as read): On February 20, 2025, Mr. Patrick, in his capacity as the general partner of Atlas IDF GP LLC, sent a letter to Crown Global Insurance advising of the intention to dissolve Atlas in accordance with the partnership agreement dated November 30, 2015.
Other than the use of the European style for the dates, have I read that accurately?

A. Yes.

Q. So you knew before there ever was an 9019 settlement agreement that Mr. Patrick exercised his authority as the general partner of Atlas IDF GP LLC to dissolve Atlas, and that he gave notice of that effect to Crown Global, correct?

A. Yes.

Q. Okay.

And so, we saw the redemption letters of Dolomiti and Hakusan.

And now, we see that Mr. Patrick is giving notice to Crown Global of his intention to resolve Atlas. And all of this is being disclosed before there's ever a 9019 settlement.

Is that fair?

MR. EDNEY: Objection to form.

A. I'm sorry. What was the question again?

Q. Mr. Patrick, in February of 2025, before there was a 9019 agreement, has told Dolomiti and Hakusan that it was redeeming their limited partnership interest in Rand, and he told Crown Global that he intended to

dissolve Atlas; is that right?

A. Yes.

Q. Okay.

Did anybody with that information seek injunctive relief?

Did anybody run into court to try to stop what he was doing?

A. I don't know if we knew enough at the time, that he had lost his authority. I don't know if we had enough information yet.

But I don't remember anybody running into court, no.

Q. Did anybody object to these steps that he was taking?

A. There was a lot of back-and-forth and objection regarding those notes in particular. But I -- I don't remember the specifics.

Q. He also -- you came to learn before you filed this affidavit that Mr. Patrick had caused Beacon Mountain to be sold for about a million dollars; is that right?

MR. EDNEY: Objection to form.

A. I don't remember. I don't remember what was in Beacon Mountain.

Q. Hunter Mountain?

A. I don't remember what was in Beacon Mountain.

Q. Let's look at your declaration?

MR. MORRIS: Can we scroll up to, I guess, paragraph 38.

BY MR. MORRIS:

Q. So you knew no later than April 16th that in February of 2025, Mr. Raver had asked for inbound wire instructions for an affiliate that owned a position in a trust called Hunter Mountain.

Do you see that?

A. Yes.

Q. What affiliate does that refer to?

A. I don't know.

Q. Is that Dolomiti?

A. I don't know.

Q. Did you know when you signed the affidavit?

MR. EDNEY: Objection to form.

A. I don't remember.

Q. But you knew that Hunter Mountain owned most of the distribution rights of the equity position in Highland bankruptcy,

correct?

A. Yes.

Q. And as a result of inquiries -- if we can go to paragraph 39 -- you learned before there ever was a 9019 settlement, that Mr. Raver had disclosed that the entire Hunter Mountain position had been sold to an unidentified party for a million dollars, right?

MR. EDNEY: Objection to form.

A. Yeah, the affidavit says what it says. But that's essentially what it says.

Q. Right.

So did you ever learn who the buyer was of Beacon Mountain?

A. I never saw the document. I believe I heard through counsel that it was DFW. I don't know for sure. If that's a factual question.

Q. But you knew the identity of the buyer before the 9019 hearing.

Isn't that fair?

MR. EDNEY: Objection to form.

A. No.

Q. No?

When did you learn of the identity of the buyer?

A. I don't know. But it was -- we knew very little in June and July.

Q. Did -- did you think to ask the question during discovery in connection with the 9019 motion?

Did anybody ask Mr. Raver or Mr. Patrick who bought -- who bought Beacon Mountain?

MR. EDNEY: Objection to form.

A. I don't know.

Q. Are you aware of any reason why somebody couldn't have asked that deposition -- that question in either one of their depositions?

MR. EDNEY: Objection to form. Assumes facts not in evidence.

A. Maybe they did. I don't know.

Q. In fact, it is very possible that they did; isn't that right?

MR. EDNEY: Objection to form.

A. No idea.

Q. And you never -- you never thought to suggest to anybody that somebody inquire as

to the identity of the buyer of Beacon Mountain as part of the discovery process in the 9019 hearing.

Is that fair?

A. I wasn't directly involved with the questions set.

Q. You were fully aware that Mark Patrick was taking for himself what you believed to be oversized compensation long before there was a 9019 settlement; isn't that right?

MR. EDNEY: Objection to form.

A. I think we were aware of first 7 or 8 million, but not the next 15 million.

Q. All right.

MR. MORRIS: Let's go up to paragraph 31.

BY MR. MORRIS:

Q. I'm sorry, Mr. Dondero.

Did I cut you off?

A. No, that's my recollection. Let's see what it says.

Q. So your declaration that was filed in April, you noted that the fees went from 40,000 in 2022 to 600,000 in 2023 to 2 and a

quarter million dollars in the first half of '24 alone.

Do I have that right, in 31A?

A. Yes, I believe this was accurate at the time.

Q. Okay.

Did anybody think to ask Mr. Patrick or Mr. Raver during their depositions what compensation was paid in the second half of 2024 and the first half of 2025?

MR. EDNEY: Objection to form.

A. I mean, I don't know whether it came out of those depositions or Cayman stuff. You know, there was a lot more directors' fees and a lot more compensation paid than these numbers.

Q. I'm just asking you whether or not you're aware of any barrier to the Dallas Foundation or Dugaboy that would have prevented them from inquiring as to Mr. Patrick's or the director's compensation during the 9019 proceeding?

MR. EDNEY: Objection to form.

A. I don't know if people ask, like, how much money he stole lightly.

You know, can you update monies that you've stolen?

I don't know if all those questions were asked.

Q. Did you do anything to make sure on Dugaboy's behalf that those questions were asked?

MR. EDNEY: Objection to form.

I'm going to instruct him not to answer to the extent it calls for his communications with counsel that were handling those hearings.

The record of that case speaks for itself.

A. I wasn't directly --

MR. EDNEY: Don't answer the question.

MR. MORRIS: He can -- why can't he answer the question?

MR. EDNEY: Because it calls for privileged information.

I'm instructing him not to answer.

Move along, Counsel.

MR. MORRIS: I'll try again.

BY MR. MORRIS:

Q. Did it occur to you, Mr. Dondero, to try to obtain information as part of the discovery process concerning Mr. Patrick or the director's compensation?

MR. EDNEY: Objection to form.

A. I wasn't directly involved. I left it in the competent hands of my attorneys.

Q. How about the expenses?

Were you offended by the expenses that were being incurred by Mr. Patrick?

A. I was offended by these expenses that we outlined in the affidavit.

Q. Okay.

A. And those were just the tip of the iceberg.

Q. Do you know if Dugaboy made any effort to obtain information as part of the discovery process concerning the expenses that were being incurred?

MR. EDNEY: Objection to form.

A. I wasn't involved in the questions set. I left it to the competent hands of the attorneys.

Q. You accused Mr. Patrick of misusing material nonpublic inside information; is that

right?

A. Yes.

Q. What material nonpublic inside information do you contend that Mr. Patrick abused?

A. I don't remember exactly. But I believe it was -- if it wasn't part of this affidavit, maybe the other affidavit.

But it was regarding a restructuring of a private REIT. And yeah -- I believe the evidence was clear. I don't remember whether it was e-mails or conversations with recently deceased Doug Mancino (Phonetic).

Q. Mr. Patrick advised the Dallas Foundation to exercise a put option; isn't that right?

A. Correct.

Q. Who is on the other side of that transaction?

A. One of the private REITs that we manage here.

Q. What private REITs that you managed was the other side of the put option?

A. A small little hospitality REIT.

Q. And if the Dallas Foundation had

exercised that put option, do you have an understanding of how much money it would have received?

A. No.

Q. You didn't want the Dallas Foundation to exercise the put option; isn't that right?

A. I didn't have an opinion.

Q. The exercise of the put option would've been adverse to the REIT; isn't that right?

A. The put option would've been outstanding for a long time. It wasn't timely or helpful. I think it was one of the many things Mark Patrick did to be punitive after he left. I don't think the economic consequence was significant.

That's my recollection.

Q. Well, how would it have been punitive?

A. Well, it just would've affected liquidity on, you know, a hospitality company that was getting its feet back under itself post COVID.

Q. So the exercise of put option would

have had adverse consequences for that entity, correct?

A. I -- yeah, I believe it would have been --

(Multiple speakers.)

Q. And that's --

A. -- yes.

Q. That's --

MR. EDNEY: Hang on. Let the man finish his answer.

Are you finished, Mr. Dondero?

A. Yeah, I believe it was unnecessary and unhelpful in terms of long-term value for that entity.

Q. For which entity?

A. That small hospitality REIT.

Q. If the Dallas Foundation had exercised the option, how much would the small hospitality REIT have to have paid?

A. It was only a few million dollars. But I don't remember the exact amount.

But again, he -- except for inside information, he would have no basis for deciding to do it or not do it.

Q. He didn't exercise any transaction,

did he?

A. I don't remember. It says what it says here. I don't remember exactly.

Q. Did you have any conversations with the Dallas Foundation about whether they should or shouldn't exercise the put option?

A. I did not.

Q. Did anybody acting on behalf of the small hospitality REIT?

A. Don't know.

Q. Do you know whether the Dallas Foundation ever exercised the put option?

A. I do not.

Q. Did the put option expire at some point?

A. Not that I'm aware of.

Q. Is the put -- was the put option in the money at this time?

A. I don't know.

Q. Did you ever report Mr. Patrick to the SEC?

A. I don't know on this or on other things. But we have a responsibility when we -- when we know registered investment advisors have done something improper. We have a

responsibility to inform regulatory bodies.

So we were implying it -- here. So if we were aware of anything, we did what we were supposed to do.

But I don't know, specifically.

Q. So you don't know if back in August 2024, Mr. Patrick's abusive material, nonpublic inside information, caused you to contact the SEC?

A. Like I said, I know as a registered investment advisor, just like the insider trading that Stone Hill did, we have an obligation to tell regulatory authorities. And we -- we do tell regulatory authorities when we have an obligation to.

Q. And I'm just asking you if you had an obligation in this case?

A. I'm just saying if we did, we did.

Q. So you don't know, as you sit here today, if you had an obligation.

Is that fair?

A. Correct. I don't know.

Q. All right.

MR. MORRIS: Let's take a ten-minute break. I may be close to done here.

It is 1:27 or, I guess, 3:27 your time. Let's actually take until 3:40.

(Recess is taken.)

BY MR. MORRIS:

Q. Mr. Dondero, are you sure that the obligor on the put option was a small hospitality REIT?

A. I'm not sure. That's my recollection, as I sit here today. But I have to refresh myself on it.

Q. Okay.

The JOLs haven't joined Dugaboy's motion to vacate the 9019 settlement; is that right?

A. I believe that's correct.

Q. In fact, the JOLs have never appeared in the Highland bankruptcy case; is that right, to the best of your knowledge?

A. I believe that's correct.

Q. The supporting organizations haven't joined Dugaboy's motion to set the 9019 settlement agreement aside; is that correct?

A. I believe that's correct.

Q. And to the best of your knowledge, has any -- have any of the supporting

organizations ever appeared in the Highland bankruptcy case?

A. I -- other than Julie Diaz that we've discussed, I do not believe so.

Q. And Julie Diaz, as we discussed, did not appear in the Highland bankruptcy case on behalf of the Highland Dallas Foundation; she appeared in the case on behalf of the Dallas Foundation; is that correct?

A. I believe that's correct.

Q. Okay.

And neither the Dallas Foundation nor Crown Global decided to join Dugaboy's motion to vacate the settlement; is that right?

A. I believe that's correct.

Q. Okay.

Can you tell me why Dugaboy filed its motion to vacate the 9019 settlement when nobody else is joining it.

MR. EDNEY: Objection to form.

A. Those are two separate issues.

Q. Okay.

I apologize. Let's take them one at a time.

Can you tell me why Dugaboy decided

to file the motion to vacate.

A. In a nutshell, where Patrick got no consideration, no meaningful consideration that he wasn't already entitled to, I guess, number one.

Number two, the Highland estate has been very unfortunate Chapter 11 that got flipped into a 7, but has been highly solvent since the beginning. It's highly solvent now, with tens or hundreds of millions of reserve accounts.

There's been, in our belief, bad acts and bankruptcy fraud, none of which should have been released. And Mark Patrick didn't deserve a release as part of it also.

Q. Okay.

Do you recall Highland's plan of reorganization and its disclosure statement?

A. Generally.

Q. Do you recall that in November of 2020, Highland projected that general unsecured creditors in Class 8 would recover 70 percent?

A. I thought it was even less. But something around that number, yes.

Q. And do you recall that Dugaboy and

other entities affiliated with you filed a host of objections to the plan?

A. Yes.

Q. Do you recall that none of those objections concerned valuation?

MR. EDNEY: Objection to the form of question.

A. That's not true. I think the objections were largely around lack of transparency, mismarked assets, lack of detail on the assets that were ultimately sold for $850 million. That if they had been sold well, would've been sold for $950 million against, you know, original claimants who all sold for 160 million, to affiliates or disclosed business relationships of Jim Siri and Grosvenor (phonetic.)

I think it's the biggest fraud that's occurred in bankruptcy in a decade.

Q. So it's your recollection that you and others affiliated with you objected to Highland's plans on the grounds that the valuations were inaccurate?

A. Yes.

Q. Okay.

Can you think of any other reasons that Dugaboy filed the motion to vacate?

MR. EDNEY: By the motion to vacate, you mean the one in February of 2026?

MR. MORRIS: Yes, sir.

MR. EDNEY: The Rule 60(b) motion, Jim.

A. Yeah, I think I highlighted them. There's significant solvency and there always has been in the estate. There's significant bad acts that will be more difficult to pursue, if the releases hold against Stone Hill and Fairlawn, in particular.

I think Mark Patrick had no meaningful consideration, and he gave himself releases. I think it would be unconscionable for it not to be set aside.

Q. Is it fair to say, based on your testimony, that you believe the settlement was in Highland's best interest?

MR. EDNEY: Objection to the form of the question.

A. I'm not even sure it was in Highland's interest. I think it was in Stone Hill and Fairlawn's best interest. And I think

it was in the best interest of professional fees that are north of 300 million in an $850 million estate. And likely to burn up the 150, 200 million that's left.

Q. Okay.

Are you aware that the supporting organizations commenced an action in Texas Business Court against Mark Patrick and others on or about July 1, 2025?

A. Yes.

Q. Are you aware that that case was abated?

MR. EDNEY: Objection to the form of the question.

A. If abatement means waiting for Cayman to join it, that's where I understand that is.

Q. Great.

And let's use that definition of abatement.

Is it your understanding that the case was abated in September 2025 and it remains abated today?

A. At the moment, yes.

Q. And do you know why the joint

official liquidators haven't joined that case?

MR. EDNEY: Objection to the form of the question.

A. I think it's a complicated answer. I don't want to speculate. I don't know the exact reasons.

Q. Okay.

Are you aware that the supporting organizations entered into a Rule 11 agreement with Mr. Patrick and the other defendants pending the abatement?

MR. EDNEY: Objection to the form of the question.

Do you know what a Rule 11 agreement is, Jim?

THE WITNESS: I do not.

MR. EDNEY: Remember, he's not a lawyer.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q. Are you aware of any agreement between the supporting organizations and Mr. Patrick and the other defendants arising out of or relating to the Texas business lawsuit?

A. Is that the injunction that's in place? Is that what the Rule 11 is?

Q. I'm talking about an agreement, not an injunction.

MR. EDNEY: Objection to the form of the question.

A. I don't have awareness.

Q. What injunction are you thinking about?

A. The judge in the Dallas business court put in an induction Mark Patrick's activities that is in place. Maybe not as tight as it should be, but it's in place.

Q. Do you understand that Mr. Patrick voluntarily consented to the terms of that order?

MR. EDNEY: Objection to the form of the question.

A. I believed the judge asked both sides to agree on something and they did.

Q. And pursuant to that agreement, Mark Patrick remains the sole authorized representative of the defendants in that lawsuit, correct?

MR. EDNEY: Objection to the form of

the question.

A. I don't know the specifics.

Q. Did you ever try to find out the terms of the agreement or the injunction that you're referring to?

MR. EDNEY: Objection to the form of the question.

A. Not specifically.

Q. Are you aware that the supporting organizations left Mr. Patrick in place as the control person of the defendants in the Dallas -- in the Texas business lawsuit?

A. Like I said, you know, consistent with the injunction and a desire to move the case forward, yeah.

Q. Okay.

So you're aware of that; is that right?

You're aware that the supporting organizations entered into an agreement pursuant to which Mr. Patrick remains in control of the defendants of the Texas business suit, correct?

MR. EDNEY: Objection to the form of the question.

A. At the moment, I believe that's the case.

Q. Thank you very much.

Ms. McGinnis is one of the JOLs; is that right?

A. Yes, I believe so.

Q. Do you know how the JOLs were identified?

A. It was a process.

Q. Do you know anything about the process?

A. A little bit, but not specifically.

Q. Do you know if anybody had a prior relationship with either of the JOLs before they were engaged?

MR. EDNEY: Objection to the form of the question.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. Do you know of anybody that you're affiliated with that had a prior relationship with the JOLs before they were engaged?

MR. EDNEY: Objection to form.

A. I have no awareness of such regarding Grant Thornton and Maples.

Q. Do you know if Scott Ellington had a prior relationship with Ms. McGinnis?

MR. EDNEY: Objection to form.

A. Not that I'm aware of.

Q. Okay.

Are you aware that for two days in December 2025, the Cayman court heard argument on the JOLs' writ?

A. Yes.

Q. And the JOLs' writ was supplemented by further declarations that were filed on behalf of the JOLs; is that right?

A. I don't have awareness of that.

Q. Are you aware that the Cayman court issued a decision in early February with respect to the JOLs' request for proprietary injunction?

A. My general awareness is they lost the stringent injunction that they had applied for in December, but they may have won most of it back on appeal recently. That's my knowledge.

Q. Let's take it one step at a time.

Is it your understanding that the JOLs -- withdrawn.

Is it your understanding that the Cayman trial court declined to issue any injunction following a two-day hearing in December?

MR. EDNEY: Objection to form.

A. That's not my understanding.

Q. What -- what action on behalf of Mr. Patrick was enjoined by the Cayman trial court, to the best of your knowledge?

A. To the best of my knowledge, they went to put in a strict injunction that would have stopped all the expense bleed and almost like a receiver. And that was not granted.

But then the appellate court put back in most of the injunction, but not the highly restricted receiver-type injunction that they are highly confident they're going to get in September.

Q. Okay.

I want to separate the appellate process from the trial court in the Cayman Islands.

Do you understand that?

A. I've given my full general understanding.

Q. You keep coming back to the appellate court. And we're going to get to that and you can tell me about the appellate court.

I'm just asking if you're aware of any injunction that was issued by the Grand Court of the Cayman Islands Financial Services Division on the JOLs' writ following the two-day hearing in December?

MR. EDNEY: Objection to form.

A. I have the same answer.

Q. They didn't issue any injunction; is that right?

MR. EDNEY: Objection to form.

A. They were looking for a very strict injunction and they didn't get it. I don't know what they did get.

Q. Okay.

So as you sit here today, you're not aware of the Grand Court of the Cayman Islands Financial Services Division enjoining Mr. Patrick in any way following the two-day hearing in December; is that right?

MR. EDNEY: Objection to form.

A. I know they didn't win in December.

They felt like they won at the appellate court recently. But that's all I know.

Q. Okay.

The appeal has not been heard; is that correct?

A. No, it has been.

Q. Your understanding is that the appellate court has already rendered a decision?

A. Correct.

Q. So what's going to happen in September?

A. That's the full injunction hearing.

The full evidentiary hearing, I understand, is in September. The appellate review, where they got appellate guys to fly in, that happened a month or two ago, reinstated some of the original injunction stuff and reversed the December judge, as far as I understand.

And then the true evidentiary hearing is coming in September. But that's all I know.

Q. Is it your understanding that what the appellate court did was adopt the terms of

the agreement in the Texas Business Court that had been agreed to by the supporting organizations and Mr. Patrick and the defendants there?

MR. EDNEY: Objection to the form of the question.

A. I'll state it one more time, because this is all I know. December released the criteria of the injunction that was in place prior to December. And they were disappointed by that.

When they got appellate relief, they put it back to where it was in September. I don't know if it mirrors Texas Business Court or not. So I can't answer affirmatively or negatively on that.

But the appellate court put it back to where it was prior to the December hearing.

And then the full evidentiary hearing is occurring in September, where they're optimistic based on all the facts and everything that they'll get a strong injunction in place.

Q. Okay.

MR. MORRIS: I've got nothing

further.

THE WITNESS: Thank you.

MR. EDNEY: All right. Mr. Morris, I don't have any redirect.

Thank you very much for your time today.

We can go off the record.

(Time Noted: 5:06 p.m.)

JAMES DONDERO

Subscribed and sworn to before me
this day of 2026.

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, LISA M. MURACO, a Notary Public within and for the State of New York, do hereby certify:

That JAMES DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 2026.

Lisa M. Muraco

LISA M. MURACO

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In re Highland Capital Management, L.P.
Dep. Date: FRIDAY, MAY 8, 2026
Deponent: JAMES DONDERO

CORRECTIONS:

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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS____DAY OF_____, 2026.

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(Notary Public) MY COMMISSION EXPIRES:_____

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EXHIBIT 78

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) *(admitted pro hac vice)*
Jordan A. Kroop (AZ Bar No. 018825) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

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

Counsel for Highland Capital Management, L.P.

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	Case No. 19-34054-sgj11
Reorganized Debtor.	

HIGHLAND CAPITAL MANAGEMENT, L.P.'S REQUESTS FOR THE PRODUCTION OF DOCUMENTS DIRECTED TO THE DUGABOY INVESTMENT TRUST

PLEASE TAKE NOTICE that pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034, incorporating by reference Federal Rules of Civil Procedure 26 and 34, Highland Capital Management, L.P., the reorganized debtor in the above-referenced bankruptcy case ("Highland"), hereby demands that The Dugaboy Investment Trust ("Dugaboy") produce for

[1] The Debtor's last four digits of its taxpayer identification number are (6725). he headquarters and service address for Highland is 6333 E. Mockingbird Lane, Suite 147 #5045, Dallas, TX 75214.

inspection and copying all non-privileged documents responsive to the requests below (the "Requests"), on or before **March 30, 2026, by 5:00 p.m. Central Time** in connection with the litigation concerning *Dugaboy's Motion for Relief From Order and Motion to Vacate* [Docket No. 4513] (the "Motion").

INSTRUCTIONS

1. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of this request to which the document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

2. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

3. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

4. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs or other media to be mutually agreed by the parties.

5. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs or other media to be mutually agreed by the parties with .tiff and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs or other media to be mutually agreed by the parties or use an ftp site upload.

6. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response to these Requests as required by Fed. R. Bank. P. 7026(e).

7. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

8. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

DEFINITIONS

1. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. "Concern" or "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

3. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

4. "ESI" has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

5. "You" or "Your" means The Dugaboy Investment Trust and any person or entity authorized to act on its behalf.

DOCUMENT REQUESTS

Request No. 1:

1. Concerning the Motion, all Documents and Communications that You contend constitute "newly discovery evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial." *See* Fed. R. Civ. Pro. 59(b).

Request No. 2:

2. Concerning the Motion, all Documents and Communications that You contend Concern "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party" for purposes of Fed. R. Civ. Pro. 60(b)(3).

Dated: February [ ], 2026

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 266326)
Jordan A. Kroop (AZ Bar No. 018825)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
jkroop@pszjlaw.com
hwinograd@pszjlaw.com

-and-

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

Counsel for Highland Capital Management, L.P.

EXHIBIT 79

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This Membership Interest Purchase Agreement (this "**Agreement**"), dated as August 1, 2022, is entered into by and among JOHN HONIS ("**Seller**"), RAND ADVISORS HOLDING CORP., a Delaware corporation ("**Buyer**"), and CLO HOLDCO, LTD. a Cayman limited company (the "**Guarantor**").

RECITALS

WHEREAS, Seller owns one hundred (100%) percent of the issued and outstanding membership interests, (the "**Interests**") of each of Atlas IDF GP, LLC, a Delaware limited liability company ("**Atlas GP**"), Rand PE Fund Management, LLC, a Delaware limited liability company ("**Rand GP**") and Rand Advisors, LLC, a Delaware limited liability company ("**Advisor**", and together with Atlas GP and Rand GP, each a "**Company**" and collectively, the "**Companies**");

WHEREAS, the Companies collectively manage certain private investment funds, including two (2) insurance-dedicated funds ("**IDFs**") and one (1) one private equity fund that one of the IDFs invests in (collectively, the "**Client Funds**");

WHEREAS, in addition to the foregoing with respect to the Client Funds, Advisor acts as the investment sub-advisor to Rand Advisors Series I Insurance Fund of SALI Multi-Series Fund, L.P., a Delaware series limited partnership (such, product, the "**SALI Fund**");

WHEREAS, Rand GP as the general partner of Rand PE Fund I, LP, ("**Rand LP**") manages: a) Rand LP; b) Rand LP's wholly owned subsidiary Beacon Mountain, LLC ("**Beacon**"); and c) Beacon's sponsorship and administration of the Hunter Mountain Investment Trust ("**HMIT**", and together with Rand LP and Beacon, the "**Managed Companies**"); and

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Interests, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
PURCHASE AND SALE

Section 1.01 Purchase and Sale. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Interests, free and clear of any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance. In connection with such sale of the Interests, Seller acknowledges that he retains no rights to any commissions or other compensation or consideration from (a) any Company, (b) any of the Client Funds, (c) the SALI Fund, (d) any of the Managed Funds, and/or (e) any person or entity affiliated with any of the foregoing, that has not been paid as of the Closing.

Section 1.02 Purchase Price. The purchase price payable by Buyer for the Interests shall be equal to One Million One Hundred Twenty Thousand ($1,120,000.00) Dollars (the "**Purchase Price**"). The Purchase Price shall be due and payable in sixteen (16) equal quarterly installments of Seventy Thousand ($70,000.00) Dollars (each, an "**Installment Payment**") with the first Installment Payment payable on the Closing Date and subsequent Installment Payments made quarterly thereafter on March 31, June 30, September 30 and December 31 of each calendar year until the Purchase Price has been paid in full; *provided, however*, that if any Installment Payment is due and owing on a day that is not a Business Bay, such Installment Payment shall be paid on the next Business Day. For purposes of this Agreement, the term "Business Day" means any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in New York, New York. Each Installment Payment shall be paid to Seller pursuant to the wiring instructions provided in writing at least two (2) days prior to Closing; *provided* that Seller may provide alternative wiring instructions in writing at least two (2) days prior to any Installment Payment.

ARTICLE II
CLOSING

Section 2.01 Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place electronically as of the Effective Date, with the parties executing and exchanging all material closing documents by counterpart, as applicable, on the date that all deliverables pursuant to Sections 2.02 and 2.03 have been delivered, or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "**Closing Date**".

Section 2.02 Seller Closing Deliverables. At the Closing, Seller shall deliver to Buyer the following:

(a) The resignation letter, resigning in all capacities from each of the Companies.

(b) The independent contractor agreement, by and between Seller and Buyer, dated as of the date hereof (the "**Independent Contractor Agreement**"), countersigned by Seller.

(c) The books and records of the Companies.

Section 2.03 Buyer's Deliveries. At the Closing, Buyer shall deliver the following to Seller:

(a) The Purchase Price.

(b) The Independent Contractor Agreement, countersigned by Buyer.

(c) Evidence of compliance with Section 5.01(b).

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this ARTICLE III are true and correct as of the date hereof.

Section 3.01 Organization and Authority of Seller. Seller is a natural person and resident of the State of New York. Seller has all necessary authority to enter into this Agreement, to carry out his obligations hereunder and to consummate the transactions contemplated hereby. This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.02 Organization, Authority, Qualification and Ownership of the Companies. Each Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it is currently conducted. Each Company is duly licensed or qualified to do business and is in good standing in each jurisdiction where the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a material adverse effect. Seller is the sole owner and member of each Company.

Section 3.03 Employment Matters. Seller is the only employee of each of the Companies.

Section 3.04 Title to Interests. Seller has exclusive and valid title to all of the Interests, with the absolute right to sell, assign and transfer the same to Buyer free and clear of all liens, pledges, security interests and encumbrances. Seller has not assigned, transferred or sold any rights, options or other benefits associated with the Interests. Further, Seller represents and warrants that the assets of the Companies are free and clear of any and all liens, pledges, security interests and other encumbrances.

Section 3.05 No Restrictions Against Sale. Seller has full right, power and authority to sell the Interests to Buyer as provided in this Agreement without obtaining the consent or approval of any creditor, third party or governmental body.

Section 3.06 Intentionally Blank

Section 3.07 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE III, none of Seller, the Companies or any other person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller or any Company, including any representation or warranty as to the accuracy or completeness of any information regarding the Companies furnished or made available to Buyer as to the future revenue, profitability or success of each Company, or any representation or warranty arising from statute or otherwise in law.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all necessary corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder, and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with any provision of the certificate of incorporation or by-laws of Buyer; (b) violate or conflict with any provision of any law or governmental order applicable to Buyer; (c) require the consent, notice or other action by any person under, violate or conflict with, or result in the acceleration of any agreement to which Buyer is a party; or (d) require any consent, permit, governmental order, filing or notice from, with or to any governmental authority; except, in the cases of clauses (b) and (c), where the violation, conflict, acceleration or failure to obtain consent or give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and, in the case of clause (d), where such consent, permit, governmental order, filing or notice which, in the aggregate, would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

Section 4.03 Legal Proceedings. There are no actions pending or, to Buyer's knowledge, threatened against or by Buyer or any of its affiliates that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 4.04 Buyer Acknowledgement of SALI Agreement and CG Agreement. Buyer acknowledges the obligations of (i) the Advisor pursuant to the Subadvisor Agreement dated September 25, 2013 between the Advisor and SALI Fund Management, LLC (the **"SALI Agreement"**) and (ii) Atlas IDF, LP and the Advisor pursuant to the Participation Agreement dated as of November 30, 2015 among Crown Global Life Insurance Ltd., Atlas IDF, LP and the Advisor (the **"CG Agreement"**). The purchase and sale of the Interests pursuant to this Agreement will not cause a violation of either Exhibit C to the SALI Agreement or Schedule D to the CG Agreement (**"Schedule D"**).

Section 4.05 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of Seller, the Companies, the Managed Companies, the Client Funds and the SALI Fund, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Seller, the Companies, the Managed Companies, the Client Funds and the SALI Fund for such purpose. Buyer represents and warrants that it is aware that the Companies are involved in multiple litigations, the ultimate liability under such litigations may not be quantified and accepts any risk related thereto. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in ARTICLE III of this Agreement; and (b) none of Seller, any Company or any other person has made any representation or warranty as to Seller, any Company, any Managed Company, any Client Funds, the SALI Fund or this Agreement, except as expressly set forth in ARTICLE III of this Agreement.

ARTICLE V
COVENANTS

Section 5.01 Director, Manager and Officer Indemnification Liability.

(a) Buyer agrees that all rights to indemnification, advancement of expenses and exculpation by each Company now existing in favor of each person who is now, or has been at any time prior to the date hereof, an officer, manager, member or director of such Company, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date hereof, shall survive the Closing Date and shall *continue in full force and effect in accordance with their respective terms.*

(b) Each Company shall, and Buyer shall cause each Company to (i) maintain in effect for a period of six (6) years after the Closing Date the current policies of Investment Adviser and Fund Professional and Directors and Officers Liability Insurance (or similar policy) maintained by each Company immediately prior to the Closing Date (provided that each Company may substitute policies, of at least the same coverage and amounts and containing terms and conditions that are not less advantageous to the directors, members, managers and officers of such Company when compared to the insurance maintained by such Company as of the date hereof), or (ii) obtain as of the Closing Date "tail" insurance policies with a claims period of six (6) years from the

Closing Date with at least the same coverage and amounts, and containing terms and conditions that are not less advantageous to the mangers and officers of such Company, in each case with respect to claims arising out of or relating to events which occurred on or prior to the Closing Date (including in connection with the transactions contemplated by this Agreement). The parties acknowledge and agree that the coverages required by this Section 5.01(b) shall not be required to cover the Excluded Claims referenced in Section 5.04 hereinafter.

(c) The obligations of Buyer and each Company under this Section 5.01 shall not be terminated or modified in such a manner as to adversely affect Seller.

(d) In the event that Buyer, any Company or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then, and in either such case, proper provision shall be made so that the successors and assigns of Buyer or such Company, as the case may be, shall assume all of the obligations set forth in this Section 5.01.

Section 5.02 Further Assurances. Following the Closing:

(a) each of the parties hereto shall, and shall cause their respective affiliates to, execute and deliver such additional documents and instruments and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

(b) The parties agree that certain matters in which any of the Affected Parties will be involved may necessitate Seller's cooperation in the future. Accordingly, for any reason, to the extent requested by any of the Affected Parties or their representatives and/or agents, Seller shall reasonably cooperate with the Affected Parties in connection with any matters in which any of the Affected Parties asserts that Seller's assistance is necessary, including, but not limited to, the Kirschner Litigation, the HCMLP Bankruptcy, and any other disputes; provided that, any of the Affected Parties shall make reasonable efforts to minimize disruption of Seller's other activities. The respective Affected Parties shall reimburse Seller for reasonable expenses incurred in connection with such reasonable cooperation and, to the extent that Seller is required to spend substantial time on such matters, the respective Affected Parties shall compensate Seller at an hourly rate of $350.00 per hour. Such reasonable cooperation shall include, but is not limited to, providing interviews, truthful testimony, documents, assistance, information, and executing and returning documents related to any litigation or disputes in which any of the Affected Parties is involved, including, but not limited to, the Kirschner Litigation and/or the HCMLP Bankruptcy and any disputes related thereto. "Affected Parties" shall collectively mean Buyer, Companies, Client Funds, SALI Fund and Managed Companies.

(c) Additionally, Seller agrees that he will not voluntarily provide reasonable assistance to or cooperate with any party that has any adverse interests to any of the Affected Parties without prior written consent from the respective Affected Parties, and Seller will notify the Affected Parties if any third-party seeks such reasonable assistance or cooperation from Seller. Any failure to comply with this clause by Seller shall constitute a material breach of this Agreement. Seller shall not, except as required by law, disclose to any third party this Agreement, its terms and particularly this cooperation clause. If, at any time, Seller is ordered or subpoenaed by any court, regulator, agency, or legislative body to disclose, or is served with a subpoena or discovery request seeking or requiring disclosure of, this Agreement or any of its terms, Seller shall so notify the Affected Parties at least two (2) business days in advance of the time for compliance with the order, subpoena or discovery request.

Section 5.03 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and Seller shall cooperate with respect thereto as necessary).

Section 5.04 Release. Effective as of the Closing, (i) Buyer shall, (ii) Buyer shall cause the Companies, (iii) Buyer shall cause the Companies to cause the Client Funds, and (iv) Buyer shall cause the Companies to cause the Managed Companies (together, the "**Buyer Releasors**") generally, irrevocably, unconditionally and completely to release and forever discharge Seller and his partners, affiliates, employees, consultants, counsel and agents, and the counsel, consultants and agents of the Companies, the Managed Companies, and the Client Funds (each, a "**Seller Releasee**" and collectively, the "**Seller Releasees**") from, and irrevocably, unconditionally and completely to waive and relinquish each and all past, present and future disputes, claims, controversies, demands, rights, obligations, liabilities, actions and causes of action of every kind and nature, including any unknown, unsuspected or undisclosed claim (collectively "**Claims**"), that the Buyer Releasors may have had in the past, may now have or may have in the future against any of the Seller Releasees and has arisen or arises directly or indirectly out of, or relates directly or indirectly to, this Agreement and the transactions contemplated hereby, or the operation of the Companies, the Managed Companies, the SALI Fund or the Client Funds, other than any claim that Buyer may have against any of the Seller Releasees that arises under this Agreement. Buyer Releasors, acknowledges that the laws of many states provide substantially the following: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." The Buyer Releasors acknowledge that such provisions are designed to protect a party from waiving claims which it does not know exist or may exist. Nonetheless, the Buyer Releasors, agree that, effective as of the Closing, the Companies, the Client Funds and the Managed Companies shall be deemed to waive any such provision. Buyer shall not permit any Company, Client Fund or Managed Company to institute, solicit or encourage, or participate, assist or cooperate in, any legal proceeding based upon, arising out of, or relating to any of the disputes, claims, controversies, demands, rights,

obligations, liabilities, actions and causes of action waived under this Section 5.04. Notwithstanding the foregoing, the parties acknowledge and agrees that the Claims released by this Section 5.04 shall not include any and all Claims that are found by a court of competent jurisdiction to be a result of a Seller Releasees fraud, gross negligence or willful misconduct (each an "**Excluded Claim**" and/or collectively, the "**Excluded Claims**").

Section 5.05 Guaranty.

(a) The Guarantor hereby irrevocably and unconditionally guarantees to Seller full and punctual performance of and compliance with all of Buyer's obligations pursuant to this Agreement. The guaranty set forth in this Section 5.05(a) is an absolute, present, primary and continuing guaranty of performance, payment and compliance. The Guarantor acknowledges and agrees that upon any default by Buyer, Seller shall not be obligated to first attempt enforcement against Buyer. The Guarantor hereby waives any and all defenses to enforcement of the guaranty set forth in this Section 5.05(a), now existing or hereafter arising, which may be available to guarantors, sureties and other secondary parties at law or in equity. The Guarantor further agrees to pay all reasonable costs and expenses, including reasonable attorney fees and related costs, incurred by any Seller Releasee in enforcing the guaranty set forth in this Section 5.05(a).

(b) The Guarantor represents and warrants to Seller that (i) the execution and delivery of this Agreement, and the Guarantor's performance under this Agreement, including the Guarantor's performance under this Section 5.05, does not violate any law, decree or contractual restriction binding on the Guarantor, (ii) this Agreement has been duly executed and delivered by the Guarantor and constitutes the valid and legally binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and general principles of equity and (iii) the Guarantor has the financial capacity necessary to perform its obligations under the guaranty set forth in Section 5.05(a).

Section 5.06 Ownership of Work Product of the Companies. Seller hereby agrees that all work product, designs, graphics, processes, trade secrets, proprietary information and confidential investor information of the Companies, that is not (i) generally available to the public other than by virtue of a disclosure by Seller after the Closing Date and in violation of this Agreement or (ii) independently developed by Seller from sources not known by Seller to be bound by an obligation of confidentiality to the Companies (collectively, "**Confidential Information**") and shall remain the property of the applicable Company without any further act on Seller's or any Company's part, and that Seller shall not have any past, current or future copyright, trademark right, intellectual property right, property interest and/or any other right, title or interest in such Confidential Information. Seller acknowledges and agrees that all right, title and interest in such Confidential Information, including, without limitation, all conceivable intellectual property rights, including, without limitation, all copyrights, trademarks, service marks, patents, and discoveries shall remain the property of the applicable Company on and after the Closing Date. Notwithstanding anything in this Section 5.06 or otherwise in this Agreement

to the contrary, Seller may retain the phone that he used in the management and ownership of the Companies as his own personal property, and all "personal" information/data on such phone shall not constitute Confidential Information.

Section 5.07 Client Information. Seller hereby covenants and agrees at all times following the execution hereof to hold in strictest confidence, and not to use (for himself or for any other person), or to disclose to any person, firm or entity, any such Confidential Information. The provisions of this Section 5.07 shall survive the execution hereof.

Section 5.08 Buyer Obligations Pursuant to CG Agreement. Buyer covenants and agrees to ensure that after the Closing, either (x) Buyer and each person that would be an "Adviser Party" within the meaning of Schedule D immediately after the Closing is not affiliated with any "Policy Party" within the meaning of Schedule D or (y) each such person that would be such an Adviser Party immediately after the closing and that is affiliated with any such Policy Party has established or will establish procedures pursuant to a legally binding written agreement to prevent any communication prohibited by Schedule D.

Section 5.09 Managed Companies Counsel. Buyer expressly acknowledges that counsel who have appeared for or represented the Managed Companies prior to the execution of this Agreement shall withdraw as counsel from any existing litigation and shall be replaced by counsel of Buyer's choice or designation. The Managed Companies existing counsel shall cooperate with Buyer's designated replacement counsel in all respects, including filing any necessary pleadings or motions with the applicable court and turning over all documents, correspondence or other work product heretofore generated in connection with any such existing litigation to Buyer's designated replacement counsel; *provided* that Buyer acknowledges existing counsel may retain one copy of each such document, correspondence or work product for record keeping purposes.

ARTICLE VI
INDEMNIFICATION AND OTHER REMEDIES

Section 6.01 Indemnification by Buyer. Buyer shall defend and indemnify each Seller Releasee against, and hold each Seller Releasee harmless from, all Claims (other than Excluded Claims), including those related to Seller's ownership of the Interests or any actions or inaction by any Company, any Managed Company, any Client Fund or the SALI Fund.

Section 6.02 Indemnification by Seller. Seller shall have no obligations of indemnification with respect to any Claims (other than Excluded Claims), including those related to this Agreement or the transactions contemplated hereby.

Section 6.03 Intentionally Blank

Section 6.04 Exclusive Remedies. The parties acknowledge and agree that their sole and exclusive remedy with respect to any and all Claims for any breach of any representation,

warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this ARTICLE VI. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their affiliates arising under or based upon any law, except pursuant to the indemnification and other provisions set forth in this ARTICLE VI. Nothing in this Section 6.04 shall limit any person's right to seek and obtain any equitable relief to which such person shall be entitled or to seek any remedy on account of any fraud by any party hereto. The provisions of this Articles VI shall survive the execution hereof.

ARTICLE VII
MISCELLANEOUS

Section 7.01 Expenses. All costs and expenses incurred in connection with the preparation and negotiation of this Agreement and the transactions contemplated hereby shall be paid by Buyer at Closing.

Section 7.02 Notices. All notices, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the second day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid, if sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7.02):

If to Seller:

John Honis
42 Regatta View Drive
Saratoga Springs, NY 12866
Email: jwhonis@icloud.com

with a copy (which shall not constitute notice) to:

Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, NY 10176
Attn: Steven Huttler
Email: SHuttler@sadis.com

If to Buyer:

Rand Advisors Holding Corp.
6716 Glenhurst Dr.
Dallas, TX 75254

Email: mpatricktax1040@gmail.com
Attention: Mark Patrick

with a copy (which shall not constitute notice) to:

Leggett Clemons Crandall, PLLC
5700 Granite Parkway, Ste. 950
Plano, TX 75024
Email: sclemons@lcclawfirm.com
Attention: Steve H. Clemons

Section 7.03 Interpretation; Headings. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 7.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement.

Section 7.05 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

Section 7.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations hereunder without the prior written consent of the other parties. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 7.07 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise or delay in exercising, any right or remedy arising from this Agreement shall operate or be construed as a waiver thereof. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

Section 7.08 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.08(c).

Section 7.09 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 7.10 AS-IS, WHERE-IS. Except as expressly set forth in this Agreement to the contrary, Buyer is expressly purchasing the Interests "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and Seller has no obligation to determine or correct any such facts, circumstances, conditions, or defects or to compensate Buyer for same. Except as expressly set forth in this Agreement, Seller has specifically bargained for the assumption by Buyer of all responsibility to investigate Seller, the Companies, the Client Funds, the SALI Fund, the Managed Companies and the Interests, and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. Except for the representations set forth in ARTICLE III, Buyer is and will be relying strictly and solely on its own inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers. Except as set forth

in ARTICLE III and otherwise in this Agreement, Buyer assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to Seller, any Company, any Client Fund, the SALI Fund, any Managed Company or the Interests. The provisions of this Section 7.10 shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

Section 7.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 7.12 Privileges; Conflicts. It is acknowledged by each of the parties hereto that the Seller has retained Sadis & Goldberg LLP ("**Sadis**") to act as their counsel in connection with the transactions contemplated hereby and that Sadis has not acted as counsel for Buyer, any Company, any Client Fund, SALI Fund, any Managed Company or any of their respective affiliates in connection with the transactions contemplated hereby and that no other party has the status of a client of Sadis for conflict of interest or any other purposes as a result thereof. Buyer hereby agrees that, in the event that a dispute arises between Buyer or any of its affiliates (including, after the Closing, the Companies) and the Seller or any of his affiliates, Sadis may represent the Seller or any such affiliate in such dispute even though the interests of the Seller or such affiliate may be directly adverse to Buyer or any of its affiliates (including, after the Closing, the Companies), and even though Sadis may have represented such Company in a matter substantially related to such dispute, or may be handling ongoing matters for the Companies, and Buyer and the Companies hereby waive, on behalf of themselves and each of their affiliates, any claim they have or may have that Sadis has a conflict of interest in connection with, or is otherwise prohibited from engaging in, such representation. Buyer further agrees that, as to all communications among Sadis, Seller, any Company, or their respective affiliates that relate in any way to the transactions contemplated by this Agreement, the attorney-client privilege, the expectation of client confidence and all other rights to any evidentiary privilege belong to Seller and may be controlled by Seller and shall not pass to or be claimed by Buyer, any Company or their affiliates. Buyer agrees to take, and to cause its affiliates to take, all reasonable steps necessary to implement the intent of this Section 7.12. Buyer and Seller further agree that Sadis and its partners and employees are third-party beneficiaries of this Section 7.12.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

SELLER:

JOHN HONIS

BUYER:

RAND ADVISORS HOLDING CORP

By_____
Name: Mark Patrick
Title: Director

GUARANTOR:

CLO HOLDCO, LTD.,
a Cayman limited company

By_____
Name: Mark Patrick
Title: Director

EXHIBIT 80

SadisGoldberg LLP

Amended and Restated Limited Partnership Agreement of Rand PE Fund I, L.P.

A DELAWARE "SERIES" LIMITED PARTNERSHIP

As of November 30, 2015

Exhibit A

Neither Rand PE Fund I, L.P. nor the limited partner interests therein ("**Interests**") have been or will be registered under the Securities Act of 1933, as amended ("**Securities Act**"), the Investment Company Act of 1940, as amended, or the securities laws of any of the States of the United States. The offering of the Interests is being made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering, and analogous exemptions under state securities laws.

These securities are subject to restrictions on transferability and resale, may not be transferred or resold, except: (i) as permitted under the Securities Act and applicable state securities laws pursuant to registration or exemption therefrom, and (ii) in accordance with the requirements and conditions set forth in this Amended and Restated Limited Partnership Agreement.

This Amended and Restated Limited Partnership Agreement of Rand PE Fund I, L.P., a Delaware "series" limited partnership ("**Partnership**"), is entered into as of November 30, 2015 ("**Agreement**") by and among: (i) Rand PE Fund Management, LLC, a Delaware limited liability company ("**General Partner**"), with an address at 87 Railroad Place, Suite 403, Saratoga Springs, New York, 12866; (ii) such persons and entities who are or may become limited partners in accordance with the terms hereof ("**Limited Partners**"; and, together with the General Partner, shall collectively be referred to as the "**Partners**"); (iii) John Honis, as the initial Limited Partner ("**Initial Limited Partner**"); and (iv) such other persons who may become parties to this Agreement from time to time.

WITNESSETH:

WHEREAS, the General Partner and the Initial Limited Partner entered into a Limited Partnership Agreement, dated and effective as of October 29, 2015 ("**Current Agreement**"); and

WHEREAS, the General Partner desires to amend and restate the Current Agreement in its entirety pursuant to, and in accordance with the terms of, **Section 28** thereof, including to reflect the conversion of the Partnership into a "series" limited partnership.

NOW THEREFORE, in consideration of the mutual promises of the parties hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties agree to amend and restate the Current Agreement in its entirety with the following terms and conditions:

ARTICLE I
GENERAL PROVISIONS

Section 1.01 **Formation of Partnership**. The Partnership was formed as a limited partnership under the Delaware Revised Uniform Limited Partnership Act (as in effect on the date hereof and as amended from time to time, the "**Act**") by the filing of its Certificate of Limited Partnership (the "**Certificate**") with the Secretary of State of the State of Delaware (the "**Delaware Secretary**") on September 18, 2015. On November 19, 2015, an amended Certificate was filed with the Delaware Secretary to convert the Partnership into a "series" limited partnership under Section 17-218 of the Act. The General Partner, for itself and as agent for the Limited Partners, shall accomplish all filing, recording, publishing and other acts necessary or appropriate for compliance with all the requirements for the formation and operation of the Partnership as a limited partnership under this Agreement and the Act and under all other laws of the State of Delaware and such other jurisdictions in which the General Partner determines that the Partnership may conduct business. Each Limited Partner admitted to the Partnership by the General Partner shall promptly execute all relevant certificates and other documents, as the General Partner shall request.

Section 1.02 **Partnership Name**. The name of the Partnership is Rand PE Fund I, L.P.

Section 1.03 **Purpose**. The Partnership was organized for the purpose of investing and trading in a wide variety of securities and financial instruments, domestic and foreign, of all kinds and descriptions, whether publicly traded or privately placed, including but not limited to, common and preferred stocks, bonds and other debt securities, convertible securities, limited partner interests, mutual fund shares, options, warrants, commodities, futures, derivatives (including swaps, forward contracts and structured instruments), currencies, monetary instruments, and cash and cash equivalents. In furtherance of the foregoing, the Partnership may engage in any lawful act or activity for which limited partnerships may be formed under the Act, and any and all activities necessary or incidental thereto, including any other business activities described in the Partnership's confidential private placement memorandum (as amended and supplemented from time to time, the "**Memorandum**").

Section 1.04 **Place of Business**. The Partnership shall have offices located at 87 Railroad Place, Suite 403, Saratoga Springs, New York, 12866, or elsewhere as the General Partner may from time to time determine. The Partnership may have more than one (1) office as may from time to time be determined by the General Partner.

Section 1.05 **Fiscal Year**. The fiscal year of the Partnership (the "**Fiscal Year**") shall end on December 31

of each year, except that it may be changed at any time by the General Partner in its sole discretion. In the event that the General Partner changes the Partnership's Fiscal Year, the dates and time periods referred to in this Agreement shall be appropriately adjusted.

Section 1.06 **Term of Partnership**. The term of the Partnership commenced upon filing of the Partnership's Certificate with the Delaware Secretary and shall continue indefinitely; *provided, however*, that the Partnership shall be dissolved forthwith upon the occurrence of any one of the events set forth in **Section 13.01**.

ARTICLE II
COMPOSITION; ADMISSIONS

Section 2.01 **Names of the Partners**. Rand PE Fund Management, LLC, a Delaware limited liability company, is the sole general partner of the Partnership as of the date hereof. The names and addresses of the General Partner and of each of the Limited Partners shall be set forth in the records of the Partnership to be kept on file at all times at the principal place of business of the Partnership.

Section 2.02 **Admission of Partners**. Additional Limited Partners (as defined in **Section 8.01**) may be admitted to the Partnership at such times as provided in **Article VIII**. In connection with the admission of a Limited Partner to the Partnership, such Limited Partner shall, in advance of such admission and as a condition thereto, sign a copy of this Agreement or an agreement to become bound by the provisions of this Agreement and such other subscription materials as shall be determined by the General Partner. Upon the admission of a Limited Partner, the Initial Limited Partner listed on the signature page hereof shall automatically be deemed to have withdrawn from the Partnership. A substitute general partner and additional general partners may be admitted to the Partnership as provided in **Article IV**.

Section 2.03 **Partnership Interests**. For purposes of this Agreement, the term "**Partnership Interest**" shall mean the quotient resulting from dividing (i) the amount in a Partner's Capital Account (as defined in **Section 9.01**), including the fair value of such Partner's interests in any Side Pocket Accounts (as defined in **Section 9.07**) or New Issues Accounts (as defined in **Section 9.08(a)**) and other memorandum accounts, by (ii) the aggregate amount in the Capital Accounts of all Partners, including the fair value of any Side Pocket Accounts, New Issues Accounts and other memorandum accounts. "**Partnership Interests**" shall mean the sum of all amounts in the Capital Accounts of all Partners (including all Side Pocket Accounts, New Issues Accounts and other memorandum accounts).

Section 2.04 **Issuance of Interests in Series**.

(a) Pursuant to Section 17-218 of the Act, the Partnership Interests will be offered in separate series ("**Series**"). The Partnership is currently offering one Series of Partnership Interests: "**Series 1 Partnership Interests**". Each Series of Partnership Interests will have separate rights and obligations.

(b) In addition, each Series of Partnership Interests may correspond to a separate portfolio of assets, which may have different investment objectives and strategies. The Partnership may issue additional Series of Partnership Interests in the future, which may have rights and obligations that differ from those of the Series 1 Partnership Interests with respect to any matters, including without limitation, fees, withdrawal rights, participation in Side Pocket Accounts (as defined) and other rights and terms. The terms of such additional Series shall be determined by the General Partner, in its sole discretion.

(c) Each Series shall have separate rights, powers and duties with respect to its investment portfolio and other property and obligations and the profits and losses associated with such portfolio, property and obligations. The Partnership shall maintain separate and distinct records for each Series and shall hold and account for the assets and liabilities of such Series separately from other Series.

(d) Pursuant to Section 17-218 of the Act, (i) the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular Series shall be enforceable

against the assets of such Series only, and not against the assets of any other Series, and (ii) none of the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to the Partnership generally or any other Series shall be enforceable against the assets of such Series.

(e) Unless the context otherwise requires, Series 1 Partnership Interests and any other Series of Partnership Interests shall be collectively referred to throughout this Agreement as the "**Partnership Interests**." As the context may require, the holders of Series 1 Partnership Interests may be referred to herein as "**Series 1 Limited Partners**". Series 1 Limited Partners and, to the extent applicable, all the Limited Partners of other Series shall be collectively referred to throughout this Agreement the "**Limited Partners**".

(f) References herein to the Partnership shall include, where appropriate, each Series of the Partnership. The terms of the other Series may be set forth in an amended version of this Agreement and/or in a separate supplement thereto.

ARTICLE III
MANAGEMENT

Section 3.01 Management of Partnership

(a) The business and affairs of the Partnership shall be managed exclusively by the General Partner. The Limited Partners shall take no part in the management or control of the Partnership's business and shall have no authority to act for or bind the Partnership. The General Partner shall have sole discretion and authority to select investments, shall invest the funds of the Partnership from time to time as the General Partner deems appropriate in accordance with the purposes set forth in **Section 1.03**, and shall have (without limitation) the powers set forth in **Section 3.02**. The General Partner may select an investment manager ("**Investment Manager**") to provide all or any portion of the portfolio management services required by the Partnership, including the valuation of assets of the Partnership. The Investment Manager may be changed from time to time by the General Partner in its sole and absolute discretion. The initial Investment Manager shall be Rand Advisors, LLC, a Delaware limited liability company and an affiliate of the General Partner. If at any time there is no Investment Manager, then the General Partner shall provide such portfolio management services, and be subject to the provisions of this Agreement applicable to the Investment Manager.

(b) Each of the General Partner and the Investment Manager shall not be required to devote its full time to the business of the Partnership, but shall devote so much of its time and efforts to the affairs of the Partnership as may in its judgment be necessary to accomplish the purposes of the Partnership. Nothing herein contained shall prevent the General Partner or the Investment Manager from conducting any other business, including any business with respect to securities (and/or other investments), whether or not such business ventures are in direct or indirect competition with the Partnership. Each of the General Partner and the Investment Manager is not prohibited from buying or selling securities for its own account, including the same securities (and/or other investments) as are purchased, sold or held by the Partnership, but none of the General Partner, the Investment Manager or any of their respective affiliates (which shall not include, for purposes of this paragraph, advisory clients or managed funds) shall buy securities (and/or other investments) from or sell securities (and/or other investments) to the Partnership without the written consent of either all Limited Partners or a committee of independent Limited Partners.

(c) Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to Atlas IDF, LP, a Delaware "series" limited partnership ("**IDF Fund**") that is structured as an insurance-dedicated fund and is expected to invest a portion of its assets in the Partnership; (ii) Atlas IDF GP, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the IDF Fund; (iii) the Principal (as defined in the Memorandum) is the managing member and controlling person of Atlas IDF GP, LLC; and (iv) the

Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series, as further set forth in the Memorandum.

Section 3.02 **Powers of the General Partner**. Without in any way intending to limit the powers of the General Partner, the General Partner shall have the right, power and authority on behalf of the Partnership (or to delegate any portion of such rights, power and authority):

(a) As provided in **Section 3.01**, to allocate all of the assets of the Partnership among securities (and/or other investments) to be selected by the General Partner in its sole and absolute discretion, including, but not limited to the right to:

(i) purchase, hold and sell securities (and/or other investments) and rights therein of any kind or nature;

(ii) purchase, hold, sell and otherwise deal in put and call options, monetary instruments and any combinations thereof and any other financial instruments or contracts of any nature or kind;

(iii) maintain margin accounts with brokers, pledge securities for loans and, in connection with any such pledge, effect borrowings from brokers or banks in such amounts as may be determined from time to time; and

(iv) transact business through brokers and dealers and other persons selected by the General Partner in its sole discretion, and in selecting such brokers, dealers and other persons, and determining the compensation payable to such persons, it shall seek to obtain the best execution for the Partnership taking into account the value of any research and brokerage services or products provided by such persons to the General Partner or the Partnership even though other persons may be able to provide transactional services (without any accompanying research or brokerage services or products) at lower rates of compensation;

(b) To acquire and enter into any contract of insurance that the General Partner deems necessary or appropriate for the protection of the Partnership and the General Partner or for any purpose convenient or beneficial to the Partnership;

(c) To engage in any transaction with affiliates of the General Partner, including entering into and amending and restating an investment management agreement with the Investment Manager (any such agreement, in effect from time to time, "**Investment Management Agreement**"), subject to the restrictions in **Section 3.01(b)**;

(d) To employ persons, whether full-time or part-time, in the operation and management of the business of the Partnership, on such terms and for such compensation as the General Partner shall determine, regardless of whether or not such persons also may be employed by the General Partner or its affiliates;

(e) To file, conduct and defend legal proceedings of any form, including proceedings against Partners, and to compromise and settle any such proceedings or any claims, including claims against Partners, on whatever terms deemed appropriate by the General Partner;

(f) To open brokerage, bank and other accounts and, to the extent that funds are not invested, to deposit and maintain such funds in the name of the Partnership in such accounts and to temporarily invest such funds in short term United States and/or foreign government securities, money market accounts and/or other short term interest-bearing instruments; *provided, however*, that the Partnership's funds shall not be commingled with the funds of any other person or entity;

(g) To cause the Partnership to make or revoke any of the elections referred to in Section 754 of the Internal Revenue Code of 1986, as amended ("**Code**"), or any similar

provision enacted in lieu thereof;

(h) To act as the "tax matters partner" of the Partnership within the meaning of Section 6231(a)(7) of the Code;

(i) To select as its accounting year the annual period ending December 31 or any other Fiscal Year as is permitted by the Internal Revenue Service ("**IRS**");

(j) To engage independent accountants, attorneys, investment managers, sub-advisers, broker-dealers, administrators, custodians, consultants and such other persons as the General Partner may deem necessary or advisable;

(k) To establish and maintain for the conduct of Partnership affairs one or more offices and in connection therewith rent or acquire office space, engage personnel, whether part time or full time, and do such other acts and incur such expenses as the General Partner may deem necessary or advisable in connection with the maintenance or administration of such office;

(l) To require a provision in any Partnership contract that the General Partner shall not have any personal liability therefor, but that the person or entity contracting with the Partnership is to look solely to the Partnership and its assets for satisfaction;

(m) To purchase and sell Partnership assets at such price or amount for cash, securities or other property and upon such terms as are deemed in the General Partner's absolute discretion to be in the best interests of the Partnership;

(n) To prepare (or cause to be prepared), execute, acknowledge and/or deliver any and all instruments to effectuate the business of the Partnership, including, but not limited to, annual and/or interim reports, a copy of which shall be delivered to each Partner, as provided in **Sections 3.06(b) and 13.05**;

(o) To effect on behalf of the Partnership any "agency cross transaction" (as contemplated in Rule 206(3)-2 under the U.S. Investment Advisers Act of 1940, as amended ("**Advisers Act**")) through the General Partner or any of its affiliates that is registered as a broker or dealer; *provided* that the authority granted in this subsection may be revoked at any time by the General Partner or by vote or consent of Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners;

(p) To "cross" any transaction for the purchase or sale of securities between two or more advisory clients or managed funds, including the Partnership (as contemplated in Rule 206(3) under the Advisers Act and interpretations thereunder) ("**Cross Trading**"); *provided* that the General Partner receives no additional compensation in connection with such Cross Trading activities, and subject to the restrictions in **Section 3.01(b)**;

(q) To waive or reduce, in whole or in part, any notice period, minimum amount requirement, or other limitation or restriction imposed on Capital Contributions (as defined in **Section 8.01**), withdrawals of capital, any fee, any payment to the General Partner and/or any requirement imposed on a Limited Partner by this Agreement, regardless of whether such notice period, minimum amount, limitation, restriction, withdrawal provision, fee, payment or other requirement of this Agreement, or the waiver or reduction thereof, operates for the benefit of the Partnership, the General Partner or fewer than all the Limited Partners;

(r) To establish such reserves for the Partnership as the General Partner shall, in its sole but reasonable discretion, deem appropriate to pay current and future, definite, contingent and possible obligations of the Partnership or a Series (even if such reserves are not in accordance with U.S. generally accepted accounting principles ("**GAAP**"));

(s) To value the assets and liabilities of the Partnership;

(t) To create special purpose vehicles to make or pursue investments either alone or as a joint-venture with other persons or entities;

(u) To establish and offer multiple Series of Partnership Interests with such rights and privileges as the General Partner shall determine, and to amend this Agreement in connection therewith to reflect such multi-Series structure;

(v) To convert the Partnership from a stand-alone fund into a "feeder fund" as part of a master-feeder structure, and to amend this Agreement pursuant thereto to reflect such master-feeder structure;

(w) To create a liquidating fund entity (e.g., a liquidating trust or similar vehicle), and to transfer all or a portion of the Partnership's assets to such entity for any reason, including an orderly liquidation of any illiquid Partnership assets; and

(x) To do any act, engage in any activity or execute any agreement of any nature, necessary or incidental to the accomplishment of the purposes of the Partnership in accordance with the provisions of this Agreement, the Memorandum and all applicable federal, state and local laws and regulations.

Section 3.03 **Actions of General Partner**. The General Partner is authorized, directed and empowered to act individually on behalf of the Partnership, and in accordance therewith, to execute all documents and instruments on behalf of the Partnership. Third parties may rely on the execution of any documents on behalf of the Partnership by the General Partner.

Section 3.04 **Liability and Indemnification**

(a) None of the General Partner, the Investment Manager or any of the Investment Manager Affiliates (as defined in **Section 6.02(a)**) shall be liable to the Partnership or the Limited Partners for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. It shall be conclusively presumed and established that the General Partner, the Investment Manager and such persons acted in good faith if any action is taken, or not taken, by any of them on the advice of legal counsel or other independent outside consultants; *provided* that the General Partner, the Investment Manager and such persons did not act with gross negligence or willful misconduct in the selection of such counsel or consultants. Any exculpation under this **Section 3.04(a)** shall apply only to the extent that such exculpation does not violate applicable federal and state laws.

(b) The Partnership shall indemnify and hold harmless the General Partner, the Investment Manager and the Investment Manager Affiliates (which, for purposes of this **Section 3.04(b)**, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any of them in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided, however*, that the party against whom the claim is made or legal proceeding is directed is not guilty of gross negligence or willful misconduct, as determined by a final, non-appealable decision of a court of competent jurisdiction. Any indemnity under this **Section 3.04(b)** shall be paid from and to the extent of Partnership assets only, and shall apply only to the extent that such indemnity does not violate applicable federal and state laws. The Partnership shall, in the sole discretion of the General Partner, advance amounts and/or pay expenses as incurred in connection with the indemnification obligation herein. In the event this indemnification obligation shall be deemed unenforceable, whether in whole or in part, such unenforceable portion shall be stricken or modified so as to give effect to this paragraph to the fullest extent permitted by law. For the avoidance of doubt, the foregoing indemnification provisions shall apply on a Series-

by-Series basis.

(c) If, to the extent, and at such times as, any assets of the Partnership are deemed to be "plan assets" within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), of any Limited Partner that is an employee benefit plan governed by ERISA, the General Partner shall be, and hereby acknowledges that it shall be considered to be, a fiduciary within the meaning of Section 3(21) of ERISA as to that Limited Partner. In such an event, or if any manager, member, officer, employee, agent or affiliate of the General Partner, is ever held to be a fiduciary of any Limited Partner, then, in accordance with Sections 405(b)(1), 405(c)(2) and 405(d) of ERISA, the fiduciary responsibilities of that person shall be limited to the person's duties in administering the business of the Partnership, and the person shall not be responsible for any other duties to such Limited Partner, specifically including evaluating the initial or continued appropriateness of this investment in the Partnership under Section 404(a)(1) of ERISA.

Section 3.05 **No Prohibition Against Other Business Ventures**. Each of the General Partner, the Investment Manager, the Principal and the Investment Manager Affiliates may engage and hold interests in other business ventures of every kind and description for its own account, including, without limitation, other investment entities similar to the Partnership, whether or not such business ventures are in direct or indirect competition with the Partnership, and whether or not the Partnership or any of the Partners also has an interest therein, without having to account to the Partnership or any Partner for any profits or other benefits derived therefrom and without incurring any obligation to offer any interest in any such activity to the Partnership or any Partner.

Section 3.06 **Duty to Keep Books, Financial and Tax Reports**

(a) At all times during the existence of the Partnership, the General Partner shall keep true and complete records and books of account, in which each transaction of the Partnership shall be entered fully and accurately. The General Partner has the power, in its sole and absolute discretion, to delegate some or all of the administrative bookkeeping functions relating to the Partnership to an administrator or other agent, which may be the Partnership's accountants.

(b) The General Partner shall cause to be prepared and distributed to each Partner as soon as practicable following each Fiscal Year the Partnership's annual financial statements prepared in accordance with GAAP (except to the extent that the Memorandum or this Agreement states or contemplates that such statements may be inconsistent with GAAP) and audited by an independent certified public accounting firm. The General Partner shall also have prepared and filed all federal, state and local income, franchise, gross receipts, payroll and other tax returns that the Partnership is obligated to file. Subject to the limitations set forth in **Section 5.04**, copies of all Partnership tax returns, information returns or reports shall be available to all Partners as soon as possible after the close of the Partnership's Fiscal Year at the principal office of the Partnership. Copies of each Partner's Schedule K-1 of the Partnership's Tax Return (Form 1065) shall be distributed to such Partner as soon as practicable after the close of the Partnership's Fiscal Year. The General Partner may agree to provide certain Limited Partners with additional information on the underlying investments of the Partnership, as well as heightened access to the General Partner, the Investment Manager and their respective employees for relevant information. For the avoidance of doubt, the foregoing reporting provisions shall apply on a Series-by-Series basis.

(c) Notwithstanding anything to the contrary herein, the General Partner may at any time choose to change the Partnership's accounting guidelines from GAAP to the International Financial Reporting Standard ("**IFRS**"). In such event, the financial performance of the Partnership, as determined under IFRS, may vary from those determined under GAAP.

ARTICLE IV
GENERAL PARTNER RESIGNATION; TRANSFER OF GENERAL PARTNER INTEREST;

CONTINUATION OF PARTNERSHIP; SUBSTITUTION OF GENERAL PARTNER

Section 4.01 **General Partner Resignation and Involuntary Withdrawal; Admission of Additional General Partners and Transfer by General Partner**

(a) The General Partner shall not be permitted to voluntarily withdraw or resign as the general partner of the Partnership, except upon no less than thirty (30) days' prior written notice to all Limited Partners. In the event of dissolution of the General Partner, or if a voluntary or involuntary petition for bankruptcy shall be filed by or against the General Partner, or the General Partner shall make any assignment for the benefit of its creditors (any of the foregoing, an "**Involuntary Withdrawal**"), the General Partner or the General Partner's trustee, receiver or assignee shall have none of the rights and powers of a general partner hereunder, and shall have no authority to act on behalf of the Partnership or have any voice in the management and operation of the Partnership, except as provided in **Section 13.02**.

(b) The General Partner may admit additional general partners to the Partnership at such times as the General Partner shall determine, without the consent of the Limited Partners. Notwithstanding anything herein to the contrary, the General Partner shall have the right to transfer its interest, as the general partner of the Partnership, to any affiliate of the General Partner, including any person or entity controlled by the General Partner, controlling the General Partner or under common control with the General Partner, without the consent of the Limited Partners. In the event of such transfer by the General Partner to an affiliate, the General Partner shall not be deemed to have resigned or withdrawn from the Partnership for purposes of **Section 13.01(a)**. Any affiliate transferee of the General Partner under this **Section 4.01(b)** shall assume the status of and shall have all of the rights, powers and obligations that the General Partner possessed prior to such transfer. The General Partner shall not assign, transfer, sell, mortgage or otherwise encumber or transfer its interest as the general partner of the Partnership, except as set forth herein. Any additional general partner or transferee of the General Partner shall execute and acknowledge any and all instruments that are necessary or appropriate to effect the admission of any such person or entity as a general partner, including, without limitation, the written acceptance and adoption by such person of the provisions of this Agreement and, if required by the Act, an amendment of the Certificate. For the avoidance of doubt, should the General Partner transfer its interest, as the general partner of the Partnership, to any non-affiliate of the General Partner, the Limited Partners shall have the right to revoke such appointment within ninety (90) days after such event, by affirmative vote of Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners.

Section 4.02 **Continuation of Partnership; Appointment of Substitute General Partner by Limited Partners**. If an event as set forth in **Section 13.01(a)** occurs, the Limited Partners shall have the right, within ninety (90) days after such event, by affirmative vote of Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners, to appoint a substitute general partner, in which event the Partnership shall not dissolve and shall continue its existence.

Section 4.03 **Substitute General Partner Requirements**. Any substitute general partner shall execute and acknowledge any and all instruments that are necessary or appropriate to effect the admission of any such person or entity as a substitute general partner, including, without limitation, the written acceptance and adoption by such person of the provisions of this Agreement and, if required by the Act, an amendment of the Certificate. Any successor to such office of general partner shall assume the status of and shall have all of the rights, powers and obligations that the General Partner possessed prior to its withdrawal, resignation or Involuntary Withdrawal from the Partnership.

ARTICLE V
STATUS, RIGHTS, POWERS AND VOTING RIGHTS OF LIMITED PARTNERS

Section 5.01 **Limited Liability**. No Limited Partner, Substitute Limited Partner (as defined in **Section 10.02**) or Additional Limited Partner shall be personally liable or bound for the expenses, liabilities or obligations of the Partnership or the relevant Series beyond the amount in such Partner's Capital Account in the relevant Series, from time to time, including any amounts thereof attributable to Capital Contributions, except that such Partner may be obligated to return all or a portion of any distributions (including withdrawal proceeds) received from the Partnership (x) in an amount up to its aggregate Capital Contributions in the relevant Series (including any income or gains thereon) to the Partnership in order to pay such Partner's *pro rata* share of any Partnership liabilities that arose while such Partner held Partnership Interests, and (y) as required under **Section 5.02(b)**.

Section 5.02 **Capital Contributions**

(a) No Limited Partner shall be entitled to a return of such Limited Partner's Capital Contribution or any portion thereof, except as set forth in **Section 7.01**, and no time has been agreed upon for the return of any Partner's Capital Contribution, except as herein provided.

(b) Each Limited Partner, if such Limited Partner receives a return of all or any part of such Limited Partner's Capital Contribution, may, to the extent provided for in the Act, be liable to the Partnership or the relevant Series for an amount equal to such distribution, if at the time of such distribution, the Limited Partner knew the Partnership or the relevant Series was prohibited from making such distribution under the Act.

Section 5.03 **Liability of Limited Partner for Additional Contributions and Loans**. No Limited Partner shall be obligated to provide any contributions to the Partnership, other than the Original Capital Contribution (as defined in **Section 9.02**) of such Limited Partner. No Limited Partner shall be obligated to make any loan to the Partnership.

Section 5.04 **Rights of Limited Partners to Inspect Books, Records, and Partnership Documents**. Upon reasonable advance written notice and during reasonable business hours, a Limited Partner may inspect and copy, at the Limited Partner's expense and solely for a purpose reasonably related to the Limited Partner's interest as a Partner, the records of the Partnership required to be maintained pursuant to Section 17-305 of the Act and any financial statements maintained by the Partnership. Any such inspection must be in good faith without any intent to damage the Partnership or any of its Partners in any manner. Notwithstanding the foregoing, the General Partner in its discretion may limit the information that a Limited Partner may obtain pursuant to this **Section 5.04** to the extent that such information shall allow a Limited Partner to identify any other Limited Partner. As a result, each Limited Partner agrees and acknowledges that any books and records of the Partnership made available to a Limited Partner for inspection may be redacted to exclude any information concerning the identity of the other Limited Partners, and, to the extent such books and records cannot be so redacted, such books and records may be withheld for inspection to such requesting Limited Partner. Copies of this Agreement and all amendments hereto shall be furnished to each Limited Partner upon request. For the avoidance of doubt, the foregoing reporting provisions shall apply on a Series-by-Series basis.

Section 5.05 **No Restriction on Other Activities**. Limited Partners may engage and hold interests in business ventures of every kind and description for their own accounts, including, without limitation, business ventures which are, directly or indirectly, in competition with the Partnership and whether or not the Partnership or any of the Partners also has an interest therein. Neither the Partnership nor any of the Partners shall have any rights in such independent business ventures by virtue of this Agreement.

Section 5.06 **Voting Rights**. In addition to the rights to vote conferred upon the Limited Partners in **Sections 3.01(b), 3.02, 4.02 and 13.02** or otherwise specifically set forth herein, Limited Partners shall have the right to vote on amendments to this Agreement to the extent provided in **Section 14.08**.

Section 5.07 **Constructive Consent by Limited Partners**. In the event that the General Partner requires the consent of the Limited Partners in order to take action (including approving amendments to

this Agreement), and written notice of such action is sent to any such Limited Partners by (i) certified mail, return receipt requested, (ii) electronic mail, or (iii) overnight delivery by a reputable private carrier or by the postal service, those Limited Partners not affirmatively objecting in writing within thirty (30) days after such notice is deemed to have been mailed or sent (under **Section 14.01**) be deemed to have consented to the proposed action set forth in the General Partner's notice.

Section 5.08 **Rights as to Dissolution**. The Limited Partners shall have no right or power to cause the dissolution and winding up of the Partnership by court decree or otherwise or to withdraw or reduce their Capital Contributions, except as set forth in the Certificate and this Agreement. No Limited Partner shall have the right to bring an action for partition against the Partnership, and each Partner hereby waives any right to partition of the Partnership's property.

Section 5.09 **Consent by Partners in Lieu of Meeting**. Any action required by this Agreement or the Act to be taken at any regular or special meeting of the Partners, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Partners (or shall be deemed signed by the Partners pursuant to **Section 5.07**) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Partners entitled to vote thereon were present and voted.

Section 5.10 **Non-Voting Interests of BHC Limited Partners; Other Non-Voting Interests**

(a) The portion of any Partnership Interest held for its own account by a BHC Limited Partner (as defined in this **Section 5.10(a)**) whose interests in the Partnership are determined, at any time, to be in excess of 4.99% (or such greater or lesser percentage as may be permitted or required from time to time under Section 4(c)(6) of the Bank Holding Company Act of 1956, as amended ("**BHCA**")) of the aggregate outstanding Partnership Interests of all Limited Partners, excluding any other Partnership Interests that are non-voting Partnership Interests pursuant to this **Section 5.10**, shall be deemed to be non-voting Partnership Interests to the extent of such excess above 4.99% (whether or not subsequently transferred, in whole or in part, to any other person or entity) (collectively, "**Non-Voting Interests**"); *provided* that such Non-Voting Interests shall be permitted to participate in any vote by the Limited Partners on (i) any proposal to dissolve or continue the business of the Partnership under this Agreement, (ii) any vote pursuant to **Section 4.02**, and (iii) matters with respect to which voting rights are not considered to be "voting securities" under 12 C.F.R. § 225.2(q)(2), including such matters which may "significantly and adversely" affect a BHC Limited Partner (such as amendments to this Agreement or modifications of the terms of its Partnership Interest). Except as provided in **Section 13.01(a)**, a BHC Limited Partner shall not be permitted to vote on the selection of any successor general partner of the Partnership, and each BHC Limited Partner irrevocably waives its right to vote its Non-Voting Interest on the selection of a successor general partner of the Partnership under Section 17-801 of the Act, which waiver shall be binding upon such BHC Limited Partner or any person or entity that succeeds to its Partnership Interest. A "**BHC Limited Partner**" shall mean any Limited Partner that is, or is an affiliate of, a bank holding company (as defined in Section 2(a) of the BHCA) that is subject to the provisions of Regulation Y issued by the Board of Governors of the Federal Reserve System.

(b) To the extent permitted by the BHCA, and except as otherwise provided in this **Section 5.10**, Non-Voting Interests shall not be counted as Partnership Interests held by any Limited Partner for purposes of determining whether any vote or consent required by this Agreement has been approved or given by the requisite percentage of the Limited Partners.

(c) Notwithstanding the foregoing, any BHC Limited Partner may elect to no longer be treated as a BHC Limited Partner for the purposes of this Agreement by delivering written notice of such election to the General Partner. Any such election made by a BHC Limited Partner may be rescinded at any time by providing written notice thereof to the General Partner.

(d) The General Partner may, for legal, regulatory or other reasons, designate any other Partnership Interests as non-voting, in whole or in part. Except as provided in this **Section 5.10**, a Partnership Interest held by a Limited Partner as a non-voting Partnership Interest shall be identical in all regards to all other Partnership Interests held by Limited Partners.

(e) For the avoidance of doubt, the provisions of this **Section 5.10** shall apply on a Series-by-Series basis.

ARTICLE VI
FEES AND EXPENSES; BROKERAGE PRACTICES

Section 6.01 **Management Fee**.

(a) In consideration for services provided pursuant to the Investment Management Agreement, the Investment Manager shall receive a quarterly management fee ("**Management Fee**") equal to a percentage of each Limited Partner's share of the Partnership's Net Asset Value (as defined in **Section 9.04**), and based on the Partnership's total Net Asset Value, as follows:

Partnership's Total Net Asset Value	Management Fee (per annum)
$0 - $99,999,999	0.5500%
$100,000,000 - $199,999,999	0.5000%
$200,000,000 - $249,999,999	0.4500%
$250,000,000 - $499,999,999	0.3500%
> $500,000,000	0.3400%

For the avoidance of doubt, the Management Fee calculated based on the foregoing schedule will be calculated on a "progressive" basis. For example, if the Partnership's Net Asset Value reaches $150,000,000, the initial $99,999,999 will always be charged a Management Fee of 0.55000% annually. The benefit of the declining Management Fee schedule above is intended to benefit all Limited Partners as each Capital Account will be charged a blended Management Fee based on the above schedule.

The Management Fee shall be calculated and payable to the Investment Manager quarterly, in advance, as of the first day of each calendar quarter. A *pro rata* Management Fee shall be charged to Limited Partners on any amounts accepted by the General Partner during a calendar quarter. No part of the Management Fee shall be refunded in the event that a Limited Partner withdraws, whether voluntarily or involuntarily, all or any of the value in such Limited Partner's Capital Account during any calendar quarter. Management Fees shall be payable with respect to the Partnership Interests of a Limited Partner in any Side Pocket Account.

(b) For purposes of calculating the Management Fee with respect to Side Pocket Accounts, Illiquid Investments (each as defined in **Section 9.07**) shall be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

(c) With respect to any Limited Partner who has requested to withdraw all of its Partnership Interests from the Partnership, with the exception of any Partnership Interests maintained in a Side Pocket Account, the Partnership may reserve an amount from the withdrawing Limited Partner's withdrawal proceeds in order to cover the estimated accrued Management Fees and expenses attributable to the Limited Partner's Partnership Interests in the Side Pocket Account based on the Investment

Manager's estimate of the time period that the Illiquid Investments held in the Side Pocket Account shall remain in such Side Pocket Account (collectively, the "**Management Fee Reserve**"). The Management Fee Reserve shall be treated as a liability of the Partnership, and the balance of the Management Fee Reserve, if any, shall be paid to the withdrawing Limited Partner, without interest, upon such Limited Partner's complete withdrawal from the Side Pocket Account.

Section 6.02 Expenses

(a) **Organizational and Initial Offering Expenses**. The Partnership shall pay or reimburse the General Partner, the Investment Manager and/or their respective managers, members, shareholders, directors, officers, partners, employees, agents and/or affiliates (collectively, "**Investment Manager Affiliates**") for all organizational and initial offering expenses of the Partnership, including, but not limited to, legal and accounting fees, printing and mailing expenses and government filing fees (including blue sky filing fees). The Partnership's organizational and initial offering expenses may be, for accounting purposes, capitalized and amortized by the Partnership for up to sixty (60) months from the date the Partnership commences operations. Amortization of such expenses is a divergence from GAAP. In certain circumstances, this divergence may result in a qualification of the Partnership's annual audited financial statements. In such instances, the Partnership may elect to: (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP-conforming changes for financial reporting purposes, but capitalize and amortize expenses for purposes of calculating the Partnership's Net Asset Value (resulting in a divergence in Fiscal Year-end Net Asset Values reported in the Partnership's financial statements, and as otherwise applicable under the provisions of this Agreement). If the Partnership capitalizes and amortizes such expenses and is then terminated within sixty (60) months of its commencement, any unamortized expenses shall be recognized. If a Limited Partner makes a withdrawal prior to the end of the period during which the Partnership is capitalizing and amortizing expenses, the Partnership may, but is not required to, accelerate a proportionate share of the unamortized expenses based upon the amount being withdrawn and reduce withdrawal proceeds accordingly.

(b) **Operating Expenses**. The Partnership shall pay or reimburse the General Partner, the Investment Manager and/or the Investment Manager Affiliates for: (i) all expenses incurred in connection with the ongoing offer and sale of Partnership Interests, including, but not limited to, printing of the Memorandum and exhibits, marketing expenses and documentation of performance and the admission of Limited Partners, (ii) all operating expenses of the Partnership, such as tax preparation fees, governmental fees and taxes, fees to the Partnership's administrator ("**Administrator**"), costs of communications with Limited Partners, and ongoing legal, accounting, auditing, bookkeeping, consulting and other professional fees and expenses, (iii) all Partnership research, trading and investment-related costs and expenses (e.g., brokerage commissions, research fees, margin interest, expenses related to short sales, custodial fees, bank service fees, and clearing and settlement charges), (iv) technology-related costs and expenses, including, but not limited to, software licenses, data feeds and colocation expenses, (v) all expenses related to attending any conference or seminar related to alternative investments (e.g., registration, transportation, accommodation or meal expenses), (vi) regulatory and other filing fees and expenses, (vii) travel expenses related to meeting with management teams, or related to any of the other categories of expenses set forth herein, (viii) any costs and expenses incurred by the Partnership in connection with converting from a stand-alone fund into a "feeder fund" as part of a master-feeder structure, (ix) director and officer liability insurance or other insurance premiums for any principal or employee of the Partnership, the General Partner, the Investment Manager or any of the Investment Manager Affiliates, (x) all fees and other expenses incurred in connection with the investigation, prosecution or defense of any claims, assertion of rights or pursuit of remedies, by or against the Partnership, including, without limitation, professional and other advisory and consulting expenses, and (xi) any and all costs and expenses incurred in connection with the dissolution, winding up, or termination of the Partnership. Each of the General Partner, the Investment

Manager or any of the Investment Manager Affiliates, in its sole discretion, may from time to time pay for any of the foregoing Partnership expenses. Any such person may elect to be reimbursed for such expenses, or to waive its right to reimbursement for any such expenses, as well as terminate any such voluntary payment or waiver of reimbursement.

(c) **Allocation of Expenses Among Series**. The General Partner and/or the Investment Manager will allocate all expenses attributable to the Partnership among the Series on a *pro rata* basis or otherwise in their reasonable discretion.

(d) **General Partner and Investment Manager Expenses**. The General Partner and the Investment Manager shall pay for their own general operating and overhead expenses associated with providing the management and investment management services required under this Agreement and the Investment Management Agreement, respectively. These expenses include all expenses incurred by the General Partner and the Investment Manager in providing for their normal operating overhead, including, but not limited to, the cost of providing relevant support and administrative services (e.g., employee compensation and benefits, rent, office equipment, computer systems, insurance (other than as expressly set forth above), utilities, telephone, secretarial and bookkeeping services, etc.), but not including any Partnership operating expenses described above. The General Partner and the Investment Manager may use "soft dollar" commissions or rebates by brokerage firms of commissions generated by the Partnership's brokerage transactions executed through those firms to pay for certain brokerage and research products and services that fall within the safe harbor under Section 28(e) of the Securities Exchange Act of 1934, as amended, as set forth in the Memorandum.

Section 6.03 **Marketing Fees and Sales Charges**. The General Partner and/or the Investment Manager may sell Partnership Interests through broker-dealers and pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. The General Partner and/or the Investment Manager may also deduct a percentage of the amount invested by a Limited Partner in the Partnership to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer based upon the Capital Contribution of such Limited Partner introduced to the Partnership by such broker-dealer. Any such sales fees or charges would be assessed against the referred Limited Partner and would reduce the amount actually invested by such Limited Partner in the Partnership. If a Limited Partner is introduced to the Partnership through a broker-dealer that is not affiliated with the General Partner and/or the Investment Manager, the arrangement, if any, with such broker-dealer shall be disclosed to, and acknowledged by, such Limited Partner.

Section 6.04 **Directed Brokerage**. The Investment Manager is authorized to direct Partnership brokerage transactions to brokers or other persons who refer prospective Limited Partners to the Partnership. The Investment Manager is authorized to pay finders' fees or other compensation at its own expense to such persons.

Section 6.05 **Allocation of Investment Opportunities**. The Investment Manager may at times determine that certain investments shall be suitable for acquisition by the Partnership and by other accounts managed by the Investment Manager, the Investment Manager's own accounts or accounts of an affiliate. If that occurs, and the Investment Manager is not able to acquire the desired aggregate amount of such investments on terms and conditions which the Investment Manager deems advisable, the Investment Manager shall endeavor to allocate in good faith the limited amount of such investments acquired among the various accounts for which the Investment Manager considers them to be suitable. The Investment Manager may make such allocations among the accounts in any manner which it considers to be fair under the circumstances, including, but not limited to, allocations based on relative account sizes, the degree of risk involved in the investments acquired, and the extent to which such investments are consistent with the investment policies and strategies of the various accounts involved.

Section 6.06 **Aggregation of Orders**. The Investment Manager may aggregate purchase and sale orders of investments held by the Partnership with similar orders being made simultaneously for other accounts or entities if, in the Investment Manager's reasonable judgment, such aggregation is

reasonably likely to result in an overall economic benefit to the Partnership based on an evaluation that the Partnership shall be benefited by relatively better purchase or sale prices, lower commission expenses or beneficial timing of transactions, or a combination of these and other factors. In some instances, the purchase or sale of investments for the Partnership may be effected simultaneously with the purchase or sale of like investments for other accounts or entities. Such transactions may be made at slightly different prices, due to the volume of investments purchased or sold. In such event, the average price of all investments purchased or sold in such transactions may be determined, at the Investment Manager's sole discretion, and the Partnership may be charged or credited, as the case may be, with the average transaction price.

ARTICLE VII
WITHDRAWALS FROM CAPITAL ACCOUNT; DISTRIBUTIONS

Section 7.01 **Permissible Withdrawals**. A Limited Partner may withdraw all or any of the value in such Limited Partner's Capital Account in any Series in the manner and to the extent provided in **Section 7.02**. Each of the General Partner and its principals and affiliates may withdraw all or any of the value in its respective Capital Account at any time, from time to time, without the consent of the Limited Partners and without notice to any of the Limited Partners.

Section 7.02 **Withdrawal Procedures**

(a) Subject to the Lock-Up Period (as defined in **Section 7.02(b)**) and certain other restrictions described herein, each Limited Partner may withdraw a minimum of $100,000 as of the last day of each calendar quarter and at such other times as the General Partner may determine in its sole discretion (each such date shall be referred to herein as a "**Withdrawal Date**"), upon at least ninety-one (91) days' prior written notice to the Administrator, with a copy to the General Partner. Unless the General Partner consents, partial withdrawals may not be made if they would reduce a Limited Partner's Capital Account balance below $500,000. All withdrawals shall be deemed made prior to the commencement of the following calendar quarter (or other relevant period).

(b) Each Capital Contribution by a Limited Partner to the Partnership will be subject to a twelve (12)-month lock-up period ("**Lock-Up Period**") during which such capital may not be withdrawn from the Partnership, unless the Lock-Up Period is waived or reduced by the General Partner. If a Limited Partner purchases Partnership Interests on multiple dates, each tranche of Partnership Interests will be tracked separately for purposes of the Lock-Up Period, and withdrawals will be deemed made from Partnership Interests purchased on the earliest date (as adjusted for changes in the Net Asset Value). For the avoidance of doubt, the foregoing Lock-Up provisions shall apply on a Series-by-Series basis.

(c) Notwithstanding anything to the contrary herein, the General Partner cannot guarantee that the assets of the Partnership will be invested in a manner which would allow the General Partner to satisfy withdrawal requests. The General Partner may, in its sole discretion: (i) defer withdrawal requests until the Partnership's assets mature or are liquidated in due course, (ii) elect to purchase with its own funds the Partnership Interests of the withdrawing Partner, or (iii) borrow from a third party or draw from a line of credit, subject to availability and other factors, in order to fund any withdrawal.

(d) A Limited Partner may not withdraw any of the amounts in its Capital Account that are attributable to the value of an Illiquid Investment held in a Side Pocket Account until such time that such Illiquid Investment (or the sales proceeds thereof) is reallocated to such Limited Partner's Capital Account. At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event (as defined in **Section 9.07**). **For the avoidance of doubt, any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely.**

(e) The following provision shall apply to withdrawals, on a Series-by-Series basis:

(i) A Limited Partner who requests any withdrawal of capital that constitutes, together with prior withdrawals within any Fiscal Year, less than ninety percent (90%) of the value of such Limited Partner's Capital Account (excluding any amounts held in any Side Pocket Accounts) shall be paid within ninety (90) days after the applicable Withdrawal Date.

(ii) In the event that a Limited Partner requests a withdrawal of capital that constitutes, together with prior withdrawals within any Fiscal Year, ninety percent (90%) or more of the value of such Limited Partner's Capital Account (excluding any amounts held in any Side Pocket Accounts), the General Partner may reduce the amounts paid after any Withdrawal Date so that they constitute, in the aggregate during such Fiscal Year ninety percent (90%) of an amount estimated by the General Partner to be the amount to which the withdrawing Limited Partner is entitled in the aggregate (calculated on the basis of unaudited data); such amount will be paid within ninety (90) days after the applicable Withdrawal Date. The balance of the amount payable upon such withdrawal shall be paid, without interest, within ninety (90) days after completion of the audited financial statements for the Fiscal Year in which the withdrawal occurs. Notwithstanding the foregoing, the General Partner may, in its sole discretion, agree to pay up to the full Capital Account balance (calculated on the basis of unaudited data) to a withdrawing Limited Partner within ninety (90) days after the applicable Withdrawal Date, subject to adjustment based on audited financial statements. To the extent that the sum previously paid to a withdrawing Limited Partner is calculated to have exceeded the amount to which it is entitled, that Limited Partner shall be required to repay to the Partnership the balance.

(f) The General Partner may, in its sole discretion, require a Limited Partner to withdraw any or all of the value of such Limited Partner's Capital Accounts on at least five (5) days' notice for any reason or no reason; *provided, however*, that the General Partner may require such a withdrawal on less (or no) notice in order to comply with any laws and regulations applicable to the Partnership and/or its affiliates.

(g) The Partnership or the relevant Series has the right to pay cash or in-kind, or a combination of both, to a Limited Partner that makes a withdrawal from such Limited Partner's Capital Account under this **Article VII**.

(h) All withdrawals shall be subject to the General Partner's power to establish such reserves for the Partnership or a Series as the General Partner shall, in its sole but reasonable discretion, deem appropriate to pay current and future, definite, contingent and possible obligations of the Partnership or a Series (even if such reserves are not in accordance with GAAP), including estimated expenses in connection therewith, which could reduce the amount of a distribution upon withdrawal.

(i) All notices of withdrawal must specify the dollar amount or percentage of value of a Limited Partner's Capital Account to be withdrawn. The General Partner, in its sole discretion, may waive or modify any of the terms relating to withdrawals, including, without limitation, minimum amounts, notice periods and the Lock-UP Period, for all or any of the Limited Partners in its discretion without notice to the other Limited Partners.

(j) If the General Partner, in its sole discretion, permits a Limited Partner to withdraw capital other than on a regularly scheduled Withdrawal Date, the General Partner may impose an administrative fee to cover the actual legal, accounting, administrative, brokerage, and any other costs and expenses associated with such withdrawal. Such fee shall be payable to the relevant Series of the Partnership and shall be deducted from the withdrawal proceeds of the withdrawing Limited Partner as of such Withdrawal Date.

(k) Upon withdrawal of all of the capital in its Capital Account (excluding for purposes hereof, any remaining investments held in a Side Pocket Account), a Limited Partner shall be deemed to have withdrawn from the Partnership or the relevant Series and, upon notice of such withdrawal, a Limited Partner shall not be entitled to exercise any voting rights afforded to Limited Partners under this Agreement.

Section 7.03 **Limitations on Withdrawals**

(a) The Partnership or a Series may suspend (or postpone) withdrawals, subscriptions, calculations of Net Asset Value and/or payments upon any withdrawals (in whole or in part) from Capital Accounts:

(i) during the existence of any state of affairs which, in the opinion of the General Partner, makes the disposition of the Partnership's investments impractical or prejudicial to the Partners, or where such state of affairs, in the opinion of the General Partner, makes the determination of the price or value of the Partnership's investments impractical or prejudicial to the Partners;

(ii) where any such withdrawals, subscriptions, calculations and/or payments, in the opinion of the General Partner, would result in the violation of any applicable law or regulation;

(iii) if the General Partner determines, in its sole discretion, that such suspension or postponement is prudent in order to prevent the Partnership from being subject to adverse tax or regulatory implications; or

(iv) for such other reasons or for such other periods as the General Partner may in good faith determine.

(b) All Limited Partners shall be notified in writing of any such suspension or postponement and the termination thereof. Following any suspension or postponement of withdrawals, a withdrawal request made by a Limited Partner prior to such suspension or postponement shall be effected as of the first Withdrawal Date following the recommencement of withdrawals.

(c) For the avoidance of doubt, the following "gate" provisions shall apply on a Series-by-Series basis. In the event that Limited Partners, in the aggregate, request, as of any Withdrawal Date, withdrawals of more than twenty-five percent (25%) of the aggregate balances of the Partnership's Capital Accounts (excluding any Side Pocket Accounts), the requested amounts may, in the General Partner's sole discretion, be reduced to an amount equal to twenty-five percent (25%) of the aggregate Capital Account balances of the Partnership (excluding any Side Pocket Accounts) as of such date, and satisfied on a *pro rata* basis, based on the respective amounts of requested withdrawals of capital by each withdrawing Limited Partner. Capital withdrawal requests that are deferred due to such limitation may be revoked by the withdrawing Limited Partner, and if not revoked, will be aggregated with other withdrawal requests received for subsequent Withdrawal Dates. In the interim, all of the remaining capital in such Limited Partner's Capital Account (including the capital subject to such deferred withdrawal request) shall remain subject to the performance of the Partnership.

Section 7.04 **Distributions**

(a) The Partnership (or any Series) is not required, and generally does not intend, to make any distributions of cash or other property. However, the Partnership (or any Series) may make such distributions at such times and in such amounts as the General Partner shall determine in its sole discretion.

(b) All distributions hereunder (other than those made related to withdrawals from Capital Accounts) shall be made *pro rata* to all Partners in accordance with their relative Capital Accounts (or Side Pocket Accounts, New Issues Accounts or other memorandum accounts, as applicable) at the time of any such distribution. The

General Partner may set up such reserves as it shall determine shall be appropriate or necessary to accomplish the purposes of the Partnership (even if such reserves are not in accordance with GAAP). If the Partnership (or a Series) shall distribute property other than cash pursuant to this **Section 7.04**, the Capital Accounts of the Partners shall be adjusted as if such property were sold at the value of such property as determined under **Section 9.04**, and the cash proceeds of such sale were distributed.

ARTICLE VIII
ADDITIONAL LIMITED PARTNERS

Section 8.01 **Future Issuance of Partnership Interests**. The General Partner may admit as of the first day of each month (each such date, a "**Contribution Date**"), or at any other time that the General Partner determines in its sole and absolute discretion, as additional Limited Partners ("**Additional Limited Partners**"), persons who contribute cash or, in the General Partner's sole discretion, persons who contribute securities (and/or other investments), for Partnership Interests ("**Capital Contributions**"). If the General Partner consents to a Limited Partner's contribution of securities (and/or other investments) to the Partnership, the Partnership may, in the General Partner's discretion, assess a special charge against such Limited Partner equal to the actual costs incurred by the Partnership in connection with accepting such contributed securities (and/or other investments), including, but not limited to, the costs of liquidating, or otherwise adjusting the Partnership's portfolio to accommodate, such securities (and/or other investments), and legal, accounting and administration costs. Such special charge shall be assessed as of such dates deemed appropriate by the General Partner. Any securities (and/or other investments) accepted as a Capital Contribution shall be valued by the General Partner, in its sole discretion, using the valuation criteria set forth in **Section 9.04**.

ARTICLE IX
CAPITAL ACCOUNTS; CAPITAL CONTRIBUTIONS; NET ASSET VALUE ADJUSTMENTS; TAXABLE INCOME AND LOSS AND DISTRIBUTIONS

Section 9.01 **Capital Accounts**. A Partner's "**Capital Account**" as of a particular date shall consist of the following:

(a) an amount equal to the Partner's Original Capital Contribution;

(b) the increases, if any, to such account by reason of Additional Capital Contributions (as defined in **Section 9.03(a)**);

(c) the decreases, if any, to such account by reason of withdrawals (and distributions) from such Capital Account; and

(d) the increases or decreases, if any, to such Capital Account in accordance with the provisions of this **Article IX**.

Capital Accounts shall be maintained in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2), or any successor provisions thereto.

Section 9.02 **Original Capital Contributions**. A Partner's "**Original Capital Contribution**" shall be the amount of the cash, or in the sole discretion of the General Partner, securities (and/or other investments), contributed by such party upon such Partner's admission as a Partner. The General Partner may establish such minimum Original Capital Contribution as the General Partner deems appropriate and that minimum may thereafter be waived or changed by the General Partner. In the event an Original Capital Contribution is accepted as of any day other than a Contribution Date, the General Partner shall cause appropriate adjustments to be made for purposes of applying the accounting and allocation provisions of this Agreement. At any time that a Partner is admitted, the General Partner shall end the prior accounting period on the day prior to the date of the acceptance of the Original Capital Contribution, and commence a new accounting period on the date of such admission, and upon such admission, the Partnership Interests shall be adjusted and reallocated based upon the Capital Accounts of the

respective Partners.

Section 9.03 Additional Capital Contributions

(a) A Partner shall be permitted, with the consent of the General Partner, to make additional Capital Contributions in an amount deemed appropriate by the General Partner in cash or, in the sole discretion of the General Partner, securities (and/or other investments) ("**Additional Capital Contributions**") to the capital of the Partnership as of any Contribution Date, or at any other time that the General Partner determines in its sole and absolute discretion. In the event an Additional Capital Contribution is accepted as of any day other than a Contribution Date, the General Partner shall cause appropriate adjustments to be made for purposes of applying the accounting and allocation provisions of this Agreement. At any time that Additional Capital Contributions are accepted pursuant to this **Section 9.03**, the General Partner shall end the prior accounting period on the day prior to the date of the acceptance of the Additional Capital Contributions, and commence a new accounting period on the date of such acceptance, and upon such acceptance, the Partnership Interests shall be adjusted and reallocated based upon the Capital Accounts of the respective Partners. Any securities accepted as an Additional Capital Contribution shall be valued by the General Partner, in its sole discretion, using the valuation criteria set forth in **Section 9.04**.

(b) In connection with an Additional Capital Contribution by an existing Limited Partner, the General Partner shall (i) treat such Additional Capital Contribution as a Capital Contribution with respect to one of such Limited Partner's existing Capital Accounts or (ii) establish a new Capital Account to which such Capital Contribution shall be credited and which shall be maintained for the benefit of such Limited Partner separately from any existing Capital Account of such Limited Partner. Such separate Capital Account may be maintained for any purpose, in the discretion of the General Partner, including the calculation of the Performance Allocation, the Loss Carryforward (each as defined in **Section 9.05**) and/or the Lock-Up Period. If a Limited Partner has more than one Capital Account, any withdrawals by or distributions to such Limited Partner shall be applied to such Capital Accounts in such manner and proportion as the General Partner shall determine in its sole discretion.

Section 9.04 Determination of Net Asset Value

(a) The net asset value ("**Net Asset Value**") of the Partnership, on a Series-by-Series basis, shall be determined on an accrual basis of accounting, as of the end of each calendar month (or other period, as the case may be), in accordance with GAAP, consistently applied (except that: (x) organizational and initial offering expenses of the Partnership may be capitalized and amortized over a period of up to sixty (60) months from the date the Partnership commences operations and (y) reserves may be taken that are inconsistent with GAAP), the Memorandum and the following:

(1) No value shall be assigned to goodwill;

(2) All accrued debts and liabilities shall be treated as liabilities, including, but not limited to, all compensation payable to the Investment Manager that has been earned but not yet paid (e.g., Management Fees), any allowance for the Partnership's estimated annual audit and legal fees and other operating expenses and any contingencies for which reserves are required;

(3) Securities, commodities and other financial instruments (other than options) that are listed on a national securities, commodities or other exchange, or over-the-counter instruments listed on NASDAQ, shall be valued at their last sales prices on such date or, if no sales occurred on such date, at the midpoint between the last "bid" and "ask" prices for such securities, commodities or financial instruments on such date;

(4) Options that are listed on a securities or commodities exchange shall be valued at their last sales prices on the date of determination on the largest

securities or commodities exchange (by trading volume) on which such options shall have traded on such date; provided that, if the last sales prices of such options do not fall between the last "bid" and "ask" prices for such options on such date, then such options shall be valued at the midpoint between the last "bid" and "ask" prices for such options on such date;

(5) Securities, commodities, options and other financial instruments that are not listed on an exchange or quoted on an over-the-counter market, but for which there are available quotations, shall be valued based upon quotations obtained from market makers, dealers or pricing services;

(6) Securities (and/or other investments) contributed to the Partnership as subscription proceeds shall be treated as if purchased by the Partnership at market value on the date of contribution, and securities (and/or other investments) distributed from the Partnership as withdrawal proceeds shall be treated as if sold by the Partnership at market value on the date of distribution;

(7) Net profits and net losses from New Issues (as defined in **Section 9.08(a)**) shall only be credited or debited to the Net Asset Value of the New Issues Accounts, except to the extent permitted by the applicable rules of the FINRA (as defined in **Section 9.08(a)**), in which case a portion of the net profits and net losses from New Issues may be credited or debited to the Net Asset Value of the Capital Accounts of Limited Partners who are Restricted Persons (as defined in **Section 9.08(a)**) up to an amount permitted by applicable FINRA rules;

(8) Any securities, commodities, options and other financial instruments that have no public market, investments in other asset classes (including those in Side Pocket Accounts), and all other assets of the Partnership for which a valuation methodology is not specified, shall be valued by the Investment Manager in a manner determined in good faith to reflect their fair market value; and

(9) The Investment Manager intends to engage an independent third-party valuation agent (in addition to the Administrator) to appraise the Partnership's interests in Illiquid Investments.

(b) If the Investment Manager determines, in its sole discretion, that the valuation of any security, commodity, option or other financial instrument does not fairly represent its market value, the Investment Manager shall value such security, commodity, option or other financial instrument as it reasonably determines.

(c) In connection with the determination of the Net Asset Value of the Partnership, the Investment Manager may consult with and is entitled to rely upon the advice of the Partnership's brokers and any other third parties deemed appropriate by the Investment Manager. In no event and under no circumstances shall the Investment Manager, the Partnership's brokers or such other third parties incur any individual liability or responsibility for any determination made or other action taken or omitted by them in good faith.

(d) Absent bad faith or manifest error, all Net Asset Value determinations pursuant to this Agreement are conclusive and binding as to all Partners.

(e) After the foregoing determinations have been made, a further calculation shall be made to determine the increase or decrease in Net Asset Value of the Partnership during the month (or other time period, as the case may be) just ended. The term "**increase in Net Asset Value**" shall be the excess of Net Asset Value at the end of any month (or other time period, as the case may be) over that of the Net Asset Value of the Partnership as of the end of the preceding period, after adjusting for Capital Contributions, distributions and withdrawals. The term "**decrease in Net Asset Value**" shall be the amount by which the Net Asset Value at the end of the month (or

other time period, as the case may be) is less than the Net Asset Value of the Partnership as of the end of the preceding period, after making the adjustments specified above.

Section 9.05 **Allocation of Increases and Decreases in Net Asset Value; Performance Allocation**

(a) Any net increase or decrease in Net Asset Value during any month (or such other period, as the case may be) shall be allocated as of the end of such month (or such other period, as the case may be) to the Capital Account of each Partner in the proportion which such Partner's Capital Account bore to the sum of the Capital Accounts of all the Partners as of the beginning of such month (or such other period, as the case may be); *provided* that net increases or decreases in Side Pocket Accounts, New Issues Accounts and other memorandum accounts shall be allocated as provided in **Sections 9.07 and 9.08**, respectively.

(b) In consideration for the management services provided pursuant to this Agreement, the General Partner shall receive a performance allocation ("**Performance Allocation**") at the close of each Fiscal Year (or such other applicable period that this allocation is made in accordance with this Agreement, as the case may be) equal to five percent (5%) of the net increase in Net Asset Value (including realized and unrealized gains and losses and net of the Management Fee) attributable to each Limited Partner's Capital Account for such Fiscal Year (or other applicable period), as determined on the accrual basis of accounting; *provided*, *however*, that the Performance Allocation shall be subject to a Loss Carryforward (as described below in **Section 9.05(g)**); and *provided further* that, notwithstanding the foregoing, General Partner shall not charge any Performance Allocations with respect to the first $50 million of Limited Partners' Capital Contributions to the Partnership.

(c) The Performance Allocation shall not include any change in the value of an Illiquid Investment held in a Side Pocket Account until such Illiquid Investment (or the sales proceeds thereof) has been reallocated from such Side Pocket Account to the Capital Accounts of participating Partners. Notwithstanding the foregoing, any income generated from an Illiquid Investment shall be transferred to and included in the Capital Accounts of participating Partners for purposes of calculating the Performance Allocation.

(d) The General Partner shall also receive the Performance Allocation with respect to any amounts withdrawn by a Limited Partner, whether voluntary or involuntary, and upon dissolution of the Partnership under **Article XIII**. The Performance Allocation shall be allocated to the General Partner in addition to, and separately from, the allocations of net increases or decreases in Net Asset Value to its Capital Account pursuant to **Section 9.05(a)**.

(e) In the event of a net decrease in the Net Asset Value of the Capital Account of any Limited Partner in any Fiscal Year (or other relevant Performance Allocation period), the amount of such net decrease shall be recorded and carried forward as a "**Loss Carryforward**". Any net increase in the Net Asset Value of the Capital Account of such Limited Partner in a subsequent Fiscal Year (or other period) shall be applied to reduce (but not below zero) such Loss Carryforward balance (and, conversely, any net decrease in Net Asset Value shall be applied to increase such Loss Carryforward balance). No Performance Allocation shall be allocated in any subsequent Fiscal Year (or other period) in respect of such Capital Account until the Loss Carryforward has been fully recovered as described above, and in such Fiscal Year (or other period) of such recovery, the Performance Allocation shall be calculated based on the excess net increase in Net Asset Value of such Capital Account (i.e., after being applied to reduce the Loss Carryforward to zero). However, in the event that a Limited Partner withdraws funds at a time in which such Limited Partner's Capital Account has a Loss Carryforward, the amount of such Loss Carryforward at such Withdrawal Date applicable to such Limited Partner's Capital Account shall be reduced by a percentage equal to one hundred percent (100%) multiplied by a fraction, the numerator of which is the amount to be withdrawn from the Limited Partner's Capital Account, and the denominator of which is the amount in such

Capital Account immediately prior to the withdrawal.

(f) Notwithstanding the provisions set forth above, if the Partnership has a material item of income or loss in any fiscal period which relates to a matter or transaction occurring during a prior fiscal period (e.g., if the Partnership wins a cash settlement in a case it began in a prior period) the item of income or loss may, at the sole discretion of the General Partner, be shared among the Partners (including persons who ceased to be Partners) in accordance with each such Partner's Partnership Interest in the Partnership during the prior period.

Section 9.06 **Allocations for Tax Purposes; General Partner Discretion on Allocations; Withholding**

(a) Ordinary income, gains, losses and deductions of the Partnership for each Fiscal Year shall accrue to, and be borne by, the Partners in proportion to their sharing of net increases or decreases in Net Asset Value, the allocations of various types of taxable income and losses likewise being as nearly as possible proportionate.

(b) All allocations under this **Section 9.06** shall be made pursuant to the principles of Section 704 of the Code and in conformity with Treasury regulations promulgated thereunder ("**Regulations**"), or the successor provisions to such Code Section and Regulations.

(c) All matters concerning the allocation of profits, gains and losses among the parties (including the taxes thereon) and accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the General Partner in its sole discretion, and the General Partner is expressly permitted to use the aggregate method of apportioning taxable gain and loss under Treasury Regulation Section 704(b). The General Partner is expressly authorized to make special allocations to the Partners of such gains or income as shall be necessary to satisfy the "qualified income offset" requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(d). The General Partner's determination of the foregoing matters shall be final and conclusive as to all parties.

(d) Notwithstanding anything to the contrary contained in this Agreement, in the event a Partner withdraws all of the capital in its Capital Account from the Partnership (excluding any amounts held in Side Pocket Accounts), the General Partner shall have the discretion to specially allocate an amount of the Partnership's taxable gains or losses to the withdrawing Partner to the extent that the Partner's Capital Account exceeds, or is less than, its federal income tax basis in its Partnership Interest.

(e) Any taxes, fees or other charges that the Partnership is required to withhold under applicable law with respect to any Partner shall be withheld by the Partnership (and paid to the appropriate government authority) and shall be deducted from the Capital Account of such Partner as of the last day of the Fiscal Year (or earlier if the Partner withdraws) with respect to which amounts are required to be withheld.

(f) For the avoidance of doubt, the provisions of this **Section 9.06** shall apply on a Series-by-Series basis.

Section 9.07 **Side Pocket Accounts**

(a) The Investment Manager may designate that certain investments held by a Series of the Partnership be carried in one or more separate memorandum accounts (each, a "**Side Pocket Account**") for such period of time as the Investment Manager determines. Such investments may include: (i) privately placed, unregistered securities, commodities, options and other financial instruments, or those investments that, in the opinion of the Investment Manager, do not have a readily ascertainable market value; (ii) other illiquid securities that may be valued but are not freely transferable; and (iii) investments in other asset classes (such as real estate) and other property that are not traded on public exchanges (each, as designated by the Investment Manager, along with follow-on investments, if any, an "**Illiquid Investment**"). **For the avoidance of doubt, (i) there will be no limitation on the**

percentage of the Partnership's portfolio that may be carried in a Side Pocket Account, and (ii) any investment made by Series 1 into the Highland Transaction (if any) may be held in a Side Pocket Account indefinitely. Illiquid Investments held in a Side Pocket Account shall be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

(b) At the sole discretion of the Investment Manager, an Illiquid Investment may be held in a Side Pocket Account until the occurrence of a Realization Event. Upon a Realization Event, such Illiquid Investment (or the sales proceeds thereof) shall be reallocated, *pro rata*, from the Side Pocket Account to the Capital Accounts of participating Partners in accordance with their respective interests in such Side Pocket Account. Until such reallocation, a Limited Partner may not withdraw any of the amounts in its Capital Account that are attributable to the value of Illiquid Investments held in a Side Pocket Account. Upon such reallocation, a Limited Partner that has withdrawn all of its capital from the Partnership other than the capital attributable to such Side Pocket Account shall receive an amount equal to its interest in such Side Pocket Account (net of: (i) any accrued Management Fees and accrued expenses (to the extent not covered by the Partnership's reserves, including the Management Fee Reserve), and (ii) the Performance Allocation, if any, with respect thereto) within ninety (90) days after such reallocation. A "**Realization Event**" occurs: (1) when an Illiquid Investment becomes liquid, as determined in the reasonable discretion of the Investment Manager; (2) when an Illiquid Investment is sold or otherwise disposed of by the Partnership; (3) when circumstances otherwise exist that, in the reasonable judgment of the Investment Manager, conclusively establish a value for an Illiquid Investment, as determined in the reasonable discretion of the Investment Manager (including, without limitation, when additional securities substantially similar to the Illiquid Investment have been issued by the issuer of the Illiquid Investment); or (4) as otherwise determined in the sole discretion of the Investment Manager.

(c) Newly-admitted Limited Partners may not participate in Illiquid Investments that were placed in a Side Pocket Account prior to their admission. Notwithstanding any provisions of this Agreement to the contrary, any expenses relating specifically to a Side Pocket Account shall be charged to the Partners participating in such account in proportion to their respective interests therein, as of the commencement of such Side Pocket Account.

(d) If the Investment Manager in its discretion designates any investment as a follow-on investment to an existing Illiquid Investment (each, a "**Follow-On Investment**"), only the Partners participating in such original investment shall participate in such Follow-On Investment in proportion to their interest in the related Side Pocket Account; *provided, however*, that if a Partner shall have withdrawn from the Partnership, the General Partner shall equitably adjust the interests of the remaining participating Partners to reflect such withdrawn Partner's non-participation in the Follow-On Investment. In its discretion, the Investment Manager need not designate as a "Follow-On Investment" an additional investment in the same or similar opportunity as the investment for which a Side Pocket Account has been established, but instead may designate such investment as a new investment with a separate Side Pocket Account. Additionally, the Investment Manager, in its sole and absolute discretion, may determine that, for various reasons, an asset that initially was not an Illiquid Investment should be categorized as an Illiquid Investment.

Section 9.08 **New Issues; Other Memorandum Accounts for Restricted Transactions**.

(a) From time to time, the Partnership may invest in initial public offerings of equity securities ("**New Issues**"). Under rules adopted by the Financial Industry Regulatory Authority ("**FINRA**"), (i) certain persons engaged in the securities, banking or financial services industries (and members of their immediate families) and (ii) certain persons who are affiliated with companies that are current, former or prospective investment banking clients of the Partnership's broker(s) (collectively, "**Restricted Persons**") are restricted from participating in New Issues, each subject to a de minimis exemption ("**De Minimis Limit**"). To the extent necessary to comply with FINRA rules, in

addition to the Partnership's regular Capital Accounts and any Side Pocket Accounts, the General Partner may establish one or more memorandum accounts that are authorized to participate in New Issues (each, a "**New Issues Account**"). Participation in New Issues Accounts shall be limited to (i) those Limited Partners who are not Restricted Persons, and (ii) those Limited Partners who are Restricted Persons, but only to the extent that such participation by Restricted Persons does not exceed the De Minimis Limit. To the extent not prohibited by applicable FINRA rules, the General Partner shall be entitled to receive the Performance Allocation with respect to any profits arising from New Issues trades.

(b) In the event a New Issues Account is established, to effect a transaction in New Issues, the requisite funds shall be transferred from the Partnership to the New Issues Account. Securities held in the New Issues Account shall be held there until they are eventually sold or transferred. Upon the sale or other disposition of New Issues (including any transfer of the underlying securities in the New Issues Account to the Capital Accounts of all of the Partners after such securities no longer constitute New Issues), any profits or losses resulting from securities transactions in the New Issues Account in any fiscal period shall be credited or debited to the Capital Accounts of Limited Partners participating in the New Issues Account in accordance with their interests therein. In the event that the Partnership establishes one or more New Issues Accounts, the General Partner shall be authorized to make an equitable adjustment to account for the fact that Limited Partners that are not Restricted Persons were receiving profits based in part on the capital of Limited Partners that are Restricted Persons. Such adjustment may, in the sole and absolute discretion of the General Partner, and to the extent not prohibited by rules of FINRA, consist of: (i) assessing an interest charge to the Capital Accounts of Limited Partners that are not Restricted Persons, in favor of the Partnership, in an amount deemed appropriate to compensate the Partnership for the use of capital by Limited Partners that are not Restricted Persons in connection with New Issue trades; or (ii) such other adjustment as the General Partner considers equitable and is not inconsistent with the rules of FINRA.

(c) In addition to the foregoing provisions with respect to New Issues Accounts and Side Pocket Accounts, to the extent that certain Limited Partners are restricted from participating in any transactions of the Partnership by applicable laws or regulations, or for any other reason determined by the General Partner in good faith, the General Partner may, in its discretion, establish one or more separate memorandum accounts to hold such investments and isolate ownership away from such non-participating Limited Partners. Only those Limited Partners who the General Partner determines are eligible shall participate in such accounts. In the event that the Partnership establishes one or more memorandum accounts, the General Partner shall be authorized to make an equitable adjustment to account for the fact that participating Limited Partners were receiving profits based in part on the capital of non-participating Limited Partners. Such adjustment may, in the sole and absolute discretion of the General Partner, consist of: (i) assessing an interest charge to the Capital Accounts of participating Limited Partners, in favor of the Partnership, in an amount deemed appropriate to compensate the Partnership for the use of capital by participating Limited Partners in connection with such trades; or (ii) such other adjustment as the General Partner considers equitable.

ARTICLE X
RESTRICTIONS ON TRANSFERS OF PARTNERSHIP INTERESTS OF LIMITED PARTNERS; ADMISSION OF SUBSTITUTE LIMITED PARTNERS; OTHER MATTERS AFFECTING PARTNERSHIP INTERESTS

Section 10.01 **Restrictions on Transfer of Partnership Interests of Limited Partners**

(a) Except for transfers by will or intestate succession or by operation of law, no Limited Partner may offer, sell, transfer, assign, exchange, hypothecate or pledge, or otherwise dispose of or encumber (hereinafter collectively, "**Transfer**" or "**Transferred**"), in whole or in part, such Limited Partner's Partnership Interest without the consent of the General Partner, which may be given or withheld in the sole and

absolute discretion of the General Partner.

(b) No Limited Partner may Transfer, in whole or in part, such Limited Partner's Partnership Interest if, in the General Partner's discretion, such Transfer could result in the termination of the Partnership for federal income tax purposes, and any purported Transfer that could result in the termination of the Partnership for federal income tax purposes shall be void *ab initio*. In its sole and absolute discretion, the General Partner may request a written opinion of counsel acceptable to the General Partner (the expenses of which may be allocated to the relevant Limited Partner) as to whether any contemplated Transfer could result in the termination of the Partnership for federal income tax purposes, and the General Partner shall be entitled to rely conclusively upon such opinion in determining whether such Transfer could result in the termination of the Partnership and whether consent to such disposition should be given.

(c) The Partnership Interests may not be transferred without documentation acceptable to the General Partner, which may include a written opinion of counsel acceptable to the General Partner (the expenses of which may be allocated to the relevant Limited Partner) that such proposed Transfer may be effected without:

(i) registration of the Partnership Interest being made under the Securities Act of 1933, as amended;

(ii) violating any applicable state securities or "blue sky" law (including investment suitability standards) or the laws of any other jurisdiction;

(iii) the Partnership becoming subject to the Investment Company Act of 1940, as amended ("**1940 Act**"); or

(iv) violating the Act.

(d) In no event shall the Partnership Interest of a Limited Partner or any portion thereof be Transferred to a minor or incompetent, unless by will or intestate succession.

Section 10.02 Admission of Substitute Limited Partner

(a) Subject to the provisions of this **Article X**, an assignee of the Partnership Interest of a Limited Partner (which shall include any purchaser, transferee, donee or other recipient of any disposition of such Partnership Interest) shall be deemed admitted to the Partnership as a Limited Partner (a "**Substitute Limited Partner**") only upon the satisfactory completion of the following:

(i) consent of the General Partner shall have been given, which may be given or withheld in the sole and absolute discretion of the General Partner and which shall be evidenced by a written document executed by the General Partner;

(ii) the assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement (as it may be amended from time to time) by executing a counterpart hereof and such assignee shall have expressly assumed all of the rights and obligations of the assignor Limited Partner hereunder, and shall have executed such other documents or instruments as the General Partner may require in its sole and absolute discretion in order to effect the admission of such person as a Limited Partner;

(iii) an amendment to the Certificate, if required by the Act (in the opinion of the General Partner), evidencing the admission of such person as a Limited Partner shall have been filed;

(iv) the assignee shall have delivered a letter containing a representation that the assignee's acquisition of the Partnership Interest is made as a principal, for the assignee's own account, for investment purposes only and not with a

view to the resale or distribution of such Partnership Interest, and that the assignee will not Transfer such Partnership Interest or any fraction thereof to anyone in violation of this Agreement;

(v) if the assignee is a corporation, partnership, limited liability company, trust or other entity, the assignee shall have provided to the General Partner evidence satisfactory to the General Partner of its authority to become a Limited Partner under the terms and provisions of this Agreement;

(vi) the assignee shall have complied with all applicable governmental rules and regulations, if any;

(vii) the assignee meets the suitability requirements for investing in the Partnership and the assignee completes the subscription documents ("**Subscription Documents**") provided by the General Partner; and

(viii) all costs and expenses incurred by the Partnership and the General Partner in connection with this **Section 10.02** shall be paid by the person or entity seeking to become a Substitute Limited Partner (or the transferor Limited Partner).

Section 10.03 Rights of Assignee of Partnership Interest

(a) Subject to **Section 10.01(b)**, if a Limited Partner Transfers all or a portion of such Limited Partner's Partnership Interest, involuntarily, by operation of law or voluntarily, without the consent required by this **Article X**, the transferee or assignee shall: (i) be entitled only to receive that proportion of profit and loss, and any distribution of Partnership assets, attributable to the Partnership Interest acquired by reason of such disposition from and after the effective date of such disposition, and only upon written notification of same to the General Partner consistent with **Section 10.03(b)**; and (ii) have no other rights as a Limited Partner unless admitted as a Substitute Limited Partner in accordance with the terms of this Agreement.

(b) Subject to the provisions of **Section 10.01**, and except as required by operation of law, the Partnership shall not be obligated for any purposes whatsoever to recognize the assignment by any Limited Partner of such Limited Partner's Partnership Interest until the General Partner has received notice thereof.

(c) Any person or entity who is the assignee of all or any portion of the Partnership Interest of a Limited Partner, but who has not become a Substitute Limited Partner, and desires to make a further disposition of such Partnership Interest, shall be subject to all the provisions of this **Article X** to the same extent and in the same manner as any Limited Partner desiring to make a disposition of such Limited Partner's Partnership Interest.

Section 10.04 Effect of Bankruptcy, Death or Incompetence of a Limited Partner. The bankruptcy, dissolution or winding up of a Limited Partner, the death of a Limited Partner or an adjudication that a Limited Partner is incompetent (which term shall include, but not be limited to, insanity), shall not cause the termination, wind-down or dissolution of the Partnership and the business of the Partnership shall continue. If a Limited Partner becomes bankrupt, dissolved or wound up, the trustee or receiver of such Limited Partner's estate or, if a Limited Partner dies, such Limited Partner's executor, administrator or trustee, or, if such Limited Partner is adjudicated incompetent, such Limited Partner's committee, guardian or conservator, shall have the rights of such Limited Partner for the purposes of settling or managing such Limited Partner's estate or property and such power as the bankrupt, deceased or incompetent Limited Partner possessed to dispose of all or any part of such Limited Partner's Interest and to join with any assignee in satisfying conditions precedent to the admission of the assignee as a Substitute Limited Partner.

Section 10.05 Attachment by Creditors. If a Partnership Interest is subjected to attachment by a creditor, or is assigned for the benefit of any creditor, the Partnership Interest obtained by such creditor shall be only that of an assignee, and in no event shall such creditor have the rights of a

Substitute Limited Partner or an Additional Limited Partner.

ARTICLE XI
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.01 **Limited Partners**. Each Limited Partner represents, warrants and covenants to the Partnership and to every other Partner as follows:

(a) Such Limited Partner shall provide promptly, upon request by the General Partner, all financial data, documents, reports, certifications or other information necessary or appropriate to enable the Partnership to apply for and obtain an exemption from the registration provisions of applicable law and any other information required by governmental agencies having jurisdiction over the Partnership.

(b) There is no misrepresentation contained in the Subscription Documents and the forms attached thereto completed by such Limited Partner.

(c) If such Limited Partner is a corporation, partnership, limited liability company, trust or other entity, that the officer (or other signatory) signing on its behalf has been duly authorized to execute and deliver this Agreement and, to the extent requested by the General Partner, the Certificate.

(d) Such Limited Partner that is an entity that would be an "investment company" under the 1940 Act, but for an exclusion under either Section 3(c)(1) or Section 3(c)(7) thereof, has advised the General Partner of the number of persons that constitute "beneficial owners of such Limited Partner's outstanding securities (other than short-term paper)" within the meaning of Section 3(c)(1)(A) of the 1940 Act, and shall advise the General Partner promptly upon any change in that number.

ARTICLE XII
SPECIAL POWER OF ATTORNEY

Section 12.01 **Execution and Consent**. Each Limited Partner hereby irrevocably constitutes and appoints the General Partner and its respective successors (hereinafter referred to as "**Special Attorney**") as the attorney-in-fact for such Limited Partner with power and authority to act in the Limited Partner's name and on the Limited Partner's behalf to execute, acknowledge, swear to and file documents and instruments necessary or appropriate to the conduct of the Partnership's business, which shall include, but not be limited to, the following:

(a) the Certificate and this Agreement, as well as amendments thereto as required by the laws of any state, or any other jurisdiction, or as otherwise permitted under the terms of this Agreement;

(b) any other certificates, instruments and documents, including fictitious name certificates, as may be required by, or may be appropriate under, the laws of any state;

(c) the amendment and/or restatement of this Agreement in accordance with **Section 14.08**; and

(d) any documents that may be required to effect the continuation of the Partnership, the admission of an Additional Limited Partner or a Substitute Limited Partner, the withdrawal of a Limited Partner, or the dissolution and termination of the Partnership, *provided* that such continuation, admission, withdrawal or dissolution and termination are in accordance with the terms of the Certificate and this Agreement.

Section 12.02 **Procedural Aspects**. The power of attorney granted by each Limited Partner to the Special Attorney:

(a) is a special power of attorney, coupled with an interest, and is accordingly

irrevocable;

(b) may be exercised by the Special Attorney for each Limited Partner either by signing separately as attorney-in-fact for each Limited Partner or, by executing any instrument with the single signature of such Special Attorney acting as attorney-in-fact for all of the Limited Partners; and

(c) shall survive the assignment by a Limited Partner of the whole or any portion of such Limited Partner's Partnership Interest; *provided* that where the assignee has been approved in accordance with the provisions of this Agreement for admission to the Partnership as a Substitute Limited Partner, the Power of Attorney shall survive such assignment for the sole purpose of enabling the Special Attorney to execute, acknowledge and file any instrument necessary to effect such substitution.

ARTICLE XIII
DISSOLUTION AND LIQUIDATION

Section 13.01 **Dissolution**. The Partnership shall be dissolved upon the earliest to occur of:

(a) the withdrawal, resignation or Involuntary Withdrawal of the General Partner, or any other event that results in such entity ceasing to be a general partner, unless the remaining Limited Partners agree, within ninety (90) days after such event, to continue the Partnership with a new and qualified substitute general partner pursuant to and in accordance with the terms and conditions set forth in **Article IV**;

(b) an election to dissolve the Partnership made by the General Partner, in its discretion, upon thirty (30) days' prior written notice to the Limited Partners; or

(c) the happening of any other event, including the entry of a decree of judicial dissolution under Section 17-802 of the Act, that under the law of the State of Delaware, mandatorily requires the dissolution of the Partnership.

For the avoidance of doubt, the termination of the Partnership shall constitute the termination of all Series. For the avoidance of doubt, the termination of an individual Series, however, shall not constitute the termination of the Partnership.

Section 13.02 **Liquidation**. Upon the dissolution of the Partnership, the "**Liquidators**", namely: (i) the General Partner or, if there is no general partner at the time, or if the principal(s) of the General Partner are unable to act on its behalf, (ii) (A) the person or persons previously designated in writing by the General Partner and notified to the Partnership's auditors, or (B) if the General Partner has not made such a designation, the person or persons designated by Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners, shall cause the cancellation of the Certificate, liquidate (or distribute) the assets of the Partnership, and apply and distribute the balance of the proceeds of such liquidation in accordance with the following order of priority: (1) pay off known liabilities; (2) establish reserves for contingent liabilities and expenses of liquidation (even if such reserves are not in accordance with GAAP); and (3) distribute the remainder to the Partners in proportion to the Capital Account balances maintained in accordance with the provisions of **Section 9.01** and the Act. The Liquidators shall take all other steps necessary to wind up the affairs of the Partnership as promptly as practicable. To the extent reasonable, the business of the Partnership may continue to be conducted until liquidation is complete. For purposes hereof, the term "Liquidators" shall also include the trustees, receivers or other persons required by law to wind up the affairs of the Partnership.

Section 13.03 **Notice of Dissolution**

(a) Upon the dissolution of the Partnership or the relevant Series, the Liquidators shall promptly notify the Partners of such dissolution as well as known creditors and claimants whose addresses appear on the Partnership's or the relevant Series' records.

(b) The General Partner shall give at least fifteen (15) days' prior written notice to each Limited Partner that is a BHC Limited Partner (as defined in **Section 5.10**) of any proposal to distribute property in-kind to such Limited Partner and the proposed date of such distribution, and shall not make any such distribution in-kind to the extent that such Limited Partner advises the General Partner at least five (5) days prior to the date set forth in such notice for such distribution that such distribution in-kind could reasonably be expected to cause it to violate the BHCA. In the event that a BHC Limited Partner notifies the General Partner to such effect, the General Partner shall be authorized to make such arrangements for the property that it would have otherwise distributed in-kind as the General Partner shall determine in its reasonable discretion.

Section 13.04 **Deferred Liquidation; Distribution In-Kind of Joint Interests in Property**. For the avoidance of doubt, the following provisions of this **Section 13.04** shall apply on a Series-by-Series basis. Notwithstanding the provisions of **Section 13.02**, if on dissolution of the Partnership the Liquidators shall determine that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidators may, in their absolute discretion, either defer for a reasonable time the liquidation of any assets, except those necessary to satisfy liabilities of the Partnership (other than those to Partners), or distribute to the Partners, in lieu of cash, as tenants in common and in proportion to their respective interests in the Partnership, undivided interests in such Partnership assets as the Liquidators deem not suitable for liquidation. To the extent that the General Partner exercises its right, power and authority under **Section 3.02(w)**, this Section shall be construed by the Liquidators in their reasonable discretion to give effect thereto.

Section 13.05 **Final Statement**. As soon as practicable after the dissolution of the Partnership or the relevant Series, a final statement of its assets and liabilities shall be prepared by the General Partner and/or the internal accountants for the Partnership or the relevant Series and furnished to the Partners.

ARTICLE XIV
GENERAL PROVISIONS

Section 14.01 **Address and Notices**. The address of each Partner (other than the General Partner) for all purposes shall be the address set forth on the signature page to this Agreement or such other address of which the General Partner has received written notice in accordance with this **Section 14.01**. The address of the General Partner for all purposes shall be the address set forth in **Section 1.04** or such other address of which the General Partner has provided written notice to the Partners in accordance with this **Section 14.01**. Any notice, demand or request required or permitted to be given or made hereunder shall be in writing and shall be deemed given or made (i) when delivered in person, (ii) when sent to such Partner at such address by registered or certified mail, return receipt requested, or by electronic mail, or (iii) when delivered by overnight delivery by a reputable private carrier or by the postal service.

Section 14.02 **Titles and Captions**. All Article and Section titles and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

Section 14.03 **Pronouns and Plurals**. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 14.04 **Further Action**. The Limited Partners shall execute and deliver all documents, provide all information and take or forbear from taking all such action as may be necessary or appropriate, in the discretion of the General Partner, to achieve the purposes set forth in this Agreement.

Section 14.05 **Governing Law, Personal Jurisdiction and Venue**. **EACH LIMITED PARTNER ACKNOWLEDGES AND AGREES THAT ANY CLAIM, CONTROVERSY, DISPUTE OR ACTION RELATING IN ANY WAY TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT OR SUCH LIMITED PARTNER'S INVESTMENT IN THE PARTNERSHIP**

SHALL BE GOVERNED SOLELY AND EXCLUSIVELY BY THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICT OF LAWS DOCTRINES. EACH LIMITED PARTNER UNDERSTANDS AND AGREES THAT IT IS WAIVING THE PROTECTION OF STATUTES IN ITS STATE OF RESIDENCE THAT PROVIDE IT WITH CERTAIN RIGHTS, REMEDIES AND PROTECTIONS IN THE CASE OF FRAUD OR MISREPRESENTATION AND AGREES TO RELY SOLELY UPON THE LAWS OF THE STATE OF DELAWARE AND ANY APPLICABLE FEDERAL LAWS. EACH LIMITED PARTNER MAKES THIS WAIVER KNOWINGLY AND REPRESENTS THAT IT HAS CONSULTED INDEPENDENT COUNSEL, OR THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH SUCH INDEPENDENT COUNSEL BUT HAS ELECTED NOT TO DO SO, AND AGREES THAT THE ONLY STATE LAWS THAT WILL APPLY TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT AND ITS INVESTMENT IN THE PARTNERSHIP ARE THE LAWS OF THE STATE OF DELAWARE.

EACH OF THE LIMITED PARTNERS, FUND COUNSEL AND ANY OTHER PARTY TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT OR ANY OTHER AGREEMENT REGARDING SUCH LIMITED PARTNER'S INVESTMENT IN THE PARTNERSHIP (COLLECTIVELY, FOR PURPOSES OF THIS CLAUSE, THE "PARTIES") IRREVOCABLY CONSENTS TO BEING SERVED WITH LEGAL PROCESS ISSUED FROM THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK AND IRREVOCABLY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS SITUATED IN THE STATE OF NEW YORK. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTIONS TO THE PERSONAL JURISDICTION OF THESE COURTS. SAID COURTS SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OVER ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES AND ACTIONS, OF ANY KIND OR MANNER, WHICH IN ANY WAY RELATE TO THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT, OR SUCH LIMITED PARTNER'S INVESTMENT IN THE PARTNERSHIP. THE PARTIES ALSO IRREVOCABLY WAIVE ANY OBJECTIONS THAT THESE COURTS CONSTITUTE AN OPPRESSIVE, UNFAIR, OR INCONVENIENT FORUM AND AGREE NOT TO SEEK TO CHANGE VENUE ON THESE GROUNDS OR ANY OTHER GROUNDS. THE PARTIES FURTHER AGREE THAT THEY WILL NOT FILE SUIT IN A JURISDICTION OTHER THAN NEW YORK AND THAT, SHOULD THEY DO SO, THEY SHALL BE LIABLE FOR ALL DAMAGES AS A RESULT OF MAKING SUCH A FILING AND SHALL PAY ALL ATTORNEYS' FEES INCURRED BY ANY PARTY IN CONNECTION WITH MOVING TO DISMISS THE SUIT FOR FAILURE TO COMPLY WITH THIS PROVISION.

In the event that (i) any current or prior Limited Partner ("**Claiming Party**") initiates or asserts any litigation, arbitration or similar claim or counterclaim, or joins, offers substantial assistance to or has a direct financial interest in any claim ("**Claim**") against the Partnership, the General Partner, the Investment Manager or any Investment Manager Affiliates, including any Claim purportedly filed on behalf of the Partnership or any Limited Partner, and (ii) the Claiming Party (or the third party that received substantial assistance from the Claiming Party or in whose Claim the Claiming Party had a direct financial interest) does not obtain a judgment on the merits that substantially achieves, in substance and amount, the full remedy sought, then each Claiming Party shall be obligated jointly and severally to reimburse the Partnership and/or the General Partner, the Investment Manager or any such Investment Manager Affiliate for all fees, costs and expenses of every kind and description (including, but not limited to, all reasonable attorneys' fees and other litigation expenses) that the parties may incur in connection with such Claim.

Section 14.06 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns; *provided*, however, that fund counsel shall be a party to this Agreement solely with respect to **Sections 3.04(b) and 14.05** hereof in order to benefit from and enforce such Sections, and a conformed signature page for fund counsel is included as a counterpart to this Agreement.

Section 14.07 **Entire Agreement**. This Agreement, together with the related Subscription Documents and any other written agreement between the General Partner, on behalf of the Partnership (acting severally in the name of and for the account of any individual Series), and any Limited Partner of that Series, shall constitute the entire agreement and understanding among all the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and

communications of the parties, oral or written, respecting such subject matter, including, without limitation, the Current Agreement. The parties hereto acknowledge that, notwithstanding any other provision of this Agreement or the Subscription Documents, the General Partner, on its own behalf or on behalf of the Partnership, without any act, consent or approval of any other Partner, may enter into side letters or other writings to or with one or more Limited Partners that have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or the Subscription Documents ("**Side Letters**"). The parties agree that any rights established, or any terms of this Agreement or the Subscription Documents altered or supplemented, in a Side Letter to or with one or more Limited Partners shall govern with respect to such Limited Partner(s) notwithstanding any other provision of this Agreement or the Subscription Documents. No covenant, representation or condition not expressed in this Agreement or such Subscription Documents (and, if applicable, any Side Letter) shall affect or be deemed to interpret, change or restrict the express provisions hereof and thereof.

Section 14.08 **Amendment**. This Agreement may be modified or amended only by the affirmative vote of the General Partner and Limited Partners owning more than fifty percent (50%) of all of the outstanding Partnership Interests of each Series; *provided* that the General Partner may amend this Agreement from time to time (x) only with the affirmative vote of the General Partner and Limited Partners owning more than fifty percent (50%) of the Partnership Interests held by Limited Partners of a specific Series of Partnership Interests, if such amendment, in the opinion of the General Partner, only has a material effect on such Series of Partnership Interests, and (y) without the consent, approval or other authorization of, or notice to, any of the Limited Partners (including pursuant to **Sections 3.02(u)** and **(v)**) if, in the opinion of the General Partner, the amendment does not have a material adverse effect on any Limited Partner. Notwithstanding the foregoing, no amendment may: (i) convert a Limited Partner's interest to that of a general partner or, modify the limited liability of any Limited Partner, without the consent of each affected Partner or (ii) amend any provision hereof which requires the consent or approval of a specified percentage in interest of the Limited Partners without the consent of such specified percentage in interest of the Limited Partners.

Section 14.09 **Creditors**. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership or the relevant Series.

Section 14.10 **Waiver by Partner**

(a) Any Partner by notice to the General Partner may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Partner to such first mentioned Partner.

(b) No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other existing or subsequent breach.

Section 14.11 **Rights and Remedies**

(a) The rights and remedies of any of the Partners hereunder shall not be mutually exclusive, and the implementation of one or more of the provisions of this Agreement shall not preclude the implementation of any other provision.

(b) Each of the Partners confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Partner aggrieved as against the other Partners for a breach or threatened breach of any provision hereof, it being the intention of this paragraph to make clear that the respective rights and obligations of the Partners hereunder shall be enforceable in equity as well as at law or otherwise, except as provided in **Section 5.08**.

Section 14.12 **Counterparts**. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement binding on all parties, notwithstanding that all the parties are

not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing his, her or its signature hereto, independently of the signature of any other party.

Section 14.13 Certain Tax Matters

(a) *Tax Matters Partner*

(i) The Tax Matters Partner (as such term is defined in Section 6231(a)(7) of the Code) of the Partnership shall be the General Partner. The General Partner shall have all powers necessary to perform fully in its capacity as Tax Matters Partner and, in such capacity, the General Partner shall use its reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including the Regulations) and shall have any powers necessary to perform fully in such capacity.

(ii) In furtherance of the foregoing, the General Partner is authorized to represent the Partnership before taxing authorities and courts in tax matters affecting the Partnership and the Partners in their capacity as such and shall keep the Partners informed of any such administrative and judicial proceedings. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any action brought against it in connection with any judgment in or settlement of any such proceeding, except in the case of the General Partner's own fraud, gross negligence, willful misconduct or conduct that is the subject of a criminal proceeding (where the General Partner has a reasonable cause to believe that such conduct was unlawful).

(iii) Any Partner that is in dispute with any tax authority in relation to any Partnership matter shall notify the General Partner within thirty (30) calendar days, and if the General Partner reasonably determines that the matter is of material relevance to the tax position of the Partnership, such Partner shall consult with the General Partner (or any advisor appointed by the General Partner for the purpose) as to how that dispute shall be handled. Any Partner who enters into a settlement agreement with respect to any Partnership item shall notify the Tax Matters Partner of such settlement agreement and its terms within thirty (30) calendar days after the date of settlement.

(iv) The provisions of this **Section 14.13(a)** shall survive any termination of this Agreement.

(b) *Tax Elections*. Each Partner agrees to provide the Partnership with such information which may be necessary or desirable in order for the General Partner to carry out its powers under this **Section 14.13** and **Section 3.02(g)**, including, without limitation, to facilitate compliance with Section 743 of the Code and elections permitted thereunder.

(c) *Classification as a Partnership*. The parties hereto intend that the Partnership be classified as a partnership for federal income tax purposes. The General Partner shall not elect to have the Partnership classified as an association taxable as a corporation for federal income tax purposes pursuant to Regulation Section 301.7701–3. The General Partner shall, for and on behalf of the Partnership, take all steps as it may deem reasonably necessary to maintain the Partnership's classification as a partnership for federal income tax purposes.

(d) *Tax Audits*. Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership or any existing or former investment.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, this Amended and Restated Limited Partnership Agreement has been duly executed as of the day and year first above written.

Rand PE Fund Management, LLC, as General Partner
(acting severally in the name of and for the account of individual each Series)

By: _____
Name: John Honis
Title: Managing Member

INITIAL LIMITED PARTNER:

/s/ John Honis
John Honis

[SIGNATURES OF ADDITIONAL LIMITED PARTNERS AND OTHER PARTIES ARE SET FORTH ON SEPARATE SIGNATURE PAGES]

EXHIBIT 81

INVESTMENT MANAGEMENT AGREEMENT

This Investment Management Agreement (this "**Agreement**") is entered into as of November 30, 2015 by and among: (i) Rand Advisors, LLC, a Delaware limited liability company (the "**Investment Manager**"); (ii) Atlas IDF, LP, a Delaware "series" limited partnership, acting severally in the name of and for the account of each individual Series (as defined herein) (the "**Partnership**"); and (iii) such other persons who may become parties this Agreement from time to time.

WHEREAS, the Partnership is governed by its Amended and Restated Limited Partnership Agreement (as the same may be amended and/or restated from time to time, the "**Partnership Agreement**");

WHEREAS, the Partnership sells limited partner interests ("**Interests**"), which may be offered in multiple series (the "**Series**"), to eligible investors ("**Limited Partners**") pursuant to the Partnership's Confidential Private Placement Memorandum (as the same may be amended and/or supplemented from time to time, the "**Memorandum**");

WHEREAS, as of the date hereof, the Partnership is offering Interests in one Series, and the terms of the other Series (if any) may be set forth in an amended version of the Memorandum, the Partnership Agreement and/or this Agreement and/or in a separate supplement to any such document;

WHEREAS, the Partnership shall not accept additional Limited Partners into any existing Series if such Series has existing Side Pocket Accounts at the time of such admission;

WHEREAS, the Partnership is an insurance-dedicated investment fund;

WHEREAS, in addition to investing in individual traded assets, the Partnership may invest a significant portion of its assets in other investment vehicles, including, without limitation, hedge funds, managed accounts and other private investment funds (collectively, the "**Portfolio Funds**"), including those managed by, or otherwise affiliated or related to, the Investment Manager;

WHEREAS, the Investment Manager desires to manage and invest the assets of the Partnership in accordance with the terms and conditions set forth herein; and

WHEREAS, the Investment Manager and the Partnership desire to establish the duties and responsibilities of the Investment Manager and the compensation to be paid to the Investment Manager in connection therewith.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions**. All capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Partnership Agreement and/or the Memorandum, as the case may be.

2. **Appointment of the Investment Manager**. The Investment Manager shall act as investment manager to the Partnership and shall manage the investment and re-investment of the cash, securities, commodities, financial instruments and other assets of the Partnership in accordance with the terms hereof.

3. **Authority of the Investment Manager**. (a) In connection with its obligations hereunder, the Investment Manager shall have the authority for and in the name of the Partnership to:

(i) purchase, hold, sell, sell short, cover and otherwise deal in securities, various financial instruments of any sort, including interests in other investment vehicles, and rights therein, on margin or otherwise on a discretionary basis;

(ii) write, purchase, hold, sell and otherwise deal in put and call options of any sort and any combination thereof;

(iii) purchase, hold, sell, sell short and otherwise deal in commodities, commodity contracts, commodity futures, financial and other types of futures and options in respect thereof;

(iv) purchase, hold, sell, sell short and otherwise deal in currencies, forwards, swaps, partnership interests, interests in other investment companies and any other financial instruments which exist

now or are hereafter created;

(v) open, maintain and close futures, margin and custodial accounts; open, maintain and close bank accounts and draw checks or other orders for the payment of moneys; pledge assets for loans, and to effect borrowings from brokers, banks and other financial, governmental and other institutions;

(vi) exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the assets of the Partnership, including voting proxies on behalf of the Partnership;

(vii) engage personnel, whether part-time or full-time, and attorneys, independent accountants, administrators or such other persons and service providers as the Investment Manager may deem necessary or advisable;

(viii) supply the attorneys, the independent accountants, the administrators of, and other service providers to, the Partnership with such information and instructions as may be necessary to enable such person or persons to perform their duties in accordance with applicable agreements;

(ix) cause the Partnership to engage in agency, agency cross and principal transactions with affiliates to the extent permitted by applicable securities law;

(x) enter into, make and perform any contracts, agreements or other undertakings it may deem advisable in connection with providing investment management services to the Partnership, including, but not limited to, contracts, agreements or other undertakings with persons, firms or corporations with which the Investment Manager or any principal of the Investment Manager is affiliated;

(xi) authorize any member, employee or other agent of the Investment Manager or agent or employee of the Partnership to act for and on behalf of the Partnership in all matters incidental to the foregoing;

(xii) delegate the rights and obligations under this Agreement, at the Investment Manager's discretion; and

(xiii) otherwise act for the Partnership as it may deem necessary or advisable in connection with any investment management related matters.

(b) The Investment Manager may, if it deems advisable, maintain any portion of the assets of the Partnership in cash, cash-equivalents and short-term obligations. The Investment Manager shall be free to sell securities, commodities, options, futures and other financial instruments or assets of the Partnership regardless of the length of time they have been held. The Investment Manager shall further be free to make investment changes regardless of the resulting rate of portfolio turnover, when it, in its sole discretion, shall determine that such changes will promote the investment objective of the Partnership.

4. **Policies of the Partnership**. The activities engaged in by the Investment Manager on behalf of the Partnership shall be subject to the policies and control of the general partner of the Partnership, Atlas IDF GP, LLC, a Delaware limited liability company (the "**General Partner**"). The Investment Manager shall submit such periodic reports to the General Partner regarding the Investment Manager's activities hereunder as the General Partner may reasonably request.

5. **Status of the Investment Manager**. The Investment Manager shall for all purposes be an independent contractor and not an agent or employee of the Partnership, nor shall anything herein be construed as making the Partnership a partner or co-venturer with the Investment Manager or any of its managers, members, shareholders, directors, officers, partners, employees, agents and affiliates (all of the foregoing, persons and entities, collectively, "**Affiliates**"). The Investment Manager shall have no authority to act for, represent, bind or obligate the Partnership except as specifically provided herein.

6. **Investments**. All investments of the Partnership shall at all times conform to and be in accordance with the requirements imposed by: (a) any provisions of applicable law; (b) the provisions of the Memorandum and the Partnership Agreement, as the same may be amended, supplemented or otherwise modified from time to time; *provided* that the Investment Manager shall not be bound by any such amendment, supplement or modification until it has been given notice thereof; and (c) such policies as may be adopted from time to time by the General Partner and communicated to the Investment Manager.

7. **Valuation of Assets.** The assets of the Partnership shall be valued in accordance with the terms of the applicable Memorandum and the Partnership Agreement.

8. **Management Fee Payable to the Investment Manager.** In consideration for services provided pursuant to this Agreement, the Investment Manager shall receive a quarterly management fee (the "**Management Fee**") equal to a percentage of each Limited Partner's share of the Partnership's Net Asset Value, and based on the Partnership's total Net Asset Value, as follows:

Partnership's Total Net Asset Value	Management Fee (per annum)
$0 - $99,999,999	0.5500%
$100,000,000 - $199,999,999	0.5000%
$200,000,000 - $249,999,999	0.4500%
$250,000,000 - $499,999,999	0.3500%
> $500,000,000	0.3400%

For the avoidance of doubt, the Management Fee calculated based on the foregoing schedule will be calculated on a "progressive" basis. For example, if the Partnership's Net Asset Value reaches $150,000,000, the initial $99,999,999 will always be charged a Management Fee of 0.55000% annually. The benefit of the declining Management Fee schedule above is intended to benefit all Limited Partners as each Capital Account will be charged a blended Management Fee based on the above schedule.

The Management Fee shall be calculated and payable to the Investment Manager quarterly, in advance, as of the first day of each calendar quarter. A *pro rata* Management Fee shall be charged to Limited Partners on any amounts accepted by the General Partner during a calendar quarter. No part of the Management Fee shall be refunded in the event that a Limited Partner withdraws, whether voluntarily or involuntarily, all or any of the value in such Limited Partner's Capital Account during any calendar quarter. Management Fees shall be payable with respect to the Interests of a Limited Partner in any Side Pocket Account. For purposes of calculating the Management Fee with respect to Side Pocket Accounts, Illiquid Investments will be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

With respect to any Limited Partner who has requested to withdraw all of its Interests from the Partnership, with the exception of any Interests maintained in a Side Pocket Account, the Partnership may reserve an amount from the withdrawing Limited Partner's withdrawal proceeds in order to cover the estimated accrued Management Fees and expenses attributable to the Limited Partner's Interests in the Side Pocket Account based on the Investment Manager's estimate of the time period that the Illiquid Investments held in the Side Pocket Account will remain in such Side Pocket Account (collectively, the "**Management Fee Reserve**"). The Management Fee Reserve will be treated as a liability of the Partnership, and the balance of the Management Fee Reserve, if any, will be paid to the withdrawing Limited Partner, without interest, upon such Limited Partner's complete withdrawal from the Side Pocket Account.

The Partnership will also bear its *pro rata* share of the management fees charged by the managers of the Portfolio Funds. Notwithstanding the foregoing, the Investment Manager intends to waive any management fees due to the Investment Manager with respect to any investment of the Partnership in any Affiliated Funds, including the PE Portfolio Fund (as defined herein). Accordingly, to the extent the Partnership invests in any Affiliated Funds, including the PE Portfolio Fund, the Partnership will not be subject to a layering of fees.

9. **Services to Other Clients; Conflicts of Interest**.

(a) The Investment Manager and its Affiliates may provide investment management and other services to parties other than the Partnership and may manage other accounts and/or establish other private investment funds in the future (both domestic and offshore), including those which may employ an investment strategy similar to that of the Partnership, and shall not by reason thereof be deemed to be acting in conflict with the interests of the Partnership. Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to Rand PE Fund I, L.P., a Delaware "series" limited partnership ("**PE Portfolio Fund**") that: (x) is expected to initially invest in the Highland

Transaction (as defined in the Memorandum), if any, and (y) will potentially make investments in the future in other private transactions similar to the Highland Transaction; (ii) Rand PE Fund Management, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the PE Portfolio Fund; (iii) the Principal is the managing member and controlling person of Rand PE Fund Management, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series.

(b) The parties hereby acknowledge that they have reviewed the conflicts of interest and related disclosures in the Memorandum.

10. **Expenses**. The Investment Manager shall pay for its own general operating and overhead expenses associated with providing the investment management services required under this Agreement. These expenses include all expenses incurred by the Investment Manager in providing for its normal operating overhead, including, but not limited to, the cost of providing relevant support and administrative services (e.g., employee compensation and benefits, rent, office equipment, computer systems, insurance (other than as expressly set forth in the Memorandum and/or the Partnership Agreement as an expense of the Partnership), utilities, telephone, secretarial and bookkeeping services, etc.), but not including any Partnership operating expenses of the Partnership set forth in the Memorandum or the Partnership Agreement. The Investment Manager may use "soft dollar" commissions or rebates by brokerage firms of commissions generated by the Partnership's brokerage transactions executed through those firms to pay for certain brokerage and research products and services that fall within the safe harbor under Section 28(e) of the Securities Exchange Act of 1934, as amended as further described in the Memorandum and the Partnership Agreement.

11. **Exculpation and Indemnification.**

(a) Notwithstanding any other provision of this Agreement to the contrary, none of the Investment Manager or any of its Affiliates (collectively, "**Indemnified Persons**") shall be liable to the Partnership or its investors for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. It shall be conclusively presumed and established that the Investment Manager and such persons acted in good faith if any action is taken, or not taken, by any of them on the advice of legal counsel or other independent outside consultants; *provided* that the Investment Manager did not act with gross negligence or willful misconduct in the selection of such counsel or consultants. Any exculpation under this **Section 11(a)** shall apply only to the extent that such exculpation does not violate applicable federal and state laws.

(b) Notwithstanding any other provision of this Agreement to the contrary, the Partnership shall indemnify and hold harmless the Indemnified Persons (which, for purposes of this indemnity, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any Indemnified Person in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided, however*, that the party against whom the claim is made or legal proceeding is directed is not guilty of gross negligence or willful misconduct, as determined by a final, non-appealable decision of a court of competent jurisdiction. Any indemnity under this **Section 11(b)** shall be paid from and to the extent of Partnership assets only, and shall apply only to the extent that such indemnity does not violate applicable federal and state laws. For the avoidance of doubt, the foregoing indemnification provisions shall apply on a Series-by-Series basis.

(c) The foregoing provisions of this **Section 11** shall survive the termination of this Agreement.

12. **Representations, Warranties and Covenants of the Investment Manager**. The Investment Manager represents, warrants and covenants to the Partnership that:

(a) It has full authority to enter into this Agreement.

(b) It shall not by entering into this Agreement: (i) be required to take any action contrary to its formation documents or any applicable statute, law or regulation to which it is subject; or (ii) breach or cause to be breached any undertaking, agreement, contract, statute, rule or regulation to which it, or any of its Affiliates, is a party or by which it or they are/is bound which, in the case of (i) or (ii), would materially limit or materially adversely affect its or any of its Affiliates' ability to perform its duties under this Agreement.

(c) It shall comply in all material respects with all laws, rules, and regulations having application to its business, properties and assets. Except to the extent otherwise disclosed to the Partnership, there are no actions, suits, proceedings, or investigations pending or to its knowledge threatened against the Investment Manager or its

principal(s), at law or in equity or before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, any self-regulatory organization, or any exchange that might be material to an investor investing in any Fund.

The foregoing shall be continuing during the term of this Agreement, and if, at any time any of the foregoing becomes untrue or inaccurate, the Investment Manager shall promptly notify the Partnership in writing of that fact.

13. **Termination**. This Agreement shall remain in effect indefinitely, except that it may be terminated at any time by any party upon thirty (30) days' prior written notice by the terminating party to the other parties.

14. **Governing Law, Personal Jurisdiction and Venue**. **EACH OF THE PARTNERSHIP AND THE INVESTMENT MANAGER ACKNOWLEDGES AND AGREES THAT ANY CLAIM, CONTROVERSY, DISPUTE OR ACTION RELATING IN ANY WAY TO THIS AGREEMENT SHALL BE GOVERNED SOLELY AND EXCLUSIVELY BY THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICT OF LAWS DOCTRINES. EACH OF THE PARTNERSHIP AND THE INVESTMENT MANAGER UNDERSTANDS AND AGREES THAT IT IS WAIVING THE PROTECTION OF STATUTES IN ITS STATE OF RESIDENCE THAT PROVIDE IT WITH CERTAIN RIGHTS, REMEDIES AND PROTECTIONS IN THE CASE OF FRAUD OR MISREPRESENTATION AND AGREES TO RELY SOLELY UPON THE LAWS OF THE STATE OF DELAWARE AND ANY APPLICABLE FEDERAL LAWS. EACH OF THE PARTNERSHIP AND THE INVESTMENT MANAGER MAKES THIS WAIVER KNOWINGLY AND REPRESENTS THAT IT HAS CONSULTED INDEPENDENT COUNSEL, OR THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH SUCH INDEPENDENT COUNSEL BUT HAS ELECTED NOT TO DO SO, AND AGREES THAT THE ONLY STATE LAWS THAT WILL APPLY TO THIS AGREEMENT ARE THE LAWS OF THE STATE OF DELAWARE.**

EACH OF THE PARTNERSHIP, THE INVESTMENT MANAGER, FUND COUNSEL AND ANY OTHER PARTY TO THIS AGREEMENT (COLLECTIVELY, FOR PURPOSES OF THIS CLAUSE, THE "PARTIES") IRREVOCABLY CONSENTS TO BEING SERVED WITH LEGAL PROCESS ISSUED FROM THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK AND IRREVOCABLY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS SITUATED IN THE STATE OF NEW YORK. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTIONS TO THE PERSONAL JURISDICTION OF THESE COURTS. SAID COURTS SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OVER ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES AND ACTIONS, OF ANY KIND OR MANNER, WHICH IN ANY WAY RELATE TO THIS AGREEMENT. THE PARTIES ALSO IRREVOCABLY WAIVE ANY OBJECTIONS THAT THESE COURTS CONSTITUTE AN OPPRESSIVE, UNFAIR, OR INCONVENIENT FORUM AND AGREE NOT TO SEEK TO CHANGE VENUE ON THESE GROUNDS OR ANY OTHER GROUNDS. THE PARTIES FURTHER AGREE THAT THEY WILL NOT FILE SUIT IN A JURISDICTION OTHER THAN NEW YORK AND THAT, SHOULD THEY DO SO, THEY SHALL BE LIABLE FOR ALL DAMAGES AS A RESULT OF MAKING SUCH A FILING AND SHALL PAY ALL ATTORNEYS' FEES INCURRED BY ANY OTHER PARTY IN CONNECTION WITH MOVING TO DISMISS THE SUIT FOR FAILURE TO COMPLY WITH THIS PROVISION.

15. **Notices**. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given (x) when delivered in person, (y) when sent to the parties at such address by registered or certified mail, return receipt requested, as set forth below, or to such other mailing address as any party may hereafter specify for the purpose by notice to the other parties, or by electronic mail, or (z) when delivered by overnight delivery by a reputable private carrier or by the postal service:

If to the Investment Manager:

Rand Advisors, LLC
87 Railroad Place, Suite 403
Saratoga Springs, NY 12866
Attention: John Honis
Telephone: (214) 335-7969
Email: Jhonis@RandAdvisors.com

If to the Partnership:

Atlas IDF, LP
87 Railroad Place, Suite 403
Saratoga Springs, NY 12866
Attention: John Honis
Telephone: (214) 335-7969
Email: Jhonis@RandAdvisors.com

16. **Entire Agreement**. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter, including those referred to in the recitals to this Agreement. The parties hereto acknowledge that, notwithstanding any other provision of this Agreement, the Investment Manager, on its own behalf or on behalf of the Partnership, may enter into side letters or other writings to or with one or more Limited Partners which have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement ("**Side Letters**"). The parties agree that any rights established, or any terms of this Agreement altered or supplemented, in a Side Letter to or with one or more Limited Partners shall govern with respect to such Limited Partner(s) notwithstanding any other provision of this Agreement.

17. **Amendments and Waivers**. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

18. **Binding Effect; Assignment**. This Agreement shall be binding upon and inure to the benefit of the Partnership, the Investment Manager, each Indemnified Person, and their respective successors and permitted assigns; *provided, however*, that fund counsel shall be a party to this Agreement solely with respect to **Sections 11(b)** and **14** hereof in order to benefit from and enforce such Sections, and a conformed signature page for fund counsel is included as a counterpart to this Agreement. No party to this Agreement may assign or delegate, by operation of law or otherwise, all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement.

19. **Headings**. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

20. **Counterparts**. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall be deemed to be one and the same instrument.

21. **Partnership Agreement Controls**. If there are any inconsistencies or conflicts between the terms and conditions of this Agreement and the terms and conditions set forth in the Partnership Agreement, the terms and conditions of the Partnership Agreement shall control.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, each of the parties has caused this Investment Management Agreement to be executed on its behalf by its duly authorized representative, as of the date first above written.

Rand Advisors, LLC

By:_____
Name: John Honis
Title: Managing Member

Atlas IDF, LP
By: Atlas IDF GP, LLC, its general partner
(acting severally in the name of and for the account of each individual Series)

By:_____
Name: John Honis
Title: Managing Member

[SIGNATURES OF OTHER PARTIES ARE SET FORTH ON A SEPARATE SIGNATURE PAGE]

EXHIBIT 82

INVESTMENT MANAGEMENT AGREEMENT

This Investment Management Agreement (this "**Agreement**") is entered into as of November 30, 2015 by and among: (i) Rand Advisors, LLC, a Delaware limited liability company (the "**Investment Manager**"); (ii) Rand PE Fund I, L.P., a Delaware "series" limited partnership, acting severally in the name of and for the account of each individual Series (as defined herein) (the "**Partnership**"); and (iii) such other persons who may become parties this Agreement from time to time.

WHEREAS, the Partnership is governed by its Amended and Restated Limited Partnership Agreement (as the same may be amended and/or restated from time to time, the "**Partnership Agreement**");

WHEREAS, the Partnership sells limited partner interests ("**Interests**"), which may be offered in multiple series (the "**Series**"), to eligible investors ("**Limited Partners**") pursuant to the Partnership's Confidential Private Placement Memorandum (as the same may be amended and/or supplemented from time to time, the "**Memorandum**");

WHEREAS, as of the date hereof, the Partnership is offering Interests in one Series, and the terms of the other Series (if any) may be set forth in an amended version of the Memorandum, the Partnership Agreement and/or this Agreement and/or in a separate supplement to any such document;

WHEREAS, the Investment Manager desires to manage and invest the assets of the Partnership in accordance with the terms and conditions set forth herein; and

WHEREAS, the Investment Manager and the Partnership desire to establish the duties and responsibilities of the Investment Manager and the compensation to be paid to the Investment Manager in connection therewith.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions**. All capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Partnership Agreement and/or the Memorandum, as the case may be.

2. **Appointment of the Investment Manager**. The Investment Manager shall act as investment manager to the Partnership and shall manage the investment and re-investment of the cash, securities, commodities, financial instruments and other assets of the Partnership in accordance with the terms hereof.

3. **Authority of the Investment Manager**. (a) In connection with its obligations hereunder, the Investment Manager shall have the authority for and in the name of the Partnership to:

(i) purchase, hold, sell, sell short, cover and otherwise deal in securities, various financial instruments of any sort and rights therein, on margin or otherwise on a discretionary basis;

(ii) write, purchase, hold, sell and otherwise deal in put and call options of any sort and any combination thereof;

(iii) purchase, hold, sell, sell short and otherwise deal in commodities, commodity contracts, commodity futures, financial and other types of futures and options in respect thereof;

(iv) purchase, hold, sell, sell short and otherwise deal in currencies, forwards, swaps, partnership interests, interests in other investment companies and any other financial instruments which exist now or are hereafter created;

(v) open, maintain and close futures, margin and custodial accounts; open, maintain and close bank accounts and draw checks or other orders for the payment of moneys; pledge assets for loans, and to effect borrowings from brokers, banks and other financial, governmental and other institutions;

(vi) exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the assets of the Partnership, including voting proxies on behalf of the Partnership;

(vii) engage personnel, whether part-time or full-time, and attorneys, independent accountants, administrators or such other persons and service providers as the Investment Manager may deem necessary or advisable;

(viii) supply the attorneys, the independent accountants, the administrators of, and other service providers to, the Partnership with such information and instructions as may be necessary to enable such person or persons to perform their duties in accordance with applicable agreements;

(ix) cause the Partnership to engage in agency, agency cross and principal transactions with affiliates to the extent permitted by applicable securities law;

(x) enter into, make and perform any contracts, agreements or other undertakings it may deem advisable in connection with providing investment management services to the Partnership, including, but not limited to, contracts, agreements or other undertakings with persons, firms or corporations with which the Investment Manager or any principal of the Investment Manager is affiliated;

(xi) authorize any member, employee or other agent of the Investment Manager or agent or employee of the Partnership to act for and on behalf of the Partnership in all matters incidental to the foregoing;

(xii) delegate the rights and obligations under this Agreement, at the Investment Manager's discretion; and

(xiii) otherwise act for the Partnership as it may deem necessary or advisable in connection with any investment management related matters.

(b) The Investment Manager may, if it deems advisable, maintain any portion of the assets of the Partnership in cash, cash-equivalents and short-term obligations. The Investment Manager shall be free to sell securities, commodities, options, futures and other financial instruments or assets of the Partnership regardless of the length of time they have been held. The Investment Manager shall further be free to make investment changes regardless of the resulting rate of portfolio turnover, when it, in its sole discretion, shall determine that such changes will promote the investment objective of the Partnership.

4. **Policies of the Partnership**. The activities engaged in by the Investment Manager on behalf of the Partnership shall be subject to the policies and control of the general partner of the Partnership, Rand PE Fund Management, LLC, a Delaware limited liability company (the "**General Partner**"). The Investment Manager shall submit such periodic reports to the General Partner regarding the Investment Manager's activities hereunder as the General Partner may reasonably request.

5. **Status of the Investment Manager**. The Investment Manager shall for all purposes be an independent contractor and not an agent or employee of the Partnership, nor shall anything herein be construed as making the Partnership a partner or co-venturer with the Investment Manager or any of its managers, members, shareholders, directors, officers, partners, employees, agents and affiliates (all of the foregoing, persons and entities, collectively, "**Affiliates**"). The Investment Manager shall have no authority to act for, represent, bind or obligate the Partnership except as specifically provided herein.

6. **Investments**. All investments of the Partnership shall at all times conform to and be in accordance with the requirements imposed by: (a) any provisions of applicable law; (b) the provisions of the Memorandum and the Partnership Agreement, as the same may be amended, supplemented or otherwise modified from time to time; *provided* that the Investment Manager shall not be bound by any such amendment, supplement or modification until it has been given notice thereof; and (c) such policies as may be adopted from time to time by the General Partner and communicated to the Investment Manager.

7. **Valuation of Assets.** The assets of the Partnership shall be valued in accordance with the terms of the applicable Memorandum and the Partnership Agreement.

8. **Management Fee Payable to the Investment Manager**. In consideration for services provided pursuant to this Agreement, the Investment Manager shall receive a quarterly management fee (the "**Management Fee**") equal to a percentage of each Limited Partner's share of the Partnership's Net Asset Value, and based on the Partnership's total Net Asset Value, as follows:

Partnership's Total Net Asset Value	Management Fee (per annum)
$0 - $99,999,999	0.5500%
$100,000,000 - $199,999,999	0.5000%
$200,000,000 - $249,999,999	0.4500%
$250,000,000 - $499,999,999	0.3500%
> $500,000,000	0.3400%

For the avoidance of doubt, the Management Fee calculated based on the foregoing schedule will be calculated on a "progressive" basis. For example, if the Partnership's Net Asset Value reaches $150,000,000, the initial $99,999,999 will always be charged a Management Fee of 0.55000% annually. The benefit of the declining Management Fee schedule above is intended to benefit all Limited Partners as each Capital Account will be charged a blended Management Fee based on the above schedule.

The Management Fee shall be calculated and payable to the Investment Manager quarterly, in advance, as of the first day of each calendar quarter. A *pro rata* Management Fee shall be charged to Limited Partners on any amounts accepted by the General Partner during a calendar quarter. No part of the Management Fee shall be refunded in the event that a Limited Partner withdraws, whether voluntarily or involuntarily, all or any of the value in such Limited Partner's Capital Account during any calendar quarter. Management Fees shall be payable with respect to the Interests of a Limited Partner in any Side Pocket Account. For purposes of calculating the Management Fee with respect to Side Pocket Accounts, Illiquid Investments will be carried at their fair value (which may be at, above or below cost) as determined by the Investment Manager.

With respect to any Limited Partner who has requested to withdraw all of its Interests from the Partnership, with the exception of any Interests maintained in a Side Pocket Account, the Partnership may reserve an amount from the withdrawing Limited Partner's withdrawal proceeds in order to cover the estimated accrued Management Fees and expenses attributable to the Limited Partner's Interests in the Side Pocket Account based on the Investment Manager's estimate of the time period that the Illiquid Investments held in the Side Pocket Account will remain in such Side Pocket Account (collectively, the "**Management Fee Reserve**"). The Management Fee Reserve will be treated as a liability of the Partnership, and the balance of the Management Fee Reserve, if any, will be paid to the withdrawing Limited Partner, without interest, upon such Limited Partner's complete withdrawal from the Side Pocket Account.

9. **Services to Other Clients; Conflicts of Interest**.

(a) The Investment Manager and its Affiliates may provide investment management and other services to parties other than the Partnership and may manage other accounts and/or establish other private investment funds in the future (both domestic and offshore), including those which may employ an investment strategy similar to that of the Partnership, and shall not by reason thereof be deemed to be acting in conflict with the interests of the Partnership. Specifically, as of the date hereof: (i) the Investment Manager acts as the investment manager to Atlas IDF, LP, a Delaware "series" limited partnership ("**IDF Fund**") that is structured as an insurance-dedicated fund and is expected to invest a portion of its assets in the Partnership; (ii) Atlas IDF GP, LLC, a Delaware limited liability company and an affiliate of the General Partner and the Investment Manager, is the general partner of the IDF Fund; (iii) the Principal is the managing member and controlling person of Atlas IDF GP, LLC; and (iv) the Investment Manager acts as the investment subadvisor to a series of SALI Multi-Series Fund, L.P., a Delaware "series" limited partnership, and provides certain discretionary investment advisory or consulting services to such series.

(b) The parties hereby acknowledge that they have reviewed the conflicts of interest and related disclosures in the Memorandum.

10. **Expenses**. The Investment Manager shall pay for its own general operating and overhead expenses associated with providing the investment management services required under this Agreement. These expenses include all expenses incurred by the Investment Manager in providing for its normal operating overhead, including, but not limited to, the cost of providing relevant support and administrative services (e.g., employee compensation and benefits, rent, office equipment, computer systems, insurance (other than as expressly set forth in the Memorandum and/or the Partnership Agreement as an expense of the Partnership), utilities, telephone, secretarial and bookkeeping services,

etc.), but not including any Partnership operating expenses of the Partnership set forth in the Memorandum or the Partnership Agreement. The Investment Manager may use "soft dollar" commissions or rebates by brokerage firms of commissions generated by the Partnership's brokerage transactions executed through those firms to pay for certain brokerage and research products and services that fall within the safe harbor under Section 28(e) of the Securities Exchange Act of 1934, as amended as further described in the Memorandum and the Partnership Agreement.

11. **Exculpation and Indemnification.**

(a) Notwithstanding any other provision of this Agreement to the contrary, none of the Investment Manager or any of its Affiliates (collectively, "**Indemnified Persons**") shall be liable to the Partnership or its investors for any action or inaction in connection with the business and affairs of the Partnership unless such action or inaction is determined by a final, non-appealable decision of a court of competent jurisdiction to constitute gross negligence or willful misconduct. It shall be conclusively presumed and established that the Investment Manager and such persons acted in good faith if any action is taken, or not taken, by any of them on the advice of legal counsel or other independent outside consultants; *provided* that the Investment Manager did not act with gross negligence or willful misconduct in the selection of such counsel or consultants. Any exculpation under this **Section 11(a)** shall apply only to the extent that such exculpation does not violate applicable federal and state laws.

(b) Notwithstanding any other provision of this Agreement to the contrary, the Partnership shall indemnify and hold harmless the Indemnified Persons (which, for purposes of this indemnity, shall include fund counsel (except for legal malpractice)) from and against any and all claims, liabilities, obligations, judgments, suits, proceedings, actions, demands, losses, costs, expenses (including attorneys' fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding (made or threatened) related to any action or inaction by any Indemnified Person in connection with the business and affairs of the Partnership (including the settlement or appeal of any such claim or legal proceeding); *provided, however*, that the party against whom the claim is made or legal proceeding is directed is not guilty of gross negligence or willful misconduct, as determined by a final, non-appealable decision of a court of competent jurisdiction. Any indemnity under this **Section 11(b)** shall be paid from and to the extent of Partnership assets only, and shall apply only to the extent that such indemnity does not violate applicable federal and state laws. For the avoidance of doubt, the foregoing indemnification provisions shall apply on a Series-by-Series basis.

(c) The foregoing provisions of this **Section 11** shall survive the termination of this Agreement.

12. **Representations, Warranties and Covenants of the Investment Manager**. The Investment Manager represents, warrants and covenants to the Partnership that:

(a) It has full authority to enter into this Agreement.

(b) It shall not by entering into this Agreement: (i) be required to take any action contrary to its formation documents or any applicable statute, law or regulation to which it is subject; or (ii) breach or cause to be breached any undertaking, agreement, contract, statute, rule or regulation to which it, or any of its Affiliates, is a party or by which it or they are/is bound which, in the case of (i) or (ii), would materially limit or materially adversely affect its or any of its Affiliates' ability to perform its duties under this Agreement.

(c) It shall comply in all material respects with all laws, rules, and regulations having application to its business, properties and assets. Except to the extent otherwise disclosed to the Partnership, there are no actions, suits, proceedings, or investigations pending or to its knowledge threatened against the Investment Manager or its principal(s), at law or in equity or before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, any self-regulatory organization, or any exchange that might be material to an investor investing in any Fund.

The foregoing shall be continuing during the term of this Agreement, and if, at any time any of the foregoing becomes untrue or inaccurate, the Investment Manager shall promptly notify the Partnership in writing of that fact.

13. **Termination**. This Agreement shall remain in effect indefinitely, except that it may be terminated at any time by any party upon thirty (30) days' prior written notice by the terminating party to the other parties.

14. **Governing Law, Personal Jurisdiction and Venue**. **EACH OF THE PARTNERSHIP AND THE INVESTMENT MANAGER ACKNOWLEDGES AND AGREES THAT ANY CLAIM, CONTROVERSY, DISPUTE OR ACTION RELATING IN ANY WAY TO THIS AGREEMENT SHALL BE GOVERNED SOLELY AND EXCLUSIVELY BY THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY**

CONFLICT OF LAWS DOCTRINES. EACH OF THE PARTNERSHIP AND THE INVESTMENT MANAGER UNDERSTANDS AND AGREES THAT IT IS WAIVING THE PROTECTION OF STATUTES IN ITS STATE OF RESIDENCE THAT PROVIDE IT WITH CERTAIN RIGHTS, REMEDIES AND PROTECTIONS IN THE CASE OF FRAUD OR MISREPRESENTATION AND AGREES TO RELY SOLELY UPON THE LAWS OF THE STATE OF DELAWARE AND ANY APPLICABLE FEDERAL LAWS. EACH OF THE PARTNERSHIP AND THE INVESTMENT MANAGER MAKES THIS WAIVER KNOWINGLY AND REPRESENTS THAT IT HAS CONSULTED INDEPENDENT COUNSEL, OR THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH SUCH INDEPENDENT COUNSEL BUT HAS ELECTED NOT TO DO SO, AND AGREES THAT THE ONLY STATE LAWS THAT WILL APPLY TO THIS AGREEMENT ARE THE LAWS OF THE STATE OF DELAWARE.

EACH OF THE PARTNERSHIP, THE INVESTMENT MANAGER, FUND COUNSEL AND ANY OTHER PARTY TO THIS AGREEMENT (COLLECTIVELY, FOR PURPOSES OF THIS CLAUSE, THE "PARTIES") IRREVOCABLY CONSENTS TO BEING SERVED WITH LEGAL PROCESS ISSUED FROM THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK AND IRREVOCABLY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS SITUATED IN THE STATE OF NEW YORK. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTIONS TO THE PERSONAL JURISDICTION OF THESE COURTS. SAID COURTS SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OVER ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES AND ACTIONS, OF ANY KIND OR MANNER, WHICH IN ANY WAY RELATE TO THIS AGREEMENT. THE PARTIES ALSO IRREVOCABLY WAIVE ANY OBJECTIONS THAT THESE COURTS CONSTITUTE AN OPPRESSIVE, UNFAIR, OR INCONVENIENT FORUM AND AGREE NOT TO SEEK TO CHANGE VENUE ON THESE GROUNDS OR ANY OTHER GROUNDS. THE PARTIES FURTHER AGREE THAT THEY WILL NOT FILE SUIT IN A JURISDICTION OTHER THAN NEW YORK AND THAT, SHOULD THEY DO SO, THEY SHALL BE LIABLE FOR ALL DAMAGES AS A RESULT OF MAKING SUCH A FILING AND SHALL PAY ALL ATTORNEYS' FEES INCURRED BY ANY OTHER PARTY IN CONNECTION WITH MOVING TO DISMISS THE SUIT FOR FAILURE TO COMPLY WITH THIS PROVISION.

15. **Notices**. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given (x) when delivered in person, (y) when sent to the parties at such address by registered or certified mail, return receipt requested, as set forth below, or to such other mailing address as any party may hereafter specify for the purpose by notice to the other parties, or by electronic mail, or (z) when delivered by overnight delivery by a reputable private carrier or by the postal service:

If to the Investment Manager:

Rand Advisors, LLC
87 Railroad Place, Suite 403
Saratoga Springs, NY 12866
Attention: John Honis
Telephone: (214) 335-7969
Email: Jhonis@RandAdvisors.com

If to the Partnership:

Rand PE Fund I, L.P.
87 Railroad Place, Suite 403
Saratoga Springs, NY 12866
Attention: John Honis
Telephone: (214) 335-7969
Email: Jhonis@RandAdvisors.com

16. **Entire Agreement**. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter, including those referred to in the recitals to this Agreement. The parties hereto acknowledge that, notwithstanding any other provision of this Agreement, the Investment Manager, on its own behalf or on behalf of the Partnership, may enter into side letters or other writings to or with one or more Limited Partners which have the effect of establishing rights

under, or altering or supplementing the terms of, this Agreement ("**Side Letters**"). The parties agree that any rights established, or any terms of this Agreement altered or supplemented, in a Side Letter to or with one or more Limited Partners shall govern with respect to such Limited Partner(s) notwithstanding any other provision of this Agreement.

17. **Amendments and Waivers**. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

18. **Binding Effect; Assignment**. This Agreement shall be binding upon and inure to the benefit of the Partnership, the Investment Manager, each Indemnified Person, and their respective successors and permitted assigns; *provided, however*, that fund counsel shall be a party to this Agreement solely with respect to **Sections 11(b)** and **14** hereof in order to benefit from and enforce such Sections, and a conformed signature page for fund counsel is included as a counterpart to this Agreement. No party to this Agreement may assign or delegate, by operation of law or otherwise, all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement.

19. **Headings**. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

20. **Counterparts**. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall be deemed to be one and the same instrument.

21. **Partnership Agreement Controls**. If there are any inconsistencies or conflicts between the terms and conditions of this Agreement and the terms and conditions set forth in the Partnership Agreement, the terms and conditions of the Partnership Agreement shall control.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, each of the parties has caused this Investment Management Agreement to be executed on its behalf by its duly authorized representative, as of the date first above written.

Rand Advisors, LLC

By:_____
Name: John Honis
Title: Managing Member

Rand PE Fund I, L.P.
By: Rand PE Fund Management, LLC, its general partner (acting severally in the name of and for the account of individual each Series)

By:_____
Name: John Honis
Title: Managing Member

[SIGNATURES OF OTHER PARTIES ARE
SET FORTH ON A SEPARATE SIGNATURE PAGE]

EXHIBIT 83

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT (this "Agreement") is made and entered into as of the 24 day of March, 2021, by and between Grant J. Scott (the "Assignor") and Mark E. Patrick.

WHEREAS, Assignor is the legal and beneficial owner of one hundred percent (100%) of the limited liability company interest (the "Membership Interest") in Charitable DAF GP, LLC, a Delaware limited liability company (the "Company"), and Assignor desires to assign the Membership Interest to Assignee, upon the terms and conditions set forth herein; and

WHEREAS, Assignee desires to accept an assignment of the Membership Interest (such right, title and interest in and to the Membership Interest, together with, if any: (i) Assignor's capital account, (ii) the Assignor's rights in and to specific Company property, (iii) Assignor's rights to participate in the management of the Company, (iv) Assignor's rights to distributions, reimbursements or other payments (including any distributions of cash flow which have not been distributed), (v) rights to profits, losses and other allocations, and (vi) all other rights and benefits of Assignor in the Company with respect to the Membership Interest assigned hereby to Assignee being herein sometimes collectively referred to as the "Assigned Interest").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignment and Assumption of Assigned Interest. Assignor does hereby unconditionally and irrevocably assign, transfer, set over and deliver unto the Assignee, its successors and assigns, the Assigned Interest, including, but not limited to the profits, losses, capital and cash flow, if any, allocable to the Assigned Interest, free and clear of any and all liens, security interests, encumbrances, claims, rights of another, rights of first refusal, covenants, conditions, reservations and any and all other restrictions. Assignee does hereby accept the Assigned Interest and agrees to be bound by and assume all obligations under the limited liability company agreement of the Company.

2. Substitute Member. Assignor hereby acknowledges that Assignee is hereby admitted as a substitute member of the Company with respect to the Membership Interest from and after the date hereof as a result of this Agreement.

3. Effective Date. This Agreement is effective as of the date first above mentioned.

4. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Agreement. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, PDF or other electronic means, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

EXHIBIT 7

ASSIGNOR:

Name: **Grant J. Scott**

ASSIGNEE:

Name: **Mark E. Patrick**

[Signature Page for Assignment of Membership Interest Agreement]

EXHIBIT 84

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
CHARITABLE DAF GP, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of Charitable DAF GP, LLC (the "Company"), dated to be effective as of January 1, 2012, by Grant J. Scott, the new managing member (the "Managing Member"), James D. Dondero, the former Managing Member, and any persons admitted to the Company pursuant hereto (collectively with the Managing Member, the "Members").

WHEREAS, the Company was formed by filing a Certificate of Formation with the Secretary of State of the State of Delaware on October 25, 2011, pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. §§18-101, et seq., as amended from time to time (the "Act"), and has entered into this Agreement;

WHEREAS, the former Managing Member entered into that certain Limited Liability Company Agreement dated October 25, 2011 (the "Original Agreement");

WHEREAS, the Company now desires to amend and restate the Original Agreement in its entirety pursuant to the terms set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Name and Address. The name of the Company is "Charitable DAF GP, LLC." Its principal office is located at 4140 Park Lake Avenue, Suite 600, Raleigh, North Carolina 27612, or at such other location as the Managing Member in the future may designate.

2. Purposes of the Company. The Company is organized for the purpose of engaging in any lawful act or activity for which limited liability companies may be organized under the Act. In connection with the foregoing, the Company serves as the general partner of (or in a similar capacity with respect to) Charitable DAF Fund, LP and/or any other private investment partnerships pursuant to the limited partnership agreement in effect from time to time among the Company and the limited partners of each private investment partnership. The Company shall have no economic interest in the assets, profits or losses of Charitable DAF Fund, LP or the right to receive distributions from Charitable DAF Fund, LP except as may be required by law.

3. Registered Office; Registered Agent. The address of the Company's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. The registered office or agent of the Company may be changed from time to time by the Managing Member in its sole discretion.

4. Member. The name and address of the Managing Member is as follows:

Name	Address
Grant J. Scott, *Managing Member*	4140 Park Lake Avenue, Suite 600 Raleigh, North Carolina 27612

5. Management of the Company and Officers. The business and affairs of the Company shall be managed by the Managing Member, who shall have the exclusive power and authority, on behalf of the Company, to take any action of any kind not inconsistent with the provisions of this Agreement and to do anything and everything it deems necessary or appropriate to carry on the business and purposes of the Company. The Managing Member will be the "manager" (within the meaning of the Act) of the Company. Except as authorized by the Managing Member, those persons, if any, admitted to the Company after the date hereof shall be non-managing Members and shall have no right to participate in the management or control of the business of the Company. The Managing Member may, from time to time, designate one or more persons to be officers of the Company (each, an "Officer" and collectively, the "Officers"). Each Officer shall hold office for the term for which such Officer is designated and until his or her successor shall be duly designated and shall qualify or until his or her death, resignation or removal (with or without cause) by the Managing Member or as otherwise provided for in this Agreement. If an Officer is employed by the Company or any of its affiliates, such designation as an Officer shall terminate automatically upon termination of his or her employment with the Company and/or such affiliates. Any Officer so designated shall have such authority and perform such duties as the Managing Member is permitted to perform under this Agreement and may, from time to time, delegate to such person. The Managing Member may assign titles to particular Officers, and unless the Managing Member decides otherwise, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office. Any person may hold any number of offices. No Officer need be a manager, a Member, a Delaware resident or a United States citizen. Designation of such a person as an Officer of the Company shall not of itself create any contract rights in such person.

6. Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the determination of the Managing Member or upon the effective date of a decree of judicial dissolution under the Act.

7. Initial Capital Contributions; Percentage Interests. The Managing Member has made a capital contribution to the Company in the amount set forth in the books and records of the Company. The capital account (the "Capital Account") of each Member shall be in an amount equal to such Member's initial capital contribution, adjusted from time to time for additional contributions, withdrawals, allocations of appreciation and depreciation and other appropriate items.

8. Additional Contributions. No Member shall have any obligation to make additional capital contributions to the Company.

9. Allocations; Tax Matters. The Managing Member intends that the Company be treated as a disregarded entity for U.S. federal income tax purposes and not be treated as an association taxable as a corporation for Federal tax purposes. If applicable, the Company shall maintain the Capital Accounts for each Member in accordance with the principles of Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder. The Company's income, gains, deductions, and losses shall be allocated to the Members' Capital Accounts as shall be determined by the Managing Member. If

applicable, allocations for Federal income tax purposes shall be made to the Members in a similar manner. If applicable, the Managing Member is hereby designated as the "Tax Matters Partner" of the Company for purposes of Section 6231(a)(7) of the Code.

10. Withdrawals.

(a) Without the written consent of the Managing Member, no Member may withdraw capital from the Company.

(b) Without the written consent of the Managing Member, no Member may voluntarily withdraw as a Member of the Company.

(c) The Managing Member may terminate the interest of any Member, at any time by written notice.

11. Payments to Withdrawing Members. A withdrawn Member, or the legal representative of a Member that has died or become disabled, shall in all events be entitled to be paid as soon as reasonably practicable after the date of such withdrawal, death or disability the balance in his Capital Account (less any amount owing to the Company by such Member and unless otherwise agreed to with the Managing Member). Unless otherwise consented to by the Managing Member, a withdrawn Member shall not be entitled to any further allocation of any other net income in which the Member would otherwise thereafter have shared.

12. Transfer. A Member may not sell, assign, pledge, transfer or otherwise dispose of all or any part of his or her interest in the Company without the consent of the Managing Member, and any purported sale, assignment, pledge, transfer or other disposition of all or any part of a Member's interest in the Company without the Managing Member's consent shall be null and void.

13. Admission of Additional or Substitute Members. The Company may admit substitute or additional members at the Managing Member's discretion.

14. Liability of the Members. The Members shall not have any liability for the obligations or liabilities of the Company except to the extent expressly provided in the Act.

15. Exculpation and Indemnification. To the fullest extent permitted by applicable law, a Covered Person (defined below), shall be entitled to exculpation and indemnification from the Company and its Members for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such a Covered Person in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, unless such action or inaction was made in bad faith or constitutes fraud, willful misconduct or gross negligence; *provided, however*, that any indemnity under this Section 16 shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

"Covered Person" means the Members (including the Managing Member), any affiliate of the Members, any representatives or agents of the Members, any Officer of the Company or their respective affiliates.

16. Fiscal Year. The fiscal year of the Company shall end on December 31.

17. Benefits of Agreement. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or of any Member.

18. Headings. The titles of Sections of this Agreement are for convenience of reference only and shall not define or limit any of the provisions of this Agreement.

19. Counterparts. This Agreement may be executed by the parties hereto in counterparts, each of which shall be considered an original, and all of which shall together constitute one and the same instrument.

20. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles of such State.

21. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith.

22. Amendments. The terms and provisions of this Agreement may be modified or amended at any time and from time to time by the Managing Member in its sole discretion.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first above written.

New Managing Member:

Dated: March 21, 2012

GRANT J. SCOTT

Former Managing Member:

Dated: March 21, 2012

JAMES D. DONDERO

EXHIBIT 85

Execution Version

DATED 11 March 2024

SECOND AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

WARNING
THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS DOCUMENT INTO THE CAYMAN ISLANDS MAY GIVE RISE TO THE IMPOSITION OF CAYMAN ISLANDS STAMP DUTY

Execution Version

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SECOND AMENDED AND RESTATED

EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF CHARITABLE DAF FUND, LP

THIS SECOND AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the "Agreement") is made on 11 March 2024

BETWEEN

(1) CDH GP, Ltd., a Cayman Islands exempted company having its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands as general partner (the "**General Partner**");

(2) Charitable DAF HoldCo, Ltd, a Cayman Islands exempted company having its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands as limited partner (the "**Limited Partner**"); and

(3) Each individual, partnership, corporation, limited liability company, trust or other entity (each, a "**Person**") admitted as a limited partner or general partner (collectively, the "**Partners**") of the Partnership (as defined below) in accordance with this Agreement, including any Persons hereafter admitted as Partners in accordance with this Agreement and excluding any Persons who cease to be Partners in accordance with this Agreement.

WHEREAS, Charitable DAF Fund, LP (the "**Partnership**") was formed on October 25, 2011 and registered as an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Act (as amended) of the Cayman Islands (the "**Act**"), and an Initial Limited Partnership Agreement of the Partnership was entered into as of the same date (the "**Initial Agreement**");

WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**") and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein;

WHEREAS, the Limited Partner and Charitable DAF GP, LLC, as general partner of the Partnership, amended and restated the Initial Agreement in its entirety on November 7, 2011 ("**A&R LPA**");

WHEREAS, Charitable DAF GP, LLC assigned to the General Partner its general partnership interest and the General Partner assumed the obligations of Charitable DAF GP, LLC, as general partner of the Partnership pursuant to an assignment and assumption agreement dated 7 March 2024; and

WHEREAS, the Limited Partner and the General Partner, desire to amend and restate the A&R LPA in its entirety as set forth below.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby adopt this Agreement to be their Limited Partnership Agreement, as follows:

IT IS AGREED:

ARTICLE I

GENERAL PROVISIONS; COMPENSATION AND EXPENSES

1.1 Continuation. The parties hereto continue the Partnership as an exempted limited partnership formed on October 25, 2011 pursuant to the Act.

1.2 Name. The name of the Partnership is Charitable DAF Fund, LP or such other name as the General Partner may from time to time determine provided that the words "Limited Partnership" or the abbreviations "LP" or "L.P." shall be included in the name as required by the Act.

1.3 Purpose and Powers. The purpose of the Partnership shall be to invest and trade, directly or indirectly, in securities of all types and other investment vehicles and instruments, and to engage in any lawful activity for which exempted limited partnerships may be formed under the Act. At least initially, a majority of the Partnership's assets shall be invested in shares of CLO HoldCo, Ltd., a Cayman Islands exempted company ("**CLO HoldCo**"), but the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners.

1.4 Registered Office. The registered office of the Partnership is c/o Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands or such other place in the Cayman Islands as the General Partner may in its absolute discretion from time to time determine. The General Partner shall make the required filings with the Registrar of Exempted Limited Partnerships of any change to the Partnership's registered office in accordance with the Act.

1.5 Partners. The name and addresses of the Partners are as follows:

Name	**Address**
CDH GP, LTD. (General Partner)	c/o Campbells Corporate Services Limited Floor 4, Willow House Cricket Square Grand Cayman KY1-9010 Cayman Islands
Charitable DAF HoldCo, Ltd (Limited Partner)	c/o Campbells Corporate Services Limited Floor 4, Willow House Cricket Square Grand Cayman KY1-9010 Cayman Islands

1.6 Powers.

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and conduct of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and obligations of a general partner of an exempted limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in

this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

(b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management or conduct of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.

1.7 Term. The Partnership was established on October 25, 2011 and shall continue until wound up and subsequently dissolved in accordance with this Agreement or any amendment or modification thereof.

1.8 Admission of New Partners. The General Partner may at any time admit one or more new Partners on such terms as it may determine in its sole discretion; provided that any such new Limited Partner shall have as its equity owners solely Indirect Charitable Owners.

1.9 Taxable Year. The Taxable Year of the Partnership shall be a calendar fiscal year, or such other fiscal year as the General Partner shall determine in their sole discretion from time to time.

1.10 Liability of Partners

(a) The General Partner shall be liable for all of the debts, liabilities and obligations of the Partnership.

(b) Except to the extent otherwise required by law or this Agreement, a Limited Partner shall not be personally liable for any obligations of the Partnership to third parties nor for the return of any distributions from the Partnership to the Limited Partner. Limited Partners should not take part in the conduct of the business of the Partnership and should not deal with third parties, nor for the return of any distributions from the Partnership to the Limited Partner, or otherwise hold itself out, as a general partner of the Partnership. A Limited Partner may be liable for the tax audit and related expenses referred to in Section 6.1

1.11 Limitation on Assignability of Partners' Interests.

(a) A Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner. Any attempted assignment or substitution not made in accordance with this section shall be void *ab initio*.

(b) The General Partner may not assign their interests in the Partnership to any entity that is not under common control with the General Partner without the consent of a majority-in-interest of the Limited Partners. Notwithstanding the foregoing, the General Partner may freely assign their economic interest in the Partnership in whole or in part. The General Partner shall file, or cause to be filed, any amended Section 10 Statement with the Cayman Islands Registrar of Exempted Limited Partnerships required to be filed pursuant to Section 10 of the Act to give effect to the provisions of this Section 1.11.

1.12 Definitions. For the purpose of this Agreement, unless the context otherwise requires:

(a) General Partner. The term "**General Partner**" shall refer to CDH GP, Ltd., and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.

Indirect Charitable Owners. The term "Indirect Charitable Owner" shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 50l(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.

(b) Limited Partner. The term "**Limited Partner**" shall refer to Charitable DAF HoldCo Ltd (and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of this Agreement).

(c) Partner. The term "**Partner**" shall refer to the General Partner or the Limited Partner.

1.13 Service Providers. The General Partner may engage one or more Persons to act, or remove any one or more Persons from so acting, as service providers to the Company (including, without limitation, as manager, administrator, custodian, registrar and transfer agent, investment manager, investment adviser, sponsor and/or prime broker, auditors and legal counsel to the Partnership) in its sole discretion; provided, that any compensation paid to any such service provider that is affiliated with the General Partner shall be in an amount customary for services of a similar nature.

1.14 Partnership Expenses. The Partnership will bear its own operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees (if any), taxes, research costs, legal and accounting expenses and other operating expenses. In addition, the Partnership will bear its pro rata share of CLO HoldCo's operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees, taxes, research costs, legal and accounting expenses and other operating expenses. The Partnership will also bear (or reimburse the General Partner for) its organizational fees and expenses. To the extent the Partnership shares trading expenses with other accounts that may be managed by the General Partner or any affiliates, it will bear a proportionate share of the associated costs. In no event shall the General Partner receive any compensation from the Partnership.

1.15 Partnership Records. The General Partner shall cause to be maintained at the principal office of the Partnership, or at such other place as the Act may permit, a register of limited partnership interests which shall include such information as may be required by the Act (the "**Register**"). The Register shall not be part of this Agreement. The General Partner shall, from time to time, update the Register as required by the Act to accurately reflect the information therein and no action of any Limited Partner shall be required to amend or update the Register. [Upon the prior consent of the General Partner, the Limited Partners shall have the right to inspect the Register.] Any reference in this Agreement to the Register shall be deemed a reference to the Register as in effect from time to time. Subject to the terms of this Agreement, the General Partner may take any action authorised hereunder in respect of the Register, including making the Register available at the registered office to satisfy any order or notice pursuant to the Tax Information Authority Act (as amended) without any need to obtain the consent of any other Partner.

1.16 Limited Partner Information. Other than what has been expressly agreed to be provided to the Limited Partners herein, the Limited Partners are not entitled to any other additional information regarding the Partnership (including for the purposes of section 22 of the Act (which is disapplied with respect to the Partnership)) unless agreed by the General Partner in its sole discretion.

ARTICLE II

POWERS

2.1 Partnership Powers.

The Partnership shall have the following powers:

(a) To purchase, sell, invest and trade, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non- U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, syndicated debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; statutory claims; royalty claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (all such items being called herein a "**Financial Instruments**"), and to sell Financial Instruments short and cover such sales;

(b) To possess, transfer, mortgage, pledge, charge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Financial Interests held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such Financial Interests in the name of the Partnership, in the name of any securities broker or firm, in the name of any nominee of such firm, or in the name of any other nominee or any other street name, or any combination thereof;

(c) To lend, either with or without security, any Financial Instruments, funds or other properties of the Partnership, including by entering into reverse repurchase agreements, and, from time to time, undertake leverage on behalf of the Partnership;

(d) To borrow or raise moneys and, from time to time, without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any of the foregoing instruments and of the interest thereon by mortgage upon or pledge, charge,

conveyance or assignment in trust of the whole or any part of the property of the Partnership, whether at the time owned or thereafter acquired, and to sell, pledge, charge or otherwise dispose of such bonds or other obligations of the Partnership for its purposes;

(e) To have and maintain one or more offices within or without the Cayman Islands and in connection therewith to rent or acquire office space, engage personnel and do such other acts and things as may be necessary or advisable in connection with the maintenance of such office or offices;

(f) To open, maintain and close bank accounts and brokerage accounts, including the power to draw checks or other orders for the payment of monies; and

(g) To enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of the foregoing objects and purposes.

2.2 Rights, Powers, Limitations on Liability and Indemnification of General Partner.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the General Partner, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including members of any committee and parties acting as agents for the execution of transactions) (each, a **"Covered Person"** and collectively, **"Covered Persons")** shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the Partnership or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Partnership, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Partnership, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Partnership whom such Covered Person believes is authorized to make such suggestions on behalf of the Partnership, (iii) any act or omission by the Partnership, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Partnership selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Partnership or in furtherance of the business of the Partnership in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the Partnership shall indemnify and save harmless Covered Persons (the **"Indemnitees"),** from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection

with the business of the Partnership, any investment made under or in connection with this Agreement, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Partnership, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.

(f) The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) **Notwithstanding anything in this Agreement to the contrary, the aggregate maximum amount that a Covered Person may be liable to the Partnership and/or any of the Partners pursuant to this Agreement shall, to the extent not prohibited by law, never exceed the amount of management and incentive fees received by such Covered Person from the Partnership under this Agreement prior to the date that the acts or omissions giving rise to a claim for indemnification or liability shall have occurred. In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits. No Covered Person shall incur any liability for interest on any monies at any time received by such Covered Person or any investment loss or other charge resulting therefrom with respect to amounts invested hereunder.**

(i) **WAIVER OF CONSUMER RIGHTS: The Partnership and each of the Limited Partners waive all of their respective rights, if any, under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code ("DTPA"), a law that gives consumers special rights and protections. After consultation with an attorney of Partnership's own selection, Partnership voluntarily consents to this waiver. This waiver includes any right to recover attorneys' fees under the DTPA Further, Partnership waives all of its rights to any and all protections afforded by any other state or federal Consumer Protection Acts, including the recovery of attorneys' fees.**

(j) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Covered Person, the Partnership (and not the applicable Covered Person) shall be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence or reckless or intentional misconduct of any Covered Person. Given the volume of transactions executed on behalf of the Partnership, Limited Partners acknowledge that trading errors (and similar errors) will occur and that the Partnership shall be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Covered Person.

(k) This Section 2.2 shall survive a Limited Partner's withdrawal as a limited partner of the Partnership and any termination of this Agreement.

ARTICLE III

CAPITAL ACCOUNTS AND DIVISION OF PROFITS AND LOSSES

3.1 Capital Contributions.

(a) Each Partner has made the capital contributions to the Partnership in the amount set forth in the records of the Partnership. The Limited Partner has contributed to the Partnership all of the outstanding equity interests of CLO HoldCo.

3.2 Capital Account; Allocation of Profits and Losses.

(b) There shall be established for each Partner on the books of the Partnership as of the first day of the fiscal period during which such Partner was admitted to the Partnership a capital account for such Partner in an amount equal to his capital contribution to the Partnership.

(c) Since the General Partner's capital account and contributions shall be the minimum required by Act, all income, deductions, gains, losses and credits of the Partnership shall be allocated shall be for the benefit of the Limited Partner, except as may otherwise be required by law. In the event any valuation of assets is necessary or appropriate, the General Partner shall determine such value in any reasonable manner determined by the General Partner in its sole discretion consistent with relevant accounting principles and applicable law.

(d) For purposes of determining the share of any items allocated to any period during the relevant Taxable Year of the Partnership, such shares shall be determined by the General Partner using any method permitted by the Code and the regulations thereunder. All allocations to be made by the General Partner may be overridden if necessary to comply with the Code, the regulations thereunder or other applicable law.

(e) To the extent that the Partnership pays withholding taxes as to a Partner, such amounts shall be charged to the applicable Partner's capital account; provided, however, that any such amounts may be treated as an advance to the Partner with interest to be charged to that Partner's capital account at a rate determined by the General Partner.

(f) Each Partner agrees not to treat, on any tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with treatment of such item by the Partnership.

ARTICLE IV

LEGAL INTERESTS, DISTRIBUTIONS AND PARTIAL WITHDRAWLS FROM CAPITAL ACCOUNT

4.1 Legal Interest. Each Partner shall have and own during any Taxable Year an undivided interest in the Partnership equal to his opening capital account for such period.

4.2 Distributions.

(a) Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses. In determining the amount of cash or securities available for distribution, the General Partner may retain reasonable reserves in such amounts as it determines may be necessary to cover expenses, contingencies and losses. Notwithstanding the foregoing, distributions made in connection with a sale of all or substantially all of the Partnership's assets or a liquidation of the Partnership shall be made in accordance with the capital account balances of the Partners within the time period set forth in Treasury Regulations Section 1.704- 1(b)(2)(ii)(b)(3).

(b) The General Partner may withhold and pay over to the U.S. Internal Revenue Service (or any other relevant taxing authority) such amounts as the Partnership is required to withhold or pay over, pursuant to the Code or any other applicable law, on account of a Partner's distributive share of the Partnership's items of gross income, income or gain.

(c) For purposes of this Agreement, any taxes so withheld or paid over by the Partnership with respect to a Partner's distributive share of the Partnership's gross income, income or gain shall be deemed to be a distribution or payment to such Partner, reducing the amount otherwise distributable to such Partner pursuant to this Agreement and reducing the capital account of such Partner. If the amount of such taxes is greater than any such distributable amounts, then such Partner and any successor to such Partner's interest shall pay the amount of such excess to the Partnership, as a contribution to the capital of the Partnership. Notwithstanding anything to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, will not be required to make a distribution to any Partner on account of its interest in the Partnership if such distribution would violate any provision of the Act or any other applicable law.

4.3 Withdrawal. Without the consent of the General Partner, no Partner may withdraw as a Partner or make withdrawals from such Partner's capital account. In the event the General Partner permits any such withdrawal, the withdrawal shall be on such terms and conditions as the General Partner shall determine in its sole discretion. The General Partner may require the withdrawal of all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.

ARTICLE V

DURATION OF PARTNERSHIP

5.1 Commencement of Winding Up. The Partnership shall be required to be wound up and subsequently dissolved pursuant to the provisions of Section 36(1)(a) of the Act after the earliest of:

(a) the service of a notice by the General Partner on the other Partners requiring that the Partnership be wound up and dissolved; or

(b) the withdrawal by or resignation of the General Partner as general partner of the Partnership; or

(c) the withdrawal of all Limited Partners.

Upon the occurrence of any such event, the Partnership's affairs shall be wound up by the General Partner or such other Person as the General Partner shall appoint to act as liquidator of the Partnership.

5.2 Winding Up. Upon the commencement of the winding up of the Partnership, the General Partner (or a duly appointed liquidator, as applicable) shall proceed with the liquidation and distribution of the assets of the Partnership in an orderly manner in accordance with this Agreement and the Act.

5.3 Termination. Upon completion of the winding up of affairs of the Partnership in accordance with the Act and this Agreement, the General Partner (or liquidator, as applicable) shall execute a notice of dissolution ("**Notice of Dissolution**") in respect of the Partnership and cause such Notice of Dissolution to be filed with the Registrar of Exempted Limited Partnerships of the Cayman Islands, and this Agreement shall terminate.

ARTICLE VI

MISCELLANEOUS

6.1 Tax Matters Partner. The General Partner shall at all times constitute, and have full powers and responsibilities, as the Tax Matters Partner of the Partnership. In the event the Partnership shall be the subject of an income tax audit by any Federal, state or local authority, to the extent the Partnership is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and his decision shall be final and binding upon, the Partnership and each Partner thereof, and the Tax Matters Partner shall be indemnified and held harmless by the Partnership and each Partner for any action so taken by him in good faith. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Partnership to the extent of available Partnership funds, and any excess shall be paid by the Partners individually in proportion to their percentage interests in the Partnership.

6.2 Right to Hire.

(a) Nothing herein shall preclude the General Partner from engaging on behalf of the Partnership the services of any person or firm, whether or not affiliated with the General Partner, including the General Partner, to render for compensation such services to the Partnership as may be necessary to implement the business purposes of the Partnership. For the avoidance of doubt, the General Partner and the Limited Partners confirm that any such compensation is received by the General Partner in its capacity as general partner of the Partnership and in

furtherance of the General Partner's authority to conduct the Partnership's business and affairs on behalf of the Partnership.

(b) Each of the Partners consents that the General Partner or any Limited Partner or any affiliate (as defined in the Securities Act of 1933, as amended, and the regulations thereunder) of any of them, including without limitation the investment manager of the CLO HoldCo, may engage in or possess an interest in directly or indirectly, any other present or future business venture of any nature or description for his own account, independently or with others, including but not limited to, any aspect of the securities business or any other business engaged in by the Partnership, and may become the general partner in other partnerships; and neither the Partnership nor any Partner shall have any rights in or to such independent venture or the income or profits derived therefrom.

(c) The General Partner and any affiliate or employee of such General Partner, may hereafter render investment advisory services to other investors with respect to, and/or may own, purchase or sell, securities or other interests in property the same as or similar to those which the General Partner may purchase, hold or sell on behalf of the Partnership.

6.3 Applicable Law, etc. This Agreement: (i) shall be binding on the executors, administrators, estates, heirs and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the Cayman Islands; and iii) may be executed in more than one counterpart, all of which taken together shall constitute one and the same instrument.

6.4 Power of Attorney. Each of the undersigned does hereby constitute and appoint the General Partner, with full power of substitution, his true and lawful representative and attorney in-fact, in his name, place and stead to make, execute, sign and file this Agreement and any amendment to this Agreement authorized by the terms of this Agreement, and all such other instruments, documents and certificates (and any amendments thereto) which may from time to time be required by the laws of the Cayman Islands, the United States of America, or any state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership and to take any further action that the General Partner considers advisable in its sole discretion in connection with the exercise of its authority pursuant to this Agreement.

This power of attorney is intended to secure a proprietary interest of the General Partner and, in addition, the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable.

6.5 Tax Elections Under the Internal Revenue Code. The General Partner shall have the authority to make all tax elections and determinations on behalf of the Partnership under the Internal Revenue Code, the regulations promulgated thereunder or other applicable law to effect any elections, determinations or capital allocations.

6.6 Amendments to Partnership Agreement. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the consent of the General Partner together with the consent of a majority in interest of the Limited Partners, insofar as is consistent with the laws governing this Agreement. Notwithstanding the foregoing, the General Partner shall have the right to effect amendments to this Agreement without the consent of any Limited Partner, including without limitation, to reflect: a change in the location of the Partnership's principal place of business; a change in the registered office or registered agent; a change in the name of the Partnership; admission of Partners in accordance with this Agreement; a change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the Tax Matters Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for Federal income tax purposes; a change of the provisions relating to the management fee or other compensation to the General Partner so that such provisions conform to any applicable requirements of the U.S. Securities and Exchange

Commission and other regulatory authorities; a change (i) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any Federal or state agency or contained in any Federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, (ii) that is required or contemplated by this Agreement, or (iii) that is necessary or desirable to implement new regulations published by the Internal Revenue Service with respect to partnership allocations of income, gain, loss, deduction and credit; a change to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to the matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof; or a change that does not adversely affect the Limited Partners in any material respect; provided, that in no event shall the General Partner effect any amendment to this Agreement that has the effect of giving the General Partner any economic benefits in the assets of the Partnership; provided further, that the General Partner shall give notice to the Limited Partners of any such amendment.

6.7 Investment Representation. Each Partner hereby acknowledges and represents that it acquired its interest in the Partnership for investment purposes only and not with a view to its resale or distribution.

6.8 Notices. All notices, requests or approvals that any party hereto is required or desires to give to any Partner or to the Partnership shall be in writing signed by or on behalf of the party giving the same and delivered personally or sent overnight express mail by a reputable private carrier or by prepaid registered or certified mail, return receipt requested, addressed (i) to the Limited Partner at the address set forth in this Agreement; (ii) to the Partnership at the principal place of business of the Partnership with a copy of such notice sent simultaneously to the General Partner at 6716 Glenhurst Dr., Dallas, TX 75254; or (iii) to the respective party at such other address or addresses as the party may specify from time to time in a writing given to the Partnership in the manner provided in this Section 6.8 of ARTICLE VI. Notice shall be deemed to have been duly given and received (i) on the date of delivery, if personally delivered, (ii) on the next business day subsequent to sending by overnight express mail as aforesaid, or iii) on the third day subsequent to mailing if mailed as aforesaid; provided that any withdrawal notices shall not be deemed to have been given until actually received by the Partnership.

6.9 General Partner Determinations. Any determinations or calculations made by the General Partner shall, if made in good faith and in the absence of manifest error, be binding upon the Partnership and its Limited Partners.

6.10 Dispute Resolution. The following procedures shall be used to resolve any controversy or claim **("Dispute")** arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation.

(1) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(2) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(3) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(4) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration. If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect **("Arbitration Rules").** In the event of a conflict, the provisions of this document will control.

(1) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act ("FAA"), and resolved by the arbitrators, provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

(2) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.

(3) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code§ 38.001(8), which rights the parties expressly waive.

(4) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty- five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

(5) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.

(6) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

6.11 Successors and Assigns. Subject to the limitations set forth in Section 1.11, this Agreement shall inure to the benefit of and be binding upon the parties and to their respective heirs, executors, administrators, successors and permitted assigns. For the avoidance of doubt, any Limited Partner who becomes a former Limited Partner shall remain bound to all terms and conditions of this Agreement.

6.12 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

6.13 No Third Party Rights. Any Covered Person not being a party to this Agreement, may enforce any rights granted to it pursuant to this Agreement in its own right as if it were a party to this Agreement. Except as expressly provided in the foregoing sentence, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (as amended)

of the Cayman Islands to enforce any term of this Agreement. Notwithstanding any term of this Agreement, the consent of or notice to any person who is not a party to this Agreement shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under this Agreement at any time."

6.14 No Right to Partition. Each of the Partners, on behalf of themselves and their shareholders, partners, principals, members, successors and assigns, if any and as permitted hereunder, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

[Signature Page follows.]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Amended and Restated Exempted Limited Partnership Agreement as a Deed on the day and year first above written.

EXECUTED AS A DEED by Charitable DAF Holdco, Ltd, as Limited Partner:

Duly Authorised Signatory

Name: Mark Patrick

Title: Director

in the presence of:

Signature of Witness

Name: Kasey J. Rose

Address: 16400 Dallas Pkwy, Ste 300
Dallas, TX 75248

EXECUTED AS A DEED by CDH GP, Ltd. as General Partner:

Duly Authorised Signatory

Name: Mark Patrick

Title: Director

in the presence of:

Signature of Witness

Name: Kasey J. Rose

Address: 16400 Dallas Pkwy, Ste 300
Dallas, TX 75248

EXHIBIT 86

CONTRIBUTION AND ASSIGNMENT AGREEMENT

THIS CONTRIBUTION AND ASSIGNMENT AGREEMENT (this "Agreement"), dated as of April 27, 2023, by and among Charitable DAF Fund, LP, a Cayman Islands limited partnership ("Charitable DAF"), CLO HoldCo, Ltd., a Cayman Islands exempted company ("CLO HoldCo"), Liberty CLO HoldCo, Ltd., a Cayman Islands exempted company ("Liberty"), and Charitable DAF Holdings Corp. f/k/a Rand Advisors Holding Corp., a Delaware corporation ("DAF Holdings" and, collectively with Charitable DAF, CLO HoldCo and Liberty, the "Parties"), recites and provides as follows:

RECITALS

WHEREAS, immediately prior to the Effective Time (as defined below), Charitable DAF owned 100% of the capital stock of DAF Holdings and 100% of the issued shares of CLO HoldCo;

WHEREAS, CLO HoldCo owns 100% of the issued shares of Liberty;

WHEREAS, CLO HoldCo and Liberty are treated, for U.S. federal income tax purposes, as corporations pursuant to Treasury Regulations Section 301.7701-2(b)(1);

WHEREAS, Charitable DAF desires to make a capital contribution to CLO HoldCo which is satisfied by the transfer of 100% of the capital stock of DAF Holdings to CLO Holdco ("Charitable DAF Contribution") and CLO HoldCo desires to accept the Charitable DAF Contribution as a capital contribution from Charitable DAF; and

WHEREAS, CLO HoldCo, in turn, desires to make a capital contribution to Liberty which is satisfied by the transfer of 100% of the capital stock of DAF Holdings to Liberty ("CLO HoldCo Contribution") and Liberty desires to accept the CLO HoldCo Contribution as a capital contribution from CLO HoldCo;

NOW THEREFORE, in consideration of the mutual agreements, covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

AGREEMENTS

1. **Charitable DAF Contribution to CLO HoldCo**. Effective as of April 27, 2023 (the "Effective Time"), Charitable DAF hereby makes a contribution to the capital of CLO Holdco which is satisfied by the transfer, assignment, conveyance, and delivery of 1000 shares of DAF Holdings common stock to CLO HoldCo. Effective as of the Effective Time, CLO HoldCo hereby acknowledges and accepts the Charitable DAF Contribution as a contribution to CLO HoldCo's capital.

2. **CLO HoldCo Contribution to Liberty**. Immediately following the Effective Time, CLO HoldCo makes a contribution to the capital of Liberty which is satisfied by the the

transfer, assignment, conveyance, and delivery of 1000 shares of DAF Holdings common stock to Liberty. Liberty hereby acknowledges and accepts the CLO HoldCo Contribution as a contribution to Liberty's capital.

3. **Tax Matters**. For U.S. federal income tax purposes, the Charitable DAF Contribution and the CLO HoldCo Contributions will be treated as successive exchanges described in Section 351 of the Code and as further described in Revenue Ruling 64-155.

4. **Miscellaneous**.

(a) Further Assurances. The Parties hereby agree to execute any further instruments or perform any acts which are or may become reasonably necessary to carry out the intent of this Agreement or to consummate the transactions contemplated hereby.

(b) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to, or giving effect to, the application of Delaware choice of law rules.

(c) Entire Agreement. This Agreement represents the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all other agreements, oral or written with respect to such subject matter.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and permitted assigns.

(e) Amendments. This Agreement may be amended only by a written instrument signed by each of the parties hereto.

(f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature pages, which shall have the same force and effect as original executed signature pages.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Contribution and Assignment Agreement to be signed and delivered as of the date first above written.

CHARITABLE DAF FUND, LP
By Charitable DAF GP, LLC
Its: General Partner

By: _____
Name: Mark Patrick
Title: Managing Member

CLO HOLDCO, LTD.

By: _____
Name: Mark Patrick
Title: Director

LIBERTY CLO HOLDCO, LTD.

By: _____
Name: Mark Patrick
Title: Director

CHARITABLE DAF HOLDINGS CORP.

By: _____
Name: Mark Patrick
Title: Director

EXHIBIT 87

HIGHLAND CAPITAL
MANAGEMENT

Highland Capital Management, L.P.

Hearing on Motion for Relief from Order and Motion to Vacate

(Docket No. 4513)

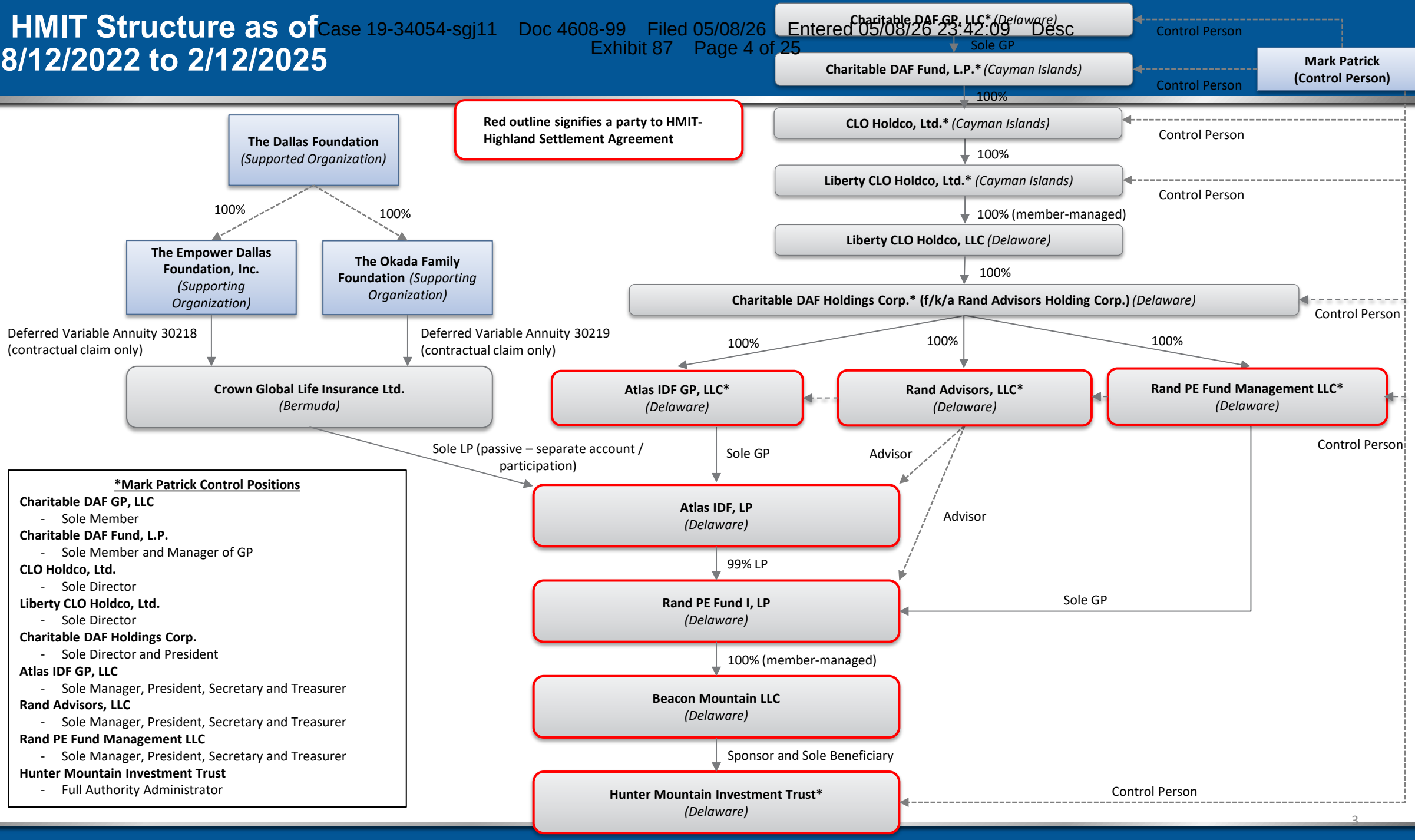
May 11, 2026

PSZJ PACHULSKI STANG ZIEHL & JONES

Executive Summary

- Prior to 2/12/25, Patrick had sole authority to act on behalf of the HMIT Entities
- On 2/12/25, Rand PE Fund sold Beacon Mountain—the owner of HMIT—to CLO HoldCo, LLC
- Because Patrick controlled CLO HoldCo, LLC, Patrick remained in control of Beacon Mountain (and, therefore, HMIT) before and after the transfer
- Dondero and entities controlled by him have validated Patrick's role by entering into nine written agreements with him since 1/1/25
- No one has ever sought Patrick's removal as the Control Person of any of the HMIT Entities and he remains in control today

HMIT Structure as of 8/12/2022 to 2/12/2025



***Mark Patrick Control Positions**

Charitable DAF GP, LLC
- Sole Member

Charitable DAF Fund, L.P.
- Sole Member and Manager of GP

CLO Holdco, Ltd.
- Sole Director

Liberty CLO Holdco, Ltd.
- Sole Director

Charitable DAF Holdings Corp.
- Sole Director and President

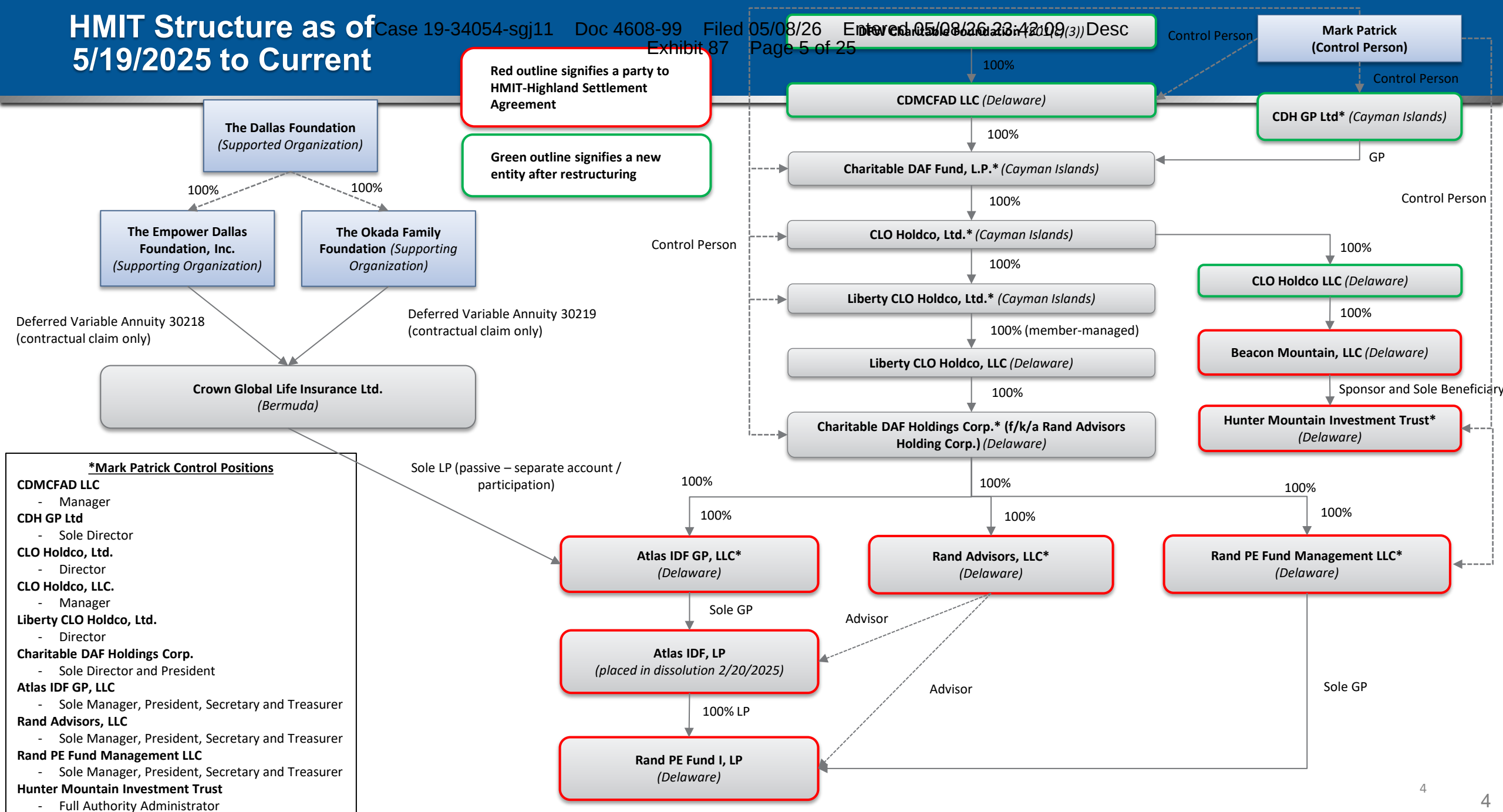
Atlas IDF GP, LLC
- Sole Manager, President, Secretary and Treasurer

Rand Advisors, LLC
- Sole Manager, President, Secretary and Treasurer

Rand PE Fund Management LLC
- Sole Manager, President, Secretary and Treasurer

Hunter Mountain Investment Trust
- Full Authority Administrator

HMIT Structure as of 5/19/2025 to Current



***Mark Patrick Control Positions**

CDMCFAD LLC
- Manager

CDH GP Ltd
- Sole Director

CLO Holdco, Ltd.
- Director

CLO Holdco, LLC.
- Manager

Liberty CLO Holdco, Ltd.
- Director

Charitable DAF Holdings Corp.
- Sole Director and President

Atlas IDF GP, LLC
- Sole Manager, President, Secretary and Treasurer

Rand Advisors, LLC
- Sole Manager, President, Secretary and Treasurer

Rand PE Fund Management LLC
- Sole Manager, President, Secretary and Treasurer

Hunter Mountain Investment Trust
- Full Authority Administrator

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Patrick's Authority and Control Over the HMIT Entities Before Restructuring

Patrick Controls DAF Holdings Corp. and Its Assets

- On August 1, 2022, John Honis transferred to Charitable DAF Holdings Corp. (f/k/a Rand Advisors Holdings Corp., "**DAF Holdings Corp.**")[1] 100% of the issued and outstanding membership interests of each of (1) Atlas IDF GP, LLC ("**Atlas IDF GP**"), (2) Rand PE Fund Management, LLC ("**Rand PE Fund Management**"), and (3) Rand Advisors, LLC ("**Rand Advisors**").[2] Patrick has been the Control Person of all DAF entities since March 25, 2021.[3]

- As a result, DAF Holdings Corp. became the sole member of (1) Atlas IDF GP, (2) Rand PE Fund Management, and (3) Rand Advisors, with the power to appoint and remove the boards/officers of each entity.[4]

- On October 13, 2022, Patrick was appointed as the Sole Manager, President, Secretary, and Treasurer of each of (1) Atlas IDF GP, (2) Rand PE Fund Management, and (3) Rand Advisors.[5]

Patrick, Via Atlas IDF GP, Rand Advisors LLC, and Rand PE Fund Mgmt. LLC, Controls and Advises Atlas IDF and Rand PE Fund

- Atlas IDF GP is the general partner of, and has full and exclusive authority and control over, Atlas IDF, L.P. ("**Atlas IDF**"), including the express right, power and authority to settle claims.[6] Patrick is the control person of Atlas IDF GP.

- Rand PE Fund Management LLC is the general partner of, and has full and exclusive authority and control over, Rand PE Fund I, L.P. ("**Rand PE Fund**"), including the express right, power, and authority to settle claims. Patrick is the control person of Rand PE Fund Management LLC.[7]

- Rand Advisors is the investment manager of Atlas IDF and Rand PE Fund. Patrick is the control person of Rand Advisors.[8]

Patrick Controls Beacon Mountain and HMIT

- Patrick controls Beacon Mountain through his control of Rand PE Fund. Prior to the 2025 Beacon Mountain sale, Beacon Mountain was a member-managed LLC. As its sole member, Rand PE Fund had full authority and control over Beacon Mountain.[9]

- Beacon Mountain is the sponsor and beneficial owner of Hunter Mountain Investment Trust ("HMIT").[10] Patrick is the sole "Administrator" of HMIT with full and exclusive authority over HMIT, including the express right, power and authority to settle claims.[11]

Patrick's Authority and Control Over the DAF Entities Before Restructuring

Patrick Controls DAF GP, DAF Fund, and Its Assets

- On March 24, 2021, Grant Scott transferred 100% of the limited liability company interests of Charitable DAF GP, LLC ("**DAF GP**") to Patrick, and Patrick was admitted as substitute member of DAF GP,[12] giving Patrick full authority and control over DAF GP.[13]
- The general partner of Charitable DAF Fund, L.P. ("**DAF Fund**") has full authority and control over DAF Fund. The initial general partner of DAF Fund was DAF GP, thus Patrick controlled DAF Fund via DAF GP.[14]
- Patrick, via DAF Fund, controls CLO Holdco, Ltd. and its subsidiaries, including DAF Holdings Corp. and CLO Holdco, LLC.
  - CLO Holdco, Ltd. is a wholly-owned subsidiary of DAF Fund.[15] On April 2, 2021, Patrick was appointed as sole director of CLO Holdco, Ltd.[16]
  - Liberty CLO Holdco, Ltd. is a wholly-owned subsidiary of CLO Holdco, Ltd. On March 24, 2021, Patrick was appointed as director of Liberty CLO Holdco, Ltd. [17]
  - Liberty CLO Holdco, LLC is a wholly-owned subsidiary of Liberty CLO Holdco, Ltd.[18]
  - DAF Holdings Corp. is a wholly-owned subsidiary of Liberty CLO Holdco, LLC[19] and Patrick is the President and Director of DAF Holdings Corp.[20]

Patrick Does Not Share Authority Over HMIT or DAF Entities

None of the Supporting Organizations Has Any Authority or Control Over HMIT

- The HMIT Entities were intentionally structured to prevent any of The Dallas Foundation or its supporting organizations, The Empower Dallas Foundation, Inc. and The Okada Family Foundation (collectively, the "**Supporting Organizations**"), from being treated as the owners of the HMIT Entities or their assets for tax purposes. Were it otherwise, such organizations could be treated as having received the distributions, interest, capital gains, and other income, including unrelated business taxable income (UBTI), realized by the HMIT Entities.[21]

- Instead, the Supporting Organizations purchased deferred variable annuity policies issued by Crown Global Insurance Company, a Bermuda insurer ("**Crown Global**"). As a result, "The Dallas Foundation and the Supporting Organizations have no legal, equitable, direct, or indirect interest in any of the assets held by Atlas IDF. Rather, [they] only have a contractual claim against Crown Global to collect cash from the [deferred variable annuity policies]." [22]

- The Supporting Organizations are prohibited from even communicating with Rand Advisors or Atlas IDF GP regarding Atlas IDF or its assets.[23]

Crown Global, The Sole Limited Partner Of Atlas IDF, Has No Control Over Atlas

- "[T]he Limited Partners shall take no part in the management or control of [Atlas IDF's] business and shall have no authority to act for or bind the Partnership."[24]

- Atlas IDF's Limited Partnership Agreement limits the matters on which the Limited Partners are entitled to vote to (i) approval of certain affiliate transactions (*§ 3.01(b)*), (ii) revocation of the General Partner's authority to effect agency cross transactions *(§ 3.02(o)*), (iii) appointment of a successor General Partner in the event of a withdrawal of the General Partner (*§ 4.02*), (iv) the appointment of a liquidator upon dissolution in the event the General Partner fails to appoint one (*§ 13.02*), and (v) amendments to the Limited Partnership Agreement (*§ 14.08*).

None of DAF Holdco or the Dondero Foundations Had Any Authority or Control Over the DAF Entities

- Prior to the 2025 DAF restructuring transactions, Charitable DAF Holdco, Ltd. ("**DAF Holdco**") was the sole limited partner of DAF Fund.[25]

- The Limited Partnership Agreement of DAF Fund expressly provides that the limited partners have no authority or control over DAF Fund.[26]

- The Dondero Foundations held participating shares of DAF Holdco.[27] The holders of participating shares have no right to vote on matters relating to DAF Holdco.[28]

Patrick's Post-Restructuring Authority

Patrick Continues To Have Full Authority Over Beacon Mountain & HMIT Entities

- *Rand PE Fund Sells Beacon Mountain to CLO Holdco, LLC* - On February 12, 2025, Rand PE Fund (controlled by Patrick) sold all of the issued and outstanding membership interests of Beacon Mountain to CLO Holdco, LLC [29] for an aggregate purchase price of $1,000,000.[30]

- *Following the 2025 Beacon Mountain Sale, Patrick Continues to Control Beacon Mountain - Now Through His Control of CLO Holdco, LLC* - Following the sale, Beacon Mountain continued to be a member-managed LLC. As its new sole member, CLO Holdco, LLC has full authority and control over Beacon Mountain.[31]

- Beacon Mountain remains the sole beneficiary of HMIT.

Patrick Continues to Have Full Authority Over DAF Entities

- On March 7, 2024, DAF GP (owned by Patrick) assigned its general partner interest in DAF Fund to CDH GP, Ltd. ("**CDH GP**"), which is also 100% owned by Patrick and of which Patrick is Director.[32]

- Thus, Patrick remains in full control of DAF Fund, now through CDH GP, instead of through DAF GP.

Conclusion

- Before the restructuring, Patrick had full authority over every HMIT Entity signatory to the settlement.
- After the restructuring, Patrick continued to have full authority over every HMIT Entity signatory to the settlement.
- Patrick continued to have full authority over every HMIT Entity signatory after the restructuring and continues to have the full authority today.

CITATIONS

[1] DAF Holdings Corp. was incorporated by Patrick on January 1, 2022 (*DAF Holdings Corp. Cert. of Incorporation*) and is a direct wholly-owned subsidiary of Liberty CLO Holdco, LLC and indirect wholly-owned subsidiary of Charitable DAF Fund, L.P. (*Dkt. 2547-3, Structure Chart; Dkt. 2547-6, CLO Holdco. Ltd. Mem. and Art. of Assoc.; Dkt. 2547-7*, *CLO Holdco, Ltd. Register of Members*). Patrick is the President and Sole Director of DAF Holdings Corp. (*Membership Interest Purchase Agreement, dated August 1, 2022 by and among John Honis, as seller, DAF Holdings Corp., as buyer, and CLO Holdco, Ltd., as guarantor; Member and Manager Consent of Atlas IDF GP, dated October 13, 2022; Member and Manager Consent of Rand PE Fund Management, dated October 13, 2022; Member and Manager Consent of Rand Advisors, dated October 13, 2022*).

[2] Membership Interest Purchase Agreement, dated August 1, 2022, by and among John Honis, as seller, DAF Holdings Corp., as buyer, and CLO Holdco, Ltd., as guarantor.

[3] (*Assignment and Assumption of Membership Interest Agreement, dated March 24, 2021, between Grant J. Scott and Mark E. Patrick*).

[4] "At each annual meeting of Members, Managers shall be elected to hold office until the next annual meeting of Members and until their successors are elected and qualified . . . Except as otherwise may be provided by the Members, at any meeting of Members called expressly for that purpose, any Manager or the entire Board of Managers may be removed, with or without cause, by a vote of one or more Members whose Percentage Interests total more than fifty percent (50%)" (*§§ 3.02 – 3.03 of each of (i) Amended and Restated Company Agreement of Atlas IDF GP, dated August 1, 2022, (ii) Amended and Restated Company Agreement of Rand PE Fund Management, dated August 1, 2022, and (iii) Amended and Restated Company Agreement of Rand Advisors, dated August 1, 2022*); "The business and affairs of [each of (1) Atlas IDF GP, (2) Rand PE Fund Management, and (3) Rand Advisors] shall be managed EXCLUSIVELY by the Board of Managers. Subject to the restrictions imposed by law, the Certificate, or this Agreement, the Board of Managers may exercise all powers of [(1) Atlas IDF GP, (2) Rand PE Fund Management, and (3) Rand Advisors, respectively]" (*§ 3.01 of each of (i) Amended and Restated Company Agreement of Atlas IDF GP, dated August 1, 2022 and (ii) Amended and Restated Company Agreement of Rand PE Fund Management, dated August 1, 2022, and (iii) Amended and Restated Company Agreement of Rand Advisors, dated August 1, 2022*).

[5] Member and Manager Consent of Atlas IDF GP, dated October 13, 2022; Member and Manager Consent of Rand PE Fund Management, dated October 13, 2022; Member and Manager Consent of Rand Advisors, dated October 13, 2022.

CITATIONS

[6] "The business and affairs of the Partnership shall be managed exclusively by the General Partner. The Limited Partners shall take no part in the management or control of the Partnership's business and shall have no authority to act for or bind the Partnership. The General Partner shall have sole discretion and authority to select investments, shall invest the funds of the Partnership from time to time as the General Partner deems appropriate in accordance with the purposes set forth in Section 1.03, and shall have (without limitation) the powers set forth in Section 3.02 . . . Without in any way intending to limit the powers of the General Partner, the General Partner shall have the right, power and authority on behalf of the Partnership (or to delegate any portion of such rights, power and authority): . . . (e) To file, conduct and defend legal proceedings of any form, including proceedings against Partners, and to compromise and settle any such proceedings or any claims, including claims against Partners, on whatever terms deemed appropriate by the General Partner . . . The General Partner is authorized, directed and empowered to act individually on behalf of the Partnership, and in accordance therewith, to execute all documents and instruments on behalf of the Partnership. Third parties may rely on the execution of any documents on behalf of the Partnership by the General Partner." (*§§ 3.01, 3.02(e), 3.03 of the Amended and Restated Limited Partnership Agreement of Atlas IDF, dated as of November 30, 2015*) (Patrick Dep. Ex. 30) .

[7] "The business and affairs of the Partnership shall be managed exclusively by the General Partner. The Limited Partners shall take no part in the management or control of the Partnership's business and shall have no authority to act for or bind the Partnership. The General Partner shall have sole discretion and authority to select investments, shall invest the funds of the Partnership from time to time as the General Partner deems appropriate in accordance with the purposes set forth in Section 1.03, and shall have (without limitation) the powers set forth in Section 3.02 . . . Without in any way intending to limit the powers of the General Partner, the General Partner shall have the right, power and authority on behalf of the Partnership (or to delegate any portion of such rights, power and authority): . . . (e) To file, conduct and defend legal proceedings of any form, including proceedings against Partners, and to compromise and settle any such proceedings or any claims, including claims against Partners, on whatever terms deemed appropriate by the General Partner . . . The General Partner is authorized, directed and empowered to act individually on behalf of the Partnership, and in accordance therewith, to execute all documents and instruments on behalf of the Partnership. Third parties may rely on the execution of any documents on behalf of the Partnership by the General Partner." *(§§ 3.01, 3.02(e), 3.03 of the Amended and Restated Limited Partnership Agreement of Rand PE Fund, dated as of November 30, 2015*).

[8] "[Rand Advisors] shall act as investment manager to [Atlas IDF and Rand PE Fund, respectively] and shall manage the investment and re-investment of the cash, securities, commodities, financial instruments and other assets of [Atlas IDF and Rand PE Fund, respectively] in accordance with the terms hereof" (*Investment Management Agreement, dated as of November 30, 2015, by and among Rand Advisors and Atlas IDF; Investment Management Agreement, dated as of November 30, 2015, by and among Rand Advisors and Rand PE Fund*); § 3.01 of each of (i) the Amended and Restated Limited Partnership Agreement of Atlas IDF, dated as of November 30, 2015, and (ii) the Amended and Restated Limited Partnership Agreement of Rand PE Fund, dated as of November 30, 2015 also provides that, "The General Partner may select an investment manager ("Investment Manager") to provide all or any portion of the portfolio management services required by the Partnership, including the valuation of assets of the Partnership. The Investment Manager may be changed from time to time by the General Partner in its sole and absolute discretion. The initial Investment Manager shall be Rand Advisors, LLC, a Delaware limited liability company and an affiliate of the General Partner. If at any time there is no Investment Manager, then the General Partner shall provide such portfolio management services, and be subject to the provisions of this Agreement applicable to the Investment Manager."

CITATIONS

[9] "The sole responsibility for managing the business and affairs of the Company, except as otherwise provided herein or in the Act, shall be vested in the Member. Except as expressly provided herein, voting power shall be vested solely in the Member, and all matters requiring a vote pursuant to this Agreement or the Act shall be determined by the vote of the Member and the Member may act by written consent." (*§ 2 of Amended and Restated Limited Liability Company Agreement of Beacon Mountain, dated September 24, 2015*).

[10] *Trust Agreement of HMIT, dated December 17, 2015*. The Administrator of HMIT has full authority and control over HMIT, including the express power to settle claims. "The Administrator shall pursuant to Section 3806(b)(7) of the Delaware Act have the power and authority, and shall be duly authorized from time to time, in his sole discretion to manage the business and affairs of the Trust . . . The Administrator shall also have the power to settle, compromise, submit to arbitration, or submit to any court having jurisdiction in the matter any matters in dispute." (*§ 7 of the Trust Agreement of HMIT, dated December 17, 2015*). As a result of the 2022 Honis sale, John Honis was automatically removed as the Administrator of HMIT, and on August 12, 2022, Beacon Mountain appointed Patrick as the successor Administrator of HMIT. "'Honis Trigger Event' means, with respect to Honis or any of his Affiliates . . . (v) the termination of Honis' employment with, or the failure of Honis to be actively engaged in the management of, Rand Advisors; (vi) a change in the ownership of Rand Advisors, such that Honis fails to retain, directly or indirectly, majority voting control of Rand Advisors . . . Upon any Honis Trigger Event, the Administrator shall immediately be removed without any action by the Delaware Trustee or any other party . . . Upon the termination of the Administrator in accordance with paragraph 16 above, Beacon Mountain, LLC shall appoint a successor Administrator within a reasonable period of time." *(§§ 1, 16 – 17 of the Trust Agreement of HMIT, dated December 17, 2015*) (Patrick Dep. Ex. 23).

CITATIONS

[11] (i) § 7 of the Trust Agreement of HMIT, dated December 17, 2015 (Ex. 1 of Highland W&E List) and (ii) HMIT Appointment of Successor Administrator dated 8/12/2022 (Ex. 2 of Highland W&E List)

[12] (Assignment and Assumption of Membership Interest Agreement, dated March 24, 2021, between Grant J. Scott and Mark E. Patrick).

[13] "The business and affairs of the Company shall be managed by the Managing Member, who shall have the exclusive power and authority, on behalf of the Company, to take any action of any kind not inconsistent with the provisions of this Agreement and to do anything and everything it deems necessary or appropriate to carry on the business of the Company." (*§5 of the Amended and Restated Limited Liability Company Agreement of DAF GP, dated as of January 1, 2012*).

[14] "Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make decisions regarding the business and affairs of the Partnership, and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner." (*§1.6(a) of each of (i) the Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated November 7, 2011 (Doc. 2547-9) (Patrick Dep. Ex. 6) , and (ii) the Second Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated March 11, 2024).*

[15] (*CLO Holdco, Ltd. Register of Members* (Dkt. 2547-7)).

[16] (*CLO Holdco, Ltd. Written Resolutions of Sole Shareholder* (Dkt. 2547-29); *CLO Holdco, Ltd. Register of Directors* (Dkt. 2547-36)).

[17] (*Liberty CLO Holdco, Ltd. Register of Directors* (Dkt. 2547-39)).

[18] (*Contribution and Assignment Agreement, dated April 27, 2023, by and among DAF Fund, CLO Holdco, Ltd, Liberty CLO Holdco, Ltd., and DAF Holdings Corp.*).

[19] (*Contribution and Assignment Agreement, dated April 27, 2023, by and among DAF Fund, CLO Holdco, Ltd, Liberty CLO Holdco, Ltd., and DAF Holdings Corp.*).

[20] (*Member and Manager Consent of Atlas IDF GP, dated October 13, 2022; Member and Manager Consent of Rand PE Fund Management, dated October 13, 2022; Member and Manager Consent of Rand Advisors, dated October 13, 2022*).

CITATIONS

[21] SEE Legal Opinion of Sadis & Goldberg LLP ("S&G"), dated January 29, 2016. Dondero, on behalf of HCMLP, delivered a signed certification upon which S&G relies certifying, among other things, that the statement of facts set forth in the opinion are "accurate and complete in all material respects", the assumptions set forth therein are "reasonable" and "accurate", and that "to the best of our knowledge, information and belief, there are no additional facts, conditions or circumstances which should have been disclosed to S&G for purposes of preparing [the] Tax Opinion" (Certification of Highland Capital Management, L.P., dated January 29, 2016).

[22] Pg. 21 of the Sadis & Goldberg Legal Opinion, dated January 29, 2016.

[23] SEE ALSO: " . . . an insurance company, not a Policy Owner, will become a Limited Partner in [Atlas IDF] . . . Policy Owners have no right to communicate with or direct the investment policies or decisions of [Atlas IDF] and/or the Investment Manager Affiliates relating in any way to [Atlas IDF]. For purposes of this Memorandum, the term Policy Owner includes: (i) any trustees of a Policy Owner; (ii) any Policy beneficiaries; (iii) any affiliated person (as this term is defined in Section 2(a)(3) of the Investment Company Act) of the foregoing persons; or (iv) any person that represents the Policy Owner . . . (Pgs. 1, 9, 21, 74 of the Confidential Private Placement Memorandum of Atlas IDF, dated November 30, 2015); "All decisions involving the investment of [Atlas IDF's] assets shall be made by the relevant Adviser Party in its sole and absolute discretion, without any direct or indirect input from any Policy Party . . . no Adviser Party shall knowingly discuss, communicate or solicit in any manner, whether directly or indirectly, the views of any Policy Party on the current or future investments, objectives, strategies or policies of [Atlas IDF], either in general or specific terms" (Schedule D to Participation Agreement, dated November 30, 2015 by and among Crown Global, Atlas IDF, and Rand Advisors); "Assets held in the Separate Account are the sole property of the Insurer. The Proposed Policyholder will have no direct proprietary interest in the assets held in any separate account, including, without limitation, the Separate Account with respect to this Policy . . . The Proposed Policyholder agrees that, except for the selection of the allocation of Separate Account assets among Investment Options as contemplated in Section 4.3, and changes to such allocations as contemplated in Section 4.5, it will not select, identify or recommend, nor will it contact any investment manager for the purpose of influencing, any particular investment or group of investments to be made directly or indirectly with the assets of any Subaccount, including, without limitation, an investment manager with respect to an IDF in which funds held in a particular Subaccount are invested. A Proposed Policyholder may not have direct contact or communicate with the investment manager of either an IDF or a Managed Subaccount and may not directly participate in the management of the Separate Account or any IDF or Managed Subaccount. (§§ 1.7, 4.4 of each of the Deferred Variable Annuity Policies); "As a basic premise, to allow a Proposed Policyholder to be entitled to defer the current recognition of income resulting from the inside build up within a Separate Account, the assets in the Separate Account must be considered to be owned by the Insurer, not by the Proposed Policyholder. In order to meet this requirement, the Proposed Policyholder may not have direct or indirect control over the specific investment decisions made by the investment manager with respect to the assets in the Separate Account, or be treated as possessing any "incidents of ownership." If the Proposed Policyholder retains or exercises prohibited control, the Proposed Policyholder will be treated as the owner of the underlying assets held in the Separate Account, and income, accretions and gain recognitions within the Separate Account may become currently includable in the Proposed Policyholder's taxable U.S. gross income . . . In order to minimize the potential U.S. federal income tax exposure to each Proposed Policyholder with respect to the investor control doctrine, the Insurer will contractually prohibit each Proposed Policyholder from directly or indirectly consulting with the investment manager managing the Separate Account backing his or her respective Policy following the Policy's issuance. All investment decisions will be made exclusively by the investment manager in its sole and absolute discretion, but subject to the Investment Option selected by the Proposed Policyholder. Proposed Policyholders or Policyholders will not have any authority to require the investment manager to acquire or dispose of any particular investment" (Pg. 67 of each Confidential Private Placement Memorandum for Deferred Variable Annuity (DVA) with Flexible Premiums Payable, dated June 28, 2011) . . . "The Proposed Policyholder acknowledges and agrees that all investment decisions with regard to the management of assets held in the Separate Account backing the Policy shall be made by the investment manager in the investment manager's sole and absolute discretion" (Part D of each Deferred Variable Annuity Application).

CITATIONS

[24] *(§3.01(a) of the Amended and Restated Limited Partnership Agreement of Atlas IDF, dated November 30, 2015)*.

[25] (*Structure Chart (Doc. 2547-3); § 1.5 of each of (i) the Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated November 7, 2011 (Doc. 2547-9) (Patrick Dep. Ex. 6), and (ii) the Second Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated March 11, 2024*).

[26] "Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management or conduct of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement"; § 1.6(b) of each of (i) the Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated November 7, 2011 (Doc. 2547-9)((Patrick Dep. Ex. 6), and (ii) the Second Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated March 11, 2024.

[27] (*DAF Holdco Register of Members (Doc. 2547-13*)).

[28] "Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles" (*§ 11 of the DAF Holdco Memorandum and Articles of Association dated January 19, 2015 (Doc. 2547-11)*).

[29] CLO Holdco, LLC is a direct wholly-owned subsidiary of CLO Holdco, Ltd. and an indirect wholly-owned subsidiary of Charitable DAF Fund, L.P. Patrick is the Manager of CLO Holdco, LLC.

[30] (*Membership Interest Purchase Agreement, dated as of February 12, 2025, between Rand PE Fund and CLO Holdco, LLC*) *(Patrick Dep. Ex. 27)*.

[31] "The sole responsibility for managing the business and affairs of the Company, except as otherwise provided herein or in the Act, shall be vested in the Member. Except as expressly provided herein, voting power shall be vested solely in the Member, and all matters requiring a vote pursuant to this Agreement or the Act shall be determined by the vote of the Member and the Member may act by written consent'' (§ 2 of Second Amended and Restated Limited Liability Company Agreement of Beacon Mountain, dated February 12, 2025).

[32] (*Second Amended and Restated Exempted Limited Partnership Agreement of DAF Fund, dated March 11, 2024*).